

## QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Re: National Retail Association Limited, Union of Employers* [2017] QIRC 062

PARTY: **National Retail Association Limited, Union of Employers**  
(Applicant)

CASE NOS: TH/2016/16, TH/2016/17 and TH/2016/18

PROCEEDING: Application to amend Trading Hours Order  
(Warwick, Stanthorpe and Pittsworth Areas)

DELIVERED ON: 14 June 2017

HEARING DATES: 2 December 2016  
14 February 2017  
20 February 2017 (Inspections - Stanthorpe,  
Warwick and Pittsworth)  
21 to 24 February 2017  
4 April 2017 (NRA's Submissions)  
2 May 2017 (MGA's Submissions)  
2 May 2017 (SDA's Submissions)  
16 May 2017 (NRA's Submissions in Reply)

HEARD AT: Brisbane and Toowoomba

MEMBER: Industrial Commissioner Thompson

ORDERS:

- 1. Application TH/2016/16 (Warwick) is granted with the amendment to the Order *Trading Hours - Non-Exempt Shops Trading by Retail - State* (in accordance with the Schedule attached to the Application filed 14 October 2016) to take effect from 12 July 2017.**
- 2. Application TH/2016/17 (Stanthorpe) is granted with the amendment to the Order *Trading Hours - Non-Exempt Shops Trading by Retail - State* (in accordance with the Schedule attached to the Application filed 14 October 2016) to take effect from 12 July 2017.**
- 3. Application TH/2016/18 (Pittsworth) is not granted.**

- CATCHWORDS:** INDUSTRIAL LAW - TRADING HOURS ORDER - Application to amend trading hours order - Inspections - Witness evidence - Matters relevant to ss 21 and 26 considered - Application TH/2016/16 (Warwick) granted - Application TH/2016/17 (Stanthorpe) granted - Application TH/2016/18 (Pittsworth) not granted.
- CASES:** *Trading (Allowable Hours) Act 1990, s 21, s 26*  
*Trading (Allowable Hours) Amendment Bill 2017*  
*Industrial Relations Act 1999, s 320*  
*Re: National Retail Association Limited, Union of Employers [2015] QIRC 044*  
*Re: National Retail Association Limited, Union of Employers [2015] QIRC 204*  
*Trading Hours - Non-Exempt Shops Trading By Retail - State (TH/2007/7) - Decision* <<http://www.qirc.qld.gov.au>>  
*Trading Hours - Non-Exempt Shops Trading by Retail - State (TH/2008/3) - Decision* <<http://www.qirc.qld.gov.au>>  
*Re: National Retail Association Limited, Union of Employers [2015] QIRC 027*  
*National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organisation of Employers) and Another (TH/2009/3) - Decision* <<http://www.qirc.qld.gov.au>>  
*Simpson v National Retail Association Limited, Union of Employees [2015] QIRC 172*  
*Re: National Retail Association Limited, Union of Employers [2014] QIRC 063*  
*Re: National Retail Association Limited, Union of Employers [2014] QIRC 157*  
*Trading Hours Order - Non-Exempt Shops Trading by Retail - State (2003) 174 QGIG 1339*  
*National Retail Association Limited, Union of Employers [2016] QIRC 148*
- APPEARANCES:** Mr M. Cole for the National Retail Association Limited, Union of Employers, Applicant.  
 Ms N. Prestia for the Master Grocers Australia Limited.  
 Mr D. Kerr for the Shop, Distributive and Allied Employees Association (Industrial Organization of Employees).

### **Decision**

[1] Applications to amend the *Trading Hours - Non-Exempt Shops Trading by Retail - State* (the Order) were lodged by the National Retail Association Limited,

Union of Employers (NRA) with the Industrial Registrar on 14 October 2016 in relation to the following areas:

- Warwick;
- Stanthorpe; and
- Pittsworth.

- [2] Schedules attached to each application identified similar Orders for each of the applications as:

	<u>Opening Time</u>	<u>Closing Time</u>
Monday to Friday	8.00 a.m.	9.00 p.m.
Saturday	8.00 a.m.	5.00 p.m.
Sunday	9.00 a.m.	6.00 p.m.
Public Holidays (excluding Good Friday, 25 April, Labour Day and 25 December)	8.30 a.m.	5.30 p.m.

- [3] The boundary area for each application were identified as follows:

***The Warwick Area***

"Commencing at the intersection of the Cunningham Highway and Jackie Howe Dr; then by a line in a westerly direction to the intersection of Victoria St and Rosehill Rd; then by line in a southerly direction to the intersection of New England Hwy and Pratten St; then by a line in an easterly direction to the intersection of Pratten St and Pratten St East; then by a line in a northerly direction to the point of commencement."

***The Stanthorpe Area***

"Commencing at the intersection of the New England Highway and Connor St; then by a line in a westerly direction to the intersection of Corundum St and Talc St; then by a line in a southerly direction to the intersection of Bridge St and Kilpa St; then by a line in an easterly direction to the intersection of Wolfram St and Anzac St; then by a line in a northerly direction to the point of commencement."

***The Pittsworth Area***

"Commencing at the intersection of Campbell St and Vine St; then by a line in a westerly direction to the intersection of Helen St and Young St; then by a line in a southerly direction to the intersection of Golf Course Rd and Hill St; then by a line in an easterly direction to the intersection of Hill St East and Sullivan Cr; then by a line in a northerly direction to the point of commencement."

- [4] On 14 November 2016 in a Mention before Deputy President O'Connor the NRA raised the prospect of the three applications being heard together.
- [5] At a further Mention before the Commission (as constituted) on 2 December 2016 the possibility of joining the three applications together was canvassed by the NRA and

the Shop, Distributive and Allied Employees Association (Industrial Organization of Employees)(SDA) who each were able to identify efficiencies as a consequence of such joinder.

- [6] The Master Grocers Australia Limited (MGA) indicated that the structure of the case they would present in opposing the applications would unlikely benefit from the three applications being joined however as long as the joinder would not have an adverse impact upon the ability to run their case they would not oppose such a course of action.
- [7] The Commission informed the parties that subject to the filing of a formal application by the NRA approval to join the three applications would be granted.
- [8] On 6 December 2016 the NRA filed with the Industrial Registrar an application seeking that the following trading hours applications be jointly heard:
- Warwick (TH/2016/16);
  - Stanthorpe (TH/2016/17); and
  - Pittsworth (TH/2016/18).

### **Legislation**

- [9] Section 21 of the *Trading (Allowable Hours) Act 1990* (the Act) states:

#### **"21 Trading hours orders on non-exempt shops**

- (1) The industrial commission may decide trading hours for non-exempt shops.
- (2) However, the industrial commission is not to decide trading hours that are less than the following hours on a stated day, other than a public holiday -
  - (a) 8 a.m. and 9 p.m. for Monday to Friday;
  - (b) 8 a.m. and 5 p.m. for Saturday.
- (3) The industrial commission may make any order it considers necessary or convenient to give effect to a decision made under subsection (1), including, for example, an order specifying -
  - (a) the earliest time when non-exempt shops may open on any day and the latest time when non-exempt shops must close on any day; or
  - (b) hours for trading wholesale different from the hours fixed for trading retail; or
  - (c) different trading hours by reference to -
    - (i) classes of non-exempt shops; or
    - (ii) localities, or parts of localities, where non-exempt shops are situated.
- (4) In this section -
 

**public holiday** includes, if another day is substituted for a public holiday under the *Holidays Act 1983*, section 3, the day that would have been the public holiday if the substitution had not happened."

[10] Pursuant to s 26 of the Act, when the Industrial Commission is making an order under s 21 of the Act, it must have regard to:

- "(a) the locality, or part thereof, in which the non-exempt shop or class of non-exempt shop is situated;
- (b) the needs of the tourist industry or other industry in such locality or part;
- (c) the needs of an expanding tourist industry;
- (d) the needs of an expanding population;
- (e) the public interest, consumers' interest, and business interest (whether small, medium or large);
- (f) the alleviation of traffic congestion;
- (g) the likely impact of the order on employment;
- (h) the view of any local government in whose area the order is likely to have an impact;
- (i) such other matters as the industrial commission considers relevant."

### **Inspections**

[11] On 20 February 2017 the Commission undertook inspections in each of the three locations subject of the applications which included visits to both exempt and non-exempt retail businesses as well as the various shopping precincts.

### **Witnesses Lists**

[12] Witnesses were as follows:

#### **NRA**

- David England (England) (TH/2016/16);
- Jon Russell (Russell) (TH/2016/16);
- Jason Gard (Gard) (TH/2016/16);
- Scott Templeman (Templeman) (TH/2016/16 and 17);
- David Watson (Watson) (TH/2016/18);
- Gerard Winzenberg (Winzenberg) (TH/2016/16 and 17);
- Allen Wright (Wright) (TH/2016/16, 17 and 18);
- Michael Vorrasi (Vorrasi) (TH/2016/16);
- Julia Keogh (Keogh) (TH/2016/16);
- Chanh Le (Le) (TH/2016/18);
- Neil McCosker (McCosker) (TH/2016/16 and 17); and
- Dr Gary Mortimer (Mortimer) (TH/2016/16, 17 and 18).

#### **MGA**

- Dennis Pugsley (Pugsley) (TH/2016/16);
- Mark Droney (Droney) (TH/2016/18);
- Fabrizio Carmignani (Carmignani) (TH/2016/16 and 17);
- Frank Spano (Spano) (TH/2016/16 and 17);
- Allison Webster (Webster) (TH/2016/16);
- Shane Smith (TH/2016/18); and
- Deborah Smith (TH/2016/16, 17 and 18).

### Withdrawn Statements

[13] In the course of the proceedings a number of statements filed by NRA witnesses in accordance with the issued Directions Orders were withdrawn and subsequently not considered in the determination of the application. The withdrawn statements were from:

- Trudy Grant (TH/2016/16);
- Denis Stanley Kenny (TH/2016/16);
- Michael Kairouz (TH/2016/16);
- Leeanne Gangemi (TH/2016/17);
- Mick Spiller (TH/2016/17);
- Michael Carpenter (TH/2016/18); and
- Brandon Boyce (TH/2016/18).

[14] The Commission in deciding to *precis* the evidence of the witnesses and the submissions notes that all the material has for the purposes of this decision been considered in its entirety.

### Applicant

#### England - Warwick

[15] England is the Regional Manager of Big W Discount Stores in locations across Queensland, Northern Territory and northern New South Wales, all of which strive to provide customers with the best quality merchandise at the best possible prices. In Queensland there are 46 stores of which 18 operate in major regional centres. In other states of Australia Big W stores trade longer hours than the Queensland stores and as a national retailer they would like to see more flexibility in trading hours to service customers the same as they do in the other states and territories. The offer at Big W stores include:

- |                          |                                 |
|--------------------------|---------------------------------|
| • family apparel;        | • home entertainment;           |
| • footwear;              | • electronic;                   |
| • nursery;               | • cards;                        |
| • art and craft;         | • vouchers;                     |
| • homewares;             | • layby;                        |
| • stationary and office; | • parcel pickup;                |
| • toys;                  | • photo processing; and         |
| • sporting;              | • trained cosmetic consultants. |
| • health and beauty;     |                                 |
| • books;                 |                                 |

[16] As a strong anchor tenant in shopping centres Big W encourages more shoppers into the centres which assists other tenants with their trade and sales. In recent years trading conditions across the retail sector have been very tough and it is important that capital investment in regional Queensland stores be utilised. Currently data suggests that approximately 30 to 40 per cent of Big W trade could be moved out of Warwick to Toowoomba on Sundays which makes the escape expenditure quite substantial.

- [17] If the application was successful the Big W store in Warwick would engage team members for an additional 60 hours of employment in the store following consultations with staff. The additional hours would be voluntary for existing employees and whilst those additional hours may go to current employees there was potential for employing extra staff.
- [18] An Enterprise Bargaining Agreement in place with the SDA contains an agreed range of normal hours in which the hours worked are considered to be social hours and do not attract penalty rates. Those hours are:
- Monday to Friday - 6.00 am to midnight; and
  - Saturday - 6.00 am to 10.00 pm.

Issues that may arise over rostering are able to be dealt with under the Dispute Resolution Process.

- [19] Extended hours of trade would benefit the interests of small, medium and large retailers in the centre plus also having an economic benefit, creating jobs and providing customer convenience.
- [20] Under cross-examination England indicated he was authorised to give evidence on behalf of Big W [Transcript p. 3-7] but had not spoken to Warwick residents or travellers about the issue of trading hours [Transcript p. 3-11]. The current hours of trade in Warwick is less than the available hours [Transcript p. 3-9]. On the comparison of hours of trade in other jurisdictions it was acknowledged that due to discernible differences between them they were of no relevance in this matter [Transcript p. 3-12]. Based on his experience as a Regional Manager, Area Manager, Store Manager and other roles over 20 years he had given evidence of the benefits to other retailers from extended hours accepting he had no experience of Warwick specifically [Transcript pp. 3-14 to 3-15].
- [21] On the escape expenditure of 30 to 40 per cent out of Warwick on Sundays his evidence had been based on the Dalby case and data he had seen, conceding that data was not before the Commission in this application [Transcript p. 3-15]. The Dalby store since the introduction of Sunday trade had takings of \$17,000 for that day [Transcript p. 3-15]. England was unable to give specific evidence regarding consultations between store management and staff over extended hours of work [Transcript p. 3-16]. It was accepted that Sunday penalty rates in the Big W agreement were less than the retail award [Transcript p. 3-18]. Customer feedback in Dalby had been positive about the extended trading hours [Transcript p. 3-20]. The figure of 60 hours contained in his evidence had been based on the Dalby experience [Transcript p. 3-21].
- [22] In re-examination the amount of \$17,000 for Sunday trade in Dalby was confirmation of creating employment. Customers utilising online services had to wait up to five days for delivery. The availability of trading hours on a Sunday would outweigh the benefit of staying open weeknights.

### **Russell - Warwick**

- [23] Russell the Centre Manager at the Dalby Shopping World gave evidence regarding the circumstances at the centre since the introduction of Sunday trading which included:
- 21 of 38 stores have elected to trade Sundays; and
  - customer traffic is currently at 6.3 per cent for Sundays.
- [24] It was expected that the additional hours in Warwick would provide extra choice for customers, be beneficial for passing travellers and reduce escape expenditure. The extended hours allowed retailers to spread their fixed costs over a longer period and potentially increase the volume of sales leading to lower average costs.
- [25] The participation of anchor tenants was said to be essential in encouraging shoppers which benefited the small stores in the centre with the option to open being voluntary pursuant to the *Retail Shop Leases Act 1994*. Finally the introduction of increased hours in Dalby had brought about an increase of 264 work hours per week with the major anchor tenants alone.
- [26] Under cross-examination Russell's evidence acknowledged that since the extension of trading hours there were six less retailers in the centre due to closures, retirement and "flat lining" due to reduction in mining construction [Transcript p. 3-28]. The average foot traffic in the centre on Sundays was around 2,200 people out of a population of 10,000 persons [Transcript p. 3-30]. Sales had increased in the centre and there was a "fair chance" the same would occur in Warwick if the application was granted [Transcript p. 3-32]. Russell conceded he had no exit surveys to support his evidence regarding the percentage of tourists and locals that visited the Dalby Centre or whom may visit the Warwick centre on Sundays [Transcript p. 3-34]. The centres in Warwick and Dalby were both owned by the same company with Russell having worked in Warwick on "two reliefs" in recent years [Transcript p. 3-36]. On predatory behaviour by national retailers he was unaware of a practice whereby items would be sold for less than cost to force small businesses to close [Transcript p. 3-38]. There had been a significant drop in centre trade when Woolworths had been closed on Sundays [Transcript p. 3-39]. Evidence regarding trading hours restrictions having a negative impact on centres had been based on the Dalby experience [Transcript p. 3-41]. The small retailers in the Dalby centre had increased their hours since the introduction of Sunday trade although he was unable to identify the quantum. On the 264 increased hours for the "majors" that information had been provided by the NRA [Transcript p. 3-43]. Russell accepted that an increase in hours worked in Dalby did not guarantee such an increase in Warwick [Transcript p. 3-44].
- [27] In re-examination Russell gave evidence of the businesses that had exited the centre and the reasons for the closures including:
- business in administration (Dick Smith);
  - online shopping effect on businesses; and
  - simply choosing to not renew a lease.

The growth experienced in Dalby of 5.5 per cent year on year was said to be "great". The Dalby experience with customer behaviour based on his experience would be the same in Warwick.



## **Gard - Warwick**

[28] Gard, the Centre Manager at Rose City Shopping World in Warwick, gave evidence that if the application was granted to enable the non-exempt stores to trade it would draw more customers to the area providing a positive benefit for all businesses in Warwick. Benefits from increased hours of trade were said to include:

- encourage travellers and tourists to stop in Warwick;
- prevent escape expenditure from Warwick to Toowoomba; and
- give customers choice and convenience.

As Centre Manager he had observed a "significant drop" in trade when the Woolworths store was closed on Sundays which had a negative effect on adjusting to the needs of customers and caused a decline in retailing efficiency. The extension of hours would allow retailers to spread their fixed costs over a longer period and with lower unit costs benefiting consumers with a wider range of offerings. In two Sundays in the lead up to Christmas in 2016 the centre had attracted 6,000 customers.

[29] The larger businesses act as anchor tenants in centres which is essential in producing foot traffic for the smaller retailers and restriction on anchor tenant hours can affect the profitability of smaller retailers. There would be no obligation on smaller tenants to open if the application was granted and it was likely that extended trading hours would be a positive move for boosting employment in the area.

[30] Under cross-examination Gard refuted the claim that the centre would receive additional rent payments if the centre was to open Sundays and only tenants with "turnover rent leases" would make additional payments [Transcript p. 3-48]. Based on 20 years' experience in shopping centres it was his experience that when major tenants were open they attracted customers to the centre that benefited other tenants [Transcript p. 3-49]. Centre CCTV cameras show persons regularly seeking to enter the centre through the automatic doors on Sundays usually in excess of 20 persons each time [Transcript pp. 3-49 to 3-50]. On the occasion of the Jumpers and Jazz Festival there are expectations of a transient population in excess of 20,000 people with the event run over a week and two weekends [Transcript p. 3-51]. On escape expenditure Gard gave evidence of discussions with customers about this issue however was unable to present any formal records [Transcript p. 3-52]. Toowoomba it was acknowledged, that due to population differences, offered more retail diversity [Transcript p. 3-53].

[31] At the present time there were "very limited" shops allowed to open on a Sunday in Warwick, being grocery stores and hardware [Transcript p. 3-54]. Complaints are received by the centre each year (five or six a year) regarding the non-opening of the centre on Sundays [Transcript p. 3-54]. On the matter of traffic congestion the shopping centre provides the main parking in the Warwick CBD and when events are held in the town the carpark is opened up so as to allow the Council to use the underground car park to alleviate congestion [Transcript p. 3-56]. The failure to open Sundays has resulted in the wastage of product due to "use by dates" expiring leading to relative inefficiencies [Transcript p. 3-58]. Businesses would benefit from extended trading hours as their fixed costs could be spread across seven days rather than six [Transcript p. 3-59]. On the two Sundays before Christmas 2016 when the

centre opened a total of 6,000 customers were recorded entering the centre by electronic door counters [Transcript p. 3-59].

- [32] In regards to events such as the Jumpers and Jazz Festival and the Rodeo there were large influxes of people (similar to Christmas numbers) that would visit the centre if it was open on Sundays [Transcript p. 3-60]. Entertainment and displays are also held in the centre which would benefit food operators in the centre if it was open on Sundays [Transcript p. 3-61]. As a member of the Chamber of Commerce he was aware of comments from members about people sticking around when the centre was open with increased traffic drawn to the CBD [Transcript p. 3-62]. The Council had stipulated as a condition of the centres redevelopment that another entrance on the street level of the main street be included to help expand the section of CBD that is receiving increased traffic [Transcript p. 3-62]. On the impact of extended hours upon IGA in Warwick he was aware research had shown that "normally people won't change their shopping habits in regards to where they're buying their, you know, food from a supermarket" [Transcript p. 3-62]. If the application was granted Gard expected the impact on employment would be positive [Transcript p. 3-65].

### **Templeman - Warwick**

- [33] Templeman, the Manager of Economic Development and Tourism for the Southern Downs Regional Council, gave evidence in both the Warwick and Stanthorpe applications. He described the region as covering 7,122 m<sup>2</sup>, boasting a vibrant rural lifestyle with major centres including:

- Warwick;
- Allora;
- Killarney; and
- Stanthorpe.

The Council had resolved to support both applications at a General Council Meeting held on 23 June 2016 by way of the following resolution:

"THAT Council support the National Retail Association's application to the Queensland Industrial Relations Commission seeking approval for major non-exempt retailers to trade on Sundays in Warwick and Stanthorpe Principal Centres between the hours of 9 am and 6 pm."

- [34] The Council had formed the view the extended hours would:

- help create more shifts for workers with major retailers;
- offer opportunities for local small businesses to prosper; and
- smaller retailers would be swept along with the majors and may have the option of providing more work.

- [35] The Southern Downs is an accessible and affordable short stay destination with data from the Council's Visitor's Information Centres suggesting that a large percentage of visitors and tourists come from the South-East Queensland region and with the expectation of the Queensland Government that the population will increase by two million by the year 2041. An assumption can be drawn that there will be more residents, tourists and visitors to the Southern Downs. The Visitor's Information Centre served almost 16,000 people in the 2016 calendar year and whilst there is no

data as to the percentage of visitors that represented, the Council believed it was approximately ten per cent of visitors which would have the visitor's numbers for the year at around 160,000.

[36] Visitors are attracted to Warwick for specific events that includes:

- Jumpers and Jazz;
- Leyburn Sprints;
- Warwick Rodeo; and
- various events at the motor racing precinct.

[37] The Council is currently preparing a new Economic Development Strategy and Tourist Strategy to build on the Region's strengths and natural assets to attract more investment, jobs and visitors. Community and visitor expectations requires increased access to a larger range of retail services for residents and visitors. The Council is conscious that the extension of trading hours needs to benefit all stakeholders and is endeavouring to ensure that there is no disadvantage caused by this application. Residents and tourists will benefit from increased flexibility and convenience if there were to be an extension of hours including many residents who are shift workers or work in other centres. A reduction in spending leakage to the nearby city of Toowoomba would be a further benefit providing an economic boost to local retail shops.

#### **Templeman - Stanthorpe**

[38] Templeman's evidence at times for the Stanthorpe application reflected that given in support of the Warwick application and as such those aspects of his evidence will not be reproduced. Some traders in Stanthorpe had indicated that as a result of Aldi and Woolworths opening in the town their Saturday trade had increased and were confident of a further increases on Sundays.

[39] In the 2016 calendar year the Stanthorpe Visitor Information Centre served nearly 24,000 people and based upon a similar forecast as with the Warwick application would equate to 240,000 visitors over the calendar year to a town with a resident population of approximately 7,000 people. The majority of tourists and visitors to the area emanate from South-East Queensland and northern New South Wales, areas that have had extended trading hours for a considerable number of years and the Council was concerned that visitors to the region not having access to similar arrangements may mean they do not return, thereby damaging the overall economy. Visitors to the Stanthorpe region tend to look to experience the cold conditions and in doing so seek food and beverage experiences.

[40] Increased access to a larger range of retail services for residents and tourists would assist with customer demands of looking for convenient shopping options and prevent the need to travel outside the town on Sundays.

[41] In a response to questioning from the Commission regarding the decision of the Council to support Sunday trading but failing to provide support for such trading on certain public holidays it was the evidence of Templeman that he had been instructed by Council "to support the extended trading hours, including public holidays".

[42] Under cross-examination Templeman confirmed his role as Manager of Economic Development and Tourism and that he was authorised to give evidence on behalf of the Council [Transcript p. 3-70]. He identified the main attractions to the Southern Downs region as:

- communities of interest;
- national parks;
- townships; and
- waterways. [Transcript p. 3-71]

The two visitor information centres fall under his control and from time-to-time he had been advised by the volunteers whom work in the centres that visitors to the region comment about the shops not being open on Sundays [Transcript p. 3-71]. Additionally a number of people had spoken to him about improving the offer to visitors by having shops open on Sundays. He conceded he was not in possession of verifiable evidence regarding these conversations [Transcript p. 3-72].

[43] Whilst he was not present at the Council meeting which resolved to support the extended hours application he gave evidence that the normal Council process involved a consultation period prior to matters going before the Council with there then being a vote. From his reading of the Council minutes as a professional Council officer he concluded that there had been no division with the resolution being carried unanimously [Transcript pp. 3-72 to 3-73]. He was unable to give direct evidence in relation to the consultation process [Transcript p. 3-73]. As a professional economic development practitioner it had been his experience that when major retailers are open it actually draws more foot traffic into town and the smaller stores benefit [Transcript p. 3-73]. Templeman found it "difficult to believe" that businesses would be giving evidence that they would lose business if the application was granted because with more foot traffic in town there would be more people to take advantage of their offering as well [Transcript p. 3-74].

[44] The Council was "very keen" to support the application as to not be in step with the rest of South-East Queensland and northern New South Wales would jeopardise the local community and the amount of new jobs that can be created for people who are quite often young and underemployed. In attracting more visitors to the area it would benefit local crafts, arts, coffee shops, food and beverage offerings [Transcript p. 3-76]. In Stanthorpe he had spoken to people who had businesses in the main street who had told him they believed extended trading hours would help their businesses [Transcript p. 3-79]. The assumption that 10 per cent of all visitors went through the visitor information centres was based on Australian Government statistics regarding visitors to the region in 2015 [Transcript p. 3-80]. Templeman gave evidence that currently retailers in Stanthorpe open into the early afternoon on Saturdays whilst the retailers in Warwick (Big W) go for a "little bit longer" [Transcript p. 3-82].

