

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *National Retail Association Limited, Union of Employers* [2019] QIRC 112

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

CASE NO: TH/2019/3

PROCEEDING: Application

DELIVERED ON: 5 August 2019

HEARING DATE: 2 August 2019

MEMBER: O'Connor VP

HEARD AT: Brisbane

ORDER: **Pursuant to s 5(1)(c) of the Act I declare that:**

- 1. The Mount Isa Mines Rotary Rodeo is for the purposes of s5(1)(c)(ii) a special event;**
- 2. The declaration shall apply for a period commencing on 7 August 2019 and shall continue up to and including 11 August 2019; and**
- 3. The declaration applies to an area from a point on the eastern bank of the Leichhardt River, at its intersection with Isa Street, travelling eastward along Isa Street until the intersection with Gray Street, turning northwards along Gray street and continuing in the same direction on an imaginary line to the intersection of the Barkley Highway, then travelling northwards**

along Atherton Street until the intersection with Mary Street, then travelling westwards along Mary Street and continuing beyond the intersection of West Street on an imaginary line until meeting the Leichhardt River, then in a southerly direction along the eastern bank of the Leichhardt River to its intersection with Isa Street.

CATCHWORDS: INDUSTRIAL LAW – TRADING HOURS – application to classify all non-exempt shops as exempt shops in the Mt Isa CBD for a specified period during a special event, namely, the Mount Isa Rodeo.

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

Trading (Allowable Hours) Amendment Act 2017

CASES: *Re: National Retail Association Limited, Union of Employers* [2018] QIRC 118

APPEARANCES: Mr M Cole for the applicant

Decision

- [1] The National Retail Association Limited, Union of Employers is seeking an order under the *Trading (Allowable Hours) Act 1990* to classify all non-exempt shops as exempt shops in the Mt Isa CBD for a specified period during a special event, namely, the Mount Isa Rodeo.
- [2] The Mount Isa Rodeo is described in the application as a major tourism drawcard for regional Queensland that provides employment opportunities and has grown to become the largest rodeo event in the southern hemisphere and a highlight of the outback Queensland sporting calendar.
- [3] This application is made under s 5(2)(a) of the Act and may be made by an organisation, chief executive, local government or any other person. In short, the applicant seeks a declaration that the Mt Isa Rodeo is a special event under s 5(1)(c) of the Act. The area

to be covered by the declaration is the business district of Mt Isa, as described in Appendix A to the application and as shown on the map being Appendix B, for a period beginning on 7 August 2019, and continuing up to and including 11 August 2019.

[4] Appendix A to the application relevantly provides:

From a point on the eastern bank of the Leichhardt River, at its intersection with Isa Street, travelling eastward along Isa Street until the intersection with Gray Street, turning northwards along Gray Street and continuing in the same direction on an imaginary line to the intersection of the Barkley Highway, then travelling northwards along Atherton Street until the intersection with Mary Street, then travelling westwards along Mary Street and continuing beyond the intersection of West Street on an imaginary line until meeting the Leichhardt River, then in a southerly direction along the eastern bank of the Leichhardt River to its intersection with Isa Street.

[5] Consequent upon the *Trading (Allowable Hours) Amendment Act 2017*, an "exempt shop" includes shops in an area surrounding a special event as declared by the Commission.

[6] The application was made to this Commission on 16 July 2019. A directions order was issued which required *inter alia* that the application be served on the Mount Isa City Council and that those affected by the application would need to make a formal application seeking leave to be heard by 26 July 2019.

[7] As required under the Act, the application and directions order were published on the Commission's website.

[8] On 25 July 2019 the Commission received correspondence from Mr Jack Harding, Industrial Advocate for the Australian Workers' Union of Employees (Queensland) advising the Commission that the Union did not intend seeking leave to be heard. However, the AWU raised, no doubt as a reminder, the application of s 36B of the Act which provides that an employer must not require a current employee to work during extended hours unless the employee agrees, in writing, to work during extended hours.

[9] Correspondence was also received by the Commission from Mr Darryn Gaffy, Senior Industrial Advocate with SDA (Queensland) advising that the SDA does not have any members in the area and would not be seeking leave to be heard.

Should the Commission grant the declaration sought?

[10] The applicant submits that the Mount Isa Rodeo fits the description of a special event under the Act. Relevantly s 5 of the Act 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
 - (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] The Act provides for non-exempt shops operating in a stated area for an event to be considered exempt for the period of that event if the Commission declares the event to be a "special event".

[12] Section 5(3)(a)(i) suggests that the event must have a cultural, religious or sporting quality. For the purpose of declaring the event a special event the quality must be significant.

[13] In deciding whether an "event" is a "special event" 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. 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.

- [14] The Commission, in considering whether to grant the declaration, does not have an unfettered discretion. In subsection (3)(a) of s 5, "and" between (i) and (ii) must be read as being conjunctive. It places on the Commission a requirement to consider both limbs of s 5(3)(a) of the Act.

