

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *National Retail Association Limited, Union of Employers* [2021] QIRC 199

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

CASE NO: TH/2021/5

PROCEEDING: Application for Declaration of Special Event

DELIVERED ON: 4 June 2021

HEARING DATE: 4 June 2021

MEMBER: Knight IC

HEARD AT: Brisbane

DECLARATION:

- 1. Pursuant to s 5(1)(c)(ii) of the *Trading (Allowable Hours) Act 1990 (Qld)*, I declare that the Mount Isa Show is a special event.**
- 2. This declaration applies for the period commencing on 18 June 2021 up to and including 20 June 2021.**
- 3. The declaration applies to the geographic area described as: Starting at Abel Smith Parade turning south onto Sunset Drive through to Comooweal Street then on to Patricia Street and West Street. Travelling south through to Isa Street then to East Street. Turning east onto Barkly Highway then onto Abel Smith Parade to the starting point at Sunset Drive.**

CATCHWORDS: INDUSTRIAL LAW – TRADING HOURS – APPLICATION FOR DECLARATION OF SPECIAL EVENT – application to classify all

non-exempt shops as exempt shops in part of the Mount Isa area for a specified period during a special event, namely, the Mount Isa Show – whether the Mount Isa Show is a special event within the meaning of s 5 of the *Trading (Allowable Hours) Act 1990* (Qld) – declaration made

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

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

National Retail Association Limited, Union of Employers [2021] QIRC 029

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

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

APPEARANCES: Mr D Stout and Ms L Charlton of the National Retail Association, Union of Employers

Ms L Armstrong of Shop Distributive & Allied Employees Association (Queensland Branch)

Reasons for Decision

- [1] By Application filed 21 May 2021, the National Retail Association Limited, Union of Employers ('the NRA') applied for a declaration pursuant to s 5(2) of the *Trading (Allowable Hours) Act 1990* (Qld) ('the Act') in respect of the Mount Isa Show ('the Show') which will run from 18 to 19 June 2021 inclusive.
- [2] The declaration sought is that the Show be declared a "special event" within the meaning of s 5(1)(c)(ii) of the Act. In support of the application was an affidavit of Mr David Stout, Director of Policy of the NRA, also filed on 21 May 2021.
- [3] The effect of such a declaration, if made, is that non-exempt shops operating in the area to which the declaration applies would be treated as exempt shops for the period for

which the declaration applies. Relevantly, pt 4 of the Act restricts the trading of non-exempt shops.

- [4] On 24 May 2021, I issued a Directions Order which directed that the Application and the Directions Order itself be served on the following persons:
- Mount Isa City Council;
 - Shop Distributive and Allied Employees Association (Queensland Branch) Union of Employees ('the SDA');
 - The Australian Workers' Union of Employees, Queensland;
 - Local Government Association of Queensland Ltd;
 - Executive Director, Industrial Relations, Office of Industrial Relations, Department of Education; and
 - Chief Industrial Inspector, Office of Industrial Relations, Department of Education.
- [5] 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 person was to file an outline of submissions by 2 June 2021.
- [6] I note that an Amended Directions Order was subsequently issued on 27 May 2021, in respect of which the only amendment was a change to the time for the hearing as provided in Direction 5.
- [7] As required under the Act, the Application and Amended Directions Order were published on the Commission's website.
- [8] On 26 May 2021, the SDA made an application seeking leave to be heard, supported by an affidavit of Ms Laura Armstrong, Industrial Officer. I subsequently granted the SDA's application and it filed and served submissions on 2 June 2021.
- [9] Separately, the Commission also sought submissions from the NRA which were filed on 3 June 2021.
- [10] The question for my determination is whether I should make the declaration sought.

Relevant Provisions

- [11] 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; or
 - (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 omitted]
 - (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) 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.

[12] Upon application, where the Commission declares an event to be a "special event", s 5 of the Act provides that non-exempt shops, operating in a stated area for a significant event, are exempt shops for the period of that event.

[13] In deciding whether the Mount Isa Show is a "special event" for the purpose of s 5(1)(c)(ii) of the Act, I must consider:

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

[14] Although I may consider a submission made by a local government in making my decision, I note Mount Isa City Council did not file written submissions or appear at the hearing.

Is the Show a "special event" within the meaning of s 5(1)(c)(ii) of the Act?

Cultural, religious or sporting significance?

