

## QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *National Retail Association Limited, Union of Employers* [2019] QIRC 095

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

CASE NO: TH/2019/2

PROCEEDING: Application

DELIVERED ON: 17 June 2019

HEARING DATE: 17 June 2019

MEMBER: Merrell DP

HEARD AT: Brisbane

DECLARATION:

1. Pursuant to s 5(1)(c) of the *Trading (Allowable Hours) Act 1990*, I declare that the Burdekin Annual Show is, for the purposes of s 5(1)(c)(ii) of the *Trading (Allowable Hours) Act 1990*, a special event.
2. The declaration shall apply for a period commencing on 26 June 2019 and concluding on 26 June 2019.
3. The declaration applies to an area in Ayr from a point on the corner of the Bruce Highway and Craig Street:
  - travelling east along Craig Street until its intersection with Chippendale Street;
  - travelling south on Chippendale Street to the intersection of Wickham Street;

- **travelling west on Wickham Street to the intersection of Mackenzie Street;**
- **travelling north on Mackenzie Street to the intersection of Craig Street; and**
- **then travelling in a north-east direction to the starting point.**

CATCHWORDS: INDUSTRIAL LAW – TRADING HOURS – APPLICATION FOR DECLARATION OF SPECIAL EVENT – application to classify all non-exempt shops as exempt shops in part of Ayr for a specified period during a special event, namely, the Burdekin Annual Show.

LEGISLATION: *Trading (Allowable Hours) Act 1990, s 5*

APPEARANCES: Mr M Cole of the Applicant with him Mr D Stout

### **Reasons for Decision**

- [1] By application filed on 15 May 2019, the National Retail Association Limited, Union of Employers applied for a declaration, pursuant to s 5(2) of the *Trading (Allowable Hours) Act 1990* (the Act), that the Burdekin Annual Show, to be held on Wednesday, 26 June 2019, is a special event within the meaning of s 5(1)(c)(ii) of the Act.
- [2] The effect of such a declaration, if made, would be that a shop, as defined in the Act, operating in an area in Ayr as specified in the Applicant's application, would be an exempt shop within the meaning of the Act.
- [3] The area in Ayr, as specified in the Applicant's application, is area from a point on the corner of the Bruce Highway and Craig Street:
- travelling east along Craig Street until its intersection with Chippendale Street;
  - travelling south on Chippendale Street to the intersection of Wickham Street;
  - travelling west on Wickham Street to the intersection of Mackenzie Street;

- travelling north on Mackenzie Street to the intersection of Craig Street; and
- then travelling in a north-east direction to the starting point.

- [4] The period for which the declaration is sought is Wednesday, 26 June 2019.
- [5] On 22 May 2019, a Directions Order was issued which required that the Applicant's application and the Directions Order be served on the Burdekin Shire Council, the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees, The Australian Workers' Union of Employees, Queensland, the Local Government Association of Queensland Limited, the Executive Director, Industrial Relations, Office of Industrial Relations, Department of Education and the Chief Industrial Inspector, Office of Industrial Relations, Department of Education.
- [6] The Directions Order provided that those who may be affected by the application may make a formal application seeking leave to be heard and, if leave was granted, such a party was to file an outline of submissions and serve those submissions on the Applicant by 31 May 2019.
- [7] The Application and Directions Order were published on the Commission's website.
- [8] No person made application seeking leave to be heard.

**Should the Commission grant the declaration sought?**

- [9] The Applicant contends that the Burdekin Annual Show meets the description of a special event within the meaning of s 5(1)(c)(ii) of the Act.
- [10] Section 5 of the Act relevantly provides:

**5 Exempt shops**

(1) An *exempt shop* is -

- (a) a shop of a description mentioned in schedule 1AA used predominantly for selling goods by retail, or for supplying services, a reasonable person would expect to be sold or supplied in that shop;
- (b) an independent retail shop; or
- (c) a shop operating in a stated area for an event –
  - (i) that is a unique or infrequent event of local, State or national significance; and

*Examples—*

- the 2018 Commonwealth Games
- the Weipa Fishing Classic event

- (ii) declared by the industrial commission to be a special event for this paragraph
- (2) A declaration for subsection (1)(c) –
- (a) May be made by the industrial commission on an application by an organisation, chief executive, local government or any other person; and
- (b) must state the following–
- (i) the details of the event the subject of the declaration;
- (ii) the period for which the declaration applies;
- (iii) the area to which the declaration applies; and
- (c) must be published on the QIRC website.
- (3) In deciding whether to declare an event to be a special event for subsection (1)(c), the industrial commission–
- (a) must consider–
- (i) the cultural, religious or sporting significance of the event; and
- (ii) the significance of the event to the economy and the tourism industry; and
- (b) may consider a submission made by a local government for an area in which the declaration is likely to have an impact.

