

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Re: National Retail Association Limited, Union of Employers [2021] QIRC 217*

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

CASE NO: TH/2021/6

PROCEEDING: Application

DELIVERED ON: 16 June 2021

HEARING DATE: 15 June 2021

MEMBER: Industrial Commissioner McLennan

HEARD AT: Brisbane

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

- 1. The Bowen Show is for the purposes of s 5(1)(c)(ii) a special event;**
- 2. The declaration shall apply for a single day - Tuesday 22 June 2021; and**
- 3. The declaration applies to the geographic location described as:
Starting at Jillests Road at Bowen Showgrounds turning onto Argyle Park Road then onto Wests Lane; turning south east onto Queens Road then onto Hay Street then turning south west onto Dalrymple Street; travelling through to Norris Street and turning onto Reynolds Street and through to Railway Street and Station**

Street; turning onto Don Street then onto Pantall Street to West Street; turning onto Richmond Road eastbound then onto Mount Nutt Road; travelling through to starting point at Jilletts Road at Bowen Showgrounds.

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

LEGISLATION: *Trading (Allowable Hours) Act 1990 (Qld)*
S 3, s 5, s 36B

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

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 Bowen town centre (or CBD) for a specified period during a special event, namely, the Bowen Show ('the Show').
- [2] The Show is said to be "a unique or infrequent event" of cultural and economic significance to 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 of a single day – that is, the day of the Bowen Show on Tuesday, 22 June 2021.
- [6] Exhibit B to the Affidavit of Mr David Stout filed 3 June 2021, describes the area proposed to be covered as:
- Starting at Jillets Road at Bowen Showgrounds turning onto Argyle Park Road then onto Wests Lane; turning south east onto Queens Road then onto Hay Street then turning south west onto Dalrymple Street; travelling through to Norris Street and turning onto Reynolds Street and through to Railway Street and Station Street; turning onto Don Street then onto Pantall Street to West Street; turning onto Richmond Road eastbound then onto Mount Nutt Road; travelling through to starting point at Jillets Road at Bowen Showgrounds.
- [7] The application was made on 3 June 2021. A directions order subsequently issued on 4 June 2021 required that the application be served on the Whitsunday Regional Council and other parties affected by the application. Those parties were directed to make a formal application seeking leave to be heard by 9 June 2021 if they wished to be heard. The directions order also stated that the application would be listed for hearing at 2 pm on 15 June 2021.
- [8] As required under the Act, the application and directions order were published on the Commission's website.
- [9] On 9 June 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 10 June 2021, I approved the SDA's application for leave to appear, issuing an order to that effect. On 11 June 2021 the SDA filed an outline of submissions.
- [11] The only objection to the application was that made by the SDA.

Should the Commission grant the declaration sought?

The Act

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

[13] Relevantly, s 5 of the Act provides (Emphasis added):

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.

[14] 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".

[15] 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

- [16] Mr David Stout, on behalf of the applicant, submitted in his affidavit filed 3 June 2021 that "The Bowen Show, now in its 138th year, is an annual festival held at the Bowen Showgrounds where the community celebrates the significance of agriculture to the region's economy and has in itself become a major cultural and tourist event drawing on visitors from across the region and afar." It is a one-day event with showbags, amusements and rides, displays of animals and reptiles, arts and crafts, flowers, local produce and cooking, fireworks and other entertainment. It is submitted that the Show takes on additional significance this year following the impact of Covid-19 on regional economies.
- [17] The submission is further made that events such as the Bowen 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".
- [18] In the material filed for the NRA, the Hon David Littleproud, Minister for Agriculture, Drought and Emergency Management is quoted where he states that "Shows and field days are uniquely Australian and provide huge economic spin-offs for local communities as well as opportunities for the businesses and services who exhibit. They also help to maintain our farmers' competitive edge by providing an outlet for new ideas, new technologies and new ways of working to be shared."
- [19] It is submitted that the Show has received Federal grant funding which, he says, is an indication that it is a significant event to the local economy and tourism.
- [20] Further, it was noted with approval that the Queensland Government has partnered with Tourism Whitsundays to offer 6,000 vouchers worth \$200 each for visitors to enjoy tourism experiences. Mr Stout submitted that "The past 12 months have been exceedingly difficult for local businesses and tourism operators in the region. The announcement of the \$1.2 million expansion of the Holiday Dollars was welcomed by the community." He went on to contend that "It is reasonable to expect additional visitors staying on Bowen, attending the Bowen Show and increasing demands for services, including retail, because of the Holiday Dollars program."
- [21] The Annual Show is a longstanding tradition in regional agricultural communities and may be readily accepted as significant in the community calendar of the local region. The reduction in interstate and overseas travel due to border restrictions in the current environment may well serve to increase the popularity of such intrastate opportunities. As such, the Show will inevitably draw attendances from the wider region, which will