[15] In his affidavit, Mr Stout deposes that he considers the Commission can "confidently determine" the 2021 Mount Isa Show is a highly significant event for the local community, economy and tourism.

[16] In support of this position, the NRA submits that:¹

- agricultural shows have played a leading role in the development of agricultural and rural communities, being one of the oldest community events in Australia;
- the Show is an annual two-day festival with attractions including competitions, petting zoos, sideshows and amusement rides, displays of farming and commercial goods, music, fireworks and other entertainment;
- the event is a major tourist drawcard in regional Queensland, attracting tourism and employment opportunities; and
- its purpose is to take everything great about the Mount Isa region and celebrate it with the community.

[17] Mr Stout's evidence is that that the Show will host the Professional Bull Ride ('PBR') which is a qualifying event, through which the winner will win points in the Australian and world standings.²

[18] Likewise, the Show will also feature the Rooftop Express Show, which features "highly refined and visually enchanting stunts that will take horse play and cattle mustering to a new level".³

Significance to the economy and tourism?

[19] The NRA submits the Show is a significant attraction in regional Queensland which provides tourism and employment opportunities. It points to the impact of COVID-19 on regional communities, including the fact that most agricultural shows and field days were cancelled because of the pandemic in 2020.

[20] According to Mr Stout, the Show will be first major event in Mount Isa since COVID-19 restrictions were eased in Queensland.⁴

[21] The NRA submits the Show presents an opportunity for competitors, businesses and volunteers, who rely on the Show for employment, funding and business promotion

¹ NRA's submissions filed 3 June 2021, [2].

² Affidavit of David Stout filed 21 May 2021, [7].

³ Ibid Exhibit A, p 2.

⁴ Ibid.

opportunities. Included in the Show's list of partners, drawn from both the private and public sector, are:⁵

- Mount Isa City Council;
- Queensland Government;
- Australian Government;
- Mount Isa Mines;
- Malouf's Auto;
- Mount Isa Signage; and
- Mount Isa Irish Club.

[22] In support of its position the event is of significance from both an economic and tourist perspective, the NRA further relies on statements made by the Minister for Agriculture, Drought and Emergency Management which highlight that agricultural shows not only offer immediate economic benefits, but also provide agriculturalists with an outlet for new ideas and technologies.⁶

[23] The NRA also submits the Show has received both federal and local funding, which in its submission, is indicative of the event's recognised significance to the economy and the tourism industry.⁷

[24] Mr Stout's evidence also provides that the Show is a ticketed event with revenue being invested back into the maintenance and improvement of showgrounds and facilities.⁸

[25] The SDA makes no submissions as to its position on the Show's cultural, religious or sporting significance, nor does it directly comment on the significance of the event to the economy and the tourism industry.

[26] Instead, it argues the term "significance" was not intended to be used as an unmeasured benchmark available to the NRA to point to any cultural, religious or sporting aspect of an event to satisfy an application for extended trading.⁹

[27] The SDA argues a reasonable understanding of the legislation "would be it applies where an event is of such significance it creates the real possibility of retail opportunities in the extended hours".¹⁰

⁵ NRA's submissions filed 3 June 2021, [14].

⁶ Ibid [11]-[12].

⁷ Ibid [13].

⁸ Affidavit of David Stout filed 21 May 2021, Exhibit A, p 3.

⁹ SDA's submissions filed 2 June 2021, [3].

¹⁰ Ibid.

- [28] It contends that on "nearly every occasion" where similar applications have been granted, exempt shops have not opened for longer periods and in some cases, they have significantly reduced their hours during the period of the event.¹¹
- [29] By way of example, the SDA argued Woolworths Chinchilla reduced its trading hours during the Chinchilla Show by a period of 7 hours, trading only from 10.00 am until 4.00 pm.¹²
- [30] The SDA argues the Mount Isa Show is a comparable rural event of similar attendance, which does not warrant a change in shopping patterns across the two days, particularly in circumstances where the event is specifically marketed with a family focus and it is unlikely patrons will be inclined to shop at 10.00 pm or another time unavailable within the existing regime.¹³
- [31] In oral submissions the NRA resisted the SDA's submission, noting that the day in question was a Sunday on which Woolworths Chinchilla did not ordinarily trade. The hours referred to therefore reflected extended trading hours.

