

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *National Retail Association Limited, Union of Employers* [2021] QIRC 197

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

CASE NO: TH/2021/4

PROCEEDING: Application

DELIVERED ON: 4 June 2021

HEARING DATE: 4 June 2021

MEMBER: Industrial Commissioner Pidgeon

HEARD AT: Brisbane

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

1. **The Proserpine Show is for the purposes of s 5(1)(c)(ii) a special event;**
2. **The declaration shall apply for a period commencing on 18 June 2021 and shall continue up to and including 19 June 2021; and**
3. **The declaration applies to the geographic locations described as: Proserpine Showgrounds travelling length of Anzac Road turning right onto Hinschen Street then onto Renwick Road. Travelling east on Renwick Road then turning north onto Bruce Highway to Taylor Street. Turning left onto Mill Street then**

**turning east onto Faust Street,
turning onto Jupp Street to starting
point at Anzac Road.**

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

LEGISLATION: *Trading (Allowable Hours) Act 1990*, s 5, 36B

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

Ms L Armstrong, for the Shop, Distributive and Allied Employees Association (Queensland Branch), Union of Employees

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 for a specified period during a special event, namely, the Proserpine Show ('the Show').¹
- [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 18 June 2021 and continuing up to and including 19 June 2021.

¹ Also referred to as the Whitsunday Show or Show Whitsunday.

- [6] Exhibit B to the Affidavit of Mr David Stout filed 21 May 2021, describes the area proposed to be covered as:

The declaration applies to the geographic locations described as: Proserpine Showgrounds travelling length of Anzac Road turning right onto Hinschen Street then onto Renwick Road. Travelling east on Renwick Road then turning north onto Bruce Highway to Taylor Street. Turning left onto Mill Street then turning east onto Faust Street, turning onto Jupp Street to starting point at Anzac Road.

- [7] The application was made on 21 May 2021. A directions order subsequently issued on 24 May 2021 and served on the parties affected by the application. Those parties were directed to make a formal application seeking leave to be heard by 27 May 2021 if they wished to be heard. The directions order also stated that the application would be listed for hearing on 4 June 2021 commencing at 10.00am.
- [8] As required under the Act, the application and directions order were published on the Commission's website.
- [9] On 26 May 2021, Ms Laura Armstrong, Industrial Officer 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 27 May 2021, I approved the SDA's application for leave to appear, issuing an order to that effect. On 2 June 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 21 May 2021 that after being cancelled last year due to Covid-19, and subsequent tourism vouchers offered in the Whitsunday region, the 2021 Show is expecting higher visitation to the region. It is a two-day event with competitions, wood chopping, sideshows and amusement rides, displays of farming and commercial goods, music, fireworks and other entertainment.

[16] Further evidence of the Show's significance to the local economy and tourism is that funding has been allocated to the Show by the Federal Supporting Agricultural Shows

and Field Days program. The Show is also sponsored by 21 local businesses and service providers which indicates the significance to the local economy.

- [17] After the facilities at the Proserpine Showgrounds were damaged in Tropical Cyclone Debbie in 2017, major works have been co-ordinated so that they are completed ahead of the 2021 Show, drawing assistance from community volunteers in order to meet the deadline.
- [18] The NRA quotes various Ministerial media releases espousing the importance of agricultural shows especially in the aftermath of various natural disasters and of course the pandemic, as they encourage community engagement.
- [19] With the provision of some 6,000 vouchers valued at \$200 by the State Government, The Show will inevitably draw attendances from the wider region, which will increase demand for services, including retail. It is submitted that the application allows flexibility for stores to trade and better cater for the needs of residents and visitors to Proserpine.
- [20] The NRA states work performed during the extended hours will be on a voluntary basis and refer to a Decision of Dwyer IC regarding there being adequate protections for retail employees at s 36B of the Act.²

SDA submissions

- [21] The SDA filed their submissions on 2 June 2021, the submissions did not appear to specifically object granting an order however raise certain concerns for their members. At the hearing, I asked the SDA if the submissions represented an objection and Ms Armstrong confirmed that the SDA was objecting to the application.
- [22] I note however, that the SDA submits that if the Commission is minded to grant an order, it does not object to the requested period or the requested area.
- [23] The SDA believe the application may benefit major retailers however is likely to put significant pressure on the availability required of retail workers and removes the competitive advantage of late night trading which is relied upon by small business owners.
- [24] The adequacy of existing protections around voluntary work is challenged by the SDA by reference to a generalised scenario whereby employers direct employees to work a particular roster due to operational requirements. Members of the SDA have reported they experience relationship breakdown and other consequences if the offered roster is declined.