[45] On the tourist aspect Templeman gave evidence that a facility (Morgan Park) hosted motor sports or equestrian events 50 weeks of the year attracting visitors to Warwick who would like to take advantage of what's happening in the town but are unable to do so due to the non-trade on Sundays [Transcript p. 3-83]. With regards to the evidence-in-chief about shift workers there was a meatworks in Warwick that employs more than 650 workers operating an early and late shift as well as a number of feedlots and animal activities that employ a few hundred people with some doing strange hours [Transcript p. 3-87].

[46] In re-examination it was reiterated that Toowoomba had more retail diversity than Warwick and Stanthorpe however the Southern Downs Council were seeking to attract other national retailers to the area. In previous roles with local government economic investment over a 10 year period he had been successful in attracting about \$500 million worth of investment helping to create thousands of jobs in those areas.

### **Watson - Pittsworth**

[47] Watson a representative of the ownership entity of Pittsworth Plaza which he and a partner had developed and owned since 2007. Woolworths and most of the other tenants currently trade 8.00 am to 9.00 pm Monday to Friday and 8.00 am to 5.00 pm on Saturdays.

[48] In support of the NRA application he gave evidence of his business being impacted by passing travellers, tourist trade and the changing needs of local customers. Without a "major" being open on a Sunday there was no reason to stop at the centre and worse still it could lead to escape expenditure to nearby places such as Toowoomba who have had Sunday trading for many years. Additional hours would give extra choice to their customers, remove inconvenience and congestion costs.

[49] Trading hours restrictions can have a negative impact by removing the ability of centres to adjust to the needs of customers and causes a decline in retail efficiency which is of concern to both property owners and retailers who lease space in the shopping centre environment. An increase in shopping hours would have the benefit of:

- spreading fixed costs over a longer period;
- increased volume of sales;
- lower operational costs; and
- wider range of offerings.

A strong anchor tenant such as Woolworths encourages more shopping to a retail property and assist specialty tenants with their trade and sales. Small businesses are generally not in competition with anchor tenants and often suffer financial harm by having to absorb 100 per cent of the operating costs a centre if they open and the anchor tenant is unable to open.

[50] If the application was granted it would be up to the tenants as to when they open as there is no contractual obligations on any small store in the centre to extend hours when non-exempt stores are granted extended hours. Extended hours of trade would be a positive move for boosting employment in the area.

[51] Under cross-examination Watson confirmed he owned the Pittsworth Plaza in partnership with an investor, resides in Brisbane and visits Pittsworth quarterly. The partnership developed the property which opened in 2007 and housed seven tenants including a Woolworths store [Transcript p. 4-4]. The centre is the largest commercial property in Pittsworth in terms of value [Transcript p. 4-5]. The evidence on the businesses being impacted by passing travellers and tourist trade came from anecdotal evidence provided by other tenants in Pittsworth [Transcript p. 4-5]. There was similar anecdotal evidence about the introduction of Pittsworth Plaza having brought people into the town in numbers never seen before [Transcript p. 4-7]. In a survey

conducted by Dr Mortimer some 62 per cent of those surveyed wanted Woolworths to open on Sundays [Transcript p. 4-7].

- [52] Watson understood that Toowoomba offered more retail diversity than Pittsworth and accepted that Pittsworth residents would travel to Toowoomba for reasons other than grocery shopping [Transcript p. 4-9] and likely would continue to do so for items such as fashion even if the application was approved [Transcript p. 4-10]. Watson accepted that based on Dr Mortimer's survey that escape expenditure had reduced which he attributed to the arrival of Woolworths in Pittsworth [Transcript p. 4-10]. In terms of the reference to "congestion costs" in his earlier evidence that was a reference to "fuel costs" [Transcript p. 4-12]. If Woolworths were able to open on Sundays it would be a catalyst for businesses such as the coffee shop and bakery to open [Transcript p. 4-16]. If Woolworths opened on Sunday he opined that it would benefit the community by bringing more people to town, in particularly the businesses located in his centre [Transcript p. 4-18]. When the centre opened in Pittsworth some 80-odd jobs were created with the Pittsworth Plaza precinct being one of the biggest employers in the district [Transcript p. 4-21].
- [53] In re-examination Watson did not consider himself to be a local business owner but was an investor in Pittsworth. Through their property management, local cleaning and maintenance contractors are engaged.

#### **Winzenberg - Warwick**

- [54] Winzenberg a Store Manager for Target Australia Pty Ltd, having previously held positions of District Manager in Queensland and Victoria, gave evidence in both the Warwick and Stanthorpe applications which in some cases was identical in affidavits tendered in the proceedings.
- [55] Currently there are 183 Target stores operating in Australia in addition to 125 Target Country stores which provide a more limited range of Target merchandise. He was authorised by Target to give evidence in support of both applications. The store in Warwick is a Target Country store 1,708m<sup>2</sup> in size located 80 kilometres from Toowoomba. The clear majority of Target stores trade on Sundays, typically between 9.00 am and 5.00 pm or at the least 10.00 am to 4.00 pm. Target employs approximately 23,000 team members nationally and 2,200 in South East Queensland.
- [56] Tourism is a key consideration in this application and it is desirable that retailers be given the flexibility to match their trading hours with demand. A key feature of Queensland's economy and economic growth is tourism and due to Warwick's location there is a high volume of domestic tourist traffic as well as visitors with the visitation peaks occurring on weekends. Tourism is the key income in the local community contributing one dollar to every five generated by travellers and tourists. Retail is a key provider of employment in local communities across Australia and is a major employer in Warwick. In an Australian Bureau of Statistics (ABS) Census of Population and Housing 2011 profile (paragraph 14 of the affidavit) it identified the following retail employment participation information:
- Warwick
    - 1,175 participants in the workforce
    - 17 per cent of workforce participants.

- Queensland
  - 214,617 participants in the workforce
  - 10.8 per cent of workforce participants.

[57] Over the past five years the following regional Target Country stores commenced trading on Sundays with the percentage of weekly trade for the Sunday as at October 2016 being:

- Biloela - 12 per cent;
- Gladstone - 15 per cent;
- Emerald - 13 per cent;
- Innisfail - 11 per cent;
- Atherton - 10 per cent; and
- Gatton - nine per cent.

In the case of the Biloela store the Sunday trade in 2012 was at 7.5 per cent and the most recent Sunday trade approval in Dalby had trade exceeding 9 per cent within 12 months of commencement.

[58] The introduction of Sunday trade in Warwick would according to Winzenberg achieve a similar percentage level of weekly sales as has occurred in other regional locations and have the following benefits:

- provide extra choice for consumers; and
- convenience for families with children.

Target had customer transaction data (Flybuys) that reflects that 72.5 per cent of sales fall within the 30 minute catchment area of Warwick with the remaining 27.5 per cent coming from beyond the catchment area indicating that there are high proportions of travellers to the region who would expect the stores to be open at times familiar to them.

[59] Escape expenditure to adjacent areas such as Tenterfield and Toowoomba which trades over seven days weakens the performance of the Warwick store meaning less employees in Warwick and less wages paid to local employees. The transaction information show Warwick members making a high number of visits to Toowoomba, averaging seven annual visits.

[60] It is estimated that the introduction of Sunday trade in Warwick would create additional employment and engagement of new employees to cover the additional 25 hours per week required with the additional hours being offered to existing employees on a voluntary basis.

### **Winzenberg - Stanthorpe**

[61] In addition to the generalised evidence given in respect of the Warwick application, Winzenberg gave evidence specific to the Stanthorpe application. The Target Country store in Stanthorpe was 783m<sup>2</sup> in size and the only discount department store in Stanthorpe. Tourism was also a feature of Stanthorpe's economy in similar terms to those identified in Warwick.

[62] The ABS Census of Population and Housing 2011 profile (paragraph 14 of the affidavit) identified the following retail employment participation information:

- Stanthorpe
  - 395 participants in the workforce
  - 15.9 per cent of workforce participants.

[63] The benefits of the introduction of Sunday trading in Stanthorpe were the same as those identified for Warwick. The customer transaction data for Stanthorpe identified 58.37 per cent of the store sales coming from within the 30 minute catchment area with the remaining 41.7 per cent of sales coming from beyond the catchment area indicating that high proportions of travellers to the region who would expect the stores to open at times familiar to them.

[64] Escape expenditure to Tenterfield is identified in the transaction data at a higher level than Warwick being an average of 12.6 annual visits.

[65] As with the evidence in Warwick an additional 25 hours of employment would be created and filled in the same terms as would occur in Warwick.

[66] Under cross-examination Winzenberg in elaborating on his previous role as District Manager had the oversight of the Warwick store which had gone from being a 700m<sup>2</sup> store to 1,700m<sup>2</sup> due to the shopping centre expansion [Transcript p. 4-29]. Based on information available to Target it appeared that a number of locals in Stanthorpe were employed in the tourism and hospitality industry in what was a "fairly major tourist town" [Transcript p. 4-32]. At the present time neither Warwick nor Stanthorpe trade all hours available [Transcript p. 4-32]. Over the last couple of years complaints had been logged on Target's website regarding the failure of both stores not opening on Sundays and there was "a lot of anecdotal evidence" about a fair number of tourists passing through both towns" [Transcript p. 4-33]. On the evidence that tourism and retail were major employers in Warwick and Stanthorpe respectively being 25 and 26 per cent he had relied upon ABS information [Transcript p. 4-34]. The information had come from a 2011 report with Winzenberg giving evidence that "in the six years the numbers have probably gone up more than anything" [Transcript p. 4-34]. The Apple and Grape Festival in Stanthorpe was said to be growing by 30 per cent year on year [Transcript p. 4-37].

[67] On the information relating to trading at other regional Target Country stores in Queensland the figures quoted went to a distribution of transactions over a week shown as a percentage [Transcript p. 4-40]. Prior to the granting of Sunday trade in Dalby that store had been identified as a borderline store and was earmarked for closure however that store through Sunday trading survived and 12 team members retained their jobs [Transcript p. 4-40]. On the use of the Flybuys program by customers the figures nationally identify about 60 per cent of customers partaking in that program [Transcript p. 4-46]. If Sunday trade was introduced to Stanthorpe, Winzenberg had expectations of employment levels being higher than Dalby because it is such a high tourist town [Transcript p. 4-49]. Target has an online shopping offer but it was not seen by Winzenberg as having a competitive advantage over other retailers who do not have such a system [Transcript p. 4-50]. If additional hours were required in the stores Target always offer them to existing employees and if they were not filled then extra staff could be employed [Transcript p. 4-50]. Winzenberg confirmed that any additional hours created on Sundays would not result in a reduction



of employee hours on other days [Transcript p. 4-52]. In Dalby there was according to Winzenberg a loss of 50 hours of employment in small business but a gain of 200 hours per week with the three "majors" following the introduction of Sunday trade giving a net gain of 150 hours employment per week [Transcript p. 4-53]. Retail had been tough over the last two years with Target having lost 200 million dollars on the previous year however when Sunday trade commences the whole economy of towns improve [Transcript p. 4-55].

- [68] In re-examination Winzenberg evidenced that the 200 million dollars lost the previous year was lost from profit. Expectations were that in terms of employment outcomes in Dalby the same would at least happen in the Warwick and Stanthorpe stores given they were significantly bigger than the Dalby store.

### **Wright - Warwick**

- [69] Wright, the State Support Manager for Woolworths in Queensland gave evidence in each of the three applications with each affidavit containing generic evidence which was well documented in terms of the Warwick application with such evidence applicable to each of the other two applications.
- [70] Woolworths employ more than 121,000 employees across the country with approximately 28,000 employed in Queensland operating 900 supermarkets that service 14 million customers Australia-wide each week. Woolworths support the three applications to amend the allowable trading hours on Sunday in each location.
- [71] Warwick is the administrative centre of the Southern Downs Regional Council with a population of 35,996 (2010) and covering an area of 7,120m<sup>2</sup> following the merging of the Stanthorpe and Warwick shires. In Warwick there is a large regional shopping centre precinct in the CBD containing a number of major retailers including:

- Woolworths;
- Big W;
- Target;
- Best and Less; and
- Coles.

Woolworths opened the Warwick store in 1997 and whilst they consider their regional presence offers consumers a superior range of goods in most categories in comparison to other non-exempt stores their presence is by no means dominant. Most locations across the State trade seven days with only about eight per cent of the 246 Queensland stores not opening on Sunday.

- [72] There is a high volume of tourist traffic as well as visitors to Warwick on weekends creating significant additional demand from Friday afternoon to Sunday evening which were good reasons for better consistency of regional Queensland trading hours. A survey conducted by Tourism and Events Queensland in 2012 identified the top activity with domestic tourists as:

- eating out at restaurants - 57 per cent;
- visiting friends or relatives - 47 per cent; and
- shopping for pleasure - 31 per cent.

[73] The Southern Queensland Country Regional Snapshot published for the year ending June 2016 by Tourism and Events Queensland provides a snapshot of key facts regarding tourism in Queensland that included for South-East Queensland:

- 82.8 per cent of total domestic travel were intrastate visitors; and
- 17.6 per cent were intrastate persons visiting friends.

Tourists from South-East Queensland in particular were familiar with extended trading hours could become confused and frustrated with the available hours in Warwick.

[74] There were short and long term estimates for projected population growth in the Southern Downs which had been recognised by the Council as part of a long-term strategic Council plan to attract new residents. Wright relied on the same employment participation data as contained in the evidence of Winzenberg.

[75] Sunday trading had been extended to most of Queensland and Australia in recent decades becoming one of the most important trading days and in some cases the second most important trading day after Saturday. The failure to open on Sundays encouraged consumers to consume more takeaway or restaurant food as opposed to affordable ready-made meals which feature nutritional information and provide a convenient and nutritious alternative to takeaway.

[76] In December 2016 Woolworths were able to trade on two Sundays in Warwick in the lead up to Christmas which allowed local customers to gain access to non-exempt retailers and was supported by 2,350 customers on one Sunday alone. Woolworths since 2010 have had a policy of state-wide uniform pricing which allows people who live in rural and regional areas to pay the same for groceries as those in the cities. In October 2016 the percentage of sales transactions across Queensland for Sunday was at 14.6 per cent and when coupled with the Saturday rate of 15 per cent meant that essentially 30 per cent of sales occur at the weekend.

[77] In the period between December 2007 and December 2015 Woolworth's share of the Australian grocery market had decreased from 40.9 per cent to 37.3 per cent with smaller grocery stores share decreasing from 11.3 per cent to 8.4 per cent which Wright identified the growth of Aldi from 5.5 per cent to 12.1 per cent of the market as the reason for Woolworth's and other's decline. In the same period IGA increased their share from 8.7 per cent to 9.7 per cent (Roy Morgan Single Source [Australia] January 2007 - December 2015). It was basically good policy for all trading hours to apply uniformly and consistently which should neither impose burdens on, non-exempt or one class of business over another.

[78] There were a number of difficulties in the supply of fresh food for stores such as Warwick (due to location) and these posed more challenges when there was a Sunday closure often resulting in a less than optimal shopping environment for customers. Store Managers have indicated the following operational benefits that Sunday trade would provide:

- reduced congestion at registers;
- efficient utilisation of trolleys;
- customers able to purchase food at supermarket prices;
- tourists benefit from Sunday opening;

- smoothing out peaks in deliveries and improved store replenishment;
- efficiencies in energy usage; and
- convenience stores have a restricted range of products.

[79] In Warwick an additional 100 hours of employment per week would be available if the application was granted with team members electing to work earning in excess of \$33 per hour. The current employment mix in Warwick is:

- 126 team members;
- 62 per cent of team members are women;
- 29 per cent of team members are 20 years old or under; and
- 57 per cent of hours are either full-time or part-time.

[80] The post impact of the decision to allow Sunday trade in Dalby had the following consequences:

- several team members have obtained 40 hours average of employment per week;
- additional employment was voluntarily taken up by existing team members;
- additional 90 hours employment per week;
- increase of four junior casual positions; and
- 708 additional transactions.

Figures were also made available for other Woolworths stores following the introduction of Sunday trade that included:

- Marion;
- Ipswich CBD; and
- Toowong.

### **Wright - Stanthorpe**

[81] Evidence particular to the Stanthorpe application was given by Wright in addition to the generic evidence regarding the National and State operational details of Woolworths relied upon in his Warwick evidence. Stanthorpe was part of the Southern Downs Regional Council situated 218 kilometres south west of Brisbane and 143 kilometres south of Toowoomba. The shopping offer in the town included major retailers such as Woolworths (since 1981), Aldi and Target. Tourism is a key feature of the area with high volumes of tourist traffic and family visitation throughout the region, peaking on weekends creating significant additional demand between Friday afternoon and Sunday evening. In Stanthorpe 26 per cent of those who participate in the workforce are employed in either the retail or tourist sectors and it is these sectors that have reasonable expectations that services are available during the hours sought in this application.

[82] In December 2016 the Stanthorpe store opened on 11 and 18 December 2016 with 1,625 customers visiting the store on one of the Sundays alone indicating that customers in Stanthorpe regardless of the alternative options have a preference to shop at Woolworths. The operational benefits that come with Sunday trade were same as identified by the store managers for Warwick however in terms of employment the

Stanthorpe store would likely engage team members for 75 additional hours of work. The employment mix for the Stanthorpe store was:

- 70 team members;
- 60 per cent of team members are women;
- 17 per cent of team members are 20 years old or under; and
- 70 per cent of hours are either full-time or part-time.

### **Wright - Pittsworth**

[83] As with the evidence for the Stanthorpe application the evidence given in the Warwick application of a generic nature was relied upon in this application with additional specific evidence relating to the Pittsworth application.

[84] Pittsworth is located 164 kilometres south west of Brisbane and 41 kilometres south west of Toowoomba. The town of Pittsworth falls under the Toowoomba Regional Council following a merger effected in 2008. The Woolworths store opened in 2007 and services an area that draws on population from neighbouring areas, especially the agricultural sector which contains a contiguous urban residential footprint. The major employment sectors in Pittsworth were also retail and tourism with 26 per cent of workplace participants in these sectors.

[85] In Pittsworth there was support shown for Sunday trading when the Woolworths store opened on 11 and 18 December 2016 with 1,065 customers visiting the store on one Sunday alone. If the application was granted the trade pattern of the current business for Thursday through to Saturday would be spread across Sunday creating a more even spread of trade.

[86] The Woolworths team in Pittsworth currently numbers 55 with the employment mix being:

- 20 per cent of team members are 20 years old or under;
- 80 per cent of team members are women; and
- 52 per cent of hours are full-time or part-time.

An additional 65 hours of employment would be available if the application was granted.

[87] Under cross-examination Wright gave evidence of having worked for Woolworths for 35 years with the last three as State Support Manager [Transcript p. 4-73]. The business engaged over 3,000 suppliers with Wright identifying a number from the Stanthorpe region [Transcript p. 4-74]. A renovation of the Warwick store in 2017 would see the installation of seven self-serve checkouts that will be in addition to eight to ten main registers and three express checkouts [Transcript p. 4-78]. In each of the locations subject of the application there was no full range supermarket presence [Transcript p. 4-78]. On average in a 3,000 and 3,500 m<sup>2</sup> size store there were around 15,000 items on sale [Transcript p. 4-79]. The Woolworths offer in Pittsworth was superior to that of the IGA [Transcript p. 4-79]. Wright's evidence regarding the detrimental effect on tourism by not opening on Sundays had been based on his retail experiences [Transcript p. 4-81]. Over the past 12 months Woolworths had about 20 complaints (in all) about not opening in the locations subject to the current applications [Transcript p. 4-82]. He acknowledged the tourist data relied upon by

himself was five years old and he had no data that was more recent [Transcript p. 4-83].

- [88] Shopping in supermarkets was not considered by Wright as shopping for pleasure however the supermarket is a draw card which allow customers to visit other retailers such as fashion outlets which he described as "certainly pleasurable" [Transcript p. 4-84]. Wright acknowledged a difference in density levels between the various states of Australia which have slightly different retail markets [Transcript p. 4-89]. Each of the stores in the three locations offered an online shopping service [Transcript p. 4-89] however Wright was unable to confirm or otherwise whether deliveries could be made on a Sunday [Transcript p. 4-90]. Wright was taken to a report which had shown a decline in domestic tourists in Southern Queensland country and a further decline of 10.2 per cent for international tourists which Wright acknowledged was the case but the tourist numbers had increased over a "period of time" [Transcript p. 4-95]. The assistance to cafes and restaurants from increased hours of supermarket trade had been identified by Wright from his experiences when Woolworths had previously opened stores for longer hours [Transcript p. 4-95]. On the material relied upon in terms of population growth it was conceded it covered a wider area than just Warwick, Stanthorpe and Pittsworth [Transcript p. 4-97].
- [89] Customer choice was restricted when regulated trading hours prevented them from buying goods from the store of choice, an example of which was that Woolworths sell barbequed chickens for \$8.00 whilst the IGA in Pittsworth had the same item for \$10.00 or \$12.00 [Transcript p. 4-104]. Wright did not accept the proposition that IGA supermarkets "price matched" Woolworths suggesting that may occur on 2,000 out of 14,000 items [Transcript p. 4-106]. The significance of Sunday trade figures was known to Wright due to seeing the "numbers" across the State on a weekly basis [Transcript p. 4-109]. The escape expenditure for Warwick and Pittsworth (which had been identified by rewards card activity) to Toowoomba was said by Wright to be "quite alarming" [Transcript p. 4-112]. The evidence on escape expenditure to Toowoomba from Warwick was not about a "majority" of residents but a "good proportion of residents" [Transcript p. 4-114].
- [90] The numbers of customers that visited all stores (subject of the applications) on 11 and 18 December 2016 identified in his evidence were a combination of both days [Transcript p. 4-115] and rather than actual customer numbers were in fact "transaction" numbers [Transcript p. 4-115]. On those particular days sales in Toowoomba stores were down compared to the previous weeks [Transcript p. 4-116]. Raw figures for stores that commenced Sunday trading show an overall increase in customer numbers of five per cent [Transcript p. 4-119]. In places like Stanthorpe and Warwick congestion in stores and the traffic are not good on Saturdays and in the case of Easter Saturday quite chaotic and quite dangerous due to no Sunday or Public Holiday trade [Transcript p. 4-121]. Deliveries are made to stores open on Sundays in regional towns on that same day however that is not the case for stores that do not open. Also due to stores not being open on Sundays items such as meat and seafood are often dumped [Transcript p. 4-124]. Sunday work is generally sought after because of the penalty rates that apply [Transcript p. 4-125] which provides an extra 50 per cent loading [Transcript p. 4-126]. Woolworth's stores at a local level have the authority to make donations to community organisations [Transcript p. 4-131]. Stanthorpe had given \$22,000 towards the hospital [Transcript p. 4-133].

- [91] In re-examination Wright was taken to the \$33.00 per hour rate for Sunday work and gave evidence that employees in Warwick, Stanthorpe and Pittsworth were currently paid "zero" on Sundays because they were unable to work on that day.

### **Vorrasi - Warwick**

- [92] Vorrasi, the State Finance Manager for Coles in Queensland was authorised by Coles to give evidence in support of the application for Warwick. The business operates at a national level with more than 2,380 outlets that include supermarkets, convenience stores and liquor retail stores with Coles employing 102,000 team members nationally and more than 15,000 in Queensland. Coles have invested approximately \$5.6 million of capital into a new store in Warwick which is due to open for trade in the second half of 2017 with the potential to employ up to 100 team members injecting 1,500 hours of work per week into the local economy. Employees of the Bi-Lo store that ceased operating previously will be offered positions with the new Warwick store prior to opening.
- [93] Warwick plays host to tourists and travellers all of whom would need access to the same retail shopping options as they would at home with restricted trading hours imposing limitations on these categories of visitors. The Southern Queensland Country Regional Snapshot published by the Department of Tourism and Events Queensland for the year ending June 2016 identified that intrastate travel had increased in the region by 17.6 per cent. Additionally there were predictions of population growth in the Southern Downs region by 2 per cent per annum until 2036 on data from the Queensland Government Statisticians Office.
- [94] Coles stores data in Queensland for the weeks commencing October 2016 suggests the highest proportion of sales transactions occur on the weekend with 14.9 per cent and 16 per cent occurring on a Saturday and Sunday respectively with essentially one third of weekly sales occurring on the weekend. Coles in Dalby was able to commence Sunday trade in May 2015 with that portion of trade currently 9.8 per cent of weekly trade. There exists a state-wide policy of uniform pricing (since January 2010) which allows Coles customers in rural and regional Queensland access to goods at city prices.
- [95] Flybuys loyalty data shows that Warwick members have made purchases (52 per cent of card holders) from the following Toowoomba stores in October/November 2016:

- Toowoomba Plaza;
- Toowoomba Central;
- Clifford Gardens;
- Willsington; and
- Toowoomba North.

Additionally loyalty information from the previous year indicated 296 Warwick households shopped in Toowoomba for the corresponding period suggesting if shopping in Warwick on Sundays was an option then customers may not wish to travel to Toowoomba.

[96] An additional cost is borne (when closed on Sundays) by retailers (such as Coles) for the removal and reduction in price of all perishable items that includes:

- meat;
- delicatessen;
- fresh produce; and
- bakery.

If the application was granted there would be additional hours of employment generated which would be voluntary for existing team members. It was not expected that there would be any difficulty filling the hours allowing for employment opportunities whereby team members could supplement their income at an increased rate.

