

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *National Retail Association Limited, Union of Employers* [2021] QIRC 155

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

CASE NO: TH/2021/3

PROCEEDING: Application

DELIVERED ON: 11 May 2021

HEARING DATE: 10 May 2021

MEMBER: Industrial Commissioner Dwyer

HEARD AT: Brisbane

DECLARATION: **Pursuant to s 5(1)(c) of the *Trading (Allowable Hours) Act 1990 (Qld)* I declare that:**

- 1. The Chinchilla Show is for the purposes of s 5(1)(c)(ii) a special event;**
- 2. The declaration shall apply for a period commencing on 21 May 2021 and shall continue up to and including 22 May 2021; and**
- 3. The declaration applies to the geographic locations described as: Starting at Chinchilla S Road at the Chinchilla Showgrounds, moving south and turning onto Llyod Street, then turning south onto Carmichael Street. From there, travelling north and turning north-west along the**

Warrego Highway, then turning onto Wondai Street, then West onto Railway Street. Turning from there onto Helena Street, then onto Hypatia Street through to Heeney Street and back to the starting point on Chinchilla S Road at Chinchilla showgrounds.

CATCHWORDS:

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

LEGISLATION:

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

APPEARANCES:

Mr. D. Stout and Ms L. Charlton, for the applicant

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

Mr S. Thompson for the Western Downs Regional Council

Reasons for Decision

Introduction

- [1] The National Retail Association Limited, Union of Employers ('the NRA') is seeking an order under the *Trading (Allowable Hours) Act 1990* (Qld) ('the Act') to classify all non-exempt shops as exempt shops in a geographic area covering the Chinchilla town centre (or CBD) for a specified period during a special event, namely, the Chinchilla Show ('the Show').
- [2] The Show is said to be an infrequent and significant event in the local region.

- [3] According to the Act, an "exempt shop" includes shops in an area surrounding a special event as declared by the Commission.
- [4] 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.
- [5] The applicant seeks a declaration that the Show is a special event pursuant to s 5(1)(c) of the Act. It is proposed for a period beginning on 21 May 2021 and continuing up to and including 22 May 2021.
- [6] Exhibit B to the Affidavit of Mr David Stout filed 23 April 2021, describes the area proposed to be covered as:
- Starting at Chinchilla S Road at the Chinchilla Showgrounds, moving south and turning onto Llyod Street, then turning south onto Carmichael Street. From there, travelling north and turning north-west along the Warrego Highway, then turning onto Wondai Street, then West onto Railway Street. Turning from there onto Helena Street, then onto Hypatia Street through to Heeney Street and back to the starting point on Chinchilla S Road at Chinchilla showgrounds.
- [7] The application was made on 23 April 2021. A directions order subsequently issued on 27 April 2021 required *inter alia* that the application be served on the Western Downs Regional Council and other parties affected by the application. Those parties were directed to make a formal application seeking leave to be heard by 30 April 2021 if they wished to be heard. The directions order also stated that the application would be listed for hearing at 1pm on 10 May 2021.
- [8] As required under the Act, the application and directions order were published on the Commission's website.
- [9] On 30 April 2021, Ms Laura Armstrong, Industrial Officer of the of the Shop Distributive and Allied Employees Association (Queensland Branch) Union of Employees ('the SDA') wrote to the Commission to seek leave to be heard in this matter, filing an application and affidavit on behalf of the SDA.
- [10] On 4 May 2021, I approved the SDA's application for leave to appear, issuing an order to that effect. On 6 May 2021 the SDA filed an outline of submissions.

Should the Commission grant the declaration sought?

The Act

- [11] The applicant submits that the Show fits the description of a special event under the Act.

[12] 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.

[13] 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".

[14] 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.

NRA submission

- [15] Mr David Stout, on behalf of the applicant, submitted in his affidavit filed 23 April 2021 that the Show is one of the most iconic events in the Maranoa region. It is a two-day event with competitions, rodeos, sideshows, amusements and rides, displays of farming and commercial goods, music and other entertainment. It is submitted that the Show takes on additional significance this year following the impact of Covid-19 on regional economies.
- [16] The submission is further made that events such as the Show create social bonds and improve mental health in parts of regional Australia where distance, drought, bushfires and Covid-19 have caused significant hardship and distress.
- [17] In the material filed for the NRA, Mr Stout contends that shows such as the Show provide huge economic spin-offs for local communities as well as opportunities for business and services who exhibit.
- [18] It is submitted that the Show has received a range of funding from Federal and Local government which, he says, is an indication that it is a significant event to the local economy and tourism.
- [19] Quite apart from any submission of the NRA it is difficult to see a scenario where the Show would not produce a range of positive economic and tourism outcomes for the community. The Show will inevitably draw attendances from the wider region, which will increase demand for services, including retail.

SDA submissions

- [20] The SDA filed their submissions on 6 May 2021.
- [21] The SDA's submissions broadly sought to emphasise preserving the protections afforded to employees whose employment, by reason of the declaration, would temporarily be in 'exempt shops' rather than 'non-exempt' shops.
- [22] In addition to this, the SDA submitted that the term 'significance' as it appears in s 5 of the Act contemplates something greater or more important.¹ The SDA drew comparisons between the Show and e.g. the crowd sizes at AFL grand final or the attendance numbers at the Brisbane Festival.
- [23] The SDA also made reference to the recent decision of Commissioner McLennan where she dismissed an application to extend hours for the 'BrisAsia Festival'.² In that instance

¹ Paragraph 8 of the SDA submissions filed 6 May 2021.

