

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *National Retail Association Limited, Union of Employers* [2019] QIRC 150

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

CASE NO: TH/2019/5

PROCEEDING: Application

DELIVERED ON: 17 October 2019

HEARING DATE: 15 October 2019

MEMBER: Industrial Commissioner Dwyer

HEARD AT: Brisbane

ORDER:

1. **Pursuant to s 5(1)(c) of the *Trading (Allowable Hours) Act 1990* ('the Act') the Commission declares that the Gold Coast 600 Motor race is a special event for the purposes of s 5 of the Act as it is a unique event of local and State significance.**
2. **This declaration applies for the nominated period of 25 October 2019 to 27 October 2019 (inclusive).**
3. **The area to which this declaration applies is the geographic area contained within these boundaries:**
 - **The Coomera River;**
 - **Tallebudgera Creek;**
 - **M1 Motorway;**

- **The coast line between the mouth of the Coomera River and Tallebudgera Creek.**

- 4. The statutory protections set out at s 36B of the Act will apply to all employees engaged by non-exempt shops covered by this declaration during the nominated period.**

CATCHWORDS:

INDUSTRIAL LAW – TRADING HOURS – APPLICATION FOR DECLARATION OF SPECIAL EVENT – application to classify all non-exempt shops as exempt shops in a specified area for a specified period during a special event, namely, the Brisbane Festival.

LEGISLATION:

Trading (Allowable Hours) Act 1990 (Qld) s 5, 36B

Industrial Relations Act 2016 (Qld) s 539

APPEARANCES:

Mr. M. Cole, for the applicant.

Mr. D. Gaffy, for the Shop, Distributive and Allied Employees Association (Queensland Branch), Union of Employees.

Reasons for Decision

Introduction

[1] By way of application filed on 17 September 2019, the National Retail Association, Union of Employers ('NRA') applied for a declaration pursuant to s 5 of the *Trading (Allowable Hours) Act 1990* ('the Act').

[2] A declaration was sought in relation to the 'Gold Coast 600 Motor Race' ('GC600'). The application was accompanied by an annexure containing a map of parts of the Gold Coast. The declaration proposed to cover an area as far north at Beenleigh, out to South Stradbroke Island, south to Tallebudgera creek, and then north along the M1 Motorway.

- [3] The declarations being sought proposed to cover a period running between 25 and 27 October 2019 (inclusive).
- [4] The application was supported by an affidavit by Mr. David Stout, Manager Policy, with the NRA filed 17 September 2019.
- [5] The affidavit attached written submissions for the NRA at Exhibit A and the map referred to above at Exhibit B. A further map was produced during the hearing of this application and was admitted by consent as Exhibit 1. For all intents and purposes Exhibit B and Exhibit 1 contained the same information.
- [6] On 26 September 2019 the Shop Distributive and Allied Employees (Queensland Branch) Union of Employees ('the SDA') applied for leave to be heard in this application pursuant to s 539 of the *Industrial Relations Act 2016*. Mr Darren Gaffy, Senior Industrial Officer for the SDA filed an affidavit supporting the SDA application to be heard on 26 September 2019.
- [7] The SDA was subsequently granted leave to be heard on this application and filed written submissions on 8 October 2018.
- [8] The matter proceeded to hearing on 15 October 2019.

Hearing

- [9] There were comprehensive written submissions by the NRA with respect to the unique nature of the GC600, and its significance particularly in respect of sport and tourism. The GC600 is an event with which most residents of Brisbane and the Gold Coast will be familiar. It is an annual event held over the course of a long weekend. It involves multiple motor races involving various classes of vehicles on a course that winds through the iconic high-rise buildings of Surfers Paradise and surrounds.
- [10] In their written submissions the SDA cautioned that the Commission needs to make a vigorous assessment of applications of this nature (including this one) and to apply appropriate limitations and protections for its members. I agree. Given the wide power to relax trading hours and the potential impact on employees, proper regard must be had to each application to ensure it meets the statutory criteria.
- [11] To this end, the SDA submitted¹ that *inter alia* the GC600 was not a "unique or infrequent event of local, state or national significance" which borrows from the language of s 5 of the Act. Mr Cole for the NRA made submissions at the hearing comparing the GC600 to other events (including the Brisbane Festival) of similar annual nature which have been found on such applications to meet the criteria.