Consideration

- [32] In making a decision as to whether the Show is a significant event, I am required to consider the cultural, religious or sporting significance of the Show. As best I understand the NRA's submissions, they predominantly focus on the event and its cultural significance.
- [33] The term "cultural" was considered by O'Connor DP, as he then was, in *Re National Retail Association Limited, Union of Employers*.¹⁴ There his Honour observed:¹⁵

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".

- [34] Without more information it is difficult to see how the Show would conform to the meaning given to "cultural" as detailed above. Although I accept the Show certainly represents aspects of Australian, and particularly regional Australian, culture, I am more persuaded by the sporting significance of the event.
- [35] I note the Show will host the PBR which is a major qualifying event where the winner will be awarded points in the Australian and World Standing. Mr Stout's evidence

¹¹ Ibid [4].

¹² The Chinchilla Show was a declared special event, see *National Retail Association Limited, Union of Employers* [2021] QIRC 155 (Dwyer IC).

¹³ SDA's submissions filed 2 June 2021, [5].

¹⁴ [2018] QIRC 118.

¹⁵ Ibid [23] (footnotes omitted).

includes a quote from the PBR Competition Coordinator, Ms Diane Hallam, observing that "the sport is going from strength to strength with a high calibre of riders competing".¹⁶ The Show will also host the Rooftop Express Show which encompasses horse play and cattle mustering.

- [36] Having considered the evidence in Mr Stout's affidavit and the submissions of both the NRA and the SDA, I am satisfied the events that are occurring at the Show are of sporting significance to the Mount Isa region.
- [37] I am also required to consider the significance of the Show to the economy and the tourism industry.
- [38] In light of information provided to the Commission about the entry fee, various partnerships between the Show, and government and private sector entities, and the expectations in relation to attendance by people from throughout the region and the reasons for their attendance, I am satisfied the event will add significant value to the local economy.
- [39] Likewise, I consider the unique location of the Show in combination with several of the signature events being held over the duration of the event will be of great value to the tourism sector.

What should be the area to which the declaration applies?

- [40] Attached to Mr Stout's affidavit is a map titled "Exhibit B – Description of Location". Beneath it, he has described the proposed area as follows:

Starting at Abel Smith Parade turning south onto Sunset Dr through to Comoowea St then on to Patricia St and West St

Travelling south through to Isa St then to East St

Turning east onto Barkly Hwy then onto Abel Smith Parade to the starting point at Sunset Dr

- [41] Notably, this area extends beyond the bounds of Buchanan Park where the Show will be held to include its immediate surrounds as well as parts of the town of Mount Isa.
- [42] The NRA submits the proposed area will allow visitors to take advantage of retail trade opportunities at the start or end of the days' official events and that non-exempt retailers within that area support the Application.¹⁷
- [43] At the commencement of the proceedings the SDA confirmed that where the application is to be granted, it did not object to the geographic parameters proposed by the NRA.¹⁸

¹⁶ Affidavit of David Stout filed 21 May 2021, Exhibit A, p 2.

¹⁷ NRA's submissions filed 3 June 2021, [6].

¹⁸ SDA's submissions filed 2 June 2021, [8].

[44] On the uncontested material before me, I accept the submission of the NRA as to the area to which the declaration will apply.

What should be the period for which the declaration applies?

[45] Although the Show itself concludes at 10.00 pm on 19 June 2021, the NRA submits the period for which the declaration applies should include 20 June 2021.¹⁹

[46] Due to Mount Isa's extreme remoteness, the NRA submits out of town visitors are unlikely to leave immediately after the conclusion of the Show and that the inclusion of the following day will allow local businesses to better service those visitors for the duration of their stay.²⁰

[47] It adds that flexibility to cater to and serve the needs of visitors and residents of Mount Isa is particularly important considering the COVID-19 pandemic and the township's economic recovery.²¹

[48] The SDA submits the inclusion of 20 June 2021 in the applicable period would be a misuse of s 5 of the Act and contrary to the intention of the provision which is to allow for extended trading during an event.²² There is no reason why, the SDA contends, patrons would be unable to shop within existing trading hours after the Show has ended.²³

[49] In its oral submissions, the NRA relied on an earlier decision regarding the Mount Isa Mines Rotary Rodeo, noting that in those circumstances, the Commission considered it appropriate to include the day after the event (also a Sunday) within the applicable period.²⁴

[50] Ordinarily, I would more than likely agree with the submissions of the SDA. In many of the more recent applications considered by the Commission, the period of the declaration has been limited to the duration of the event for reasons that are relevant to the circumstances of those particular events.²⁵ I also note that in the decision referred to by the NRA, there does not appear to have been any objection to the period the applicant sought.

