

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *National Retail Association Limited, Union of Employers* [2023] QIRC 185

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

CASE NO: TH/2023/2

PROCEEDING: Application

DELIVERED ON: 16 June 2023

HEARING DATE: 16 June 2023

MEMBER: Dwyer IC

HEARD AT: Brisbane

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

1. **The Mount Isa Show is for the purposes of s 5(1)(c) a special event;**
2. **The declaration shall apply for a period commencing on Friday 23 June 2023 and shall continue up to and including Sunday 25 June 2023; and**
3. **The declaration applies to the area described as: Starting at Abel Smith Parade, turning south onto Sunset Drive, through to Camooweal Street, then on to Patricia Street and West Street, travelling south through to Isa Street, then onto Pamela Street, then to East Street, turning east onto Barkly Highway, then onto Abel Smith Parade to the starting point at Sunset Drive**

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 part of the Mount Isa area for a specified period during a special event, namely, the Mount Isa Show – application granted.

LEGISLATION:

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

CASES:

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

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

National Retail Association Limited, Union of Employers (the Mount Isa Mines Rodeo)
[2021] QIRC 254

National Retail Association Limited, Union of Employers [2022] QIRC 206

APPEARANCES:

Mr D. Stout for the Applicant

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

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

Mr R. Thinee for the Mount Isa City Council

Reasons for Decision

[1] On 29 May 2023, the National Retail Association Limited, Union of Employers ('the NRA') filed in the Industrial Registry an application seeking a declaration pursuant to s

31A(1) of the *Trading (Allowable Hours) Act 1990* (Qld) ('the Act') that *inter alia* the Mount Isa Show is a special event within the meaning of s 31B of the Act ('the Application'). The period for which the declaration is sought is Friday, 23 June 2023 up to and including Sunday, 25 June 2023.

- [2] Exhibit B to the Affidavit of Mr David Stout filed 29 May 2023 sets out the area that is sought to be covered by the Application. The area is described as follows:

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

Travelling south through to Isa St then onto Pamela St then to East St

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

- [3] On 2 June 2023, a directions order was issued which provided *inter alia* that those parties who may be affected by the Application may file in the Industrial Registry and serve on the other parties an application seeking leave to be heard by 6 June 2023.
- [4] As required under s 31A(3) of the Act, the application and directions order were published on the Commission's website.
- [5] On 5 June 2023, the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees ('the SDA') filed an application and a supporting affidavit seeking leave to be heard in this matter. The SDA was given leave to be heard on 6 June 2023 and filed submissions in respect of the matter on 9 June 2023.
- [6] On 6 June 2023, The Australian Workers' Union of Employees, Queensland ('the AWU') filed an application and a supporting affidavit seeking leave to be heard in this matter. The AWU was given leave to be heard on 12 June 2023 and filed submissions in respect of the matter on the same date.
- [7] On 6 June 2023, the Mount Isa City Council ('the Council') filed an application seeking leave to be heard in this matter. A supporting affidavit was subsequently filed on 8 June 2023. The Council was given leave to be heard on 12 June 2023.

The relevant provisions of the Act

- [8] 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.
- ...

[9] Section 31A of the Act provides for the making of special event declarations:

31A Industrial commission may make declaration of special event

- (1) On an application by a chief executive, local government, organisation or any other person, the industrial commission may declare an event to be a 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.

- (3) A special event declaration must be published on the QIRC website.

[10] Section 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—
- (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;** or
 - (ii) an industrial organisation in relation to the likely impact of the special event declaration on employees.