[97] Under cross-examination Vorrasi confirmed that in 2016 Coles in conjunction with team members, customers and suppliers raised \$51.7 million for local charities, and disaster relief [Transcript p. 5-8]. Currently there were only four Coles stores unable to trade in Queensland on Sundays [Transcript p. 5-9]. It was conceded he had no statistics to support his evidence on how many day trippers visited Warwick [Transcript p. 5-10]. On the evidence regarding tourist expenditure in the Southern Downs region he had not been aware the figures quoted by him had covered a much wider area that actually included the Toowoomba region, Western Downs, Southern Downs and South Burnett regions, comprising of 33 towns [Transcript p. 5-12] when Bi-Lo operated in Warwick it was restricted due to opening only six days a week with some departments having to be shut down completely on the Sundays [Transcript p. 5-15]. Residents of Warwick are able to access online shopping with Coles from a Toowoomba store [Transcript p. 5-16]. Throughout Queensland on average Sunday is the busiest trading day of the week [Transcript p. 5-17]. Customers to a Coles store in Warwick if able to shop on Sundays would also be able to support other retailers in the centre [Transcript p. 5-19]. Vorrasi was unable to give specific evidence about businesses outside the shopping centre with regards to them not benefiting from Sunday trading [Transcript p. 5-22]. All work on Sundays would be voluntary for existing team members [Transcript p. 5-23]. It was acknowledged that his evidence related only to the interests of large retailers and not small or medium retailers [Transcript p. 5-20].

[98] In re-examination it was confirmed that when the Bi-Lo store closed offers of employment in Toowoomba were made to team members. At present 99 per cent of Coles stores nationally were able to trade on Sundays. Online shopping from Warwick residents on Sunday would "presumably" have their goods delivered from Toowoomba on the Monday or Tuesday.

### **Keogh - Warwick**

[99] Keogh the current President of the Warwick Chamber of Commerce Incorporated gave evidence of local businesses being impacted by passing travellers, tourist trade as well as the changing needs of local customers due to major retailers not opening in Warwick on Sundays. Warwick members of the organisation noticed a "definite improvement" in trade when the Rose City Shopping World is open.

[100] Keogh was aware of a survey conducted by the organisation in 2015 that resulted in the following feedback from members:

- broad business support for the extended trading hours application;
- shared understanding that small businesses have no obligation to open;
- 63 per cent of members supported allowing major retailers to open on a Sunday in Warwick;
- only 19 per cent of members surveyed currently open on a Sunday;
- 60 per cent surveyed believed that residents of Warwick should have the same access to shopping hours as Toowoomba and Dalby with Sunday trading;
- 75 per cent of members surveyed were aware that any application for major retailers to open would not require any other retailer to open;
- 57 per cent of members surveyed believed Sunday trade would result in increased employment in retail shops and tourism related businesses in the region; and
- 60 per cent of members surveyed believed that Sunday trading would make Warwick a more attractive place to potential residents and businesses.

[101] Under cross-examination Keogh, a long term resident of Warwick ("on and off for 46 years") assumed the role of President of the Chamber of Commerce on 5 December 2016. In 2016 the membership totalled 53 members and if all memberships were renewed in 2017 that number would increase to 64 members [Transcript p. 5-33]. Keogh had not been involved in the survey of 2015 and had relied upon historical documentation for her evidence having no direct knowledge of the conduct of the survey or the proportion of members that participated in the survey [Transcript p. 5-34]. The survey in her view appeared to be "either a yes or a no response" document [Transcript p. 5-34]. With regards to tourism, as a resident of long standing in Warwick, Keogh identified a major increase in tourism in the town in the form of:

- high standard of motor sports;
- high standard of equestrian events; and
- operational steam train that operates regularly on weekends.

In addition the Granite Belt region is well known for wine, food and hiking [Transcript pp. 5-34 to 5-35]. Membership of the organisation in terms of the retail industry was stable at approximately 15 per cent [Transcript p. 5-37]. Keogh reaffirmed there was no other documentation available to her regarding the survey [Transcript p. 5-40].

[102] In re-examination Keogh's evidence regarding support for the application came from general meetings of the Chamber of Commerce in the preceding year, all of which were advertised to all members electronically.

### **Le - Pittsworth**

[103] Le the Sole Director of Pittsworth 7 Day Pharmacy in Pittsworth supported the application to allow Sunday trading and trade on selected Public Holidays. The Pharmacy in addition to weekday trade also opens between 8.30 am and 12.30 pm on Sundays having agreed to requests from local customers. From extremely low figures the Sunday numbers had increased over time. The store which is situated in the same centre as the Woolworths store regularly fielded queries from customers about



whether Woolworths had plans to open on Sundays. The business is impacted by passing travellers as well as the needs of local customers and without the majors open the town may be seen as one not to stop in or worse, travel to neighbouring towns to make purchases. If Woolworths were open on Sundays there would be an improvement in the trade for the pharmacy and would positively boost employment in the area.

[104] Under cross-examination Le detailed his working arrangements being that of three or four days a week at the Pittsworth Pharmacy which included Sundays [Transcript p. 5-44]. About once or twice a week someone would inquire about Woolworths' opening hours [Transcript p. 5-44]. Customers include locals, residents of a nearby town (Millmerran) and travellers [Transcript p. 5-45]. When Woolworths could trade on Sundays in the pre-Christmas period his sales were two to three times greater with Le accepting that customers "shop more" before Christmas [Transcript p. 5-46].

[105] In re-examination Le evidenced that if Sunday trade was as good as Saturday trade it could lead to the increase of existing staff hours to meet the demand for service.

#### **McCosker - Warwick**

[106] McCosker was the owner/manager of the Red Rooster store in the Rose City Shopping World who supported the application to extend trading for non-exempt stores on Sundays and selected Public Holidays. His business was impacted by passing travellers, changing needs of local customers and there would be a definite improvement in trade if the application was granted and also a positive boost for employment in the area. Upon approval of the application he may open the store from 9.30 am due to Woolworths and Coles drawing more customers in the area.

#### **McCosker - Stanthorpe**

[107] McCosker the Owner/Manager of the Red Rooster store in Stanthorpe gave the same evidence in this application as for Warwick with the exception of the trading hours in Stanthorpe which currently include the store opening on Sundays from 9.30 am to 9.00 pm.

[108] Under cross-examination McCosker indicated that he also operated another Red Rooster store in Warwick that was situated on the highway [Transcript p. 5-51]. McCosker did not accept the proposition that if Woolworths and Coles opened in Warwick on Sundays it would mean increased competition for his business because they also sell hot chickens [Transcript p. 5-52]. Saturdays were said to be "awesome for us because everything - everything's open" [Transcript p. 5-53]. Whilst he had not carried out any studies or read reports that Woolworths or Coles by opening on Sundays would attract more people to town, it was his understanding that the Dalby store which was situated three blocks from the shopping centre had increased sales on Sundays [Transcript p. 5-53]. In accepting that the IGA may suffer a loss in business if the application was approved it was his evidence that "the majority of the town will pick up" [Transcript p. 5-54].

[109] In re-examination McCosker again indicated lack of concern at Woolworths or Coles selling barbeque chickens "because they do it every other day of the week anyway". If Rose City Shopping World opened on Sundays it would benefit his business because at present his rent covers that day and the store is not open.

### **Mortimer - Warwick, Stanthorpe and Pittsworth**

[110] Mortimer an Associate Professor at the Business School at the Queensland University of Technology (QUT) in Brisbane was the holder of the following qualifications:

- Bachelor Degree with Majors in Marketing and Retail Operations;
- a postgraduate Honours Degree in Consumer Behaviour;
- a Doctor of Philosophy - Supermarket Shopping Behaviour; and
- a Graduate Certificate.

Mortimer is an active researcher in the areas of:

- food retailing;
- retail operations and shopping behaviour; and
- consumer behaviour in food, retailing and shopping.

In addition he had published and presented numerous academic and industry papers in the area of retailing and shopping behaviour.

[111] The NRA had requested research be undertaken in relation to the three applications before the Commission for the purposes of providing a "voice for the community" on support for or opposition against the proposed changes to the trading hours.

[112] The research team for each of the three reports were:

- Mortimer;
- Dr Kathleen Chell (Chell); and
- PhD candidates - Hussain Akareem (Akareem) and Kara Burns (Burns).

All team members were fully trained at a PhD level in data collection and analysis with Chell and Burns having been involved in the collection of data for Dalby and Mt Isa for similar NRA projects.

[113] Prior to commencing the research an application was made to the Office of Research Ethics and Integrity - QUT which ensured the research team complied with the principles of the QUT Code of Conduct for Research, the Australian Code for the Responsible Conduct of Research (2007) and the Singapore Statement of Research Integrity.

### **Mortimer - Warwick**

[114] Data was collected in Warwick between Thursday 22 September and Sunday 25 September [2016] between the hours of 8.00 am to 6.00 pm and 9.00 am to 11.00 am on the Sunday. To limit biased responses, respondents to the survey were not approached inside any retail stores. Approaches were made to persons within the Warwick Plaza Shopping Centre, the car park surrounding and under the centre and high street shopping areas.

[115] On being approached, potential respondents were read the following:

"Hello, my name is \_\_\_\_\_, and I am conducting a survey on behalf of QUT business school for a research project. The project is **funded** by the **National Retail Association**, which has made an application asking that all retailers in **Warwick** be able to trade on Sunday and some Public Holidays. The purpose of this project, therefore, is to identify preferred shopping hours for Warwick shoppers. **Would you mind if I asked you a few questions to assist with this research?**"

[116] Respondents were considered valid if they were over 18 years of age, lived locally, were not a visitor/tourist and were the main grocery buyer. Researchers were conscious of biases that take place in projects of this kind and in finalising the survey a number of respondents were removed.

[117] Relevant information from the survey included:

- 547 respondents approached;
- 317 respondents made up the final valid sample;
- employing ABS statistics the sample provided a strong representation of the Warwick population in terms of:
  - gender;
  - age;
  - employment; and
  - household composition;
- respondents shopped across multiple retailers and supermarkets regularly;
- 83 per cent of respondents indicated no intention to change where they shopped if changes were made to existing hours. For grocery stores and supermarkets the response was 87 per cent;
- 94 per cent of respondents travelled by car to visit stores;
- 40 per cent of respondents indicated they had at some stage travelled outside of Warwick to shop on Sundays. Frequency of travel was not captured however qualitative data indicated travelling outside of Warwick was not done frequently;
- 61 per cent of respondents would "come into town" on Sunday if more stores were open;
- 71 per cent of respondents indicated no foreseeable barriers that would prevent them shopping on a Sunday if all stores were open;
- 75 per cent of respondents supported changes to existing trading hours which meant all retailers in Warwick could trade on Sundays and some Public Holidays;
- 22 per cent of respondents opposed such changes whilst three per cent of respondents claimed to be unsure;
- the key reasons in support of change were:
  - potential creation of more casual and part-time jobs;
  - more choice;
  - greater convenience; and
  - extra foot traffic would benefit incumbent retailers currently trading on Sundays;
- those opposed to change did so for reasons that included:
  - concern for smaller incumbent retailers being negatively impacted;

- sufficient hours were already in place; and
- workers would be forced to work on Sundays.

### **Mortimer - Stanthorpe**

[118] The *modus operandi* for the Stanthorpe Survey Report was identical to that relied upon in the Warwick survey. Data was collected in Stanthorpe between Thursday 15 September and Sunday 18 September [2016] between the hours of 8.00 am to 6.00 pm and 9.00 am to 11.00 am on the Sunday.

[119] Information arising from the survey included:

- 395 respondents approached;
- 201 respondent made up the final valid sample;
- respondent's shopped across multiple retailers and supermarkets;
- 80 per cent of respondents indicated no intention to change where they shopped if changes were made to existing hours. For grocery stores and supermarkets the response was 86 per cent;
- 86 per cent of respondents travelled by car to visit stores;
- 25 per cent of respondents indicated they had at some stage travelled outside of Stanthorpe to shop on Sunday. Frequency of travel was not captured however qualitative data indicated travelling outside of Stanthorpe was not done frequently;
- 32 per cent of respondents indicated they had "put off" coming into Stanthorpe to shop on a Sunday;
- 70 per cent of respondents indicated they would "come into town" on Sunday if more stores were open;
- 81 per cent of respondents indicated no foreseeable barriers that would prevent them shopping on a Sunday if all stores were open;
- 68 per cent of respondents supported changes to existing trading hours which meant all retailers in Stanthorpe could trade on Sunday and some Public Holidays;
- 26 per cent of respondents opposed such changes whilst six per cent claimed to be unsure; and
- concerns from those who supported and opposed the application were the same as those identified in the Warwick matter.

### **Mortimer - Pittsworth**

[120] The Pittsworth survey mirrored the surveys in Warwick and Stanthorpe. Data was collected in Pittsworth between Thursday 8 September and Sunday 11 September [2016] between the hours of 8.00 am to 6.00 pm and 9.00 am to 11.00 am on the Sunday.

[121] Information arising from the survey included:

- 417 respondents approached;
- 266 respondents made up the final valid sample;
- respondents shopped across multiple retailers and supermarkets regularly;

- 83 per cent of respondents indicated no intention to change where they shopped if changes were made to existing hours. For grocery stores and supermarkets the response was 91 per cent;
- 87 per cent of respondents travelled by car to visit stores;
- 20 per cent of respondents indicated they had at some stage travelled outside of Pittsworth to shop on a Sunday. Frequency of travel was not captured however qualitative data indicated travelling outside of Pittsworth was not done frequently;
- 66 per cent of respondents would "come into town" on Sunday if more stores were open;
- 79 per cent of respondents indicated no foreseeable barriers that would prevent them shopping on a Sunday if all stores were open;
- 61 per cent of respondents supported changes to existing trading hours which meant all retailers in Pittsworth could trade on Sundays and some selected Public Holidays;
- 29 per cent of respondents opposed such changes whilst 10 per cent of respondents claimed to be unsure; and
- concerns from those who supported and opposed the application were the same as those identified in the Warwick and Stanthorpe matters.

[122] Under cross-examination Mortimer indicated in his previous work history he had been in the employ of Coles (10 years), Big W (five years) and Kmart (two years) [Transcript p. 5-61]. All participants involved in the survey were given a QUT Participant Information for QUT Research Project - Questionnaire [Transcript p. 5-61]. Mortimer was confident with the sample numbers providing reliable information due to the participants being local rather than the same numbers at a national level [Transcript p. 5-62]. The exclusion of visitors from participation in the surveys did not invalidate the sample as a voice for that commentary [Transcript pp. 5-62 and 5-63]. A number of questions were put regarding ABS statistics relied upon in the surveys where Mortimer stated that in his opinion the sample collected in Stanthorpe reflected the demography of the town "but it won't line up 100 per cent [Transcript p. 5-65]. Claims that the survey in Stanthorpe was skewed towards female gender, the evidence was that the participants were those who did the primary grocery shop. The same applied to the other two surveys [Transcript p. 5-66].

[123] The surveys were built by Mortimer based on his previous experience, submitted to the NRA and sent off to the Ethics Department [Transcript p. 5-67]. Support in Warwick for the application was at a high level, positive in Stanthorpe and slightly less in Pittsworth [Transcript p. 5-68]. A high portion of those surveyed would be willing to come to town if all businesses were open [Transcript p. 5-69]. It was reaffirmed that respondents loyal to one store were excluded from the survey findings [Transcript p. 5-69]. Mortimer's evidence was that the outcomes in the surveys comfortably reflected the opinions of the customers spoken to [Transcript p. 5-72]. On the three reports, it was his evidence that "I think I've captured the views of people that support and also opposed to it, an also those that are unsure as well" [Transcript p. 5-74]. Whilst the word[s] "Public Holiday" did not feature in specific questions all respondents were made aware in the very first question asked that Public Holidays were part of the application [Transcript p. 5-75]. In the case of Warwick respondents the qualitative responses indicated that on average they would once a month shop outside of Warwick [Transcript p. 5-78].

[124] In re-examination Mortimer gave evidence regarding tests undertaken to indicate or calculate a margin of error which provided an outcome that statistically there was 95 per cent accuracy in the responses to the questions. With regards to the size of the sample of around four per cent of the various populations it compared favourably to reports of national research that reflected a percentage of population in the area of 0.00002 per cent (1,500 people out of a population of 23.5 million). Mortimer accepted the Warwick percentage was 2 per cent to 2.6 per cent. There were no reasons offered to respondents on the basis of being for or against position.

## **MGA**

### **Pugsley - Warwick**

[125] Pugsley the Assistant Store Manager of the Warwick IGA having held that position since 28 November 2016, resided in Toowoomba thus travelling to Warwick for work purposes. He had a 30 year engagement in the retail sector having amongst other things held Store Manager positions for both Coles and Woolworths.

[126] The application was opposed by him on the basis of:

- the effect it will have on independent supermarkets;
- changes to people's lives; and
- reduction in family time.

He had experienced the introduction of Sunday trade in both Gatton and Toowoomba witnessing the use of automated checkouts without the creation of additional employment.

[127] The Warwick IGA was competitive with the "chains" in grocery items and fresh foods and had a price matching policy making the store no more expensive than the "chains". Having worked in regional Queensland since 2012 he indicated no awareness of significant tourist numbers in Warwick as tourists would go to the Gold Coast in preference of this area. Warwick does not need extra trading hours as they are presently well serviced by the current hours of trade, with fairly priced goods available to consumers on Sundays and to increase the hours would not benefit the community or businesses in the town.

[128] Under cross-examination Pugsley's evidence was that the IGA was a small store that traded the hours of 6.00 am to 9.00 pm seven days a week with an "offer" that was more than suitable for the people in Warwick [Transcript p. 3-96]. Pugsley gave further evidence detailing the operation of the store that included:

- it was a Supa IGA (small in size);
- car parking was relatively easy;
- lines included:
  - groceries;
  - dairy;
  - freezer;
  - fruit and vegetables;
  - meat;
  - delicatessen;
  - "scratch" bakery;

- Sunday - busiest day (20 per cent of weekly turnover); and
- Tuesday - quietest day (nine per cent of weekly turnover). [Transcript pp. 3-97 to 3-98]

[129] Pugsley "strongly" believed there would be a downturn in the independent supermarkets if the application was granted basing his opinion on what a friend had told him occurred when hours changed in Brisbane in 2001 or 2002 but had no direct experience of such, inside a business [Transcript p. 3-99]. A concession was made by Pugsley that Sunday was not (as previously claimed) the quietest day in Warwick and on whether it diminished his opposition to Sunday trading he stated "That's a good question. Quite possibly, yeah" [Transcript p. 3-100]. Sunday trading gave people the option of shopping instead of spending time with their families but he personally had not raised with the store owner or manager that working Sundays was taking people away from their family [Transcript p. 3-101]. He was not aware whether Sunday work at the IGA was "voluntary or whether it's part of a roster" although in his case he was rostered to work every second Sunday [Transcript p. 3-102].

[130] In 2011/2012 he was the Store Manager of a Coles supermarket in Brisbane when Sunday trade came to Gatton and Toowoomba having no direct experience in either location or the effect on the stores [Transcript p. 3-103], also being unaware that some 20 people were recruited by Coles in Gatton [Transcript p. 3-104]. The Warwick IGA store carries around 15,000 grocery lines but Pugsley was unable to inform the Commission of how many of the lines were price matched [Transcript p. 3-105]. Pugsley stated he would "like to think" that the IGA was competitive with the larger supermarkets and on price match some lines were cheaper than Woolworths [Transcript p. 3-105].

[131] Despite having good parking and lots of checkouts Pugsley held the view that the shopping centre with specialty shops, plus the draw card of Big W, customers would have an added advantage to shop there instead of IGA if Sunday trading was allowed [Transcript p. 3-106]. For people who wanted to purchase groceries in Warwick on a Sunday there was sufficient choice at the IGA to meet their needs [Transcript p. 3-109]. Customer feedback is that they are well serviced at the IGA [Transcript p. 3-111].

[132] In re-examination Pugsley confirmed Sunday was the IGA's busiest day with all registers operational at certain times. IGA would be able to absorb more customers into the shop but "it would be getting tough". There had never been the need to turn customers away.

### **Droney - Pittsworth**

[133] Droney a Licensed Auctioneer and Real Estate Agent had been based in Pittsworth for the past eight years with his family having lived and worked in Pittsworth for six generations. In addition to his business he was also involved in many community groups in the town including the Kurrajong Pony Club and Pittsworth Show Society executive.

[134] Around five years ago he was nominated and voted in as the President of the Pittsworth District Alliance which was a local community not-for-profit organisation with a current membership of around 100 persons. Most of the membership are small business owners but schools, charities and clubs are also involved in the organisation.

The purpose of the organisation was "to promote Pittsworth and sustain and grow its diverse economy and lifestyle benefits".

- [135] Droney was aware of the NRA application to permit trading by non-exempt stores in Pittsworth on Sundays and Public Holidays and it was opposed by him. Pittsworth was said to have limited population growth with tourists limited to various horse shows and caravanning events and who generally have no need to leave the showgrounds. The local IGA is open on Sundays and has a full range of essential grocery items if tourists needed to make such purchases.
- [136] The last 12 to 18 months have been extremely tough for businesses in Pittsworth with a number having closed or moved out of town as a result of the downturn in the economy, drought, and the spill over effect of the mining downturn. The real estate market was currently experiencing a downturn in residential and commercial markets with at least seven vacant retail spaces in the main street which is significant for a small town. Given the current circumstances Droney considered the current trading hours more than adequately met the town's needs and he did not consider any leakage of locals out of the town occurred due to restrictions on Sunday trade.
- [137] The Pittsworth District Alliance held a vote on 28 November 2016 whether to support the deregulated shopping hours for Sunday trading with all executive members present voting against the proposal, agreeing that the current trading hours more than adequately met the town's needs.
- [138] The IGA unlike Woolworths invests significantly in the town through donations and contributions to the community which would be restricted if the market share of Woolworths was increased.
- [139] Under cross-examination Droney was unaware of the number of jobs created upon Woolworth's arrival in Pittsworth and could envisage at a future date small business may want to see Woolworths trade on Sundays when the economy improved [Transcript p. 4-61]. The Pittsworth District Alliance had not conducted any survey or formal research around the views of small business on the Sunday trade application [Transcript p. 4-62]. As a Real Estate Agent he had previously conducted auctions of properties on Sundays to meet the needs of clients [Transcript p. 4-62].
- [140] The Pittsworth District Alliance was in fact a combination of the Chamber of Commerce and a progress group which had been set up some five years ago [Transcript p. 4-62] and amongst other things were hopeful of attracting tourists to the area however there was a lack of attractions such as waterfalls, lakes or mountains [Transcript p. 4-63]. In November 2016 when the Pittsworth District Alliance held the vote on the application to extend hours there were 19 members present out of a total membership of 100 members with 17 representatives actually casting a vote [Transcript p. 4-64]. Prior to the vote Shane Smith from the IGA (Pittsworth District Alliance member) explained what Woolworths were looking for in the application. The Pittsworth District Alliance did not hear from Woolworths nor the NRA who were supporting the application [Transcript p. 4-65]. Droney was not surprised that survey of shoppers in Pittsworth found 61 per cent indicated support for the application with 417 persons surveyed out of a district population of nearly 4,500 [Transcript p. 4-66].



[141] In re-examination Droney gave evidence that over the last six years Woolworths had been invited many times to become a member of the Pittsworth District Alliance. Prior to the meeting of Pittsworth District Alliance held in November 2016 members were given no advanced notice of the meeting.

### **Carmignani - Warwick and Stanthorpe**

[142] Carmignani a Professor, the Head of the Department of Accounting, Finance and Economics of the Griffith Business School of Griffith University, holds a number of qualifications that include:

- Bachelor (Laurea) of Economics - Univsita Cattolica Milano (Italy);
- Master of Science in Economics - University of Glasgow (Scotland);
- Doctorate of Research - Univsita Cattolica Milano (Italy); and
- Doctor of Philosophy - University of Glasgow (Scotland).

Carmignani as a trained economist said he was able to comment on economic problems in any field or area including trading hours or retail, even if he had not previously studied the subject. He had published extensively in international journals.

[143] In 2016 he was commissioned by the Independent Grocers of Australia (IGA) to research and present the following two reports:

- The Effects of Deregulating Retail Trading Hours in Queensland (First Report); and
- Assessing the impact of changes in Sunday trade regulations in Warwick and Stanthorpe (Second Report).

[144] For the first report two methodologies of analysis were adopted being an online questionnaire and follow-up interviews were used to collect quantitative and qualitative information on:

- the operational model of IGA retailers;
- their competitive environment; and
- the typology of their customers.

[145] In order to provide some specific evidence for the case of Warwick and Stanthorpe the economic model contained in the first report was calibrated to predict the change of employment and value added associated with the proposed change in Sunday trade regulation in both locations. The conclusion of the first report was that on average a 10 per cent reduction in IGA presence would occur which was estimated to have the effect of a decrease in weekly sales of approximately \$16,000 per shop in the given local statistical areas. Upon information gathered from IGA retailers it was likely:

- a loss of 8.2 jobs in the retail sector with a total of 10.7 jobs across the community;
- a decrease in the value added generated by the retail sector of almost \$1.7 million with a total value added loss for the economy of the community to be in excess of \$2.3 million; and
- at aggregate level, if the market presence of the IGA in each statistical area across the State were to decrease by 10 per cent the Queensland economy would lose approximately \$185 million in value added.