[51] However, given the remoteness of Mount Isa and the large distances out of town visitors, competitors and exhibitors will no doubt be required to travel in order to attend the Show, I am satisfied on this occasion, there is some merit to the NRA's submission as to the value in extending the period for which the declaration applies to include 20 June 2021,

¹⁹ NRA's submissions filed 3 June 2021, [4].

²⁰ Ibid [10].

²¹ Ibid [6].

²² SDA's submissions filed 2 June 2021, [7].

²³ Ibid.

²⁴ *National Retail Association Limited, Union of Employers* [2019] QIRC 112 (O'Connor VP).

²⁵ See, for example, *National Retail Association Limited, Union of Employers* [2021] QIRC 029 (McLennan IC).

such that both visitors and locals more broadly can take advantage of extended trading hours over what will no doubt be a particularly busy period.

Other matters – Voluntary work

- [52] Within the proceedings, the SDA requested the Commission reflect, in any declaration made, the importance of extended work hours being voluntary.²⁶
- [53] In support of its position, the SDA argued the existing protections²⁷ are not always adequate in preventing a breakdown of relationships, in stores where a request to work additional hours is rejected by the employees.²⁸
- [54] The NRA referred to its members' assurances that any requirement to work additional hours will be on a voluntary basis and that retailers will only trade in line with customer expectations.²⁹ It also submitted that employees do have recourse in the form of other protections if they find themselves subject to duress or adverse action in respect of working extended hours.³⁰
- [55] Although I accept that existing protections may not be sufficient in every conceivable circumstance, those are the protections afforded by law. Further, it is not for this Commission to presuppose an employer will breach its obligations, nor do I consider I have the power to make a declaration of the type sought by the SDA.
- [56] In any event, in response to the SDA's concerns during the proceedings, I inquired with both the NRA and the SDA as to what steps their respective organisations took to advise their members about the voluntary nature of work, during the period of extended hours.
- [57] In oral submissions, the NRA advised its usual practice was to highlight provisions relating to voluntary work when notifying NRA members of a trading hours decision declaring a special event.
- [58] Likewise, the SDA confirmed that it routinely took steps to advise its members that there was no requirement to work additional hours during the extended period.
- [59] Having regard to those submissions, I am comfortable that both the NRA and the SDA will take the appropriate steps to remind their respective members of the voluntary nature of any additional hours worked during the period of extended hours, along with the statutory protections afforded to employees as set out at s 36B of the Act.

²⁶ SDA's submissions filed 2 June 2021, [9].

²⁷ For example, s 36B of the Act creates a criminal offence and at 36B(1) provides that an employer must not require an employee to work during the extended hours unless the employee has elected to work during the extended hours.

²⁸ SDA's submissions filed 2 June 2021, [1(1.2)].

²⁹ NRA's submissions filed 3 June 2021, [6].

³⁰ Ibid [8] citing *National Retail Association Limited, Union of Employers* [2019] QIRC 154 (Dwyer IC), [32].

Conclusion

- [60] I am satisfied the Show is a special event within the meaning of s 5(1)(c)(ii) of the Act because it is an event of sporting significance to the people of the Mount Isa area and regional Queensland more broadly.
- [61] I am also of the view the Show is significant to both the Mount Isa economy and tourism sector.
- [62] For these reasons, I am satisfied that I should make the declaration sought.
- [63] The area to which the declaration should apply is not in dispute and I am satisfied it is a suitable area having regard to the submissions made.
- [64] For the reasons set out above, I also accept the NRA's submissions and consider, in this circumstance, the period for which the declaration applies ought to commence on 18 June 2021 and conclude on 20 June 2021.
- [65] I make the following declaration:
- 1. Pursuant to s 5(1)(c)(ii) of the *Trading (Allowable Hours) Act 1990 (Qld)*, I declare that the Mount Isa Show is a special event.**
 - 2. This declaration applies for the period commencing on 18 June 2021 up to and including 20 June 2021.**
 - 3. The declaration applies to the geographic area described as: Starting at Abel Smith Parade turning south onto Sunset Drive through to Comoowal Street then on to Patricia Street and West Street. Travelling south through to Isa Street then to East Street. Turning east onto Barkly Highway then onto Abel Smith Parade to the starting point at Sunset Drive.**