

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *National Retail Association Limited, Union of Employers (the 2022 Weipa Fishing Classic case)* [2022] QIRC 198

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

CASE NO.: TH/2022/2

PROCEEDING: Application

DELIVERED ON: 6 June 2022

HEARING DATE: 6 June 2022

MEMBER: Merrell DP

HEARD AT: Brisbane

DECLARATION:

1. **It is declared that the Weipa Fishing Classic is a special event for the purposes of s 5(1)(c)(ii) of the *Trading (Allowable Hours) Act 1990*.**
2. **The declaration shall apply for a period commencing on 10 June 2022 and shall continue up to and including 12 June 2022.**
3. **The declaration applies to an area in Weipa starting at the Rocky Point Boat Ramp:**
 - **travelling south-east to Hibberd Drive through the roundabout onto Central Avenue;**
 - **travelling southbound on Central Avenue to Kerr Point Drive at Nanum; and**
 - **turning west onto Kerr Point Drive and travelling alongside the bay back to the Rocky Point Boat Ramp.**

CATCHWORDS:	INDUSTRIAL LAW - QUEENSLAND - TRADING HOURS - APPLICATION FOR DECLARATION OF A SPECIAL EVENT - application, pursuant to s 5 of the <i>Trading (Allowable Hours) Act 1990</i> , to classify all non-exempt shops as exempt shops in part of Weipa for a specified period during a special event, namely, the 2022 Weipa Fishing Classic - the 2022 Weipa Fishing Classic declared to be a special event within the meaning of s 5 of the <i>Trading (Allowable Hours) Act 1990</i>
LEGISLATION:	<i>Trading (Allowable Hours) Act 1990</i> , s 5
CASES:	<i>National Retail Association Limited, Union of Employers</i> [2020] QIRC 031 <i>National Retail Association Limited, Union of Employers</i> [2021] QIRC 287
APPEARANCES:	Mr D. Stout and Ms L. Charlton of the Applicant. Mr D. Marr of The Australia Workers' Union of Employees, Queensland.

Reasons for Decision

- [1] By application filed on 13 May 2022, the National Retail Association Limited, Union of Employers applied for a declaration, pursuant to s 5(2) of the *Trading (Allowable Hours) Act 1990* ('the Act'), that the Weipa Fishing Classic, to be held between Friday, 10 June 2022 and Sunday, 12 June 2022, is a special event within the meaning of s 5(1)(c)(ii) of the Act ('the Application').
- [2] The effect of such a declaration, if made, would be that a shop, as defined in the Act, operating in the area in Weipa as specified in the Application, would be an exempt shop within the meaning of the Act.
- [3] The area in Weipa, as specified in the Application, is an area starting at the Rocky Point Boat Ramp:
- travelling south-east to Hibberd Drive through the roundabout onto Central Avenue;
 - travelling southbound on Central Avenue to Kerr Point Drive at Nanum; and
 - turning west onto Kerr Point Drive and travelling alongside the bay back to the Rocky Point Boat Ramp.
- [4] The period for which the declaration is sought is 10 June 2022 to 12 June 2022.

- [5] On 18 May 2022, I issued a Directions Order which required that the Application, and the Directions Order, be served on the Weipa Town Authority, the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees, The Australian Workers' Union of Employees, Queensland ('the AWU'), the Local Government Association of Queensland Limited, the Executive Director, Industrial Relations, Office of Industrial Relations, Department of Education and the Chief Industrial Inspector, Office of Industrial Relations, Department of Education.
- [6] 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 party was to file an outline of submissions and serve those submissions on the Applicant by 23 May 2022.
- [7] The Application and Directions Order were published on the Commission's website.
- [8] By application filed on 23 May 2021, the AWU made application seeking leave to be heard. By order dated 23 May 2022, I gave leave to the AWU to be heard.
- [9] On 2 June 2022, the AWU filed written submissions. The AWU does not oppose the Application.

Should the Commission grant the declaration sought?

- [10] The Applicant contends that the Weipa Fishing Classic meets the description of a special event within the meaning of s 5(1)(c)(ii) of the Act.
- [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—*
 - the 2018 Commonwealth Games
 - the Weipa Fishing Classic event
 - (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] As is evident from s 5(1), the Act provides for non-exempt shops, operating in a stated area for an event, to be exempt shops if the Commission declares that event to be a special event.