- [146] Quantitatively, these effects would be larger than corresponding effects associated with a 10 per cent decline in the market presence of national chains.
- [147] The conclusion of the second report is the most likely scenario is that Sunday trade deregulation will reduce market presence of independent retailers with both employment and a value added decrease in both Warwick and Stanthorpe unless the market presence of national chains increase by more than the decrease in the market presence of independent retailers. Given that consumers can already shop at independent retailers on Sundays the most likely outcome would be a simple redistribution of market presence from independent shops to national chains.
- [148] Under cross-examination Carmignani confirmed he had not visited Pittsworth, Warwick or Stanthorpe [Transcript p. 5-84]. The methodology relied upon in the first report divided Queensland into 80 statistical areas and along with data from the ABS and data on IGA presence he was able to estimate the impact of change to the shops and the value added [Transcript p. 5-84]. Initially a questionnaire was sent to IGA owners and managers requesting information about the location of their shop, opening hours, type of customers, volume of sales and their perception about the impact of a change in regulation [Transcript p. 5-85]. There were around 150 responses out of which 20 to 25 qualitative interviews were undertaken in a follow-up. All 150 were either owners or managers of IGA stores [Transcript p. 5-85]. No other independent brands or national chains were interviewed [Transcript p. 5-86]. Participants were to respond to 20 questions around the deregulation of shopping hours. Carmignani understood the applications before the Commission were not about deregulating trading hours [Transcript p. 5-88]. Each response related to the environment in which each shop operated [Transcript p. 5-89]. The information provided by owners and managers was used to inform the assumptions of the report [Transcript p. 5-89]. The independent economic modelling was relied upon to form the view around the number of retail jobs lost if there was a 10 per cent reduction [Transcript p. 5-90]. The second report related only to Warwick and Stanthorpe because "that's what I was asked to do" [Transcript p. 5-91]. Based on the data collected the net effect on employment in Warwick was a decrease of 2.6 jobs [Transcript p. 5-91].
- [149] The evidence-in-chief which referred to the loss of 8.2 jobs was from a 10 per cent decrease in IGA in Warwick without any change to the national chains [Transcript p. 5-92]. Material relied upon at paragraph 13 of his affidavit of evidence regarding decreases in employment and sales did not relate directly to Warwick, Stanthorpe or Pittsworth [Transcript p. 5-93]. The questions put to owners and managers were not about "full" deregulation but regulation [Transcript p. 5-94]. Shoppers were not asked where they should shop "because there is already plenty of evidence that shoppers are all in favour of longer trading hours or Sunday trading" [Transcript p. 5-96]. The analysis undertaken was not on the preferences of consumers but the effect of a change in market presence [Transcript p. 5-97]. Carmignani presumed out of the 150 managers or owners who participated in the process some were located in Warwick or Stanthorpe but he could not answer accurately without having to go back and check the list [Transcript p. 5-98]. Responses from some owners included references to considerations around the selling of their businesses if "hours were deregulated" which Carmignani thought were relevant however he was unable to say that the comments specifically applied to either the Warwick or Stanthorpe IGA shops [Transcript p. 5-99].

[150] There had been mention of a survey undertaken by the Queensland Chamber of Commerce which sought from Queensland businesses their views on trading hours, with Carmignani in cross-examination unable to give evidence whether it related to "partial or full deregulation" [Transcript p. 5-100]. The survey found that 57 per cent of respondent's state-wide generally supported deregulation of trading hours which Carmignani reported on at "face value" [Transcript p. 5-100]. On the importance of loyal customers in his report it was the belief that if there was a change in trading hours loyal customers would in this case continue to prefer to shop in the IGA shops [Transcript p. 5-101]. The statistical analysis between the relationship with IGA stores and national chains had been confined to Aldi, Woolworths and Coles [Transcript p. 5-104]. If the applications were granted there was nothing to suggest that there would be a loss of one IGA store [Transcript p. 5-105]. The report focussed on the total loss of employment in the retail sector if the application was approved and did not relate to a loss of employment in the IGA stores [Transcript p. 5-106]. If the additional trading hours reduced the volume of IGA's business there would be a loss to the Queensland economy [Transcript p. 5-106]. The data relating to the 23 stores that opened in Dalby was not captured in his report [Transcript p. 5-107]. There was a possibility that prices may increase as a result of higher operating costs of the application was granted [Transcript p. 5-110].

[151] In re-examination Carmignani gave evidence that the model relied upon in his report on employment identified that where the market presence of "chains" increased there would be a decrease in IGA's total employment.

### **Spano - Warwick and Stanthorpe**

[152] Spano the CEO of Spano's Supermarket Group, a family owned supermarket group that operates seven stores in Queensland trading under the IGA banner. The stores are located at:

- Gatton;
- Warwick;
- Stanthorpe;
- Ashmore;
- Mermaid Waters;
- Robina; and
- Highland Park.

Spano had 16 years of retail experience, held membership on a number of industry boards and committees and was also a member of both the Stanthorpe and Warwick Chambers of Commerce. Spano had worked in the Stanthorpe store (10 years) and the Warwick store (four years) and was currently undertaking a business degree.

[153] Based upon his experience and observations he had formed the view that the applications by the NRA not only sought to extend the trading hours of Woolworths and Coles but to use it as a further opportunity to unnecessarily increase their dominance and market power in the supermarket retail industry. There was no salient reason to extend the trading hours beyond those that currently apply. The growth in market share of Woolworths and Coles is well above that of independent retailers and if they continue to expand even further there will be no diversity, no choice and a lessening of competition which will see the demise of small business, impacting on consumers and prices in local catchment areas.

## **Spano - Stanthorpe**

[154] Stanthorpe has a population of around 5,600 people with a demographic of a slightly older population of mostly retirees and older families. Spano disagreed with the evidence of Wright that there was a modest growth in Stanthorpe's population giving evidence of a decline in growth rates which was supported by a report commissioned by the Southern Downs Regional Council in May 2016 - Southern Downs Socio-Economic Profile - AEG Group.

[155] The IGA store in Stanthorpe is located in the centre of town and has been independently owned by the Spano Group since May 2007. Both the Woolworths and Aldi stores are located within five minutes walking distance from the store and normally operate Monday to Saturday. In order to remain competitive and meet ever increasing costs the IGA trades longer hours including Sundays and by servicing their customers at all times enables the store to remain competitive and sustainable. The IGA employs 30 permanent staff, casual staff with currently 13 per cent of staff undertaking a traineeship or apprenticeship. Persons with disabilities are employed in both the Stanthorpe and Warwick stores with currently three such persons in full-time employment without the aid of government subsidies.

[156] The IGA is a full line supermarket offering a large selection of grocery items, dairy goods, full service deli, hot chickens, full meat department, fresh seafood, instore baker, fresh fruit and vegetables. Additionally there is a range of tourism related items such as camping, fishing and other general recreational merchandise although the majority of their customers were locals doing their weekly shopping. The store sources many products and services from local suppliers with about 15 per cent of products being local and 35 per cent from Queensland businesses rather than IGA's main distributor (Metcash). If the application was approved there would be a need to reduce the number of products sourced from local suppliers in favour of cheaper alternatives from other parts of Australia and overseas to remain competitive. There had been a National Price Match Strategy in place in which over 2,000 of major lines across the store are matched against the lower prices of the Woolworths and Coles stores. Receipts from comparable shopping between the IGA and Woolworths in Stanthorpe on 9 January 2017 were attached to Spano's affidavit of evidence which showed the IGA was cheaper than Woolworths:

- Woolworths - \$192.82; and
- IGA - \$133.10.

The Spano group is heavily involved in sponsorship and affiliations with the local community and since 2010 have donated nearly \$100,000 to local and community groups in the Stanthorpe and Warwick areas in addition to \$10,000 of stock each store manager is allocated to "give away" to their respective communities.

[157] Tourism in the Southern Queensland region according to a report produced by Tourism and Events Queensland showed a 3.3 per cent decline in the number of domestic visitors and a 10.2 per cent decline of overseas visitors for the year ending June 2016. Furthermore in another publication published by the same organisation in 2013-2014 it identified tourism as directly representing 2.6 per cent of the total Darling Downs economy compared with 4.9 per cent for regional Queensland.

[158] In his time working in Stanthorpe he identified a number of businesses that had closed down in the town for reasons he described as loss of profits and reduced customer demand. If there was to be an increase in customer spending in Stanthorpe on Sundays or Public Holidays his store could absorb up to 10,000 additional customers per week or over \$350,000 in sales. Since October 2016 he had observed vacant retail spaces and car parks in Stanthorpe.

[159] If non-exempt stores were permitted to trade in line with the application it was his estimation both Warwick and Stanthorpe would suffer a downturn of 55 per cent of Sunday trade based on his experience and what happened with his Gatton store when extended trade was allowed in 2011. He would be forced to cut (collectively from both stores) 29,320 hours of employees work per year which would have the equivalent of a loss of 15 per cent staff and would include a significant cut to the numbers of trainees and apprentices hired by the business. Loss of employment would not be offset with gains in employment with Coles or Woolworths and the redistribution of customer spending may mean that small businesses become unviable leading to further closures in town.

### **Warwick**

[160] The Warwick IGA opens seven days a week and employs 35 permanent staff, as well as casuals. They offer a full line supermarket experience (similar to Stanthorpe) catering for the needs of the local population. Products are sourced from the local area (15 per cent) with 35 per cent of the total product from Queensland. A comparative shop was undertaken in Warwick on 15 January 2017 which showed that it was cheaper to shop at the IGA as opposed to Woolworths:

- Woolworths - \$146.85; and
- IGA - \$128.66.

Grocery consumers in Warwick are not inconvenienced by the closure of non-exempt stores on Sundays and Public Holidays as they are adequately serviced by the IGA and other stores which includes a FoodWorks supermarket. The IGA (as with Stanthorpe IGA) is able to run accounts for local businesses, rural/agricultural organisations and local farms with beneficial payment terms for account holders which is due to the strong trading levels on Sunday, however this option would have to be removed or altered if the application was approved.

[161] Tourism is limited in Warwick and the extension of trading hours would not alter that situation. Similar information to tourist numbers declining in Warwick as they were in Stanthorpe was attached to the affidavit of evidence of Spano. Due to reduced customer demand a number of retail businesses had closed in Warwick and currently there were at least 15 vacant retail spaces in the main street of Warwick.

[162] If non-exempt stores were allowed to open in accordance with the application it would likely lead to further business closures. IGA in Warwick currently operates at two thirds capacity and could provide services for up to 7,226 additional customers per week or over \$224,000 in additional sales. The granting of the application would not produce any economic benefit for the local community.

[163] Spano gave further evidence regarding the affidavit of Wright in the Warwick case which had not been available to him at the time of preparation of his material. He

refuted claims that the Woolworths stores in Warwick and Stanthorpe had undergone any refurbishment in recent years and that he currently had plans for \$3 million worth of renovations for his stores which would be cancelled if the application was approved. The range of products said by Wright to be carried by Woolworths were less than those in his IGA stores. In the two days in December 2016 when Woolworths opened on Sundays the IGA store suffered a 50 per cent drop in sales. Currently the Warwick IGA closes two full days per year (Christmas Day and Good Friday) and the morning of Anzac Day.

[164] Under cross-examination it was the evidence that the four IGAs were full-line supermarkets (including Stanthorpe and Warwick) and the other three were "normal IGAs" [Transcript p. 6-18]. The stores operated on the basis of different directors and companies for each store to allow for compliance with the obligations of 60 employees across all sites and 20 employees on the floor at any one time [Transcript p. 6-20]. Spano gave evidence that he would have to increase prices to remain viable if the applications were granted [Transcript p. 6-23]. Evidence given about the closure of an independent store in Ingham prior to the granting of extended hours was found not to be factual [Transcript p. 6-25]. Assumptions regarding grocery expenditure of Woolworths and other stores had been made on information received from Metcash in the form of a demographic report of the catchment area [Transcript p. 6-26]. The decision to stock a range of tourism items in Stanthorpe was due to a local business closing down so it would allow local residents to obtain fishing gear [Transcript p. 6-29]. On evidence before the Commission that IGA had a high level of customer loyalty, Spano was reluctant to provide a response in the absence of a customer loyalty program [Transcript p. 6-30]. Despite competitive pricing, customer service, clean and modern stores, the experience has been that where trading hours have been extended they lose sales on Sunday [Transcript p. 6-31]. In Gatton customers had moved away although the Gatton IGA as it turned out was purchased by the Spano Group after the introduction of seven day trade [Transcript p. 6-32].

[165] Of the 22,695 items in a full-line IGA around 20,695 are not price matched with Woolworths or Coles with a rule in supermarkets (80/20 rule) that 80 per cent of turnover comes from 20 per cent of the lines [Transcript p. 6-34]. Metcash as a wholesaler at times provides goods at discount which allows his stores to sell at a very low price which was not considered as unfair because it happens across all the marketplace [Transcript p. 6-36]. Spano acknowledged that there were a whole lot of factors in play in a business not being profitable [Transcript p. 6-40]. The direct cost of wages was 9.5 per cent of income plus superannuation, WorkCover and payroll tax [Transcript p. 6-47]. The projection of the cutting of 29,320 hours of work which equated to 281 hours per week or 40 seven hour shifts if an additional day of trading was available was the subject of challenge with Spano refusing to concede his figures were inaccurate. In Gatton he had staff numbers reduce from 160 to 113 [Transcript p. 6-49].

[166] In Warwick when the Bi-Lo store closed the IGA received a boost of four per cent growth [Transcript p. 6-50]. On the comparable shopping in Warwick it was undertaken by the store manager who was instructed to pick a basket of 30 lines [Transcript p. 6-51]. In the Stanthorpe comparison Woolworths had Coca Cola at double IGAs price which drew a concession that the IGA had Coca Cola as a special that day [Transcript p. 6-52]. He was unable to "sit here comfortably and say that I can tell you what's on promotion and not on promotion across these two receipts" [Transcript p. 6-54]. In terms of "home brand" products IGA is comparable with

Woolworths on 600 lines of groceries [Transcript p. 6-57]. The comparable figures indicate IGA is a cheaper place to shop than its competitor [Transcript p. 6-57]. Spano was unaware of whether the FoodWorks business in Warwick was competitive with IGA because he did not see it as a competitor and he did not purposely aim to target an independent business [Transcript p. 6-59].

[167] On the non-exempt stores opening two Sundays in December 2016 in the lead up to Christmas the Warwick IGA experienced massive declines in sales [Transcript p. 6-68] making it impossible to cover wages because of their fixed costs [Transcript p. 6-69]. On inspections of the IGA at Warwick the NRA Advocate counted 24 employees on the floor and on putting the matter to Spano he gave evidence of a maximum head count of 18 people as being the practice of the business and disputed the assertion of 24 persons [Transcript p. 6-70]. Questions were put to Spano about the total number of employees in the Spano Supermarket Group which he appeared reluctant to answer bringing the following response from the Commission:

"No I'm only talking about the - in your own statement you talk about seven stores...that are in the group and you, as the CEO of Spano Supermarket Group - now, if that's your evidence, that you are not able to tell me the total number of employees, how could I - how am I supposed to accept your evidence about everything else in the business that you know?"

Spano was then able to give approximate number for each store totalling around 400 employees in all [Transcript pp. 6-73 to 6-74]. If consumers in Stanthorpe wished to grocery shop on a Sunday the options other than the IGA store was to travel to Texas or Dalveen [Transcript p. 6-76].

[168] In re-examination Spano did not consider his operation to be a large business when compared with Woolworths or Coles.

### **Webster - Warwick**

[169] Webster the Owner/Operator of Workin' Wear Warwick a retail outlet in the centre of town that sells work wear, shoes and safety supplies such as high visibility safety clothing and first aid kits. Apart from the eight years as owner of the store most of her working life had been spent in the retail sector. In the course of her 17 years in Warwick she had regularly discussed this matter with community members and customers which led to her forming a view that there was a clear opposition against the extension of shopping hours for non-exempt shops. Webster's store opened 8.30 am to 5.00 pm Monday to Friday and 8.00 am to 12.00 noon on Saturday. There had been a decision made not to open on Sunday as there was little demand for trade on Sundays and financially due to high penalty rates and the impost on family time it was not a worthwhile proposition.

[170] If Target or Big W opened seven days a week in Warwick it would detrimentally affect her sales as they were the biggest competitors. It was difficult to quantify the drop in sales as sales were already in decline due to a drop in trade. Small businesses in Toowoomba had been unable to compete with the large multinationals opening on Sundays leading to closures of a number of stores.

[171] The claim by the NRA that the needs of tourists were not being met was refuted by Webster who indicated there were adequate local businesses open on Sundays to allow

for grocery purchases to be made if required. If the application was approved local retailers may feel pressured to open which would not be a genuine choice and certainly would not provide financial benefit. The NRA application had the potential to "change the fabric of the town and kill small businesses" according to the view expressed by Webster.

[172] Opposition to the application included concerns about the overall impact on the Warwick community as well as small business with references made to current laws that operated to protect small to medium businesses.

[173] Under cross-examination Webster gave evidence of discussing extended hours with up to 100 customers and community members over the last few years with 100 per cent opposition to the proposition [Transcript p. 6-80]. Most of the people who came to Warwick for events at Morgan Park or the Jazz and Jumper festival do not come for the shopping experience [Transcript p. 6-81]. Big W was considered to be the main competition [Transcript p. 6-81] with Webster conceding that 90 to 95 per cent of the hours her store is open so was the Big W store [Transcript p. 6-82]. Even though her store did not trade Sundays if the application was approved a level of her sales would be lost [Transcript p. 6-83]. On occasion tourists to Warwick had visited her store on a Saturday morning [Transcript p. 6-85].

### **Shane Smith - Pittsworth**

[174] Shane Smith in partnership owns and operates the IGA store in Pittsworth which has 49 staff including partners. In the three years his family had been in the town they had been active in the local community including his involvement with the Pittsworth District Alliance. Smith had 30 years' experience working in supermarkets which included employment with Woolworths, SPAR independent stores and in 2007 joined Metcash as the Area Manager for South-West Queensland.

[175] The Pittsworth store trades 6.00 am to 8.00 pm, seven days a week with Christmas Day, Good Friday and the morning of Anzac Day the only non-trading days. The supermarket is a fully function store catering for the needs of their customers which includes:

- meat;
- deli;
- produce;
- fresh bakery; and
- seafood.

The application for non-exempt stores to open on Sundays and Public Holidays would adversely affect their business if approved with the potential to reduce sales by \$1.5 million each year.

[176] On the purchase of the business all original staff were retained and six direct family members were employed. If the application was approved four full-time staff would have to be terminated which would hurt the business and also the wider community. Over the last three years the business had donated just over \$25,000 to various local organisations and school groups. The store does not currently operate at capacity and has the ability to absorb more customers. The offer is competitive with Coles or Woolworths and since 1 September 2014 IGA had price matched over 2,000 of their



major lines and they regularly do price comparisons on fresh foods to ensure their customers get the best prices possible.

[177] The Woolworths store from his observations at no times operates to its full capacity and at different times more than half the checkouts are closed. Woolworths were granted exemption to open on 11 and 18 December 2016 and in doing so the customer count at the IGA store was reduced by 300 each day. The application relied upon tourist activity to support the extension of the trading hours which was not the case as Pittsworth was a land locked town with tourism playing a negligible role in the economy. The reference in Wright's statement to "shopping being pleasurable" was questioned on the basis of application to grocery shopping as opposed to clothing and other such shopping. The range of products at Woolworths were not as claimed, superior to the range at his IGA store and in particular the fresh produce at IGA is not held in cold storage off site with the IGA fresh produce coming straight from the markets and local farmers. If the application was granted and he lost trade as a consequence he would have to consider the number of staff employed in the business.

[178] A petition (11 pages) was attached to the affidavit of evidence which contained the names and signatures of businesses and individual persons opposing the granting of the application to amend trading hours.

[179] Under cross-examination evidence was given to the effect that product and produce was sourced from the local area and further afield in Toowoomba and Killarney [Transcript p. 6-89]. The projected loss of store sales to the value of \$1.5 million was based upon \$25,000 per day over 60 days per year. Woolworths previously opened on two Sundays which resulted in losses of \$13,000 to \$14,000 and if it became a regular event it would cause a bigger problem [Transcript p. 6-90]. Sunday was currently the busiest day of trade, some 30 per cent above Saturday takings [Transcript p. 6-90]. In the period prior to Christmas 2016 and before the new year the IGA on days that Woolworths were closed either had normal or diminished sales which Smith put down to "the time of the year and people not being in town" [Transcript p. 6-93]. The current market share in Pittsworth was Woolworths 60 per cent and IGA 40 per cent [Transcript p. 6-94]. Smith accepted that on the arrival of Woolworths in town it increased commerce in the CBD [Transcript p. 6-94].

[180] The survey signatures attached to his affidavit had been gathered from the IGA supermarket, in the street and local businesses in town. Additionally some of the signatures were collected by Smith and IGA agents asking people to sign [Transcript pp. 6-98 to 6-99].

### **Deborah Smith - Warwick, Stanthorpe and Pittsworth**

[181] Deborah Smith a Director of two companies that owns a number of independent supermarkets in Queensland that trade under the banner name of FoodWorks at the following locations:

- Oakey;
- Northlands - Toowoomba; and
- Blue Mountain - Toowoomba.

Previously she had owned a similar store in Allora and in 2015 sold a FoodWorks store in Warwick that had been rebranded as an IGA store. In addition to 20 years of

retail industry experience she had been a member of a number of industry boards and was aware of difficulties and issues faced by grocery retailers.

[182] The supermarkets owned by her are within a 30 minute drive from Pittsworth, one hour from Warwick and two hours from Stanthorpe with her being familiar with all three towns. The views contained in her affidavit of evidence were based on her observations and experience in the Australian retail industry, ongoing interactions with residents, customers and retailers in different local markets. The stores owned by Deborah Smith were described as medium sized stores with a medium turnover employing 45 employees, mostly on a casual basis.

[183] A document published by Roy Morgan in April 2016 identified the combined market share of Woolworths and Coles as approaching 70 per cent and if the "duopoly" continued to gain extended trading hours the market share would expand even further until there were just two stores left to compete with each other. There would be no diversity, choice and a lessening of competition leading to the demise of small business. A further extension of trading hours forces stores into a devaluation process in the months following the changes with one or more of the following effects on small business:

- weekly turnover drops between 20 and 50 per cent;
- costs increase;
- cost ratios become unsustainable and staff hours are cut;
- profitability is reduced, often requiring more capital; and
- the (devalued) business is sold in a "fire sale" or heavily discounted. Sometimes the business may not be able to be sold.

Deborah Smith identified independent stores in the locations of Morningside, Currajong and Dalby that had been negatively impacted by the granting of extended trading hours.

[184] FoodWorks stores were all independently owned and operated and generally formed a major investment for families and often were part of a superannuation strategy. The businesses were part of the fabric of communities in which they were located, contributing to the economic health of business by supporting local trades, vendors and services.

[185] The areas where her business were located and also Warwick were not traditional tourist towns and extending the trading hours of non-exempt stores would not promote tourism or create a need. The granting of the applications would damage the FoodWorks store in Warwick as well as her FoodWorks stores with the impact as high as a 25 per cent reduction of weekly turnover, potentially making stores unviable. In other States the effect has been negative on store sales although they were offset by sales of packaged liquor. Queensland independent stores were further disadvantaged through the acquisition by Coles and Woolworths of liquor stores, hotels, wholesalers/distributors.

[186] Deborah Smith was critical of the "duopoly" regarding control of fresh produce markets and highlighted direct contracts with farmers had diminished the size and roll of Brisbane and local fruit/vegetable markets, allowing farmers fewer avenues to market their produce. Regular price checks demonstrate that Coles and Woolworths

are not the cheapest places to buy fruit and vegetables which does not benefit consumers.

[187] In November 2016 the MGA commissioned factuality research into Queensland trading hours which was annexed to her affidavit (DS-3). The independent research amongst other things found:

- 71 per cent of respondents agreed with the statement "Allowing large nationally operated retail businesses the ability to determine their own trading hours will harm independently owned community stores and reduce consumer choice";
- shopping hours are not seen by local communities (outside of Brisbane City Council area) as a significant issue;
- factors opposing extended trading hours include:
  - unnecessary;
  - negatively impacts on small business; and
  - large retailers already too dominant.

[188] Criticism was levelled at the evidence in proceedings from Vorrasi (in the Warwick application) that included:

- it was biased, based on irrelevant or speculative information;
- Coles was seeking to get a commercial advantage which would be detrimental to the local communities;
- Coles was seeking to use their market power to the detriment of small business;
- donations made by Coles occur on a national level and should be disregarded because it is misleading to assume this happens at the local area;
- references to Coles store in Dalby confirms the agenda to expand in regional Queensland;
- increases in Dalby for Coles and other such businesses had come at the expense of small business with 50 per cent of the local FoodWorks Sunday trade lost; and
- it was a "long bow" to suggest there was escape expenditure to Toowoomba for supermarket shopping.

[189] The "duopoly" in the grocery sector in Australia is "unprecedented" in the world with regulators and the NRA conveniently overlooking the reason for restricted shop trading hours which includes the opportunity for small business to trade without unfair competition from large retailers. References to customer choice must be in the context of costs and the downside of deregulation with many customers not wanting such deregulation.

[190] Tourists who visit Queensland do not come on the basis it is a shopping destination and adjust to the prevailing shopping conditions in place. Tourists are unlikely to be doing extensive shopping in supermarkets in any event. The reliance by Vorrasi on the Southern Queensland Regional Snapshot to support the application is failed as the report states there had been a 3.3 per cent decline in the number of domestic visitors and 10 per cent decline in international tourists to the area.