The cultural, religious or sporting significance of the event.

- [15] I am required to consider the cultural, religious or sporting significance of the Mt Isa Rodeo. In *Re: National Retail Association Limited, Union of Employers* I considered the word "cultural" and wrote:

There are two approaches in determining the meaning to be given to the adjective "cultural" in s 5 of the Act. The first, is to give the word "cultural" a meaning which relates to the ideas, customs, and social behaviour of a society. The second approach relates to use of the word "cultural" in the sense of the arts and to intellectual achievement. In my view, the context of "cultural" within s 5 of the Act reflects and sits more comfortably with the latter interpretation. The example being, for the purposes of s 5(3)(a)(i), a "cultural festival".¹

- [16] The Applicant has not contended that the Mt Isa Rodeo is of "cultural significance" and without more information it is difficult to see how the event would conform to the meaning given to cultural in s 5 of the Act. However, it is clear that the event is of "sporting significance".

- [17] Rodeo is an international sport and the Mt Isa Rodeo has grown to become the largest rodeo event in the southern hemisphere which clearly emphasises the sporting significance of the event. The rodeo will attract more than 600 competitors from around Australia and overseas and is conducted under the auspices of the Australian Professional Rodeo Association. The Application also includes a quote from Minister for Innovation and Tourism Industry Development the Hon Kate Jones MP who described the Mt Isa Rodeo as "the largest rodeo in the southern hemisphere, attracting more than 600 competitors from around Australia and offering \$230,000 in prize money and buckles".

The significance of the event to the economy and the tourism industry

- [18] The application references a report commissioned by Tourism and Events Queensland which stated that the 2017 event provided a "strong economic boost for Mt Isa and the wider Outback region". The report highlighted a 12% increase in the number of visitor nights and an increase in spending from \$8.1 million in 2016 to \$9.22 million in 2017.

¹ [2018] QIRC 118, [23] (footnotes omitted).

- [19] The Mount Isa Rodeo website lists some 27 motels, caravan parks, campsites and apartment complexes that offer accommodation during the event. The site also promotes key tourism activities in the Mount Isa region. The Applicant submits that one of the key activities throughout the event is "dining and shopping in the Mt Isa CBD" which demonstrates that the rodeo is part of a broader tourism picture in the region and a key part of the tourist offering for visitors.
- [20] It is further submitted by the applicant that following the order granted in 2018 Coles, Woolworths and Kmart were able to trade for extended hours. The applicant estimates that the extended trading hours for the 2018 Mount Isa Rodeo generated an additional 260 hours of additional employment.
- [21] The Mt Isa Rodeo is the recipient of numerous awards for tourism including the 2016 gold award in the Australian Tourism Awards – Events and Festivals, a gold award in the Festivals and Events category of the 2016 Queensland Tourism Awards and more recently the silver award for the best Festival and Event at the 2017 Qantas Australian Tourism Awards.
- [22] In support of its application, the applicant also references a media statement from the Honourable Kate Jones MP. In that statement the Minister said:

We know visitors to Queensland are looking for a unique experience and the Mt Isa Rodeo gives spectators an authentic taste of the Australian outback. Attracting up to 15,000 people a year and generating more than \$8 million for the local economy, the Mount Isa Mines Rotary Rodeo definitely deserves its "major event" status.

Conclusion

- [23] I am satisfied that the Mt Isa Rodeo is a unique event of local, State and it may well be argued, national significance.²
- [24] I am of the view that the Mount Isa Rodeo is a "special event" for the purposes of s 5 of the Act. I am further persuaded that the Mt Isa Rodeo is of sporting significance,³ and that the event is significant to the Mt Isa economy and tourism industry.⁴
- [25] No objections to the application have been made and there was no submission by a local government for an area in which the declaration is likely to have an impact.

² *Trading (Allowable Hours) Act 1990* s 5(1)(c)(i)

³ s 5(3)(a)(i).

⁴ s 5(3)(a)(ii).

Orders:

[26] For the reasons advanced above I am satisfied that I should grant the application. Accordingly, I make the following declaration:

Pursuant to s 5(1)(c) of the Act I declare that:

- 1. The Mount Isa Mines Rotary Rodeo is for the purposes of s5(1)(c)(ii) a special event;**
- 2. The declaration shall apply for a period commencing on 7 August 2019 and shall continue up to and including 11 August 2019; and**
- 3. The declaration applies to an area from a point on the eastern bank of the Leichhardt River, at its intersection with Isa Street, travelling eastward along Isa Street until the intersection with Gray Street, turning northwards along Gray street and continuing in the same direction on an imaginary line to the intersection of the Barkley Highway, then travelling northwards along Atherton Street until the intersection with Mary Street, then travelling westwards along Mary Street and continuing beyond the intersection of West Street on an imaginary line until meeting the Leichhardt River, then in a southerly direction along the eastern bank of the Leichhardt River to its intersection with Isa Street.**