

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *National Retail Association Limited, Union of Employers [2023] QIRC 037*

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

CASE NO: TH/2023/1

PROCEEDING: Application

DELIVERED ON: 9 February 2023

HEARING DATE: 8 February 2023

MEMBER: Hartigan DP

HEARD AT: Brisbane

DECLARATION: **Pursuant to s 31A(1) of the *Trading (Allowable Hours) Act 1990* (Qld), I declare that:**

- 1. The Chinchilla MelonFest 2023 is for the purposes of s 5(1)(c) of the Act, a special event;**
- 2. The declaration shall apply for a period commencing on Thursday, 16 February 2023 and ending on Sunday, 19 February 2023;**
- 3. The declaration applies to the area described as: Starting at Chinchilla S Road at the Chinchilla Showgrounds, moving south and turning onto Llyod Street, then turning north onto Carmichael Street. From there, travelling north and turning north-west along the Warrego Highway, then turning onto Wondai Street, then West onto**

Railway Street. Turning from there onto Helena Street, then onto Hypatia Street through to Heeney Street and back to the starting point on Chinchilla S Road at Chinchilla showgrounds; and

- 4. Section 36BA of the Act applies in relation to an employee of particular shops in the area to which the declaration applies.**

CATCHWORDS:

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

LEGISLATION:

Trading (Allowable Hours) Act 1990 (Qld)
s 5, s 31A, s 31B, s 36B

APPEARANCES:

Mr D. Stout, for the applicant

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

Mr J. Thompson for the Western Downs Regional Council

Mr D. Marr for the Australian Workers' Union of Employees, Queensland

Reasons for Decision

Introduction

- [1] The National Retail Association Limited, Union of Employers ('the NRA') seeks an order pursuant to s 31A(1) of the *Trading (Allowable Hours) Act 1990* (Qld) ('the Act'),

that, inter alia, the Chinchilla Melonfest ('the MelonFest') is a special event within the meaning of s 31B of the Act.

- [2] The purpose of the declaration sought, is to provide for non-exempt shops, operating in a stated area during the period of the MelonFest to be exempt shops for the period of that event within the meaning of the Act.
- [3] The period for which the declaration is sought is Thursday, 16 February 2023 and continuing up to and including Sunday, 19 February 2023.
- [4] Exhibit B to the Affidavit of Mr David Stout filed 18 January 2023, describes the area proposed to be covered by the declaration as:

Starting at Chinchilla S Road at the Chinchilla Showgrounds, moving south and turning onto Llyod Street, then turning north onto Carmichael Street. Travelling north and turning north-west along the Warrego Highway, then turning onto Wondai Street, then West onto Railway Street. Turning Helena Street, then onto Hypatia Street through to Heeney Street and back to the starting point on Chinchilla S Road at Chinchilla showgrounds.
- [5] The application was made on 18 January 2023. A directions order was subsequently issued on 20 January 2023 which provided, inter alia, that the application be served on the Western Downs Regional Council ('the Council') and other parties who might be affected by the application. For those parties who may be affected by the Application for Declaration, directions were issued which provided that they may apply to seek leave to be heard by 25 January 2023.
- [6] As required under the Act, the application and directions order were published on the Queensland Industrial Relations Commission's ('the Commission') website.
- [7] On 20 January 2023, Mr David Marr, Industrial Advocate of The Australian Workers' Union of Employees, Queensland ('the AWU') filed an application seeking leave to be heard in this matter.
- [8] On 23 January 2023, the AWU was given leave to be heard, and on 2 February 2023 the AWU filed an outline of submissions.
- [9] On 25 January 2023, Ms Laura Armstrong, Industrial Officer of the Shop Distributive and Allied Employees Association (Queensland Branch) Union of Employees ('the SDA') filed an application and affidavit seeking leave to be heard in this matter.
- [10] On 25 January 2023, the SDA was given leave to be heard and on 30 January 2023, the SDA filed an outline of submissions.

[11] The question for my determination is whether I should make the declaration sought by the NRA in its application.

The relevant provisions of the Act

[12] The Act was amended by the *Trading (Allowable Hours) and Other Legislation Amendment Bill 2022* ('the Bill') which was assented to on 29 August 2022.

[13] The Explanatory Notes to the Bill¹ state that the Bill's primary objective is to implement recommendations of the Queensland Parliamentary Education Employment and Training Committee ('the Committee') following its recent *Inquiry into the Operation of the Trading (Allowable Hours) Act 1990* ('the Inquiry').

[14] Relevantly, the Explanatory Notes continue by stating that:

The Committee did not identify a need, or demand, for substantial deregulation of trading hours arrangements. However, the Committee recommended a range of amendments aimed at further reducing the regulatory burden and complexity for industry stakeholders, including:

...