² *National Retailers Association Limited, Union of Employers* [2021] QIRC 029.

the NRA was seeking extended hours for retailers in the Brisbane CBD in respect of a festival centred within the Fortitude Valley precincts.

- [24] Finally, the SDA noted that the application by the NRA was not prompted by any request from retailers in the Chinchilla area. The SDA made the point that exempt retailers who were typically operating longer hours would likely suffer if larger non-exempt stores were given exemptions.

Consideration

- [25] I am satisfied that the Show is a unique event of local significance. In my view, these terms as they appear in s 5 of the Act are to be given a wide and diverse meaning, and ought to be considered in the context of the event for which the exemption is sought. Taking that approach, an annual show in a small regional community comfortably falls within those terms for *inter alia* all of the reasons submitted by the NRA.
- [26] An event in the nature of the Show, conducted over two days, on an annual basis is unique in my view. It is a stand-alone, singular event, of which there is no replica or rival in that community. The fact that it occurs annually does not make it less unique but, on the contrary, perhaps more so. By way of illustration, it would be difficult to consider the Brisbane 'Ekka' as anything but an iconic and unique event for the residents of Brisbane, and an event that could never be truly replicated. I consider the residents of Chinchilla are likely to experience their annual show in the same way.
- [27] Similarly, the Show is undoubtedly significant for the local community. An event does not have to attract the crowds of an AFL grand final to be 'significant'. The term 'significant' can be (and is) a reference not only to attendance numbers, but also to the impact and importance of the event on those in attendance. The Show in this instance is, for all of those matters outlined by the NRA, a significant event for the people of Chinchilla and the wider region.
- [28] The Commission did not receive any objections to the application. There was an appearance by a representative from local government who advised their position was essentially neutral on the application.
- [29] While the SDA have identified that the application was not prompted by retailers within the region, that is not an essential prerequisite for the application to succeed. Organisations such as the NRA (and the SDA for that matter) often serve their members collectively and without specific reference to an individual member or members by taking action or making application with collective benefits.
- [30] Having said that, I consider that such applications would be more compelling if they were accompanied by evidence from local retailers addressing specific considerations as to the expected hours of opening, or the anticipated increase in trade, and other factors relevant

to the considerations under the Act. The absence of such evidence *could* render such an application liable to being dismissed if the Commission required a more fulsome examination of the elements of s 5 of the Act, especially those relevant to s 5(3)(a)(ii).

[31] However, in this instance, when asked, the SDA was unable to make any submissions about specific adverse consequences anticipated for members in the region if the application were granted. In circumstances where no specific harm was identified as a likely consequence of granting the application, I am not persuaded to refuse the application.

[32] I am comfortable that the Act provides adequate protection for retail employees potentially impacted by the application being granted. There are statutory protections for employees which are set out at s 36B of the Act:

- (1) An employer must not require an employee to work during extended hours unless the employee has freely elected to work during extended hours.

Maximum penalty—

- (a) for a first offence—16 penalty units; or
- (b) for a second or later offence—20 penalty units.

- (2) However, subsection (1) does not apply in relation to an employee if an industrial instrument provides arrangements under which the employee may refuse or agree to work during extended hours.

- (3) For subsection (1), an employee has not freely elected to work during extended hours—

- (a) if the employee elects to work during extended hours because the employee has been coerced, harassed, threatened or intimidated by or for the employer; or
- (b) only because the employee is rostered, or required under an industrial instrument, to work during those hours.

- (4) In this section—

elect means agree in writing for a stated or indefinite period.

employer means an employer of an employee in a non-exempt shop.

extended hours means the permitted trading hours under this Act for a non-exempt shop on any day (other than a closed day), but only to the extent the hours are greater than the shop's permitted trading hours immediately before the commencement.

industrial instrument means any of the following within the meaning of the Industrial Relations Act 2016—

- (a) a modern award, bargaining award or certified agreement;
- (b) a federal industrial instrument.

[33] I am not empowered to pre-emptively make orders incorporating the protections contained in s 36B. However, during the proceedings, there was clear consent by the parties that employees affected by a granting of the application, whose hours may extend outside the normal range as prescribed by their Certified Agreements and Awards, would only be required to work those additional hours on a voluntary basis.

[34] In circumstances, while I consider that it would have been more helpful to have evidence from stakeholders in the region to more fully inform the considerations under s 5 of the Act, there was equally an absence of evidence identifying any specific harm to retail

employees as a likely consequence of granting the application. Given the mutual consent to abide by the spirit of the prohibitions set out in s 36B of the Act, I am satisfied the application can be granted.

[35] I add for completeness that, in circumstances where the application is to be granted, the SDA does not object to the dates or geographic parameters proposed by the NRA.

Declaration

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

Pursuant to s 5(1)(c) of the *Trading (Allowable Hours) Act 1990 (Qld)*, I declare that:

- 1. The Chinchilla Show is for the purposes of s 5(1)(c)(ii) a special event;**
- 2. The declaration shall apply for a period commencing on 21 May 2021 and shall continue up to and including 22 May 2021; and**
- 3. The declaration applies to the geographic locations described as: Starting at Chinchilla S Road at the Chinchilla Showgrounds, moving south and turning onto Llyod Street, then turning south onto Carmichael Street. From there, travelling north and turning north-west along the Warrego Highway, then turning onto Wondai Street, then West onto Railway Street. Turning from there onto Helena Street, then onto Hypatia Street through to Heeney Street and back to the starting point on Chinchilla S Road at Chinchilla showgrounds.**