[11] As is evident from s 5(1), the Act provides for non-exempt shops, operating in a stated area for an event, to be exempt shops for the period of that event if the Commission declares the event to be a special event.

[12] In deciding whether an event is a special event for the purposes of s 5(1)(c) of the Act, the Commission must consider:

- the cultural, religious or sporting significance of the event; and
- the significance of the event to the economy and the tourism industry.

[13] Further, the Commission may consider a submission made by a local government for an area in which the declaration is likely to have an impact.

***The cultural significance of the Burdekin Annual Show and the significance of the Burdekin Annual Show to the economy and to the tourism industry of Ayr***

[14] In his affidavit accompanying the Applicant's application, Mr David Stout, Manager Policy, for the Applicant, deposes that:

- the Burdekin Show is held annually in June in Ayr and attracts interest from across the Burdekin region and further afield which includes exhibitors, competitors and visitors to the Show and, according to the Burdekin Shire Council, the Show was also a drawcard for tourism for the surrounding region;
- the Burdekin Annual Show highlights the agricultural, commercial, trade and cultural aspects of the community for the people of Ayr, Home Hill and Brandon and surrounding area;
- the Burdekin Annual Show is a family orientated fun day/night program filled with entertainment, food and displays of many different types for the general public to experience and enjoy, including sweets and preserves, horse sports, farm machinery and historical restorations;
- the Burdekin Shire Council covers an area of approximately 5053 square kilometres and is bordered by the Townsville City Council to the north, the Charters Towers Regional Council to the west and Whitsunday Regional Council to the south;
- the Shire has an estimated resident population of approximately 17,500 and is categorised as a Rural Agricultural Very Large Local Authority under the Australian classification of Local Governments;
- every year, in June, the community celebrates the significance of agriculture to the region's economy and the Burdekin Annual Show itself has become a major cultural event;
- events such as the Burdekin Annual Show reflect a large part of the cultural heritage of regional Queensland, as does the wider notion of annual shows as a highlight of community activity in any given year;
- the Burdekin Annual Show is clearly an event of cultural significance to the Region, demonstrated by the fact that the 2018 Burdekin Annual Show schedule indicated there were 19 separate areas of show competition, many of which had 20 or 30 subcategories for competitors; and
- the commercial activity generated by the Burdekin Annual Show would benefit local main street businesses if non-exempt stores were able to trade and draw visitors into the business region throughout the day.

[15] Having regard to Mr Stout's unchallenged evidence, I am satisfied that the Burdekin Annual Show is an event of cultural significance to the people of Ayr and is significant to the economy of Ayr and to the tourism industry in and around Ayr.

## Conclusion

[16] The Commission did not receive any objections to the application.

[17] There were no submissions made by the Burdekin Shire Council.

[18] The Burdekin Annual Show is a special event within the meaning of s 5(1)(c)(ii) of the Act in that that the Burdekin Annual Show is an event of cultural significance to the people of Ayr and is significant to the economy of Ayr and to the tourism industry in and around Ayr.

[19] For the reasons set out above, I am satisfied that I should make the declaration sought.

[20] I will make the following declaration:

1. Pursuant to s 5(1)(c) of the *Trading (Allowable Hours) Act 1990*, I declare that the Burdekin Annual Show is, for the purposes of s 5(1)(c)(ii) of the *Trading (Allowable Hours) Act 1990*, a special event.
2. The declaration shall apply for a period commencing on 26 June 2019 and concluding on 26 June 2019.
3. The declaration applies to an area in Ayr from a point on the corner of the Bruce Highway and Craig Street:
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