- [191] The three applications have been made without the need for such changes and is just another means for obtaining extended trading hours in Queensland without any legitimate need.
- [192] In responding to Wright's evidence, exception was taken to the inability of small independent retailers to sell liquor whilst Woolworths were able to purchase hotels and set up off-licence bottle shops. On sales moving up for Woolworths by 8 per cent in Dalby following the introduction of Sunday trade it was her evidence that the independent as a consequence had lost 80 hours over their workforce and the customer counts were down 200 per week.
- [193] Under cross-examination Deborah Smith conceded she had no knowledge regarding Woolworth's staffing mix before or after the introduction of self-service checkouts, also it was conceded that neither Woolworths nor Coles can sell alcohol in their Queensland stores [Transcript p. 6-108]. The evidence regarding the loss of 80 hours employment at the Dalby FoodWorks following the introduction of Sunday trade had been based on information provided by Nicole Simpson (Simpson) (General Manager of the store) and where the loss of hours had been identified as 35 to 40 per week by Simpson in another matter, it was stated that now 80 hours per week was the situation [Transcript p. 6-110]. Sunday trade was introduced into Dalby after the mining boom had started to wane [Transcript p. 6-111]. Deborah Smith had no business interests in Warwick, Stanthorpe or Pittsworth [Transcript p. 6-112]. The evidence in this matter was being given on behalf of the MGA and due to her interests in "the independents" [Transcript p. 6-113]. A number of her businesses had lost sales when Coles had opened a new store in Toowoomba [Transcript p. 6-114].
- [194] In terms of the Roy Morgan report relied upon regarding the market share in supermarkets it was conceded that figures contained within that document identified both Woolworths and Coles suffering a decline in market share between 2007 and 2015 with IGA increasing their market share in the same period [Transcript p. 6-115]. At present in the grocery market IGA through Metcash's acquisition of the Action Group and Franklin Group have experienced significant growth in the New South Wales and Victoria markets and Woolworths and Coles were reacting to the growth being experienced by Aldi [Transcript p. 6-117]. Deborah Smith accepted that specific examples at paragraph 12 of her affidavit of evidence regarding the loss of weekly sales due to the introduction of Sunday trade did not reach the figure of 50 per cent [Transcript p. 6-119]. Deborah Smith acknowledged data had not been presented by her to prove the 50 per cent [Transcript p. 6-121].
- [195] The claim that Woolworths in Warwick would create an additional 100 hours of employment was the subject of evidence that there would be a requirement for 200 hours to run the shop and 100 hours would be taken from existing hours [Transcript p. 6-127]. Whether 100 hours would be a benefit depended on how many hours the IGA store lost [Transcript p. 6-128]. It was agreed that MGA material "DS-3" showed consumer support for Sunday trading at 53 per cent to 42 per cent opposed which excluded the area of Brisbane [Transcript p. 6-129]. Large nationally-operated retail businesses do not have the ability to determine their own trading hours in Queensland that is a matter for the Commission [Transcript p. 6-129]. Deborah Smith agreed she had not provided any evidence of cartel-like behaviours from Woolworths and Coles to the Commission [Transcript p. 6-132]. On the evidence relating to market share in Australia and other countries in the world Deborah Smith agreed that a country with 50 times the population of Australia that

population could contribute to the proliferation of retail trading brands [Transcript p. 6-135]. With regards to attachment "DS-1" it was agreed that the study showed a net increase in employment across two stores of 32 per cent following a shift to Sunday trading [Transcript p. 6-136].

[196] In re-examination Deborah Smith gave evidence of her direct knowledge of the Warwick, Pittsworth and Stanthorpe communities and of having previously given evidence in other trading hour's applications. The MGA has members in every state in Australia which includes the following brands:

- FoodWorks;
- IGA;
- SPAR; and
- liquor bottle shops in Victoria and New South Wales.

## **Submissions**

### **NRA Submissions**

[197] The NRA provided extensive written submissions (54 pages) which addressed the s 26 of the Act criteria for which the Commission must have regard in the determination of applications of this nature.

*(a) the locality, or part thereof in which the non-exempt shop or class of non-exempt shop is situated*

[198] In general terms each of the locations were unique in their character and circumstances however there was a common component in that each area serviced a catchment area much wider than the town itself making the "locality" affected by the applications far more significant than simply the geographic area of the applications. Each of the three regional centres were hubs for travellers and locals alike and notably the populations swell significantly at weekends.

[199] There were no established precedent to suggest seven-day trading should be limited to localities where population exceeds a particular level with many towns across Australia having seven-day trading where the population of the town is less than the three localities being considered in this application.

### *Warwick*

[200] Warwick the administrative heart of the Southern Downs Shire houses the Shire's administration centre and other attributes include:

- shopping precincts;
- public hospital;
- residential areas;
- schools;
- churches;
- sporting facilities; and
- commercial centres.

The regional shopping centre precinct in the CBD houses major retailers that include:

- Woolworths;
- Big W;
- Target;
- Best and Less; and
- Coles [under construction].

[201] Two highways (Cunningham and New England) jointly enter Warwick from the north, both coming into the town close to the central business area.

*Stanthorpe*

[202] Stanthorpe is primarily urban with housing, recreational, commercial and industrial areas and some undeveloped land. The surrounding area is also the agricultural centre of the Granite Belt for the likes of vegetables, apples, grapes and stone fruit.

[203] There is a regional shopping centre precinct with a mixture of strip shopping and neighbourhood centres and major retailers in the town include:

- Woolworths;
- Target; and
- IGA.

*Pittsworth*

[204] The Gore Highway passes Pittsworth from the north and there is a gateway to western Queensland and northern New South Wales. Pittsworth sees volumes of domestic tourist travel and family visits. There is a dedicated shopping precinct and shopping centre with major retailers such as:

- Woolworths;
- Home Hardware; and
- IGA.

**(b) *the needs of the tourist industry or other industry in such locality or part***

[205] The connection between retail trade and tourism was clearly demonstrated in evidence before the proceedings with good reasons for consistency in retail shop trading hours in the three locations being demonstrated. The retail sector in each of the locations is currently restrained from growth in key tourism areas by the inability to trade in centres that attract tourists. The most recent Census data reveals that accommodation, food and retail are the major employers in each of the locations with about 25 per cent of employed persons working in these industries.

[206] The submission went to the witness evidence in the proceedings with regards to tourism that included:

- Templeman - data from Visitor Information Centres in Warwick and Stanthorpe which recorded contacts of 16,000 and 24,000 (respectively) which the Council believes were about 10 per cent of all visitors making the approximate numbers each year of 160,000 and 240,000 visitors

(respectively). The populations of the Council area was 36,000 persons making the influx of tourists significant.

- McCosker - his business was impacted by passing travellers, tourist trade and the changing need of local customers.
- Gard - tourist events in Warwick primarily focussed on the weekend that included:
  - race tracks;
  - horse events;
  - motorcycle racing;
  - Jumpers and Jazz Festival.
- Keogh - the Chamber of Commerce supported the notion of additional tourism visitation to the region, made reference to equestrian and motor sports as well as an operational stream train that runs on weekends.

[207] Other material presented to the Commission included:

- Southern Queensland Country Regional Snapshot - June 2016;
- Brisbane Tourism Profile 2009 - 2012; and
- QUT Shopping Hours Survey.

[208] The QUT Survey identified the following data:

- Warwick
  - 85 per cent agreed tourism was good for regional and rural Queensland;
  - 70 per cent believe tourists visiting Warwick would expect businesses to be open on a Sunday; and
  - 65 per cent agreed that if Warwick was open for trade on Sundays more people would visit for the day.
- Stanthorpe
  - 85 per cent agreed tourism was good for regional and rural Queensland;
  - 59 per cent believe tourists visiting Stanthorpe would expect businesses to be open on a Sunday; and
  - 62 per cent agreed that if Stanthorpe was open for trade on Sundays more people would visit for the day.
- Pittsworth
  - 72 per cent agreed tourism was good for rural and regional Queensland;
  - 74 per cent believe tourists visiting Pittsworth would expect businesses to be open on a Sunday; and
  - 43 per cent agreed that if Pittsworth was open for trade on Sundays more people would visit for the day.

[209] The submission conceded little evidence was adduced regarding the needs of the Pittsworth tourist industry but it must be accepted that retailers and visitors to these areas would be adversely impacted by the *status quo*.

[210] The imposition of retail trading hours' restrictions may have a meaningful impact on the level of tourist expenditure given the fixed timeframe they have to make purchases and the restrictive hours available to meet demands. The existing presence of designated tourist zones for retail trading in Queensland implicitly already accepts this argument.

**(c) *the needs of an expanded tourist industry***

[211] The increased hours sought in the applications would meet the requirements of the growing tourist industry with the extended trading hours enhancing the tourist experience.

**(d) *the needs of an expanding population***

[212] Projections show an increase of population on the Southern Downs of one per cent per annum until 2036 which will increase the residential population and tourist industry requiring increased activity in services and retail industries. The evidence of Mortimer taken from customer research in each of the three locations found support for Sunday trade for reasons that included:

- greater convenience;
- freeing up time for other activities on weekends;
- benefits for shift workers;
- ease of access; and
- freedom of choice.

[213] Restrictions on weekend trade has inhibited retail and service sectors leading to the loss of take home pay with the level of income in Stanthorpe and Warwick below the State average:

- |                                     |                     |
|-------------------------------------|---------------------|
| • Queensland median personal income | \$45,711 per annum  |
| • Warwick                           | \$38,019 per annum  |
| • Stanthorpe                        | \$34,390 per annum. |

[214] Evidence from Templeman and Gard was that increased tourist numbers would see increased expenditure leading to growth.

**(e) *the public interest, consumers' interest, and business interest (whether small, medium or large)***

*Public*

[215] National retail chains want consistency in servicing their markets across Australia with a clear majority of those stores trading on Sundays. Time and resources are expended in staying abreast of trading hours restrictions which are confusing for customers and the most effective way to reduce complexity is to grant the applications.



*Consumer*

[216] All of the evidence presented in these matters from NRA and MGA witnesses demonstrated that consumers were clearly in favour of extending trading hours in each of the three venues.

*QUT Shopping Hours Survey*

[217] In evidence Mortimer outlined in some detail the methods relied upon to conduct the surveys which included:

- respondents intercepted in carparks surrounding shopping centres and in high street shopping areas;
- respondents not approached inside retail stores;
- no loaded or "double barrelled" questions; and
- findings sent to the Ethics Department for an independent assessment.

[218] The survey established a range of consumer intentions that included but not limited to:

- Warwick
  - 60 percent intended to shop on Sunday if retail was open;
  - 64 per cent find it often necessary to do some shopping on Sunday;
  - 75 per cent support proposed extension; and
  - 82 per cent believe Sunday trade may bring tourists to town.
- Stanthorpe
  - 70 per cent intended to shop on Sundays if retail was open;
  - 56 per cent find it necessary to do some shopping on Sunday;
  - 68 per cent support proposed extension; and
  - 68 per cent believe Sunday trade may bring tourists to town.
- Pittsworth
  - 66 per cent intend to shop on Sundays if retail was open;
  - 48 per cent find it necessary to do some shopping on Sunday;
  - 60 per cent support proposed extension;
  - 45 per cent believe Sunday trade may bring tourists to town.

[219] Research undertaken by Factuality and included in the affidavit of Deborah Smith found 53 per cent of the respondents supported extended shopping hours. Evidence of NRA witnesses Winzenberg, Vorrasi and Wright demonstrated the success of Sunday trading in Dalby and other regional centres with there being no reason why the three locations subject of these proceedings would be significantly different from the other regional examples that included Gladstone and Biloela.

[220] Wright gave evidence regarding the range of goods available at Woolworths' stores which were superior to other supermarkets thus providing customers with greater choice at lower prices which was good for the consumer. On price matching by IGA stores it was his evidence that consumers without the ability to shop elsewhere on a Sunday would have to buy only specials or price matched goods to get a cheaper basket of goods. Further evidence related to a notable drop in sales in Woolworths

stores in Toowoomba when residents of Warwick, Stanthorpe and Pittsworth can shop locally on a Sunday in the lead up to Christmas.

#### *Small Business*

[221] NRA submitted that additional commercial activity in regional hubs was overwhelmingly positive for small business with many of those businesses relying on the "pull" of large retailers to bring locals into town and entice tourist to break their journey. The evidence of Keogh regarding the Warwick Chamber of Commerce survey provided results that included:

- 60 per cent of members surveyed believed Sunday trading would make Warwick a more attractive place for potential residents and businesses;
- 63 per cent of members supported major retailers opening on a Sunday; and
- 57 per cent of members surveyed believed Sunday trade would result in increased employment in the retail and tourism sectors.

[222] According to the evidence of Russell from the Dalby Shopping World the smaller tenants in that centre had overwhelmingly increased their trading hours as a result of non-exempt stores opening with 21 of 38 stores involved in the extra trade. Other evidence supporting Sunday trade because of benefits to their business included McCosker (Red Rooster) and Le (Chemist - Pittsworth).

#### *Large Business*

[223] Wright in giving evidence that 95 per cent of Woolworths stores across Queensland trade on Sunday and Public Holidays identified a number of efficiencies that arose from seven day a week trade that included:

- reduced congestion at the registers by the redistribution of demand;
- consumers benefit by being able to make purchases at supermarket prices;
- tourists or visitors benefit from shops open on Sundays;
- smoothing out peaks in scheduled deliveries and store replenishment provides a more efficient work environment for staff and customers;
- benefits from energy usage of refrigeration and air-conditioning; and
- fresher products for customers.

[224] Wright have further evidence of the business support given to a range of local suppliers in the regions.

#### *Independent*

[225] Most evidence opposing the applications concerned increased competition through extended hours of large supermarkets however that evidence had a distinct lack of relevance and was not probative evidence that could satisfy any of the elements in s 26 of the Act. Whilst there are 15 categories of retail measured by the Australian Bureau of Statistics the objects were centred around one type of business owner being those in the food and grocery sector, supplied by Metcash corporation a listed ASX 200 corporation that supplies 2,400 stores across Australia under a number of banners that includes IGA and Friendly Grocer. Those number of sites are significantly higher than the number of sites held by Coles and Woolworths.

[226] Whilst the concerns expressed by MGA witnesses were genuinely held there was no evidence before the Commission to support the claimed impacts, merely the anxiety levels of the witnesses that the extended trade would cause a significant reduction in sales for independent businesses. The MGA witnesses described with some pride their points of difference compared to major supermarkets as being:

- flexibility in stock specific products requested by local customers;
- convenient parking, easy access;
- knowing customers; and
- carrying customer's groceries to their vehicles.

[227] Data in the QUT Survey from Roy Morgan demonstrates that IGA currently enjoys loyalty greater than other brands that should eliminate concerns over perceived losses in Warwick, Stanthorpe and Pittsworth.

[228] The evidence of Spano was the subject of criticism and challenge in that:

- it was an unreasonable assumption that the Warwick Rodeo would fail without the IGA sponsorship;
- was arrogant in speaking about a work-life balance for retail employees but offering no such consideration for his own employees; and
- IGA do not have to deal with weekly store closures.

[229] Spano had provided an insight into the steps taken by a large group to maintain independent status under the Act whilst avoiding questions constantly on the Spano Group employment numbers. The NRA considers due to the large number of employees in the Spano Group they hardly are in need of protection under the Act. The claim by Spano that if the application was granted there would be a loss of 281 work hours per week per store was outrageous.

[230] Shane Smith's evidence recognised that more activity in town on a Saturday rewarded both the IGA and Woolworths, unfortunately he failed to recognise increased activity on Sunday would provide similar levels of increased activity for both stores. Lower levels of activity around those occasions when Woolworths were open in Pittsworth around Christmas/New Year were not according to his evidence due to Woolworths.

[231] Debora Smith had given evidence of a 50 per cent drop in IGA store sales when Sunday trade had been introduced to a location but recanted that position in the course of cross-examination.

[232] Overall the MGA witnesses articulated their businesses are different from major supermarkets which indicate that independent businesses have competitive niches in the market and should not fear additional hours from non-exempt stores as they are clearly trading in a different market where convenience and specialty product trumps (real or perceived) price advantage.

*(f) the alleviation of traffic congestion*

[233] The level of congestion (both foot and vehicular traffic) in stores and in car parks varied from town to town and was not a significant factor for consideration in these applications.

***(g) the likely impact of the order on employment***

[234] The economic boost to businesses trading on Sundays would help create jobs and increase opportunities for retail workers who choose to work on the day to earn extra income. There was a significant body of evidence from NRA witnesses attesting to the increase in employment flowing from the granting of seven day trading with all non-exempt retails indicating Sundays would be voluntary for all existing employees and no employee would suffer a detriment if they elected not to work. The evidence supported increased employment, improved participation in the youth and female demographics.

[235] Winzenberg gave evidence that in 2015 the Dalby Country Target store had been earmarked to close as it was a borderline, making a loss. Sunday trade was a saviour with 12 team members retaining employment they may have lost in 2015. In all cases there had been incremental gains in employment of the team members and in Sunday trading applications he had been involved in there had never been a reduction in staff hours for Monday to Saturday.

***(h) the view of any local government in whose area the order is likely to have an impact***

*Warwick/Stanthorpe*

[236] The Southern Downs Regional Council supported the NRA application in correspondence [Exhibit 4] with the omission of support for Public Holidays being an oversight.

*Pittsworth*

[237] No local government view was expressed in regards to this application.

***(i) such other matters as the industrial commission considers relevant***

[238] In regional communities non-exempt stores operate as part of the local ecosystem which is made up of consumers, employees, suppliers, logistics and small businesses with restrictions on trading impacting on all and effecting the ecosystem.

[239] The evidence from Downey in terms of the Pittsworth District Alliance identified 17 members out of a 100 membership opposed the application based on information provided by the IGA store owner and no other interested group. Ironically according to Downey the best outcome for the population of Pittsworth was not to have additional choice in local shops hours but to travel to Toowoomba.

***Conclusion***

[240] NRA witnesses provided a range of evidence that included reference to consumers, employees, tourism and business. All claims were supported by empirical data with predictions in relation to employment growth in line with claims made in other applications and later tested by the Commission.

[241] In all three applications extended trading would:

- enhance the tourist experience;
- make tourist based businesses more marketable; and
- allow retailers to optimise sales.

[242] The applications are about the concepts of commercial equity in which shopping centre owners and tenants in each location should be able to compete on a level footing with other shopping precincts in the region and giving consumers convenience and choice. The expansion of trade will not diminish the current choice of residents and will enhance the experience of residents and tourists.

[243] The consolidation of the independent grocery section since 1992 has delivered capacity to the independent sector to compete much more effectively on price through Metcash, the "third" force in the grocery market. If independent stores were to fail it is not because of seven day trading but due to poor location, unattractive offers or other factors.

[244] The interests of the overwhelming majority of the retail industry, over all categories of retail must be weighed against the views of a small and narrow set of a few MGA witnesses. Local government authorities either supported or were neutral regarding the applications.

[245] Approval of the applications would:

- remove red tape;
- improve consistency in the Queensland trading hours regime;
- benefit retailers, residents, tourists and the travelling public;
- be in the interest of all business interests with expenditure remaining in the local community; and
- lead to additional employment hours.

[246] On all s 26 criteria, it was submitted that the evidence supports the applications being granted.

### **MGA Submissions**

[247] The MGA provided written submissions for each separate application (totalling 177 pages) which contained a significant degree of commonality across the three applications.

### ***Commonality in the three applications***

[248] The three applications sought the following amendment to the Order pursuant to s 21 of the Act:

	<u>Opening Time</u>	<u>Closing Time</u>
Monday to Friday	8.00 a.m.	9.00 p.m.
Saturday	8.00 a.m.	5.00 p.m.
Sunday	9.00 a.m.	6.00 p.m.
Public Holidays (excluding Good Friday, 25 April, Labour Day and 25 December)	8.30 a.m.	5.30 a.m.

[249] As a preliminary point the MGA submitted that a substantial portion of the NRA evidence was largely hearsay in nature, incapable of being properly tested as to its veracity. Specifically, unverifiable evidence included:

- supposed "benefit" for undefined co-located cafes and restaurants;
- alleged consultations at various non-exempt stores between store managers and amorphous groups of team members on the working of potential additional hours;
- feelings, thoughts, needs and perceptions of indeterminate groups of tourists and residents;
- alleged confusion and frustration experienced by unidentified interstate and overseas tourists as a result of trading hours' landscape in Queensland;
- rules governing trading hours in Queensland being complex for businesses and confusing for consumers; and
- motivations, desires and personal circumstances of anonymous employees who work additional hours both generally and in non-exempt stores in particular locations.

[250] In previous applications of this nature the Commission whilst not bound by technicalities, legal forms or rules of evidence had been reluctant to accept the level of hearsay evidence that was promulgated in the NRA evidence in these matters. In support of this aspect the following matters were cited:

- *Re: National Retail Association Limited, Union of Employers*<sup>1</sup> (TH/2014/9); and
- *Re: National Retail Association Limited, Union of Employers*<sup>2</sup> (TH/2015/1).

[251] The submission detailed the witness evidence before the proceeding from both the NRA and MGA and advanced argument that the NRA's applications were characterised by a distinct lack of relevant, probative evidence which could satisfy any of the elements outlined in s 26 of the Act.

### ***Section 26 Criteria***

#### ***(a) the locality, or part thereof in which the non-exempt shop or class of non-exempt shop is situated***

##### *Commonality*

[252] A Full Bench in *Trading Hours - Non-Exempt Shops Trading By Retail - State*<sup>3</sup> (TH/2007/7) on the matter of locality stated:

"In our view the Legislature does not impose any test of 'uniqueness' in relation to the factor of locality, either expressly or by reference to the extrinsic material. The factors contained in s. 26 are matters to which the Commission must have

<sup>1</sup> *Re: National Retail Association Limited, Union of Employers* [2015] QIRC 044

<sup>2</sup> *Re: National Retail Association Limited, Union of Employers* [2015] QIRC 204

<sup>3</sup> *Trading Hours - Non-Exempt Shops Trading By Retail - State* (TH/2007/7) - Decision <<http://www.qirc.qld.gov.au>>

regard when determining applications made pursuant to s. 21 of the Trading Hours Act. In our view a non-exhaustive list of the types of matters to be considered includes the geographic location of the town or area; the retail infrastructure; other relevant infrastructure and other relevant features of the town or area concerned."

#### *Warwick*

- geographical footprint - one main retail street containing a shopping centre with several shops closely located to intersections that cross the street;
- two large supermarkets - Woolworths, IGA within 500 metres;
- Target Country, Big W, Aldi, FoodWorks operate single stores; and
- seven day traders - IGA, FoodWorks, Coles Express, Woolworths petrol station, other service stations, numerous coffee, bakery and takeaway shops.

[253] Toowoomba the closest town to Warwick has five Woolworths and Coles stores, three Aldi stores, Target store, Big W store and a number of independent supermarkets. Tenterfield has a Coles store and other independent stores. Both locations trade seven days and there was no evidence led to suggest Warwick residents travelled to either location to shop as a result of trading restrictions in Warwick.

[254] The issue of choice and convenience was significantly overemphasised by the NRA with the non-exempt shops currently operating six days per week and these businesses offering online shopping which can be done on Sundays and Public Holidays. Additionally it was stated that Warwick was surrounded geographically by non-exempt stores that opened on Sundays. IGA operates a full size supermarket on Sundays, in any event.

[255] Further the level of growth for Warwick between 2005 and 2015 was at 0.7 per cent annually compared to the Southern Downs of 1.1 per cent and Queensland 2 per cent for the same period. Comparing with other parts of Queensland and Australia, showed a clear misunderstanding of the unique challenges faced in Warwick.

[256] In assessing the totality of the evidence, and the location of Warwick and its retail precinct there is no need for an extension of trading hours on Sunday.

#### *Stanthorpe*

- small shopping centre with one main retail street containing several shops;
- town serviced by two large supermarkets IGA and Woolworths located within 300 metres of each other [Note - also an Aldi store]; and
- seven day traders - IGA, Woolworths petrol station and Convenience Store, Caltex Star Mart; BP and Ampol service stations, to small clothing and homeware retailers and numerous coffee, bakery and takeaway stores.

[257] Toowoomba and Tenterfield are locations that have existing seven day trade with no evidence led that residents visit either location as a result of trading restrictions in Stanthorpe. There was no verifiable evidence to the effect that Stanthorpe's location caused confusion with regards to the existing trading hours. On the matters of

convenience, choice and online shopping the submission mirrored the Warwick circumstances.

[258] Growth in Stanthorpe between 2005 and 2015 was at 0.3 per cent annually compared to the Southern Downs and Queensland of 1.1 per cent and 2 per cent respectively. It was a misunderstanding to compare Stanthorpe with other areas of Queensland and Australia, with a "one size fits all rule" applied across the State would see the demise of many small retailers.

[259] The evidence does not support the locality of Stanthorpe and its retail precinct needing an extension of trading hours.

#### *Pittsworth*

- one small shopping plaza and a main street which contains standalone retail stores;
- town serviced by two supermarkets - Woolworths and IGA located within 450 metres of each other; and
- seven day traders - IGA, three petrol stations, convenience stores, pharmacy (Sunday morning only), coffee, bakery and takeaway stores.

[260] Choice and convenience was significantly overemphasised by the NRA with Pittsworth geographically located within a region that is surrounded by a number of non-exempt stores that already operate on Sunday. Pittsworth was somewhat "landlocked" requiring visitors to take the appropriate exit of the highway and travel approximately two kilometres to get to Pittsworth.

[261] Pittsworth cannot be compared with other areas of the State which varies in areas from the South-East that are growing and Western areas that are shrinking. The town is well serviced by the IGA and a select number of stores on Sunday and conveniently positioned within the opportune driving distance of Toowoomba which has Sunday and Public Holiday trading.

- (b) *the needs of the tourist industry or other industry in such locality or part; and***
- (c) *the needs of an expanding tourist industry***

#### *Commonality*

[262] There was no evidence before the Commission that the tourist industry in or around the three locations "needs" non-exempt stores to trade on Sunday or Public Holidays. There was no probative evidence to indicate that this application would benefit the "needs" of the tourist industry as no such "needs" exists.

#### *Warwick*

[263] The NRA's own evidence confirms that for the year ending June 2016 Southern Queensland (including Warwick) had a 3.3 per cent decline in the number of domestic visitors and a 10.2 per cent decline in overseas travellers which did not support the "need" to adjust trading hours to suit increases in tourism. There was no evidence regarding the "need" to extend trading hours to achieve the Southern Downs Regional Council tourism objectives.



[264] There was reliance upon the matter of *Re: National Retail Association Limited, Union of Employers*<sup>4</sup> (TH/2014/9):

"[44] Of significance is the fact that there had been no mention of a need for extended 7 day trading in Mt Isa in the Mt Isa Tourism Strategy created by the Mt Isa City Council.