- clarifying special event declarations made by the Queensland Industrial Relations Commission (QIRC) which exempt all shops in a stated area from trading hours restrictions, including to provide clear guidance on the matters the QIRC must have regard to.

...

[15] The NRA submits that the MelonFest fits the description of a special event under the Act.

[16] Section 5 of the Act provides the definition of an exempt shop as follows:

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 an area to which a special event declaration applies.

...

¹ Explanatory Notes, Trading (Allowable Hours) and Other Legislation Amendment Bill 2022.

[17] Part 5 of the Act provides for the making of orders and declarations by the Commission.

[18] Part 5, Division 3 of the Act provides for the making of special event declarations.

[19] An application for a special event declaration may be made by a chief executive, local government, organisation or any other person.² A special event declaration must be published on the QIRC website³ and the declaration must state the following matters:

31A Industrial commission may make declaration of special event

...

- (2) A declaration for subsection (1) (**a special event declaration**) must state the following matters –
- (a) details of the event the subject of the declaration;
 - (b) the period for which the declaration applies;
 - (c) the area to which the declaration applies;
 - (d) that section 36BA applies in relation to an employee of particular shops in the area to which the declaration applies.

Note—

A shop in the area to which the declaration applies is an exempt shop.

[20] In deciding whether to declare an event to be a special event, s 31B of the Act prescribes the following considerations to be had when deciding an application:

31B Deciding application for special event declaration

- (1) In deciding whether to declare an event to be a special event, the industrial commission must consider—
- (a) whether the event is a unique or infrequent event of local, State or national significance; and
- Examples—
- the 2032 Olympic and Paralympic Games
 - the Weipa Fishing Classic event
- (b) the cultural, religious or sporting significance of the event; and
 - (c) the significance of the event to the economy and the tourism industry; and
 - (d) whether there is a need for a non-exempt shop, or a class of non-exempt shops, to trade for hours greater than the core trading hours for the shop or class of shops under this Act for the period of the event.
- (2) In considering the matters mentioned in subsection (1), the industrial commission must also have regard to the following—

² *Trading (Allowable Hours) Act 1990* s 31A(1).

³ *Ibid* s 31A(1)(3).

- (a) the size of a place where the event will be held;
 - (b) whether the event will be held at multiple places;
 - (c) the predicted attendance numbers;
 - (d) any expected media coverage;
 - (e) any contribution the event may make to Queensland's national or international reputation;
 - (f) a submission made by—
 - (i) a local government for an area where the special event declaration is likely to have an impact;
 - (ii) or an industrial organisation in relation to the likely impact of the special event declaration on employees.
- ...

[21] Accordingly, the Commission must consider, in determining whether an event is a special event pursuant to s 31B(1) of the Act, the following:

- (a) whether the event is a unique or infrequent event of local, State or national significance;⁴and
- (b) the cultural, religious or sporting significance of the event;⁵ and
- (c) the significance of the event to the economy and the tourism industry;⁶and
- (d) whether there is a need for a non-exempt shop, or a class of non-exempt shops, to trade for hours greater than the core trading hours for the shop or class of shops under this Act for the period of the event.⁷

[22] In addition to the considerations above, s 31B(2) of the Act stipulates that the Commission must also have regard to the following:

- (a) the size of the place where the event will be held;⁸
- (b) whether the event will be held at multiple places;⁹
- (c) the predicted attendance numbers;¹⁰

⁴ *Trading (Allowable Hours) Act 1990* (Qld) s 31B(1)(a).

⁵ *Ibid* s 31B(1)(b).

⁶ *Ibid* s 31B(1)(c).

⁷ *Ibid* s 31B(1)(d).

⁸ *Ibid* s 31B(2)(a).

⁹ *Ibid* s 31B(2)(b).

¹⁰ *Ibid* s 31B(2)(c).

- (d) any expected media coverage;¹¹ and
- (e) any contribution the event may make to Queensland's national or international reputation.¹²

[23] The Commission must consider a submission made by a local government for an area in which the declaration is likely to have an impact.¹³ The Western Downs Regional Council did not file any written submissions with respect to this but did appear at the hearing on 8 February 2023 and made submissions.

[24] Further, the Commission must consider a submission made by an industrial organisation in relation to the likely impact of the special event on employees.¹⁴

Submissions filed by the NRA

[25] The NRA submits that the MelonFest meets the criteria of a special event under Part 5, Division 3 of the Act. The NRA relied on the application and the supporting affidavit of Mr David Stout, Director of Policy, NRA.