(Emphasis added)

Submissions filed by the NRA

- [11] The NRA submits that the Mount Isa Show 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.
- [12] The NRA submits that the Mount Isa Show holds historical and cultural significance for the region. The 2023 Mount Isa Show will be its 41st iteration and the NRA submits that it is an important part of the city's centennial celebrations, as 2023 marks 100 years since the establishment of the city of Mount Isa.
- [13] The NRA submits that although the Mount Isa Show concludes at 11:45pm on Saturday 24 June 2023, the period for which the Application applies should include Sunday 25 June 2023. Due to the remoteness of Mount Isa, the NRA submits that it is unlikely visitors not residing in Mount Isa will drive home after the events conclude at 11:45pm. It is therefore sought that Sunday 25 June 2023 is included in the Application to allow local businesses to service the needs of visitors throughout the entirety of their stay.

[14] The NRA relies on earlier decisions of the Commission¹ and notes that in those circumstances, the Commission considered it appropriate to include within the applicable period the day after the conclusion of the relevant event. The NRA refers to *National Retail Association Limited, Union of Employers*,² where Knight IC held:

[51] ...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, 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.

[15] The NRA outlines a list of partners and sponsors to the Mount Isa Show, including *inter alia* the Australian Government, the Queensland Government and Glencore Mount Isa Mines. The NRA notes that Glencore Mount Isa Mines is one of the major sponsors of the Mount Isa Show, contributing \$20,000 each year towards the children's entertainment zone. Further, the NRA submits that ticket sale revenue is invested back into the improvement of the Mount Isa Show and the Mount Isa community.

[16] The NRA submits that there is a clearly demonstrated need and support for extended trading hours for non-exempt shops. In support of this submission, the NRA relies on customer data from a non-exempt retailer during the 2022 Mount Isa Show:

- Friday 17 June 2022: 1,456 customers.
- Saturday 18 June 2022: 2,247 customers.
- Sunday 19 June 2022 (noting specifically that this is a closed day): 1,474 customers.

[17] The NRA submits that non-exempt retailers within the area sought to be covered are in support of the Application. Further, the NRA has assurances that non-exempt retailers will only trade in line with customer expectations and that the Application will not come at the expense of regulation or employers. If granted, it is submitted that the Application would allow retailers to better cater to the needs of visitors to the region for the event, as well as residents, at their own discretion, based on their customer needs. The NRA notes also that the Commission granted applications for the Mount Isa Show in the years 2021 and 2022.³

[18] The NRA notes the application of s 36BA of the Act and contends that any work during extended hours will be on a voluntary basis.

¹ *National Retail Association Limited, Union of Employers* [2019] QIRC 112; *National Retail Association Limited, Union of Employers* [2021] QIRC 199; *National Retail Association Limited, Union of Employers (the Mount Isa Mines Rodeo)* [2021] QIRC 254; *National Retail Association Limited, Union of Employers* [2022] QIRC 206.

² [2021] QIRC 199.

³ *National Retail Association Limited, Union of Employers* [2021] QIRC 199; *National Retail Association Limited, Union of Employers* [2022] QIRC 206.

Submissions filed by the SDA

- [19] The SDA filed written submissions in respect of the Application on 9 June 2023. While the SDA expresses an objection to the Application, it does so on the basis that the Commission “vigorously assess the Applicant's reasoning and justification for the event”.
- [20] The SDA notes that when the Commission granted the application for the Mount Isa Show in 2022, the Act had not been amended to include s 31B(1)(d) of the current Act. The SDA therefore submits that application should be distinguished.
- [21] The SDA submits that the Mount Isa Show appears to operate from 8:00am on Friday 23 June to 11:45pm on Saturday 24 June 2023. It is submitted that this period provides sufficient trading opportunities for non-exempt shops, which are currently entitled to open between 8:00am to 9:00pm on Fridays and 8:00am to 6:00pm on Saturdays. The SDA further submits that visitors and residents would “regulate their shopping habits” and attend non-exempt shops during these core trading hours, negating the need to extend trading hours.
- [22] While the SDA notes that non-exempt shops would ordinarily be closed on a Sunday, it submits that visitors and residents would not require non-exempt shops to operate after the Mount Isa Show's conclusion. Instead, the SDA submits that visitors and residents can access several supermarkets that ordinarily operate on a Sunday, including *inter alia* the Alpha Supermarket, FoodWorks and Colonial Conveniences.
- [23] The SDA further submits that there is no arguable need for non-exempt shops to operate on Sunday 25 June 2023 after the Mount Isa Show's conclusion and doing so may result in an adverse economic effect as visitors and residents may not buy from shops that ordinarily operate on a Sunday.
- [24] The SDA closes their submissions by contending that the Application does not adequately identify what need each non-exempt shop will meet by trading in the extended period.