[45] There is evidence which shows that tourists attend the Mount Isa area - whether that is related to seeing attractions in Mount Isa (or its whereabouts) or whether it is for the purpose of a stop-over for tourists going through to other major destinations. That is a relevant consideration, but what has not been shown is that there has been a demand from tourists for extended trading hours on a Sunday.

...

[204] With regard to the to 'tourism' criteria in s 26 of the Act, while I have taken into account the statistical data presented by NRA witnesses, it is telling that the Mount Isa Tourism Strategy does not mention the need for extended trading hours in Mt Isa as part of that strategy. It could be said that if tourists needed extended trading on a Sunday it may be a matter of which the Mt Isa Council was aware."

[265] The shopping precincts in the Southern Downs regions were not confirmed as main tourist attractions and it was the MGA position that allowing the non-exempt stores to trade Sundays would not attract additional tourism. No evidence was adduced from tourists to ascertain their views on trading hours in Warwick.

[266] In the previous NRA matters regarding the extension of trading hours various tourist organisations supported the applications however no such evidence was presented to the Commission in these proceedings. The previous matters included:

- *Trading Hours - Non-Exempt Shops Trading By Retail - State* (TH/2008/3)<sup>5</sup>; and
- *Re: National Retail Association Limited, Union of Employers*<sup>6</sup> (TH/2014/10).

[267] In light of the evidence led by the NRA concerning the decreasing tourist numbers in Warwick and the absence of verifiable evidence concerning a correlation between the needs of the tourist industry and the requirement for a further extension of trading hours there was insufficient evidence to support the application.

*Stanthorpe*

[268] The submission in most respects mirrored the content of the Warwick submission identifying similar declines in domestic and overseas tourist numbers and the lack of evidence to the need to extend the trading hours. The Mt Isa decision (TH/2014/9) cited in the Warwick submission was also relevant for Stanthorpe.

<sup>4</sup> *Re: National Retail Association Limited, Union of Employers* [2015] QIRC 044

<sup>5</sup> *Trading Hours - Non-Exempt Shops Trading by Retail - State (TH/2008/3) - Decision* <<http://www.qirc.qld.gov.au>>

<sup>6</sup> *Re: National Retail Association Limited, Union of Employers* [2015] QIRC 027

[269] The MGA did not dispute the existence of limited tourism in Stanthorpe or passing traffic through Stanthorpe however none of that automatically translates to the need for non-exempt shops to trade on Sunday. In evidence Spano acknowledged tourists visited the area for wine and associated tours but did not accept that extended hours would promote tourism in the area.

[270] There was reliance upon the already cited NRA applications in Tourist areas in the same terms as Warwick and the lack of support from tourist organisations, as well as insufficient evidence to support the application.

*Pittsworth*

[271] In the case of Pittsworth there was similar reliance on points raised in the other applications and also the evidence of Deborah Smith, applicable to the three applications which related to the Southern Queensland Country Destination Tourism Plan, that provided clear direction to the development of tourism through to 2020 in the region which had excluded adjusting retail trading hours as a core element to deliver the tourism vision.

[272] Again there was reference to the lack of evidence from tourism bodies and the lack of independent studies or evidence to support the further deregulation of trading hours.

**(d) *the needs of an expanding population***

*Commonality*

[273] There are two elements of s 26(d) for consideration being:

- a need; and
- the expanding population.

Where there is only one element present the criterion cannot be considered as weighing in favour of the approval of an application.

[274] The NRA concedes that the "Southern Downs has a modest, but growing population" however did not produce any evidence specific to population expansion. There were questions raised over whether predictions about population growth extracted from ABS data from 2015 had been accurate to date.

*Warwick*

[275] In the period between 2005 to 2015 the average annual growth was 0.7 per cent compared to 1.1 per cent for the Southern Downs region and 2 per cent for Queensland. The projections of the Queensland Government for the period 2013 to 2036 is for a 1 per cent (on average) growth annually for the Southern Downs which is less than the actual growth between 2005 to 2015.

[276] The increase in population figures were poor and not significant to endorse the approval of the application. Additionally there was evidence that Big W and Target do not currently trade all allowable hours as permitted under the Act which draws the inference that the current trading hours are sufficient to meet customer's needs.

[277] All four stores had provided evidence of their capacity to absorb and cater for a greater number of customers within the existing hours and in light of Warwick's marginal population growth there is insufficient evidence concerning s 26(d) to support the application.

*Stanthorpe*

[278] In the period between 2005 and 2015 the average annual growth for Stanthorpe was 0.3 per cent, lower than the region and State growth figures. As with Warwick the projected growth into the future is limited and does not provide validation that the population of Stanthorpe needs an alteration to the existing trading regulations.

[279] Target currently does not trade all allowable hours permitted under the Act which infers that the current trading conditions in Stanthorpe are sufficient to meet the customer's needs. There was consistent witness evidence of the capacity of businesses to absorb and cater for greater customer numbers within the existing hours. There was insufficient evidence concerning s 26(d) to support the application.

*Pittsworth*

[280] The only evidence relied upon by the NRA pertained to the ABS data of prospective growth in the Toowoomba area over the period 2015 to 2036. There was evidence from Droney that there were significant retail or business spaces available in the town with many residential properties sitting vacant for months.

[281] As with Warwick and Stanthorpe applications there had been no tangible consultation with the Pittsworth public about the growing population "needs" with Pittsworth already broadly satisfying the "needs" of the consumers. There was insufficient evidence to support the application based upon s 26(d) of the Act.

**(e) *the public interest, consumers' interest, and business interest (whether small, medium or large)***

*Public Interest*

*Commonality*

[282] The MGA adopted the comments of the Full Bench in *National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organisation of Employers) and Another (TH/2009/3)*<sup>7</sup> which stated:

"Primarily, the 'public interest' test in these circumstances is incorporated within the specific requirements which the Commission must consider within s. 26 of the Trading Act. A mandatory consideration by the Commission of factors (a) to (i), broad as these sections are, ensures that an appropriate 'public interest' consideration has been met."

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<sup>7</sup> *National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organisation of Employers) and Another (TH/2009/3)* - Decision <<http://www.qirc.qld.gov.au>>

[283] Whilst the consideration of factors (a) to (i) ensures the public interest considerations are met it is not unreasonable to suggest some tangible consultation should have occurred in each location beyond the involvement of Mortimer.

*Warwick*

[284] The NRA relied upon witnesses from Coles, Woolworths, Target, Big W and QUT who were not Warwick residents and who visited the town infrequently and sporadically whereas the MGA witnesses were current business owners in Warwick and/or residents spanning countless years.

[285] MGA witnesses stressed the importance of healthy independent retail offerings and of the financial benefits the broader public receives as a result. Further there were benefits through donations to the community and local groups with the Spano group having already donated nearly \$100,000 from the Warwick and Stanthorpe stores.

[286] The generosity of Woolworths and Coles was questioned and described as underwhelming as it related to the local community with Vorrasi unable to identify what portion, if any of the amount Coles may distribute as donations went for the benefit of Warwick. Donations from the non-exempt stores were said to be negligible, relative to the profits they take from communities such as Warwick.

[287] If the profits of independent local retailers are diminished irrespective of whether it forces the closure or simply limits their capacity to employ and support the community, there will be a detrimental effect.

*Stanthorpe*

[288] The NRA had failed to accurately address the "public interest" electing to rely on apparent consumer benefits such as minimisation of confusion and frustrations of consumers, making it reasonable to suggest that a significant portion of the Stanthorpe public may not entwine their interests with that of the patrons of the non-exempt stores.

[289] The MGA in contrast submitted direct public interest evidence from local residents, workers and retailers that were voluntarily prepared to provide an invaluable insight into Stanthorpe. The importance of a healthy independent retail offering and financial benefits the broader Stanthorpe public receives as a result. The charitable aspect of the IGA and the "alleged" generosity of Woolworths and Target were raised in similar terms as Warwick.

*Pittsworth*

[290] As with Stanthorpe it was submitted that the NRA had failed to accurately address the "public interest" component whilst the MGA had effectively done so through their witness evidence. The benefits of a healthy independent retail offering with benefits to the wider community was evident. In terms of donations to the local community, apart from a one-off donation to a rural hospital by Woolworths the evidence did not identify any specific donation provided by them for the benefit of the local community.

## *Consumer Interest*

### *Warwick*

[291] The MGA was mindful of previous Full Bench references that extended hours were favourable for consumers however in this matter there was insufficient evidence to demonstrate that the extension of trading hours would significantly add to the convenience for consumers in Warwick.

[292] The NRA relied upon the Survey undertaken by Mortimer and its conclusions however the MGA argues that the conclusions of the Survey were of little probative value as it had excluded residents that were frequent or loyal to a particular store, not the main grocery buyer and anyone under the age of 18 years. The Survey had been deliberately aimed to exclude respondents likely to be satisfied with the existing hours in Warwick. The sample size of approximately 2 per cent of the population in Warwick was quite small and not truly representative of the Warwick demographic, a point conceded by Mortimer in cross-examination. The Survey failed to take into consideration or mention Public Holidays apart from the commencement of the Survey that included a reference to Public Holidays.

[293] Findings of the Survey noted by the MGA included:

- 87 per cent of respondents would not change where they shop if shops were open on Sunday or Public Holidays;
- shoppers generally shop across the same brands of stores and would continue to do so if open Sundays;
- 56 per cent of respondents had not travelled outside of town to shop on Sundays; and
- 40 per cent who shopped out of town were not tested for frequency.

[294] The evidence of Deborah Smith included independent research from Factuality that found Queensland residents marginally supported the extension of trading hours throughout Queensland however respondents to the survey were not required to give evidence in these proceedings.

[295] The application was said to be flawed in that there was no cogent or probative evidence advanced by the NRA about consumer dissatisfaction with existing trading hours in Warwick. In an effort to overcome the flawed situation the NRA sought to rely upon the redistribution of sales in other locations following the approval of previous applications.

[296] On the matter of "lost expenditure" to other towns the NRA witnesses were unable to quantify or verify the basics for such a claim. As with any regional hub, Warwick residents would most likely travel to Toowoomba for a multitude of reasons other than shopping and always would do so regardless of retail opportunities in Warwick.

[297] The extended trading hours in Warwick (11 and 18 December 2016) for non-exempt stores attracted 2,350 cumulative transactions for the Woolworths stores however upon examination the figures they were said to be negligible when compared to Saturday figures for November 2016, equating to a three hour period of trade on the Saturday. The argument that consumers interest are more favourable price wise with non-exempt stores was refuted on the basis of IGA and FoodWorks stores having

comparative pricing in place to ensure customers had access to the best possible prices all year round.

[298] The evidence remains that Warwick consumers are extremely well serviced by the current retail options with the NRA having failed to evidence that consumers would be better served by a change to existing trading hours.

#### *Stanthorpe*

[299] The submission relied upon similar circumstances to that of the Warwick application including reference to the conclusions of the Survey undertaken by Mortimer being given little probative value for reasons previously advanced. The final sample of respondents represented around 4 per cent of the Stanthorpe population with the MGA noting the following findings:

- 80 per cent of respondents would not change where they shop if Sunday trading was available;
- shoppers generally shop across the same brands of stores and would continue with that practice if trading hours were altered;
- 75 per cent of respondents had not travelled outside of town to shop on Sunday; and
- the 25 per cent who shopped outside the town were not tested for frequency.

[300] Other similarities to the Warwick submission that were referenced included:

- Factuality research;
- no evidence of consumer dissatisfaction with existing trading hours in Stanthorpe;
- redistribution of sales in locations where trading hours extensions had been granted;
- comparisons with other parts of Australia - *Re: National Retail Association Limited, Union of Employers*<sup>8</sup> (TH/2014/9) (Mt Isa);
- lack of probative evidence on escape expenditure;
- Sunday trading on 11 and 18 December 2016 in Stanthorpe and examination of transactions when compared to Saturday trading figures from November 2016; and
- competitive pricing between IGA and non-exempt stores.

#### *Pittsworth*

[301] The submission relied upon the same content as contained in the Warwick and Stanthorpe submissions again challenging the conclusions of the survey undertaken by Mortimer.

[302] The final sample of respondents represented around 4.8 per cent of Pittsworth's population with questions raised about propositions contained in the Survey on whether they were factually correct and substantiated propositions.

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<sup>8</sup> *Re: National Retail Association Limited, Union of Employers* [2015] QIRC 044

[303] MGA noted conclusions from the Survey that included:

- 83 per cent of respondents would not change where they shop if Sunday trading was available;
- shoppers generally shop across the same brands of shop and would continue with that practice if trading hours changed;
- 80 per cent of respondents had not travelled outside of town on Sunday to shop; and
- the 20 per cent who shopped outside the town were not tested for frequency.

[304] Shane Smith led evidence of a voluntary petition conducted in Pittsworth with just under 400 participants opposing the application.

[305] Similarly the submission addressed matters that were referenced in the other submissions on consumer interest. The Mt Isa application (TH/2014/9) was again raised in which Deputy President Swan had stated:

"This has been a feature of many trading hours' cases where often Australian and Queensland wide comparisons have been drawn by non-exempt stores in order to establish a pattern of sales which might be similar if the Application under consideration was successful. This analysis however does not include any statistical data of what might be happening to exempt traders within those cities after a successful Application.

Many trading hours decisions have made reference to the lack of relevance of statistical data emanating from different Legislative regimes in various Australian States with regard to trading hours generally and that view is reiterated by the Commission in this matter."

[306] The evidence was that Pittsworth consumers were extremely well serviced by the retail options currently in place over seven days without the need to alter existing hour of trade for non-exempt stores.

### ***Small Business Interests***

#### *Warwick*

[307] Besides the evidence of McCosker the NRA had led no other direct evidence to indicate that any extension of trading hours for non-exempt stores would assist the interests of small business. Further the NRA had given no reasonable indication of having consulted with any of the small business retailers within Warwick.

[308] The attempt by the NRA to demonstrate through a 2015 survey conducted by the Warwick Chamber of Commerce the support of small and medium businesses for the application was challenged on the basis of an unidentified and uncorroborated portion of the Chamber of Commerce members who participated in the survey. No probative weight should be given to this evidence.

[309] The reliance of the NRA on the suggestion that previous successful applications had been of benefit to retailers other than the non-exempt traders was unsubstantiated and without confirmation. The MGA presented significant probative evidence as to the

concerns of small business and the detriment that would be suffered by small business in Warwick.

[310] The Commission was requested not to prioritise the proposed benefits to Woolworths, Coles, Big W and Target over the interest of small stores in Warwick with the small independent stores being an important part of that community.

*Stanthorpe*

[311] The evidence of McCosker in this application was in the same vain as that given in respect of the Warwick application and was the only evidence for this criterion that the NRA relied upon.

[312] The submission addressed similar issues raised in the Warwick application that included:

- reliance on previous successful trading hours applications;
- lack of probative consultation between the NRA and local business; and
- NRA had no capacity to speak on behalf of small business.

[313] Spano gave significant probative evidence around the detriment small businesses would suffer if trade for non-exempt stores was granted indicating:

- IGA stores would experience downturn of approximately 55 per cent of Sunday trade;
- potential risk to employment;
- impact on profits, future investment and viability of businesses; and
- no economic benefit to the local community.

[314] The evidence of Deborah Smith concerning the broader detriment that would be suffered by small or medium business to independent retailers in Stanthorpe and outside of the town was of significant probative value.

[315] The Commission should not prioritise the proposed benefits to Woolworths and Target over the interests of small stores in Stanthorpe.

*Pittsworth*

[316] The NRA relied only upon the evidence of Le that extended hours for non-exempt stores would assist the interests of small business. The submission mirrored the content of the Warwick and Stanthorpe in areas that included:

- lack of consultation between the NRA and small business in Pittsworth;
- reliance on previous trading hours decisions that extended hours benefited small business; and
- majority of probative evidence before the Commission identified a significant detriment would be suffered by numerous small and medium businesses if the application was granted.



### ***Medium Business Interest***

*Warwick, Stanthorpe and Pittsworth*

#### *Commonality*

[317] The previously identified evidentiary deficiency concerning small business interests was applicable to this criterion with only the MGA producing significant evidence directly from small and medium business owners of significant detriment if the application was successful.

[318] The limiting of NRA evidence to focus on large business interests was a defect in all three applications with there being insufficient evidence to support the applications in respect of this criteria.

### ***Large Business Interest***

[319] The NRA evidence concerning large business interests can be summarised as follows:

- extension of allowable trading hours to include Sundays and certain Public Holidays will inevitably increase sales on these days and overall profits; and
- redistribution of sales through the week will slightly increase the customer spend.

[320] The benefits to non-exempt stores is not disputed by the MGA however the necessity to alter the existing hours had not been clearly defined in NRA evidence. Regardless of whether Sunday trade becomes a positive day for the non-exempt stores the value of such evidence remains negligible. These stores entered the retail market on the understanding that their trading week was limited to six days excluding Sunday and it is unrealistic to now expect the Commission to change their allowable trading hours on a whim because they desire a change without providing evidence to suggest existing trading hours are inadequate.

[321] In contrast the MGA submits that to allow the non-exempt stores to trade on Sunday and Public Holidays will be of detriment to the IGAs and other independent stores. Whilst it is difficult to quantify exact losses the experience of the FoodWorks store in Dalby clearly showed the substantial detriment suffered following the introduction of seven day trading. In matter *Simpson v National Retail Association Limited, Union of Employees*<sup>9</sup>, Nicole Simpson (Simpson) in evidence provided the following tables which demonstrated the effect on sales on Sundays once the Order took effect.

2014		2015		Percentage Decrease
Date	Sales	Date	Sales	
1/6/2014	\$36,540.69	31/5/2015	\$17,733.04	-51.47%
8/6/2014	\$32,482.82	7/6/2015	\$15,143.85	-53.38%
15/6/2014	\$28,831.31	14/6/2015	\$19,996.84	-30.64%
22/6/2014	\$34,698.42	21/6/2015	\$16,460.05	-52.56%
29/6/2014	\$35,257.87	28/6/2015	\$18,541.38	-47.41%
7/6/2014	\$33,150.30	5/7/2015	\$17,760.57	-46.42%

<sup>9</sup> *Simpson v National Retail Association Limited, Union of Employees* [2015] QIRC 172

[322] A further comparison was provided by Simpson for trade on the Queen's Birthday Public Holiday:

2014		2015		Percentage Decrease
Date	Sales	Date	Sales	
9/6/2014	\$36,977.98	8/6/2015	\$18,661.03	-49.53%

[323] In addition Deborah Smith gave evidence of being authorised to provide an update on the Dalby FoodWorks continued detrimental effects since the introduction of seven day trading. These were identified as:

- 50 per cent down on the Sunday;
- 15 per cent down overall;
- they have lost 80 hours over their workforce;
- they have lost one and a-half per cent gross profit; and
- their customer counts are down 200 customers per week.

#### *Warwick*

[324] The experience in Dalby is extremely alarming for the Warwick IGA who through the evidence of Spano forecast a 55 per cent downturn in Sunday trade if the application was approved. Spano had previously experienced a 50 per cent drop in trade when non-exempt stores were permitted to trade on 11 and 18 December 2016.

[325] This case clearly involves competing interests being the consideration of the large business interests of non-exempt stores competing with the interests of IGA and other independent retailers. The expansion of trading hours at the expense of small and medium businesses would neutralise any perceived large business interest benefit.

[326] The NRA had not satisfied the criterion that large businesses interest would be best served across Warwick with the granting of the application with there being insufficient probative evidence before the Commission to indicate that small, medium and large business interests would be improved with the expansion of trading hours for Sundays and certain Public Holidays.

#### *Stanthorpe*

[327] Stanthorpe's circumstances for the IGA is the same as applies to Warwick with the submission for Warwick applies equally to Stanthorpe.

#### *Pittsworth*

[328] The submissions for Warwick and Stanthorpe on this criterion are equally relevant for Pittsworth including the significant drop of trade on 11 and 18 December 2016 when Woolworths were permitted to open in Pittsworth.

[329] The NRA had failed to provide sufficient evidence concerning s 26(e) to support a conclusion in favour of the application.

**(f) *the alleviation of traffic congestion****Warwick, Stanthorpe and Pittsworth*

[330] There was no evidence adduced in terms of traffic congestion in any of the applications and the Commission should conclude the existing infrastructure and trading hours are sufficient to manage current traffic flows in each location.

**(g) *the likely impact of the order on employment****Commonality*

[331] The alleged positive impact that may flow from the granting of the application, on the order of employment would be neutralised or outweighed by the detriment to employment opportunities in independent stores across each town. The most apparent reason for the zero gain in terms of employment opportunities is that the independent stores will suffer a loss in sales and be forced to reduce the number of hours available on the roster.

*Warwick*

[332] Spano gave evidence on the likely cut in hours and the inability to continue to employ trainees and apprentices from the local community. Deborah Smith also raised concerns regarding the alternative job prospects for those staff that lose their employment.

[333] Evidence from NRA witnesses such as Winzenberg and England hardly reflected a meaningful increase in employment and it was the same of Wright who had expectations of 100 additional hours per week at the Warwick store. Spano gave evidence of losing 150 hours over a week leaving a net reduction of 50 hours within the community. The fact that in other locations there had been slight increases in work hours does not prove that this would be the case for Warwick, especially given that Woolworths and Coles are intending to implement self-service checkouts in the Warwick stores.

[334] There was evidence from Carmignani that the most likely scenario was Sunday trade would reduce the market presence of independent retailers leading to a decrease in employment in that sector and an outcome of a "zero-sum game". Carmignani had focussed his report on interviews with IGA owners and relied upon an econometric model that used data collected from a range of sources which allowed him to conclude that a 10 per cent change in IGA presence corresponds to approximately \$16,000 per week and went on to make further predictions as to the devastation this could have on employment.

[335] The NRA had failed to provide probative evidence to indicate the order of employment would be improved in the non-exempt stores in Warwick or to show a positive increase would occur across the community by providing non-exempt stores with additional hours of employment on Sundays and Public Holidays.

*Stanthorpe*

[336] MGA submits that any alleged positive impact that may flow from the granting of the application would be neutralised or outweighed by the detriment to employment in independent stores across the town. The IGA would be forced to reduce the number of hours available on the roster which was consistent with the outcome in Simpson's Dalby store.

[337] The NRA evidence from witnesses Winzenberg and Wright did little to confirm ongoing increases in employment and in the case of Woolworths there was also the intention to implement self-service checkouts in the Stanthorpe store which would alleviate the need to roster an additional employee to work on a register if the application was approved.

[338] The submission relied upon the evidence of Carmignani as was the case in Warwick, as well as a paper titled, "Extended Trading Hours - More Retail Jobs?" from the Queensland University of Technology which in part stated:

"Sunday trading did not result in increased numbers of employees with stores, although it did appear to have created longer hours jobs for some part-time employees. Clearly the number of hours that a store trades influences the level of employment within a store, but longer trading hours did not necessarily mean increased employment."

[339] In the absence of probative evidence to indicate that the order of employment would be improved in non-exempt stores in Stanthorpe and in light of the detriment that staff in independent retailers will suffer there is insufficient probative evidence to show an increase in employment.

*Pittsworth*

[340] As was the case with Warwick and Stanthorpe any alleged positive impact on the order of employment would be neutralised or outweighed by the detriment to employment opportunities in independent stores across the town. Reliance was placed upon the outcome on employment with Simpson's Dalby store, Carmignani's evidence and Queensland University of Technology research on extended hours, in the same terms as they related to the Warwick and Stanthorpe applications.

[341] The NRA had failed to present probative evidence that customers would spend more in Pittsworth rather than a spread or distribution of discretionary spend over seven days therefore it can only be assumed there will be no increase in spending just a diversion of sales from smaller to larger stores.

[342] There was insufficient evidence to show that a positive increase in the order of employment would occur in the community by providing non-exempt stores with additional hours of trade on Sundays and Public Holidays.

**(h) *the view of any local government in whose area the order is likely to have an impact***

*Warwick and Stanthorpe*

[343] Templeman an employee of the Southern Downs Regional Council (not an elected Council person) gave evidence on behalf of the Council in support of the application relying upon a short brief resolution of the Council from 23 June 2016. Templeman was not an employee of the Council nor was he present at the meeting at the time the resolution was passed, so was unable to confirm the circumstances in which support was decided.

[344] Critically the resolution referred only to Sunday trading and does not confirm support or otherwise for Public Holiday trading. Spano gave evidence around Council having not undertaken any public consultation to reach their decision and Templeman was unable to present any verifiable evidence to support the Council's reasoning for backing the application.

[345] Given the unsubstantiated evidence of Templeman and the lack of any probative evidence which supports the Council's fleeting reasons for supporting the applications the position of the Council should be given little weight in this matter.

*Pittsworth*

[346] The local government (Toowoomba Regional Council) elected to remain neutral on this matter not supporting nor opposing the application. There was no support from the Pittsworth District Alliance or any other local industry group, consumer group or tourist organisation therefore the application should fail.

**(i) *such other matters the industrial commission considers relevant***

*Warwick*

[347] The MGA witnesses had reservations regarding extended trading and the effect on family time and having to pay high penalty rates if the application was approved. There were genuine concerns about the possible effects of the application on the town and the lack of consultation with the community by the non-exempt businesses about the application.

[348] On the proposed reforms to trading hours by the Queensland Government it was submitted that a "one size fits all" blanket approach was inappropriate and trading hours matters should be considered on a case by case basis, on their merits particularly as the proposed extensions could have such a devastating effect on small business.

*Stanthorpe*

[349] The submission on this criterion mirrored to a significant degree the submission in the Warwick application including the ability of the NRA and any other business or organisation under the "proposed" trading hours legislation to apply for a special event or local festival status to allow surrounding shops to trade during those special events.