[13] In deciding whether an event, that is a unique or infrequent event of local, State or national significance, is a special event for the purposes of s 5(1)(c)(ii) of the Act, 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.

[14] The Applicant submitted that the Weipa Fishing Classic was a special event for the purposes of s 5(1)(c)(ii) of the Act because:

- it is listed, in s 5(1)(c)(i) of the Act, as an example of a unique or infrequent event of local, State or national significance; and
- 2022 will be the seventeenth year of the Weipa Fishing Classic and it is Cape York's largest community event;
- the Weipa Town Authority's *Weipa Community Plan 2012-2022* aims to ensure the economic diversity of the region by developing their tourism capability by '... promoting Weipa as a world class fishing destination in international fishing media';
- the Weipa Fishing Classic is a pivotal part of the local area's economy and tourism industry and granting of the Application will allow for businesses to better cater to the needs of locals and visitors to the area for the event;
- the sporting significance of the Weipa Fishing Classic to the Weipa region is also identified in the *Weipa Town Authority Plan 2012-2022*, by aiming to '... continue to grow the annual fishing competition as a major community event that becomes known as the premier fishing competition in Australia.';
- the planning committee (of the event) is expecting record attendance this year as it will attract local and interstate visitors and anglers from across the country to participate in the biggest fishing competition in Cape York;
- when the event was held in 2021, the population of Weipa nearly doubled with just under 3,000 local and interstate visitors staying in town on each of the three nights; and

- in respect of the economic significance of the event:
 - there is an estimated injection of over a million dollars into local businesses brought by the event;
 - in 2021, the prize pool reached a record high of \$200,000 with over 100 prizes, 23 top prizes and over 70 rod and reel combos distributed;
 - tens of thousands of dollars in event profit are also donated back to community organisations by the voluntary Fishing Classic committee each year; and
 - in a small community of 3,340 people, this is a significant contribution to the local economy.

The sporting significance of the Weipa Fishing Classic and the significance of the Weipa Fishing Classic to the economy and to the tourism industry of Weipa

[15] Industrial Commissioner Dwyer, in *National Retail Association Limited, Union of Employers*,¹ determined that the Weipa Fishing Classic, that was held from 3 September 2021 until 5 September 2021 was, for the purposes of s 5(1)(c)(ii) of the Act, a special event. Industrial Commissioner Dwyer held:

[26] I am satisfied that the Weipa Fishing Classic is a unique event of local significance. As I have previously held, 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.

[27] The Weipa Fishing Classic 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. Further, 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.²

[16] Having regard to the submissions made to me by the Applicant and having regard to the reasons given by Industrial Commissioner Dwyer in the above-mentioned case, I accept that the Weipa Fishing Classic, to be held this year, is, for the purposes of s 5(1)(c)(ii) of the Act, a special event.

[17] The ordinary contextual meaning of 'significance' in s 5(3)(a) of the Act is: 'important; consequence.'³ Having regard to the unchallenged history and description of the Weipa Fishing Classic as a sporting event and to the unchallenged significance of that event to the economy and the tourism industry of Weipa, the Weipa Fishing Classic is a unique sporting event of local significance to Weipa, its economy and its tourism industry.

¹ [2021] QIRC 287.

² Citations omitted.

³ *Macquarie Dictionary* (7th ed, 2017) 'significance' (def 1).

[18] I agree that the declaration, that the Weipa Fishing Classic is a special event, should apply for the period of the sporting event, namely, from 10 June 2022 and up to and including 12 June 2022. This is because of the unchallenged evidence that the population of Weipa nearly doubled for the three nights when the same event was held in 2021.

[19] Despite the merit of such orders, I have no power to make ancillary orders, as sought by the AWU, to ensure the protection of employees in affected shops from working extended trading hours.⁴

Conclusion

[20] For the reasons set out above, I am satisfied that I should make the declaration sought.

Orders

[21] I make the following declaration:

- 1. It is declared that the Weipa Fishing Classic is a special event for the purposes of s 5(1)(c)(ii) of the *Trading (Allowable Hours) Act 1990*.**
- 2. The declaration shall apply for a period commencing on 10 June 2022 and shall continue up to and including 12 June 2022.**
- 3. The declaration applies to an area in Weipa starting at the Rocky Point Boat Ramp:**
 - travelling south-east to Hibberd Drive through the roundabout onto Central Avenue;**
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⁴ *National Retail Association Limited, Union of Employers* [2020] QIRC 031, [53]-[63].