[26] The NRA provided information with respect to the history of the MelonFest. The inaugural MelonFest was held in 1994 and continues to be a biennial four-day festival celebrating the significance of melons to the local community and the agricultural heritage of the region. Chinchilla is lauded as the 'melon capital' of Australia and the region is said to produce 25% of melons grown in Australia. The submissions continue that the MelonFest is heralded as the largest melon festival in the world, and that it is of cultural significance as it is 'an authentic celebration of the Queensland agricultural community'.

[27] Over the four days, the MelonFest will hold a number of events which will be supported by a 70-strong committee and around 400 community volunteers. The NRA submits that the MelonFest will feature market stalls, street parades, farm tours, live entertainment and 'sporting melon-themed events'. These events include but are not limited to the Melon Cricket Bash, Melon Rodeo, Melon Pip Spitting, Melon Chariot Race and Melon Iron Man.

[28] The NRA submits that the MelonFest has created and will create over the four days, significant tourism and economic benefits for Chinchilla and the surrounding region. The NRA predicts that the MelonFest this year is expected to attract over 20,000 visitors which is around three times Chinchilla's population of approximately 7,068. The estimate of 20,000 visitors is based on an attendance number of 20,000 in 2019. The

¹¹ Ibid s 31B(2)(d).

¹² Ibid s 31B(2)(e).

¹³ Ibid s 31B(2)(f)(i).

¹⁴ Ibid s 31B(2)(f)(ii).

NRA notes that as at January 2022, there are no hotel rooms available within Chinchilla during the period of the event and only minimal campsite availability.

- [29] The NRA further submits that in 2019, the MelonFest injected significant income into the region's economy over the course of the event. In their submissions, the NRA also highlights that admission to the MelonFest is free, which maximises the ability of both locals and visitors to participate.
- [30] The NRA submits that there is a demonstrated need for extended trading hours for non-exempt shops. The NRA relies on customer data following the MelonFest held in 2019 in this regard. Relevantly, the data relied on included the following information with respect to a non-exempt retailer during the 2019 MelonFest as follows:
- Thursday 14 February 2019 (8am-9pm): 2136 customers
 - Friday 15 February 2019 (8am-9pm): 2,260 customers
 - Saturday 16 February 2019 (8am-9pm): 1,824 customers
 - Sunday 17 February 2019 (10am-4pm): 596 customers

- [31] The NRA submits that granting the application will not come at an expense to the employees in the retail sector and it will allow non-exempt stores more flexibility to trade to meet the needs of visitors and residents.

Submissions filed by the SDA

- [32] The SDA filed submissions in response to the application but did not file any supporting evidence including by way of affidavit. The SDA objected to the application.
- [33] The SDA submits that a similar application made in 2019 which resulted in a declaration being issued that the MelonFest was a special event for the purpose of the Act, should be distinguished on the basis that, at the time of the earlier application, the Act had not yet been amended to include s 31B(1)(d) of the Act.¹⁵
- [34] The SDA further submits that the region provides sufficient trading opportunities for non-exempt shops which are entitled to open during the following times ('the core trading hours'):
- Wednesday to Friday between 8am to 9pm; and
 - Saturday between 8am to 6pm.
- [35] Although the SDA conceded that non-exempt shops are ordinarily closed on a Sunday in the region, it submits that the Sunday markets held between 7am and 12pm provide an opportunity for residents and visitors to purchase food or drink. Further, the SDA

¹⁵ TH/2019/1.

submits that grocery stores such as Drakes and Foodworks also operate on a Sunday between 4am and 8pm.

- [36] In their submissions, the SDA submits that the MelonFest is made up of smaller events which would allow visitors and residents to attend non-exempt shops during the core trading hours and as a result, there is no demonstrated need to extend trading hours.
- [37] The SDA further submits that the NRA has failed to provide whether there are in fact non-exempt shops in the area that have expressed an intention to trade for hours greater than the core trading hours.
- [38] Relevantly, the SDA did not adduce any evidence or make submissions with respect to the likely impact, if any, of the special event declaration on employees.

Submissions filed by the AWU

- [39] The AWU sought to appear in this matter on the basis that it had an interest in the proceedings. Curiously, however, the AWU identified in its submissions that it does not have any members likely to be affected by the application.
- [40] Despite this, the AWU filed submissions in response to the application and supported the SDA's objection to the application.

Consideration

- [41] In making a determination with respect to whether the Melonfest be declared a special event, I must have regard to the matters listed in s 31B(1)(a)-(d) of the Act.
- [42] With respect to s 31B(1)(a) of the Act, the material before me includes information that the MelonFest is heralded as the largest melon festival in the world. Historically, the MelonFest has been held bi-annually since 1994 (with the exception of 2021). The purpose of the festival is to celebrate the significance of the area's primary produce, melons, to the region's economy and agricultural heritage.
- [43] Given these characteristics, I am satisfied the Melonfest is a unique event of local and state significance.
- [44] Having regard to s 31B(1)(b) of the Act, I note that the population of Chinchilla is approximately 7000 and that the significance of the festival to the community is evidenced by the MelonFest committee comprising approximately 70 members and approximately 400 community members volunteer to assist at the event. The MelonFest is a culturally significant event as it celebrates the strong agricultural connections of the

area and celebrates Chinchilla's most well-known produce. I am satisfied that the MelonFest is of cultural significance.