*Pittsworth*

[350] The submission in this application was the same as that provided for in each of the other two applications.

***Conclusion****Warwick, Stanthorpe and Pittsworth*

[351] The conclusion in each submission was similar in nature, making it appropriate for this aspect of the MGA's submissions to be dealt with simultaneously.

[352] The evidence adduced indicates that the s 26 criteria weighs strongly against the approval of each application.

[353] Authorities cited in respect of onus were:

- *Re: National Retail Association Limited, Union of Employers*<sup>10</sup> which stated:

"[70] President Hall in C/2008/40, C2008/43, and C/2009/44 has stated that 'a decision to enlarge trading hours for non-exempt shops on Sunday and/or public holidays requires departure from the *status quo*. To that extent NRA carries the 'onus' of satisfying the Commission that the application should succeed".

- *Re: National Retail Association Limited, Union of Employers*<sup>11</sup> which stated:

"[19] Although, strictly speaking, there is no onus of proof, the Commission has previously stated that a decision to enlarge trading hours for non-exempt shops requires a departure from the *status quo*. To that extent an applicant for orders under s 21 of the Act, in this case the NRA, carries the onus of satisfying the Commission that the application should succeed."

[354] The Commission must therefore be satisfied that the trading hours' landscape in each location was in some way defective or warrants deviation from the *status quo* with the onus on the NRA to demonstrate the need to change. The NRA had not discharged that onus satisfactorily by failing to present sufficient evidence to warrant any changes to trading hours of non-exempt stores in each of the three locations.

[355] The limited NRA evidence focussed solely on the profits and sales distributions of their witnesses businesses and was limited to comparisons with towns significantly distant and incomparable to the towns subject of the applications. No evidence was produced by local consumers or business interests that required the Commission to alter existing trading hours.

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<sup>10</sup> *Re: National Retail Association Limited, Union of Employers* [2014] QIRC 063

<sup>11</sup> *Re: National Retail Association Limited, Union of Employers* [2014] QIRC 157

[356] The NRA advanced a significant lower burden of proof than had previously been required by similar applications, that would have to be accepted by the Commission if the applications were to be accepted. This included a distinct lack of relevant probative evidence that could satisfy "any" of the elements outlined in s 26 of the Act.

[357] The MGA on the other hand sought to rely on evidence specifically relevant to the local circumstances and presented grounds for the existing Sunday and Public Holidays to be retained with the dismissal of the applications to be of benefit to each community. If the applications were approved it would lead to significant reductions in volumes of sales for the businesses other than the non-exempt stores which would disadvantage the communities.

[358] It was respectfully put to the Commission, in light of the submissions, that the applications be unsuccessful.

### **SDA Submissions**

[359] The effect of the amendments sought was to increase the hours of trade in the respective areas for Sundays and other Public Holidays as defined.

[360] With regards to the proposed s 36B of the *Trading (Allowable Hours) Amendment Bill 2017* (to amend the Act) workers would be free to elect to work or not work any hours extended pursuant to any trading hours decision of the Commission. As the amendment was yet to take effect the Commission was referred to matter TH/2016/12 where the Commission provided the following in an Order:

- "1. The shops and shopping centres specified in the amended Order may trade in accordance with that Order on the condition that employees have freely elected to work the extended hours without any coercion, harassment, threat or intimidation by or on behalf of the shop owner, or occupier of the business; and
2. The Commission or Industrial Magistrates Court may, at its discretion, require employers to produce written evidence that employees have actively indicated their willingness and availability to work these hours as a result of the extension of allowable hours."

[361] Notwithstanding the amendment to the Act has not been enacted by the Parliament the Commission ought to take the same approach given the likelihood of the amendment passing.

[362] The submission applies to all three applications before the Commission.

### **NRA Submissions in Reply**

[363] The NRA provided written submissions (26 pages) in which they reiterated the reliance upon the evidence called in the proceedings and the primary submissions previously lodged.

[364] In respect of matters relevant to the three applications (TH/2016/16, 17 and 18) it was the submission that:

- in respect of hearsay evidence the Commission was likely to apportion appropriate weight to that evidence;
- the credibility of NRA witnesses representing major national retail brands was derived from the authority of the employer to give evidence on behalf of those entities;
- MGA witness evidence projecting loss of turnover and employment had been founded on assumptions rather than facts;
- online shopping options do not have same day delivery, particularly on Sundays and was an "option" that does not satisfy the needs of leisure shoppers, grocery shoppers or tourists;
- MGA figures confirm not only population growth in the locations but anticipated growth into the future;
- NRA witnesses' evidence demonstrated links between tourism and retail trade with figures demonstrating significant numbers of people passing through the highways near the three locations. There was verifiable evidence that the IGA stores in each location had played no part in attracting tourists to each location;
- NRA rejects the assertion that Mortimer's research was aimed at eliciting particular responses and that the MGA had mischievously misrepresented the substance and processes of this research;
- the MGA produced no evidence to refute Mortimer's professional findings;
- the Factuality research relied upon by the MGA whilst the subject of questions around its value did indicate that there was a very clear majority support for the deregulation of trading with some 53 per cent support and 42 per cent against;
- evidence regarding escape expenditure provided clear insights into the problem of such expenditure having been based upon loyalty information;
- the NRA rejects the premise of the MGA submission that the IGA stores are competitively priced with the evidence of the MGA witnesses on this issue casting grave doubts over witness credibility;
- the evidence of small business had indicated confidence that additional foot traffic generated by non-exempt businesses would benefit their trade;
- the claim by the MGA that "most witnesses opposed to the application represent small business" was disputed in that there was opposition from businesses that were large businesses that had been structured to comply with the independent classification under the Act;
- new evidence was sought to be introduced by the MGA through a statement from Simpson that had not been entered into evidence and never tested under cross-examination. The evidence given by Deborah Smith around the operation of a Dalby business on reduction in trade was said to be highly dubious;
- claims from MGA witnesses that the granting of the applications would threaten the viability of their business were challenged by the NRA;
- the assertion by Spano that his stores would reduce employment hours by 29,320 per year should the applications succeed was said to defy credibility and represent further examples of the MGA's hyperbole and over-reach in relation to the potential impact of successful applications;



- on projections of additional employment opportunities the evidence before the Commission is that such projections in the past have been met or exceeded;
- the claim by the MGA that "the evidence of Ms Price is expert evidence before this Commission" was rejected on the basis that she did not give evidence before the Commission and Deborah Smith who presented her paper as an attachment was unable to answer any questions about the report;
- the research papers presented to the Commission by Carmignani emanated entirely from research involving the views of a select group of IGA managers and owners and rather than using hard economic or financial data as the basis of the study the group interviewed were asked what they thought may occur in their stores;
- the inability of the Carmignani research to deal with changing behaviour by consumers or stores was a fundamental flaw in the view of the NRA and it submitted that the MGA would have the Commission accept that:
  - based on the untested fears of MGA owners;
  - from around the State, but not necessarily in the subject areas;
  - about total deregulation of shopping hours in Queensland;
  - but without testing the views of consumers;
  - and with no changes to employment at any store other than Coles or Woolworths;
  - in an economy of four IGA stores;
  - and no clear rationale of the assumed changes in market presence;
  - competition will lead to higher prices and reduced employment;
- the Southern Downs Regional Council had been unambiguous in its support of the applications (Warwick and Stanthorpe) and the failure to include the Public Holidays had been a clerical oversight on the part of a Council official;
- references to the Trading Hours Bill by the MGA were irrelevant as the proposed changes had not been adopted and in fact were still before the Parliament.

### *Summary*

[365] Specific responses to each of the s 26 criteria outlined in this submission had been made drawing upon information from a wide range of sources available to the Commission. Whilst the NRA do not doubt that the concerns expressed to the Commission by MGA witnesses are genuinely held the evidence before the proceedings does not support the claimed impacts and must respectfully be viewed as entirely speculative.

[366] The vast arguments about small business have ironically been advanced by representatives of the largest grocery supply chain in the nation with the majority of witnesses drawn from businesses supplied through Metcash which is a listed ASX 200 corporation that supplies over 2,400 stores across Australia.

[367] The applications need to succeed to meet the needs of the modern consumer in a world where successful retail businesses have learned to become more nimble and efficient in their search for a competitive edge. The NRA have demonstrated that circumstances have changed by way of consumer behaviour to warrant extended trade for all business.

[368] The NRA applications are justified on the balance of all available evidence.

## CONCLUSION

[369] The Commission on 2 December 2016 informed the parties that the three applications (TH/2016/16, 17 and 18) could be jointly heard subject to an application being filed with the Industrial Registrar. The NRA on 6 December 2016 filed such an application with the matters being heard conjointly and the decision structured to address each application separately.

[370] In the consideration of each of the applications the Commission in making orders that effect non-exempt shops pursuant to s 21 of the Act must have regard for the criteria identified in s 26 of the Act. In having such regard the Commission notes the matter of *Trading Hours Order - Non-Exempt Shops Trading by Retail - State*<sup>12</sup> in which the Full Bench stated::

"Section 26 of the Trading Hours Act requires the Commission to have regard to a number of elements in relation to whether it will make an Order under s. 21 of the same Act. In that respect, we note another Full Bench of this Commission stated in Matter No. B1156 of 2002 (172 QGIG 542) that:

*'... It should not be inferred in all applications for an extension of trading hours that all (matters identified in s. 26 of the Trading Hours Act) would be weighted equally, e.g. some applications may substantially rely upon one or two (2) of the matters outlined in s. 26 of the Act, whilst in other applications substantial reliance will be placed on many more of the s. 26 matters.'*"

## WARWICK

### *Application of s 26 criteria*

#### *(a) the locality or part thereof in which the non-exempt shop or class of non-exempt shop is situated*

[371] The application sought to amend the Order - Schedule 1 by the insertion of the following definition:

"Commencing at the intersection of the Cunningham Highway and Jackie Howe Dr; then by a line in a westerly direction to the intersection of Victoria St and Rosehill Rd; then by line in a southerly direction to the intersection of New England Hwy and Pratten St; then by a line in an easterly direction to the intersection of Pratten St and Pratten St East; then by a line in a northerly direction to the point of commencement."

[372] Warwick is situated 130 kilometres south-east of Brisbane and is the administrative centre of the Southern Downs Regional Council. The city of Toowoomba is 73 kilometres north and Stanthorpe is 60 kilometres to the south of Warwick.

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<sup>12</sup> *Trading Hours Order - Non-Exempt Shops Trading by Retail - State (2003) 174 QGIG 1339*

[373] Evidence in the proceedings identified a shopping centre precinct in the Warwick CBD in the form of the Rose City Shopping World that housed major retail tenants that included:

- Woolworths;
- Big W;
- Best and Less;
- Coles (under construction); and
- a number of smaller retailers and food outlets.

A Target Country store was located directly opposite the previously mentioned shopping centre with a further number of shops located within close proximity to the centre including an IGA some 500 metres from the same centre.

[374] The New England and Cunningham Highways both enter Warwick at points not too distant from the CBD.

[375] Overall the evidence with regards to this criterion is conducive towards the granting of the application.

- (b) *the needs of the tourist industry or other industry in such locality or part;*
- (c) *the needs of an expanding tourist industry.*

[376] In the consideration of these two criteria particularly as they relate to the tourist industry it is reasonable for both to be dealt with conjointly in the course of the decision. There was significant evidence before the proceedings in respect of visitation to Warwick and of events likely to draw tourists and visitors to Warwick. Templeman informed the Commission that in the 2016 calendar year the Visitors Information Centre fielded enquires from almost 16,000 persons which according to Council reflected around 10 per cent of persons that visited the area in that period of time, meaning that the tourist visitation numbers would be in the vicinity of 160,000 persons for the year.

[377] The figure of 16,000 persons appears to have a reasonable base however the 160,000 would I believe have a deal of speculation attached to it and therefore it would not be particularly sound to adopt that as the number of tourists that visited Warwick in the 2016 calendar year. On the other hand it is likely on the balance of probabilities that not all tourists to Warwick in 2016 visited the Information Centre therefore I am of a mind to accept that a substantial (unknown) number of tourists and others visited Warwick in the immediate past year, beyond the 16,000 that visited the Information Centre.

[378] The evidence in terms of events that attracted tourists to Warwick identified the following:

- Jumpers and Jazz Festival;
- Warwick Rodeo;
- horse racing;
- motor sports; and
- equestrian.

In the case of the motor sports and equestrian events they were held at Morgan Park, a venue on the outskirts of Warwick and according to Templeman's evidence the venue hosted events 50 out of 52 weeks of the year, attracting visitors to Warwick.

[379] Gard the Centre Manager at Rose City Shopping World in cross-examination stated that the Jumpers and Jazz Festival attracted in excess of 20,000 people for an event run over a week and includes two weekends which is a significant influx of persons to Warwick which according to Templeman had a town population of 7,000 persons.

[380] The MGA questioned whether or not there had been probative evidence adduced in the proceedings to support argument advanced around increases in tourism numbers and relied upon an attachment to the affidavit of Wright that identified a 3.3 per cent decline in the number of domestic visitors for the Southern Queensland Country for the year ending June 2016 and a 10.2 per cent decrease in overseas visitors for the same period, to refute tourism as a positive for the application.

[381] The attachment to Wright's affidavit (Queensland Country Regional Snapshot) published by Tourism and Events Queensland relied upon data sourced from National and International visitor surveys conducted by Tourism Research Australia. The research identified a change in the methodology to define tourism regional boundaries from past reports and whilst not clearly defining the Southern Queensland Country area it is accepted that Warwick is within that region.

[382] The report included tables that identified domestic and international visitations to Queensland in the following terms:

Total Visitors	Visitors	Year % Chg	Nights
Brisbane	5,741,000	6.1%	17,478,000
Gold Coast	3,723,000	11.8%	13,073,000
Sunshine Coast	3,105,000	7.8%	11,425,000
Fraser Coast	641,000	14.7%	2,469,000
<b>Southern Qld Country</b>	<b>1,928,000</b>	<b>-3.3%</b>	<b>5,402,000</b>
Southern GBR	1,850,000	-4.1%	7,176,000
Mackay	756,000	-12.8%	2,495,000
Whitsundays	508,000	30.6%	2,187,000
Townsville	1,165,000	26.1%	4,310,000
Outback	548,000	n/p	2,430,000
TNQ	2,043,000	13.6%	10,457,000
Total Domestic	20,183,000	5.7%	79,956,000

#### International Regional Comparison

Total Visitors	Visitors	Year % Chg	Nights
Brisbane	1,169,000	9.7%	24,013,000
Gold Coast	984,000	14.3%	10,167,000
Sunshine Coast	266,000	3.5%	2,820,000
Fraser Coast	132,000	-1.6%	597,000
<b>Southern Qld Country</b>	<b>46,000</b>	<b>-10.2%</b>	<b>1,333,000</b>
Southern GBR	134,000	-2.1%	2,421,000
Mackay	42,000	-6.9%	497,000
Whitsundays	222,000	5.8%	1,449,000
Townsville	123,000	-0.2%	1,850,000
Outback	22,000	n/p	298,000
TNQ	860,000	13.3%	6,522,000
Total Domestic	2,481,000	11.3%	51,968,000

[383] The figures indicate that Southern Queensland Country had 1,928,000 domestic visitors who stayed for 5,402,000 nights and in terms of the number of visitors had more domestic tourists than the Fraser Coast, Mackay, Townsville, Whitsundays and the Outback. In total the Southern Queensland Country had for the year ending June 2016 approximately 1,974,000 tourists whom stayed for some 6,735,000 nights.

[384] Notwithstanding the decline in tourist numbers of 3.3 per cent and 10.2 per cent for domestic and international tourists respectively the tourism numbers are significant and support the application in respect of the "needs of the tourist industry". The evidence would not support there was an expansion of the tourist industry at the present time.

[385] Also of relevance was the evidence of Templeman in which he referred to an "other industry" being a meatworks that employed more than 650 workers operating an early and late shift.

[386] On consideration of the evidence before the proceedings I am satisfied that the "needs of the tourist industry" would benefit from the application being granted, however the "needs of an expanded tourist industry" would not be at present be viewed favourably in terms of the application.

***(d) the needs of an expanding population***

[387] The evidence regarding this criterion was limited and in the main went to projections that identified an increase of population on the Southern Downs of one per cent per annum through until 2036. The MGA whilst opposing the enlivenment of this criterion did concede the Southern Downs had a "modest but growing population".

[388] The Commission in consideration of this criterion can only rely upon projections as there is no evidence that can definitively identify population growth occurring in future years. The projections are of a nature that predicts an expansion in population each year until 2036 albeit the growth is not significant and in the absence of further evidence the level of growth forecast will play a limited role in the success or otherwise of the application.

***(e) the public interest, consumers' interest, and business interest (whether small, medium or large)***

***Public Interest***

[389] In the recent application by the NRA to amend the Order, in *National Retail Association Limited, Union of Employers*<sup>13</sup> O'Connor DP referred to a Full Bench decision in *Re: National Retail Association Limited, Union of Employers*<sup>14</sup> regarding "public interest" which stated:

"The concept of 'public interest' is referred to in many statutes. It has been described as being of the widest import. In *O'Sullivan v Farrer*, Mason CJ, Brennan, Dawson and Gaudron JJ wrote that:

<sup>13</sup> *National Retail Association Limited, Union of Employers* [2016] QIRC 148

<sup>14</sup> *Re: National Retail Association Limited, Union of Employers* [2014] QIRC 157

'... the expression "in the public interest", when used in a statute, classically imports a discretionary value judgment to be made by reference to undefined factual matters, confined only "in so far as the subject matter and the scope and purpose of the statutory enactments may enable ... given reasons to be [pronounced] definitely extraneous to any objects the legislature could have had in view".'

As differently constituted Full Benches of the Commission have observed, public interest matters 'encompass a variety of considerations, amongst which is a requirement to weigh and balance relevant issues' and 'any competing interests.'

The 'public interest' in relation to the extent of trading hours might differ from one location to another. In some places, there might be a clear public interest in having extended trading hours (including for reasons referable to other criteria listed in s 26). In other locations, the public interest might favour a different outcome. There is no reason to adopt a narrow construction of the expression 'public interest' for the purpose of deciding this or any other trading hours application."

The Full Bench reference is relevant to the same degree in this application.

[390] The NRA argument was that the public interest was best served by National retail chains having consistency in hours in serving the market across the Nation with a majority of their stores trading on Sundays and that consistency removes confusion for customers.

[391] The MGA relied upon the importance of healthy independent retail offerings and the financial benefit the broader population receive in local communities through donations and participation in community events supported by the independent retailers.

[392] Both arguments are not without substance, with each party articulating positively in support of their differing stances, which required the Commission to weigh up what are in fact competing interests.

[393] In this particular situation I am not inclined to find that the granting of the application would in the circumstances not be in the public interest.

### ***Consumer Interest***

[394] The NRA relied heavily on the QUT Shopping Hours Survey conducted for them by Mortimer and his team. The survey had the hallmark of a most professional process with the Office of Research Ethics and Integrity - QUT ensuring that the research team complied with the QUT Code of Conduct for Research, the Australian Code of Conduct for the Responsible Conduct of Research and the Singapore Statement of Research.

[395] In the conduct of the survey 547 respondents were initially approached with 317 making up the final numbers relied upon in reaching their conclusions. Support for changes to existing trading hours to allow non-exempt retailers in Warwick to trade

on Sundays and some Public Holidays was at 75 per cent of those surveyed. Reasons for such support were identified as:

- potential creation of more casual and part-time jobs;
- more choice;
- greater convenience; and
- extra foot traffic would benefit incumbent retailers trading on Sundays.

[396] A total of 22 per cent of respondents opposed the application for reasons that included:

- concern for smaller incumbent retailers being negatively impacted;
- sufficient hours already in place; and
- workers would be forced to work Sundays.

[397] Deborah Smith who gave evidence opposing the application and who had been authorised by the MGA to give evidence on their behalf, attached to her affidavit a copy of an "MGA Review into Queensland trading Hours - Factuality research - November 2016" that amongst other things stated:

"After considering the major related issues, Queenslanders' (outside the BCC) provisionally support extended trading hours for larger retailers by a slim margin of 53% to 42%".

Whilst there were said to be certain conditions and caveats regarding this support the end result was an 11 per cent gap between those who supported extended hours and those who did not agree with the proposal.

[398] Overall in the absence of direct consumer witness evidence to consider and based upon a plethora of previous decisions of the Commission I find that the extension of trading hours sought by the NRA would if granted benefit consumers of Warwick and it would assist by unifying the hours of trade with regions adjacent to Warwick. Additionally of benefit to consumers would be the ability to have extended options in regards to grocery shopping and a number of other retail wares.

[399] It would be remiss of the Commission not to take into account that on two Sundays in December 2016 when the Rose City Shopping World opened with major retailers able to trade that 6,000 consumers attended the centre over the two days which indicates consumers "voting with their feet".

### ***Small Business***

[400] The President (Keogh) of the Warwick Chamber of Commerce gave evidence of local businesses being impacted by passing travellers, tourist trade as well as the changing needs of local customers when major retailers were not open on Sundays and how her organisation noticed a "definite improvement" in trade when Rose City Shopping World was open. Keogh tendered a survey conducted by the organisation of their members in 2015 that found there was:

- broad business support for extended trading hours;
- 63 per cent of members supported major retailers opening on Sundays;
- 60 per cent believed Warwick residents should have the same access to shopping hours as Toowoomba and Dalby; and 57 per cent believed it would result in increased employment in retail and tourism related businesses.

[401] McCosker who operates two Red Rooster franchises in Warwick including one at the Rose City Shopping World supported the application believing it would provide a boost for employment.

[402] Webster, the operator of a small retail outlet in the Warwick CBD opposed the application for reasons that included:

- little demand for trade on Sundays;
- high penalty rates; and
- impost on family time.

[403] The Commission is satisfied in the absence of significant small business evidence opposing the application this criterion should be deemed to not impact negatively in the consideration of the application.

### ***Medium Business***

[404] The major opposition to the application was mounted by the Spano Group through the evidence of Spano who operated an IGA in Warwick that employed 35 permanent staff as well as casual staff. This store was part of a conglomerate operated by the group that included four full-line IGA supermarkets and three other IGAs. Each of the stores operated on the basis of different directors and companies to allow for compliance with legislation regarding non-exempt stores and after showing a degree of reluctance, Spano's evidence was that the group employed around 400 employees overall.

[405] Spano held the view that grocery consumers were not inconvenienced by the closure of non-exempt stores on Sundays and that his store currently operated at two-thirds capacity with plans for \$3 million worth of refurbishment in their stores. Of the 22,696 items in his store around 2,000 were price matched with Woolworths and Coles. A comparative shop was undertaken on 15 January 2017 in Warwick where it was found for a basket of similar items the cost at Woolworths was \$146.85 and the IGA \$128.66 being some \$18.19 cheaper at the IGA. In December 2016 when non-exempt stores were able to open the IGA suffered a drop in sales of 50 per cent on each day which would lead to a loss of 40 seven hour shifts if Sunday trade was approved in line with the NRA application. Spano's position was in the main supported by the evidence of Pugsley an employee of the Spano Group.

[406] Deborah Smith who operates a number of independent supermarkets none of which are likely to be directly affected by the outcome of the Warwick application gave evidence based on previously approved applications that independent operators had their weekly turnover reduced between 20 and 50 per cent. The evidence from this witness was hardly of a nature that would allow for it to be accepted as "probative" evidence and was more attuned to that of opinion or hearsay evidence.

[407] The granting of the application is likely to have some level of negative financial impact on the Warwick IGA, if Spano's evidence is to be accepted as credible however that alone is not sufficient for the application to be rejected on this criterion as it must be weighed against consumer choice and the flexibility to access a broader range of retail offerings on a Sunday rather than the restricted practices that exist at present.



### ***Large Business***

[408] The non-exempt stores would clearly benefit from the granting of the application by having an additional day of trade on Sundays and certain Public Holidays and the generation of additional revenue. There were also benefits nominated by NRA witnesses for consumers should the application be granted which were said to include:

- reduced congestion in stores by a redistribution of demand;
- customers in grocery stores are able to make purchases at supermarket prices;
- tourists and visitors are able to shop on Sundays;
- store replenishment improvements;
- better energy usage; and
- fresher products for customers.

[409] This criterion supports favourably the granting of the application.

#### ***(f) the alleviation of traffic congestion***

[410] There was no evidence of any consequence around this criterion and as such is not enlivened.

#### ***(g) the impact of the order on employment***

[411] The NRA through witnesses evidence from major non-exempt retailers projected the following gains in hours of employment:

- Big W - additional 60 hours;
- Target Country - additional 25 hours; and
- Woolworths - additional 100 hours.

[412] Based upon a total of 185 hours per week over 52 weeks, growth in employment hours on a yearly basis would be an additional 9,620 hours of employment. Further with the opening of the Coles store there would likely be additional hours that at present remain unidentified.

[413] Spano gave evidence of a loss of employment hours of 29,320 on an annual basis or 563 hours per week.

[414] In consideration of the evidence I find that the NRA evidence is preferable to that of Spano who appears to have grossly overestimated the loss of employment and despite the opportunity afforded to him to recant his projections he remained steadfast. The figures quoted by him relate to the Stanthorpe and Warwick stores conjointly but are still difficult to accept.

[415] The MGA engaged Carmignani to undertake a survey regarding this application and with his engagement restricted to interviews with IGA owners and managers he offered a finding that the most likely scenario, if the application was granted, would be a "zero-sum game".

[416] It is not unreasonable to conclude that the position offered on employment growth by NRA witnesses would come to fruition, taking into account the evidence regarding

the effect of increased employment where similar applications had previously been granted. The evidence of Winzenberg was that the Dalby Target Country store had been identified as a "borderline" store and earmarked for closure but survived as a consequence of Sunday trading and 12 team members retained the jobs. He acknowledged also that in Dalby small business had as a result of Sunday trade lost 50 hours of employment but with the "majors" gaining 200 hours there was a net gain of 150 hours.