¹ At paragraph 7 of their submissions.

[12] The terms unique and infrequent are not defined. On their ordinary meaning they each adequately describe the GC600 in my view. The GC600 is unlike any other motor race held in Australia by reason of its setting and the class of vehicles participating. A once per year event conducted over three days is, in my view, infrequent.

[13] Mr Gaffy also took issue with the scope of the order sought being too wide. On this issue I am inclined to agree. During the hearing I indicated to the parties that I had a preliminary view as to the wide scope sought being excessive. Mr Cole appropriately conceded this and indicated a willingness to reduce it to have a northern boundary at Hope Island.

Statutory Provisions

[14] The applicant submits that GC600 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.

[15] 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'.

[16] 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.

[17] 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. In this regard I note that no submissions were received from the City of Gold Coast in this matter.

Consideration

[18] The statutory regime set out in s 5 of the Act provides the Commission with a broad discretion with respect to the making of a declaration. The discretion at s 5(2)(a) is unfettered. Section 5(3) contains mandatory considerations on the discrete issue of determining whether the GC600 is a 'special event' within the meaning of the Act.

[19] Section 5(3) requires me to have regard to:

- the sporting significance of the GC600, and
- the significance of the GC600 to the economy and the tourism industry.

[20] Having reviewed the submissions of the NRA and having regard to what is generally known of the event, I have no difficulty concluding that the GC600 is significant in respect of sport, the local economy, and the tourism industry.

[21] For these reasons I have no difficulty finding that the GC600 is a 'special event' for the purposes of the Act because it has sporting and tourism industry significance at a local and State level. My only concern with respect to the application was the proposed geographic breadth sought by the NRA.

[22] While s 5(3) imposes certain mandatory considerations with respect to the question about whether a matter is a 'special event', it does not detract or limit the discretion found at s

5(2)(a) of the Act. Section 5(2)(a) allows for a broad discretion which, in my view, may be informed by other relevant matters.

- [23] An object of the Act is to decide trading hours for non-exempt shops and independent retail shops throughout Queensland.² Section 5 of the Act, upon which the NRA now relies, allows for retailers to be granted exemption from the regulations imposed by the Act, in limited circumstances. Given the objects of the Act, it is necessary to ensure that any exemptions are carefully considered.
- [24] Having regard to the nature and duration of the GC600, it is clear that areas in and around Surfers Paradise are the areas mainly affected by the event. However, as submitted by the NRA, I also accept that patrons of the event are likely to park remotely and utilise public transport options from areas outside Surfers Paradise given the significant road closures required for the event. I accept the submission that some of these patrons will likely utilise extended access to retail outlets.
- [25] For this reason, I am inclined to exercise my discretion to grant the declaration, but in more limited geographic terms than those sought by the NRA. I am satisfied of the need to extend exemptions beyond the area immediately occupied by the event, but I do not consider it appropriate or necessary to grant exemptions as broadly as proposed by the NRA in their application.

Declaration

- [26] The application for declaration sought by the NRA is, subject to amendments made at my discretion, granted and is as follows:
- 1. Pursuant to s 5(1)(c) of the Act the Commission declares that the GC600 is a special event for the purposes of s 5 of the Act as it is a unique event of local and State significance.**
 - 2. This declaration applies for the nominated period of 25 October 2019 to 27 October 2019 (inclusive).**
 - 3. The area to which this declaration applies is the geographic area contained within these boundaries:**
 - **The Coomera River;**
 - **Tallebudgera Creek;**
 - **M1 Motorway;**
 - **The coast line between the mouth of the Coomera River and Tallebudgera Creek.**

² *Trading (Allowable Hours) Act 1990* (Qld) s 5(a).

4. The statutory protections set out at s 36B of the Act will apply to all employees engaged by non-exempt shops covered by this declaration during the nominated period.

[27] This declaration will be published on the Queensland Industrial Relations Commission website pursuant to s 5 of the Act.

[28] Order accordingly.