

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Re: National Retail Association Limited, Union of Employers ('the 2022 Charters Towers Show case')*
[2022] QIRC 261

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

CASE NO.: TH/2022/7

PROCEEDING: Application

DELIVERED ON: 11 July 2022

HEARING DATE: 11 July 2022

MEMBER: Merrell DP

HEARD AT: Brisbane

DECLARATION:

1. **It is declared that the Charters Towers Show 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 the period commencing on 24 July 2022 and concluding on 26 July 2022.**
3. **The declaration applies to the following stated area:**
 - **starting at Mary Street at the Charters Towers Showgrounds, travelling the length of Mary Street and turning south onto Vulture Street;**
 - **turning west onto Hodgkinson Street to Deane Street and travelling through to Marion Street via Jackson Street and Mossman Street;**
 - **travelling west onto Marion Street and then turning northeast onto Cambridge Street; and**

- **turning northeast onto Mary Street and travelling back to the starting point on Mary Street at the Charters Towers Showgrounds.**

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 Charters Towers for a specified period during a special event, namely, the 2022 Charters Towers Show - the 2022 Charters Towers Show 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> [2021] QIRC 238
APPEARANCES:	Mr D. Stout and Ms L. Charlton of the National Retail Association Limited, Union of Employers Mr D. Marr of the Australian Workers' Union of Employees, Queensland

Reasons for Decision

Introduction

- [1] By application filed on 21 June 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 Charters Towers Show, to be held between 24 July 2022 and 26 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 Charters Towers as specified in the Application, would be an exempt shop within the meaning of the Act.
- [3] The area in Charter Towers, as specified in the Application, is an area:
- starting at Mary Street at the Charters Towers Showgrounds, travelling the length of Mary Street and turning south onto Vulture Street;
 - turning west onto Hodgkinson Street to Deane Street and travelling through to Marion Street via Jackson Street and Mossman Street;

- travelling west onto Marion Street and then turning northeast onto Cambridge Street; and
- turning northeast onto Mary Street and travelling back to the starting point on Mary Street at the Charters Towers Showgrounds.

- [4] The period for which the declaration is sought is 24 July 2022 to 26 July 2022.
- [5] On 23 June 2022, I issued a Directions Order which required the Application and the Directions Order be served on the Charters Towers Regional Council, 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 6 July 2022.
- [7] The Application and Directions Order were published on the Commission's website.
- [8] By application filed on 28 June 2022, the AWU made application seeking leave to be heard. By order dated 29 June 2022, I gave leave to the AWU to be heard.
- [9] On 6 July 2022, the AWU filed written submissions.
- [10] The AWU does not oppose the Application if certain undertakings are given by the Applicant before the Commission, namely, that any work undertaken by employees in the extended hours proposed are:
- voluntarily agreed to by each individual employee and that no employee is compelled to work hours beyond their ordinary hours; and
 - employees who voluntarily do agree to work additional hours are paid in accordance with the applicable industrial entitlements.
- [11] The Applicant gave those undertakings to the Commission.

Should the Commission make the declaration sought?

- [12] The Applicant contends that the Charters Towers Show meets the description of a special event within the meaning of s 5(1)(c)(ii) of the Act.

[13] 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.

[14] 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.

[15] 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.

[16] The Applicant submitted that the Charters Towers Show is a special event for the purposes of s 5(1)(c)(ii) of the Act because:

- it is of cultural significance to the people of the Charters Towers area due to the significant history of the show dating back 141 years;
- the range of events in the show reflects unique interests and values of the Charters Towers region;

- it is a highly significant event for the local community and economy because:
 - it receives the highest funding threshold from the Charters Towers Regional Council Community Grants Program for a program of an artistic, cultural, recreational, sporting and other community-related pursuit; and
 - it offers the opportunity for community inclusion and the ability to foster civic pride and deliver enhanced local economic outcomes; and
- it (the Applicant) has received estimates from local businesses that the 2022 Charters Towers Show will be attended by 5,000 patrons and such attendance would be supported by the tourism promotion of the Charters Towers Regional Council, such that accordingly, the Charters Towers Show is also significant to the tourism economy of Charters Towers.

The cultural significance of the Charters Towers Show and the significance of the Charters Towers Show to the economy and to the tourism industry of Charters Towers

[17] Industrial Commissioner Hartigan, in *National Retail Association Limited, Union of Employers*,¹ determined that the Charters Towers Show that was held in 2021, was, for the purposes of s 5(1)(c)(ii) of the Act, a special event. Industrial Commissioner Hartigan held:

[26] Whilst the Commission must have regard to the significance of the event to the economy and tourism industry, that does not require the Commission to only declare an event when the Commission considers that the event creates the real possibility of retail opportunities in the extended hours. However, I am satisfied, on the material, that the nature and declaration of this event will mean the event is important and of consequence to the economy and tourism industry in Charters Towers.

[27] Having regard to the matters I must consider to s 5(3) of the Act, I am of the view that the Charters Towers Show is a unique event of local significance to the Charters Towers area.

[28] In consideration of the evidence contained in Mr Stout's affidavit, I am satisfied that the Charters Towers Show is of cultural significance to the people of the Charters Towers area due to the significant history of the show dating back 140 years. Further, I am also cognisant of the role that agricultural shows play in leading development in agricultural and rural communities and that they form an important part of the social fabric and emotional wellbeing for residents in the area.

[29] Further, I accept the submissions made by the NRA that the commercial activity generated by the show will benefit local business, particularly in the current economic climate, if non-exempt shops were able to trade and draw visitors into the area throughout the three days of the event.

[30] For these reasons, I have determined that the Charters Towers Show is significant to the economy and tourism of Charters Towers. Accordingly, I will exercise my discretion to declare the Charters Towers Show a special event.

[18] Having regard to the submissions made to me by the Applicant and to the reasons given by Industrial Commissioner Hartigan in *National Retail Association Limited, Union of*

¹ [2021] QIRC 238 (*the 2021 Charters Towers Show*).

Employers,² I accept that the Charters Towers Show, to be held in July this year, is, for the purposes of s 5(1)(c)(ii) of the Act, a special event.

[19] The ordinary contextual meaning of 'significance' in s 5(3)(a) of the Act is: 'important; consequence.'³ Having regard to the unchallenged evidence that the Charters Towers Show is an event of cultural significance and that it is an event which is significant to the economy and the tourism industry of Charters Towers, I find that the Charters Towers Show is a unique, cultural event of local significance to Charters Towers, its economy and its tourism industry.

[20] I agree that the declaration that the Charters Towers Show is a special event should apply for the period of the Show, namely, from 24 July 2022 and up to and including 26 July 2022. There is no sound reason why the declaration should not extend for that period of time.

Conclusion

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

Orders

[22] I make the following declaration:

- 1. It is declared that the Charters Towers Show 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 the period commencing on 24 July 2022 and concluding on 26 July 2022.**
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 - **turning northeast onto Mary Street and travelling back to the starting point on Mary Street at the Charters Towers Showgrounds.**

² *The 2021 Charters Towers Show* (n 1).

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