- [45] With respect to s 31B(1)(c) of the Act, the materials before me establish that historically the MelonFest has brought economic benefit to the community. The material before me is conflicting as it cites two separate sources, one suggesting an economic benefit in 2019 of \$3.5 million, whilst the other suggests an economic benefit in 2019 of \$7 million. Even if the lesser amount of \$3.5 million is accepted, that figure supports a conclusion that the community of Chinchilla derives a significant economic benefit from the MelonFest.
- [46] The information before me indicates that it is expected approximately 20,000 visitors will visit Chinchilla for the MelonFest in 2023. Such a significant influx of visitors to a relatively small community will no doubt sound in increased revenue in businesses throughout the community. For instance, the affidavit of Mr Stout indicates that as at January 2023, there were no hotel rooms available in Chinchilla during the course of the event.
- [47] The festival events are held over the four-day period in various locations in and around Chinchilla. This will require visitors to travel around the town leading to greater exposure to a variety of retail stores.
- [48] The material before me also indicates that the MelonFest has attracted media coverage and has been promoted in newspapers, radio and blogs.
- [49] Having regard to these matters, I consider that the MelonFest is of significance to the economy and the tourism industry.
- [50] In relation to s 31B(1)(d) of the Act, I note that the SDA contends that there is no need for a non-exempt shop to trade for extended hours. The SDA points to the hours and shops operating in Chinchilla currently as being adequate to service customers.
- [51] However, the SDA's submissions do not address the consequences of the significant influx of visitors to Chinchilla over the course of the festival. As noted above, this year the MelonFest organisers are predicting more than 20,000 visitors. This is almost three times more than the population of Chinchilla. Whilst the infrastructure in terms of store trading may be adequate to ordinarily service the population of Chinchilla, I am satisfied that the influx of visitors, in the numbers predicted, support an extension of operating hours.
- [52] Further, whilst the SDA acknowledges that Sunday is a closed day in the Chinchilla area for non-exempt shops, it submits that the markets scheduled between 7am and 12pm on Sunday provide an adequate opportunity for customers to purchase food and drink. This submission appears to be made with little regard to the context of the

application in which it is asserted the town of Chinchilla is to grow significantly in population size during the course of the event. There is no factual basis that the SDA relies on to support the assertion that a market scheduled for Sunday is able to adequately service the needs and wants of the approximated 20,000 visitors.

- [53] On the material before me, I am satisfied that the NRA has demonstrated a need for the declaration to be made.
- [54] I have ultimately concluded that the MelonFest is a bi-annual event that celebrates the significance of agriculture, in particular the production of melons, to the community of Chinchilla and has become a cultural event drawing approximately 20,000 visitors. The unchallenged evidence before me supports a conclusion that the MelonFest is of significance to the economy and tourism industry and I am satisfied that there is a need for increased trading hours for a non-exempt shop for the period of the event.
- [55] Given the economic and cultural significance of the event, and the number of potential visitors to the event, I am satisfied that the MelonFest positively contributes to Queensland's national reputation.
- [56] I have also had regard to the submissions made by the Council with respect to the MelonFest and the benefit derived from Chinchilla and the surrounding areas from the festival. The Council confirmed that visitor numbers were predicted to be above 20,000 visitors and that there is a demand for additional opening hours for shops during the festival.
- [57] Consequently, I will issue an order declaring the Chinchilla MelonFest 2023 a special event.

Declaration

- [58] I make the following declaration:

Pursuant to s 31A(1) of the *Trading (Allowable Hours) Act 1990 (Qld)*, I declare that:

- 1. The Chinchilla MelonFest 2023 is for the purposes of s 5(1)(c) of the Act, a special event;**
- 2. The declaration shall apply for a period commencing on Thursday, 16 February 2023 and ending on Sunday, 19 February 2023;**
- 3. The declaration applies to the area described as: Starting at Chinchilla S Road at the Chinchilla Showgrounds, moving south and turning onto Llyod Street, then turning north onto Carmichael**

Street. From there, travelling north and turning north-west along the Warrego Highway, then turning onto Wondai Street, then West onto Railway Street. Turning from there onto Helena Street, then onto Hypatia Street through to Heeney Street and back to the starting point on Chinchilla S Road at Chinchilla showgrounds; and

- 4. Section 36BA of the Act applies in relation to an employee of particular shops in the area to which the declaration applies.**