increase demand for services, including retail – creating a range of positive economic and tourism outcomes for the community.

SDA submissions

- [22] The SDA filed their submissions on 11 June 2021.
- [23] The SDA's submissions foundationally sought to protect the voluntary nature of any work to be performed within the extended hours, in the event that the application was granted. The union submitted that "The existing protections around voluntary work available under statutes or other instruments are not always adequate in preventing the reality of other relational pressures in store".¹
- [24] The SDA argued that local retail workers should equally be able to enjoy the public holiday on the day of the Bowen Show, after being "engaged in essential front line work for their community over the last year and a half...without the pressure of an expectation to work it."²
- [25] In addition to this, the SDA submitted that the term 'significance' as it appears in s 5 of the Act "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. 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".³
- [26] Finally, the SDA noted that the application by the NRA did not demonstrate real necessity for extended trading by major retailers and thus undermined the existing trading regime. The SDA submitted that those exempt retailers who were typically operating longer hours would likely suffer in terms of the (albeit temporary) removal of "the competitive advantage of late night trading relied upon by many small business owners and operators" if larger non-exempt stores were given exemptions.

Consideration

- [27] I am satisfied that the Bowen Show is a unique event of local significance. An annual show in a small regional community comfortably falls within those terms for the suite of reasons stated by the NRA in both written and oral submissions.
- [28] An 138-year tradition coupled with the agricultural focus of the Bowen Show celebration underscores both the significance and uniqueness of the event to the local region.

¹ Paragraph 7.2 of the SDA submissions filed 11 June 2021.

² Paragraph 4 of the SDA submissions filed 11 June 2021.

³ Paragraph 3 of the SDA submissions filed 11 June 2021.

[29] In my view, Industrial Commissioner Dwyer's observations with respect to the NRA's application for the Chinchilla Show are also relevant to this matter:

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. Similarly, the Show is undoubtedly significant for the local community.⁴

[30] On the material before me, I am satisfied that the Bowen Show meets the criteria specified under s 5(1)(c)(i) and s 3(a)(i) of the Act for the reasons above.

[31] Turning then to s 5(3)(a)(ii) of the Act, I am also persuaded as to the significance of the Bowen Show to the regional economy and the tourism industry. Mr Stout's affidavit identifies statements of support to that effect from various community and political leaders and further indicates funding support achieved for the purpose of stimulating such economic benefits. He concluded that "The Show presents an opportunity for competitors, businesses and volunteer groups who rely on the show for employment, funding and business promotion opportunities." At a practical level, all of that makes sense - and discharges the remaining test under the Act that I have identified.

[32] It is true that the extent of the economic and tourism benefit to be realised is yet to be tested in the current environment – and that the experience of past years may well differ in this one.

[33] In my view, while it is possible that some locals may prioritise 'caution over crowds' at this time, it is more likely to effect a greater potential boost to intra-regional tourism as North Queenslanders seek out the opportunity for family entertainment closer to home.