² *National Retailers Association Limited, Union of Employers* [2021] QIRC 155, [32].

- [25] The term significance is understood by the SDA to be where an event creates the real possibility of retail opportunities in the extended hours. Parallels are drawn between the Show and the Chinchilla Show whereby following a successful trading hours application by the NRA,³ the local Woolworths had in fact reduced their trading hours on the first day of the show.
- [26] The SDA also made reference to a recent decision of the Commission where an application to extend hours for the 'BrisAsia Festival' was dismissed.⁴ In that instance the NRA was seeking extended hours for retailers in the Brisbane CBD in respect of a festival centred within the Fortitude Valley precincts.

Consideration

- [27] It is clear to me that the Show is a unique event of local significance as is contemplated by s 5 of the Act. The significance of the event appears to be in particular focus this year having been cancelled last year due to the impact of Covid-19. The work undertaken by workers and volunteers to ensure major works to repair damage done by Tropical Cyclone Debbie have been completed in time for the show demonstrates the significance of the event and the facilities to the local area.
- [28] Local shows are of cultural significance⁵ as they represent an enduring tradition and opportunity for a community to come together for competitions, amusements, displays, food and cultural activities in a way that other events do not. An annual show of this nature occurring over only two days is both unique and infrequent.⁶ I note with interest the re-establishment of the Show Ball in 2021 following a 25-year hiatus. I imagine the 2021 show is eagerly anticipated and for many represents a highlight of the annual calendar.
- [29] The 2021 Show appears to also have particular significance to the economy and the tourism industry. For example, I note the submissions of the NRA regarding the Regional Agricultural Show Development Grant supporting showground infrastructure and the expectation that some of the 6000 travel vouchers valued at \$200 issued as part of a partnership between the Queensland Government and Tourism Whitsundays may result in additional visitors staying in Proserpine during the period of the show.
- [30] The SDA have made reference to the recent examples of Chinchilla and the BrisAsia Festival (see above). While it is often useful to look to other examples, experiences or decisions of the Commission, each case must be considered on its merits. I find that the circumstances in this application regarding Proserpine are quite different to those of Chinchilla and Brisbane. The affidavit of Mr Stout provides quite specific information

³ *National Retailers Association Limited, Union of Employers* [2021] QIRC 155.

⁴ *National Retailers Association Limited, Union of Employers* [2021] QIRC 029.

⁵ Section 5(3)(a)(i).

⁶ Section 5(1)(c)(i).

about the 2021 Proserpine Show, the local community and economy. I consider that the information provided is sufficient to make out the significance of the event to the economy and the tourism industry as per s 5(3)(a)(ii).

[31] In their submissions objecting to the application, the SDA submits that the existing protections are not always adequate in preventing the reality of other relational pressures in store where a worker may wish to decline work during the period of the event. This may well have been the experience for particular workers who have requested help from their union in this regard. However, protections exist⁷ and there are mechanisms for complaints to be made or disputes notified where the protections are not adhered to. With regard to the concerns raised by the SDA, Mr Stout noted the voluntary nature of work should the declaration be made. I consider that this issue and the relevant section of the legislation is well understood by the parties. In circumstances where the I find that the requirements of s 5 of the Act have been met, I do not consider that the possible behaviour of some and the potential negative impacts of such behaviour are reasons to refuse this application.

Declaration

[32] 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 Proserpine Show is for the purposes of s 5(1)(c)(ii) a special event;**
- 2. The declaration shall apply for a period commencing on 18 June 2021 up to and including 19 June 2021; and**
- 3. The declaration applies to the geographic locations described as: Proserpine Showgrounds travelling length of Anzac Road turning right onto Hinschen Street then onto Renwick Road. Travelling east on Renwick Road then turning north onto Bruce Highway to Taylor Street. Turning left onto Mill Street then turning east onto Faust Street, turning onto Jupp Street to starting point at Anzac Road.**

⁷ The Act, s 36B.