[417] This criterion is therefore viewed positively in respect of the granting of the application.

**(h) *the view of any local government in whose area the order is likely to have an impact***

[418] It is not unusual for local government to either not express a view in terms of applications to extend trading hours or to offer a neutral position whereby they neither support nor oppose an application.

[419] In *Re: National Retail Association Limited, Union of Employers*<sup>15</sup> (TH/2014/9) Swan DP expressed a view in relation to the local government participation in Trading Hours applications:

"The Mount Isa City Council did not express a view with regard to this Application. It is not mandatory for the Council to participate, but it would be mandatory for the Commission to consider the views of the local Council had those views been put to the Commission. What might have been of assistance is the Council's comments upon the current state of Mt Isa, traversing areas such as population growth, the state of the local economy etc."

[420] The Southern Downs Regional Council supported the application by carrying a resolution at a General Council Meeting on 23 June 2016 that stated:

"Council support the National Retail Association's application to the Queensland Industrial Relations Commission seeking approval for major non-exempt retailers to trade on Sundays in Warwick and Stanthorpe Principle Centres between the hours of 9 am and 6 pm."

[421] Further the Manager of Economic Development (Templeman) gave evidence that the Council had formed the view extended hours would:

- help create more shifts for workers with major retailers;
- offer opportunities for local small businesses to prosper; and
- smaller retailers would be swept along with the majors and may have the option of providing more work.

[422] He further evidenced that the Council was "very keen" to support the application as to oppose would leave them "out of step" with the rest of South-East Queensland and northern New South Wales.

[423] The support of the Council for the application is a most positive factor to be considered in the determination of the application.

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<sup>15</sup> *Re: National Retail Association Limited, Union of Employers* [2015] QIRC 044

(i) *such matters as the industrial commission considers relevant*

[424] The MGA submitted that their witnesses had reservations regarding the extended hours effecting family time and having to pay high penalty rates.

[425] The position at the time of filing the application was that the Warwick IGA was required to pay penalty rates that included a component of double time for Sunday work. In the course of hearing the application, the Fair Work Commission released a decision that would reduce penalty rates in retail for work on Sundays, effectively reducing what an employer would have to pay employees for such work and lessening the gross and net pay for employees.

Note: The date of implementation of the reduction of penalty rates has not at this time been finalised.

[426] There was no material in respect of this criterion that would operate against the granting of this application.

## **STANTHORPE**

### *Application of s 26 criteria*

(a) *the locality or part thereof in which the non-exempt shop or class of non-exempt shop is situated*

[427] The application sought to amend the Order - Schedule 1 by the insertion of the following definition:

"Commencing at the intersection of the New England Highway and Connor St; then by a line in a westerly direction to the intersection of Corundum St and Talc St; then by a line in a southerly direction to the intersection of Bridge St and Kilpa St; then by a line in an easterly direction to the intersection of Wolfram St and Anzac St; then by a line in a northerly direction to the point of commencement."

[428] Stanthorpe is situated 216 kilometres south-east of Brisbane, 60 kilometres south of Warwick and 56 kilometres to the north of Tenterfield.

[429] Inspections in Stanthorpe identified three grocery supermarkets all within easy walking distance of each other with Woolworths located in a smallish shopping centre that housed a limited number of small retail business. The IGA and Aldi are in "stand alone" locations with all three having what appeared to be adequate parking arrangements. The Target Country store was in a separate location in the town's retail precinct.

[430] The New England highway runs adjacent to Stanthorpe with easy access for those wishing to leave the highway and visit the town.

[431] To the south Tenterfield has access to retail trade on Sundays and Public Holidays as will Warwick in the north from 12 July 2017.

[432] The Commission is of the view that the locality criterion is favourable to the granting of the application due in some respects to there being no evidence to the contrary.

- (b) *the needs of the tourist industry or other industry in such locality or part;*  
 (c) *the needs of an expanding tourist industry.*

[433] Templeman gave evidence that the Visitor Information Centre in Stanthorpe in the 2016 calendar year fielded enquires from 24,000 persons and as in the Warwick application he estimated that this number was about 10 per cent of the overall visitors to the town. The Commission adopts the same approach as in the Warwick application being that the 240,000 figure had a deal of speculation attached to it and whilst it was unsound to accept this number it is more likely than not that a substantial number of tourists and others visited Stanthorpe in the previous year.

[434] Wright whilst not a resident of Stanthorpe gave evidence that there was a high volume of tourist traffic throughout the region which caused significant demand for retail services between Friday and Sunday evenings.

[435] Winzenberg, like Wright was not a resident of Stanthorpe attached to his affidavit the "Queensland Regional Profiles. Workforce Profile - people who work in the region - Stanthorpe Statistical Area Level 2" (SA2) which identified as at 2011 the following top five industry subdivisions of employment for workers:

1. Residential care services (8.1 per cent);
2. Preschool and school education (7.9 per cent);
3. Food and Beverages (7.1 per cent);
4. Other store based retailing (6.8 per cent); and
5. Food retailing (6.5 per cent).

It also identified the workforce participation in industry groups which had the top three as:

- Health care and social assistance (19.8 per cent);
- Retail trade (15.9 per cent); and
- Accommodation and food services (10.2 per cent).

The figures indicate that 26.1 per cent of the participating workforce work in either retail, accommodation or food services. Winzenberg in cross-examination gave evidence in response to tourism numbers where he stated:

"Prestia: In the tourism numbers?"

Winzenberg: Yep

Prestia: Okay. So - - -

Winzenberg: Particularly given - given the growth in the festivals at places like Stanthorpe. I read some numbers, I think last year, that that Apple and Grape Festival was sort of growing about 30 percent year on year. So that would indicate that the accommodation sector and tourism sector is - is probably a greater number than that.

Prestia: Certainly.

Winzenberg: And - you know - retail and - and the tourism go hand in hand, and we know that." [Transcript p. 4-37]

[436] Templeman in his affidavit of evidence at paragraph 7 stated:

"Visitors to the Southern Downs can be broadly categorized by the destination within the Region they choose. Stanthorpe attracts visitors looking to experience cold conditions. While they are in the Region they seek food and beverage experiences and enjoy activities surrounding the cooler climate. Many of the visitors to the Southern Downs who are attracted to these pursuits also expect to be able to shop as part of their experience. This application will allow the Southern Downs community to offer the extra shopping hours the Region's visitors expect."

[437] Additionally Stanthorpe in terms of the tables at paragraph 382 of this decision would form part of the Southern Queensland Country figures regarding tourist numbers and nights stayed in the region. Further the decline in domestic and international tourism would be equally applicable.

[438] For the purposes of consistency the Southern Queensland Country tourism numbers are significant and support the application as with the Warwick application however less weightage is given in respect of Stanthorpe due to a lack of evidence around specific tourist events.

[439] Consequently on consideration of the evidence before the proceedings I am satisfied that marginally "the needs of the tourism industry" would benefit from the application being granted however as was the case with the Warwick application the "needs of an expanded tourist industry" is not viewed as support for the application at this present time.

***(d) the needs of an expanding population***

[440] The MGA identified that whilst the annual growth in the Southern Downs and Queensland in the period 2005 to 2015 was 1.1 per cent and 2 per cent respectively Stanthorpe in this period had only grown on an annual basis of 0.3 per cent per year. The MGA acknowledged (as was the case with the Warwick application) that there existed projected modest growth for Stanthorpe through until 2036.

[441] The failure of Target Country to trade all the allowable hours available at present and the evidence that businesses in Stanthorpe had currently the capacity to absorb greater customer numbers within the existing hours worked against the granting of the application according to MGA submissions.

[442] The Commission adopts the previous reasoning recorded at paragraph 388 of this decision.

- (e) *the public interest, consumers' interest, and business interest (whether small, medium or large)*

***Public Interest***

[443] The Commission adopts the previous content of this decision in paragraphs 389 to 393 (inclusive) which in effect states that the granting of the application would not be against the public interest.

***Consumer Interest***

[444] The content of paragraph 394 is applicable to the application under consideration and as such is adopted.

[445] The survey carried out on behalf of the NRA by Mortimer and his team approached 395 respondents with 201 making up the final numbers relied upon. Support for changes to the existing trading hours to allow non-exempt retailers in Stanthorpe to trade on Sundays and some Public Holidays was at 68 per cent of those surveyed. The reasons for support were the same as in the Warwick application:

- potential creation of more casual and part-time jobs;
- more choice;
- greater convenience; and
- extra foot traffic would benefit incumbent retailers trading on Sundays.

[446] A total of 26 per cent of respondents opposed the application for reasons that included:

- concern for smaller incumbent retailers being negatively impacted;
- sufficient hours already in place; and
- workers would be forced to work Sundays.

[447] The content of paragraphs 397 and 398 of this decision are adopted for the purposes of the application although in respect of paragraph 398 consumers' benefits would be limited to grocery shopping and access to one other retail offer from a major retailer, being the Target Country store. Also in paragraph 398 references to Warwick are deleted and in their place inserted Stanthorpe for this application.

[448] The Woolworths store was allowed to trade on Sundays 11 and 18 December 2016 and according to the evidence of Wright, 1,625 customers visited the store on one of those Sundays.

[449] The consumer interests in Stanthorpe in the view of the Commission would be positively served by the granting of the application.

***Small Business***

[450] The only evidence of a small business retailer before the proceedings was that of McCosker who operates a Red Rooster franchise in Stanthorpe, in which he supported the granting of the application.

[451] The Commission is satisfied in the absence of any other evidence from small business in opposition to the application that this criterion should be deemed favourable to the granting of the application.

***Medium Business***

[452] The major opposition to the application was mounted by the Spano Group through the evidence of Spano who operated an IGA in Stanthorpe that employed 30 permanent staff as well as casual staff. This store was part of a conglomerate operated by the group that included four full-line IGA supermarkets and three other IGAs. Each of the stores operated on the basis of different directors and companies to allow for compliance with legislation regarding non-exempt stores and after showing a degree of reluctance, Spano's evidence was that the group employed around 400 employees overall.

[453] Spano held the view that grocery consumers were not inconvenienced by the closure of non-exempt stores on Sundays and that his store currently operated at two-thirds capacity with plans for \$3 million worth of refurbishment in their stores. Of the 22,696 items in his store around 2,000 were price matched with Woolworths and Coles. A comparative shop was undertaken on 15 January 2017 in Stanthorpe where it found for a basket of similar items the cost at Woolworths was \$192.82 and the IGA \$133.10 being some \$59.72 cheaper at the IGA. If Sunday trade was introduced in Stanthorpe the estimation was that there would be a 55 per cent drop in trade on Sundays.

[454] Deborah Smith's evidence in the Warwick application was as relevant to this application as it was in the other application (see paragraph 406).

[455] The granting of the application is likely to have some level of negative financial impact on the Stanthorpe IGA, if Spano's evidence is to be accepted as credible however that alone is not sufficient for the application to be rejected on this criterion as it must be weighed against consumer choice and the flexibility to access a broader range of retail offerings on a Sunday rather than the restricted practices that exist at present. Further if the comparative shopping evidence provided by Spano applied genuinely across a range of products it ought to be not only a catalyst to maintain customers but also a means to attract other custom to the IGA store.

***Large Business***

[456] The Commission adopts the previous content of this decision regarding large business in paragraph 408.

[457] The Commission is satisfied this criterion favourably supports the granting of the application.

***(f) the alleviation of traffic congestion***

[458] There was no evidence of any consequence around this criterion and as such is not enlivened.

**(g) *the impact of the order on employment***

[459] The NRA through the evidence of witnesses Winzenberg and Wright projected the following gains in hours of employment:

- Target Country - additional 25 hours; and
- Woolworths - additional 75 hours.

[460] Based upon a total of 100 hours per week over 52 weeks, growth in employment hours on a yearly basis would be an additional 5,200 hours of employment.

[461] Spano gave evidence of a combined loss of 29,320 employment hours on an annual basis between the Stanthorpe and Warwick IGAs.

[462] The content of paragraphs 414 and 415 of the decision are adopted in respect of this application.

[463] I accept the evidence of the NRA witnesses with regards to the projection of employment growth if the application was to be granted for the reasons relied upon in the Warwick application (see paragraph 416 of this decision).

[464] The evidence of MGA witness Carmignani of a "zero sum game" in relation to additional and loss of employment had been made on information provided exclusively by IGA owners and managers. However whilst unable to quantify a figure that would reasonably represent the potential losses in Stanthorpe, it is likely there will be some negative outcome regarding employment for the IGA.

[465] I do however on the consideration of the evidence find that there will be limited outcomes with regard to employment growth that supports the granting of this application.

**(h) *the view of any local government in whose area the order is likely to have an impact***

[466] The Commission adopts the content of paragraphs 418 and 423 (inclusive) of this decision as being relevant to the application.

**(i) *such matters as the industrial commission considers relevant***

[467] The Commission adopts the content of paragraphs 424, 425 and 426 of this decision as being relevant to the application, on the *proviso* of an amendment to paragraph 425 by deleting the reference to "Warwick" and inserting "Stanthorpe".

**PITTSWORTH**

***Application of s 26 criteria***

**(a) *the locality or part thereof in which the non-exempt shop or class of non-exempt shop is situated***

[468] The application sought to amend the Order - Schedule 1 by the insertion of the following definition:



"Commencing at the intersection of Campbell St and Vine St; then by a line in a westerly direction to the intersection of Helen St and Young St; then by a line in a southerly direction to the intersection of Golf Course Rd and Hill St; then by a line in an easterly direction to the intersection of Hill St East and Sullivan Cr; then by a line in a northerly direction to the point of commencement."

[469] Pittsworth is situated 164 kilometres south-west of Brisbane with the city of Toowoomba 39 kilometres to the north-east and Stanthorpe 90 kilometres to the south.

[470] Inspections revealed Pittsworth to have a main shopping precinct in the form of one street with Woolworths housed in a small shopping centre (seven specialty shops) at one end of Yandilla Street and an IGA located in a "stand alone" site some 500 metres further down the same street. Woolworths being the only National retailer with operations in the town in terms of the application being considered by the Commission.

[471] The Gore Highway passes Pittsworth from the north with the NRA submitting there was a gateway to western Queensland and northern New South Wales.

[472] In terms of this criterion as was the circumstances in TH/2016/16 and 17 it would support the granting of the application.

- (b) *the needs of the tourist industry or other industry in such locality or part;*
- (c) *the needs of an expanding tourist industry.*

[473] The proceedings did not have the benefit of direct evidence in respect of landmarks, events or venues that could reasonably be identified as tourist attractions likely to draw people to Pittsworth apart from Droney's evidence where he mentioned in passing horse shows and a caravanning event.

[474] As was the circumstances with TH/2016/16 and 17 applications it could be found on balance that Pittsworth would fall within the Southern Queensland Country boundaries with regards to the overall domestic and international visitor numbers and the nights stayed however in the absence of evidence about specific tourist visitations and events in Pittsworth it cannot be determined that the Pittsworth's share of visitors and accommodation was of a level to enliven this particular criterion.

[475] The NRA in submissions quite correctly conceded that little evidence was adduced regarding the needs of the tourist industry in Pittsworth with the MGA advancing the same position.

[476] There was no evidence of a sufficient nature to support the needs of the tourist industry or any other industry being enlivened to favourably consider this criterion nor was there evidence regarding the needs of an expanding tourist industry that would assist the application.

- (d) *the needs of an expanding population*

[477] Figures provided in research undertaken by the Australian Bureau of Statistics identified the population of Pittsworth in 2014 as 5,538 which was the only evidence

that directly related to the Pittsworth population however in an attachment to Wright's affidavit of evidence [Exhibit 17] statistics were provided for the various local government regions of Queensland. Pittsworth prior to 2008 had their own Shire Council, which merged into the Toowoomba Regional Council that year. The past, current and projected population numbers for the Toowoomba local government area were identified as:

2015	2016	2021	2026	2031	2036
163,232	163,960	174,824	188,412	202,278	216,270

Droney in his evidence expressed a view that Pittsworth had only limited population growth.

[478] Whilst the needs of the expanding population criterion in this case rely upon projections of growth across the Toowoomba local government area more so than evidence related to Pittsworth (only) I form the view that whilst the growth in population is not likely to be significant, this criterion will have a positive but limited role in assessing the application.

(e) *the public interest, consumers' interest, and business interest (whether small, medium or large)*

#### ***Public Interest***

[479] The Commission adopts the previous content of this decision in paragraphs 389 to 391 (inclusive) as it relates to this application.

[480] In the circumstances of this application the NRA argument that the public interest was best served by National retail businesses having consistency in hours across the Nation is somewhat diminished on the basis there is only a single non-exempt store that would benefit from the application being approved with that store's trading in the main, limited to grocery items.

[481] Upon weighing up the competing interests of each party I have not been convinced that the granting of the application would be in the public interest and to find otherwise would require the adoption of "a narrow construction of the expression 'public interest'" pursuant to the Full Bench decision in *Re: National Retail Association Limited, Union of Employers*<sup>16</sup>.

#### ***Consumer Interest***

[482] The content of paragraph 394 of this decision is applicable to this application and is adopted.

[483] The Mortimer team approached in the first instance 417 respondents with the final number of 266 being those surveyed. Support for the changes to existing trading hours to allow non-exempt retailers in Pittsworth to trade on Sundays and some Public Holidays was 61 per cent of those surveyed with 29 per cent opposing changes to the trading hours. The reasons of support for those in favour and those opposing the application were the same as identified in the Warwick and Stanthorpe applications.

<sup>16</sup> *Re: National Retail Association Limited, Union of Employers* [2014] QIRC 157

[484] On 11 and 18 December 2016 the Woolworths store opened for Sunday trade attracting 1,065 customers on one of those days.

[485] The content of paragraph 397 of this decision is adopted for the purposes of this application.

[486] Shane Smith attached to his affidavit of evidence a document that could be best described as a petition which attracted the signatures of around 370 persons. The preamble to the document stated the following:

**"To: The Queensland Industrial Relations Commission and Toowoomba Regional Council**

The Pittsworth District Alliance draws to the attention of the Toowoomba Regional Council and the Queensland Industrial Relations Commission (QIRC) the desires of the people of Pittsworth and surrounding areas to retain existing Sunday and Public Holiday trading hours and continue to restrict Sunday and Public Holiday trading for larger non-exempt stores in Pittsworth.

We petition the Toowoomba Regional Council and QIRC to oppose and reject the application of the National Retail Association to amend trading hours in order to allow large retail stores to open on future Sundays and Public Holidays. Larger retail stores do not need to trade these days in Pittsworth.

The opening of Sunday and Public Holiday trading hours to large retail stores will threaten our independent community stores, pharmacies and newsagents. We also want Sundays and Public Holidays kept for rest, relaxation, family time and sport which we believe is to the betterment of our community."

[487] The Principle Petitioner was identified as the Pittsworth District Alliance with the following information provided by those signing the petition:

- Name printed;
- Address; and
- Signature.

[488] Whilst some questions may arise over the standing of this petition, it does on the positive side of the ledger give the name and residential address of each person and is accompanied by their signature.

[489] The Commission in the discharge of its jurisdiction is required to take note of s 320 of the *Industrial Relations Act 1999*:

**"320 Basis of decisions of the commission and magistrates**

...

- (2) In proceedings, the commission or Industrial Magistrates Court -
- (a) is not bound by technicalities, legal forms or rules of evidence; and
  - (b) may inform itself on a matter it considers appropriate in the exercise of its jurisdiction.

- (3) Also, the commission or Industrial Magistrates Court is to be governed in its decisions by equity, good conscience and the substantial merits of the case having regard to the interests of -
  - (a) the persons immediately concerned; and
  - (b) the community as a whole.
- ...
- (5) In making a decision, other than a decision made under chapter 6, division 1, subdivision 3, the commission must consider the public interest, and to that end must consider -
  - (a) the objects of this Act; and
  - (b) the likely effects of the commission's decision on the community, local community, economy, industry generally and the particular industry concerned."

Note: The *Industrial Relations Act 1999* was the applicable Act at the time the application was both filed and heard by the Commission.

Therefore I am prepared to accept the petition instigated by the Pittsworth District Alliance is material of a nature that ought to be the subject of consideration in determining whether the granting of the application is beneficial in terms of consumer interest.

[490] In consideration of this application there was in fact competing material available to the Commission and in essence to accept the NRA argument that consumer interest should be viewed favourably would be done on the basis of a grocery offer in isolation, without other retail wares of an extended nature such as in Warwick and limited in terms of Stanthorpe being available to Pittsworth consumers.

[491] Consequently I am not satisfied the NRA has established on the requisite standard of proof that this criterion supports their application.

### ***Small Business***

[492] The NRA called witness evidence from Watson who as a partner of the entity that owned the Pittsworth Plaza supported the application to extend the trading hours being sought. Watson held the view that additional hours would provide extra choice, remove inconvenience, reduce congestion costs, boost employment while at the same time there were no contractual obligations on small store owners to open extended hours. Further evidence was adduced from Le who owned a pharmacy that was located in the Pittsworth Plaza currently opening between 8.30 am and 12.30 pm on Sundays. He also believed that extended hours would increase employment.

[493] The MGA through the evidence of Droney, the President of the Pittsworth District Alliance which is a local community not-for-profit organisation with a membership of around 100 persons, mostly small business owners informed the Commission of a vote taken by the members on 28 November 2016 to oppose the extended hours proposal. Under cross-examination he confirmed that 17 representatives cast a vote following a presentation from Shane Smith and in the absence of any supporters of the application.

[494] Shane Smith as part owner of the Pittsworth IGA identified the potential loss of \$1.5 million per annum in sales if the application was granted, having based his

assumptions on losses suffered by the IGA when Woolworths opened in December 2016 on two Sundays.

[495] The evidence before the proceedings was that small businesses in Pittsworth was not supporting the granting of the application and the NRA had failed to provide an evidentiary case to support this criterion.

***Medium Business***

[496] Neither party to the proceedings offered any evidence around this criterion and as such will not be subject of consideration by the Commission in the determination of the application.

***Large Business***

[497] The Commission adopts paragraph 408 of this decision as being relevant to large business interests.

[498] The Commission is satisfied this criterion favourably supports the application being granted.

***(f) the alleviation of traffic congestion***

[499] There was no evidence of any consequence around this criterion and as such is not enlivened.

***(g) the impact of the order on employment***

[500] The only forecast of employment growth appeared in the evidence of Wright who identified an additional 65 hours per week of employment at the Woolworths store if the application was granted. The MGA witness Shane Smith evidenced that four full-time staff would have to be terminated if the application was granted.

[501] Converting the claims of each of the parties to annual hours of employment gains and losses identified the following:

- Gain: 65 hours x 52 = 3,380
- Loss: 38 hours x 52 x 4 = 7,904

Upon assessment of the evidence I accept the position of Wright as a reasonable projection as to the likely additional hours to be created if the application was to be extended. Shane Smith's forecast of the potential loss of employment at the IGA store would appear to be highly inflated and not a figure accepted by the Commission as having credibility.

[502] The most likely scenario in Pittsworth due to the lack of National non-exempt retailers with the exception of Woolworths the gains in employment would at best end up as a "zero sum game" when compared to the loss that would be experienced by the IGA and therefore this criterion is effectively neutralised.

**(h) *the view of any local government in whose area the order is likely to have an impact***

[503] The Toowoomba Regional Council by not presenting a view on the application by omission adopted a neutral position.

**(i) *such matters as the industrial commission considers relevant***

[504] The Commission adopts the content of paragraphs 424, 425 and 426 of this decision as being relevant to the application, on the *proviso* of an amendment to paragraph 425 by deleting the reference to "Warwick" and inserting "Pittsworth".

## **FINDINGS**

### **Warwick**

[505] The statutory provisions pursuant to s 26 of the Act requires the Commission to have regard for this criteria in determining whether an Order can be made to allow non-exempt shops to extend their hours of trade.

[506] On consideration of the evidence, material and submissions the NRA has established on the balance of probabilities that all criterion with the exception of s 26(c), s 26(f) and s 26(i) is favourable to the granting of the application.

[507] Accordingly the application is granted with the amendment to the Order *Trading Hours - Non-Exempt Shops Trading by Retail - State* (in accordance with the Schedule attached to the Application filed 14 October 2016) for Warwick to take effect from 12 July 2017.

### **Stanthorpe**

[508] The statutory provisions to s 26 of the Act requires the Commission to have regard for this criteria in determining whether an Order can be made to allow non-exempt shops to extend their hours of trade.

[509] On consideration of the evidence, material and submissions the NRA has established on the balance of probabilities that all criterion with the exception of s 26(c), s 26(f) and s 26(i) is favourable to the granting of the application.

[510] Accordingly the application is granted with the Order *Trading Hours - Non-Exempt Shops Trading by Retail - State* (in accordance with the Schedule attached to the Application filed 14 October 2016) for Stanthorpe to take effect from 12 July 2017.

### **Pittsworth**

[511] The statutory provisions pursuant to s 26 of the Act requires the Commission to have regard for this criteria in determining whether an Order can be made to allow non-exempt shops to extend their hours of trade.

[512] On consideration of the evidence, material and submissions the NRA has not established on the balance of probabilities that the following criterion has been enlivened to support the granting of the application:

- s 26(b), s 26(c), s 26(e) (Public Interest, Consumer Interest and Small Business), and s26(g).

[513] The criterion that has been satisfied as supporting the application was limited to s 26(a), s 26(d) and s 26(e) (Large Business) with the remaining criterion neutral.

[514] Accordingly the application to amend the Order *Trading Hours - Non-Exempt Shops Trading by Retail - State* (in accordance with the Schedule attached to the Application filed 14 October 2016) for Pittsworth is not granted.

[515] I order accordingly.