[34] Mr Stout's affidavit references the broader benefits of agricultural shows as being "part of the fabric of regional Australia, showcasing everything positive about our communities and local industries...They create social bonds and improve mental health in parts of regional Australia where distance, drought, bushfires and now COVI-19 have caused significant hardship and distress."⁵

[35] However, I appreciate that the global health pandemic has also placed enormous challenges on retail workers and their families. They are not immune from those personal hardships and pressures. They too deserve an opportunity to relax with family and friends on the public holiday. That point was well made by the SDA in their submissions. I noted with approval at the Hearing of this matter the NRA's recognition of "the tremendous efforts of our essential retail team members who have continued to serve our community in the midst of the global COVID-19 pandemic."⁶

⁴ *National Retail Association Limited, Union of Employers* [2021] QIRC 155, [26]-[27].

⁵ Affidavit of Mr D Stout, NRA, Exhibit A – Bowen Show – Statement of Facts, filed 3 June 2021.

⁶ Affidavit of Mr D Stout, NRA, Exhibit A – Bowen Show – Statement of Facts, filed 3 June 2021.

- [36] I can well understand that some employees working in non-exempt shops (within the defined declaration area) will prioritise time with family and friends or their own participation in Bowen Show activities in preference to working additional hours. On the other hand, there would also be many struggling local families for whom some extra money would be very welcome at this time. These two possible scenarios further emphasises the good sense of leaving each affected retail worker to make their own decision about whether or not to accept any additional hours that may be offered to them over the Bowen Show public holiday, depending on their personal circumstances.
- [37] In balancing the competing needs advanced by the NRA and SDA in this case, I believe the most appropriate path is to ensure local retail workers can freely choose whether or not to accept any additional hours that may be offered to them as a result of this decision.
- [38] The SDA's submissions around protections for such work to be voluntary are especially relevant on this point.
- [39] The NRA indicated their acceptance of that proposition. Mr Stout's affidavit stated "The NRA has assurances that non-exempt retailers will only trade in line with customer expectations and will not come at the expense of regulation or employees... We wish to emphasise that whilst the QIRC may not be afforded the discretionary powers to preserve the rights protected by s 36B of the Act, any additional work during extended hours will continue to be on a voluntary basis".⁷
- [40] I absolutely agree that such protections for affected employees are appropriate, applicable and necessary in these circumstances.
- [41] With that clear caveat, I believe a decision favouring local businesses' opportunity to trade and draw visitors into the local area around the event both complies with the mandatory criteria in the Act and is the right call for the Bowen community at this time.
- [42] In circumstances where the application is to be granted, the SDA did not object to the dates or geographic parameters proposed by the NRA.

Declaration

- [43] Having regard to the submissions, I am satisfied that the Bowen Show is a special event within the meaning of s 5(1)(c)(ii) of the Act in that it is an event of cultural significance to the people of the Bowen region and beyond. It is significant to the regional economy of Bowen and to the tourism industry of North Queensland more broadly.
- [44] For the reasons set out above, I am satisfied that I should make the declaration sought. The period for which the declaration applies is limited to the day of the event, namely

⁷ Affidavit of Mr D Stout, NRA, Exhibit A – Bowen Show – Statement of Facts, filed 3 June 2021.

Tuesday 22 June 2021. Further, the area to which the declaration applies is that set out in Mr Stout's affidavit.⁸

[45] 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 Bowen Show is for the purposes of s 5(1)(c)(ii) a special event;**
- 2. The declaration apply for a single day - Tuesday 22 June 2021; and**
- 3. The declaration applies to the geographic locations described as:**

Starting at Jilletts Road at Bowen Showgrounds turning onto Argyle Park Road then onto Wests Lane; turning south east onto Queens Road then onto Hay Street then turning south west onto Dalrymple Street; travelling through to Norris Street and turning onto Reynolds Street and through to Railway Street and Station Street; turning onto Don Street then onto Pantall Street to West Street; turning onto Richmond Road eastbound then onto Mount Nutt Road; travelling through to starting point at Jilletts Road at Bowen Showgrounds.

⁸ Exhibit B – Description of Location.