Submissions filed by the AWU

- [25] The AWU filed written submissions in respect of the Application on 12 June 2023. The AWU opposes the Application.
- [26] The AWU submits that the Application lacks sufficient particulars as to the non-exempt shops that intend on trading in the extended hours. Further, the AWU submits there is a lack of evidence to support the claim that the Mount Isa Show is a special event within the meaning of s 5 of the Act, nor is there any basis for the necessity of the Application.

- [27] The AWU further submits that the earlier decisions of the Commission referred to in the NRA's submissions are distinguishable on the basis that they rely on a previous version of the Act. Notably, the AWU submits that Commission must now be satisfied that there is a demonstrated need for the non-exempt shops to trade beyond the core trading hours for the period of the event.⁴
- [28] The AWU contends that the ordinary trading hours of the non-exempt shops will be sufficient for the purposes of providing adequate services to visitors and residents throughout the course of the Mount Isa Show.
- [29] The AWU submits that there are a number of exempt stores for visitors and residents to have access to, most of which operate within the timeframes of the Mount Isa Show and can cater to the general needs of attendees.
- [30] If the Commission were minded to grant the Application, the AWU submits that the NRA should provide the Commission with assurances that any work undertaken by employees in the extended hours proposed will be voluntarily agreed to, and any voluntarily work undertaken in the additional hours is paid in accordance with the applicable industrial entitlements.⁵

Consideration

- [31] In deciding whether the Mount Isa Show should be declared a special event, as outlined, I must have regard to the matters listed in s 31B(1)(a)-(d) of the Act.
- [32] In respect of s 31B(1)(a)-(c) of the Act, I am satisfied on the material before me that:
- the Mount Isa Show is a unique event of local and State significance;
 - of the cultural and sporting significance; and
 - that will result in a significant economic benefit to the city of Mount Isa.
- [33] In respect of s 31B(1)(d) of the Act, I note that both the SDA and AWU submit that there is no need for a non-exempt shop to operate for extended hours. The SDA contends that visitors and residents can instead visit supermarkets that are ordinarily open on Sundays, while the AWU submits that the current trading hours of the non-exempt shops are sufficient.
- [34] It must be said that there is some attraction in the submissions of the AWU and the SDA in this regard. The Application is entirely devoid of any evidence that would allow the

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

⁵ I note that no such assurances are required as such protections are enshrined in the Act by s 36BA.

Commission to consider whether there is a need for a non-exempt shop to trade for hours greater than the core hours for the period of the Mount Isa Show.

- [35] At the hearing of this matter the NRA was invited to make submissions about the dearth of evidence necessary to inform this important consideration. In addition, and consistent with s 31B(2)(f)(i) of the Act, submissions were also made by Mr Thinee, a representative of the Mount Isa City Council.
- [36] Section 31B(1)(d) of the Act was recently added. It is a new consideration for special event declarations. While I note the Act compels the Commission to consider *whether* there is a need for non-exempt shops to trade greater hours during an event, it does not go so far as to prohibit the making of a declaration if no such need is found. That is to say, even if the Commission were to find that there was no need, or no evidence of such a need, it does not appear that would be a barrier to making the requested declaration.
- [37] Further, s 31B(1) is read in conjunction with s 31B(2). Section 31B(2) sets out the matters to which the Commission *must* have regard when considering the matters set out in s 31B(1). One such matter is a submission made by a local government for an area where a special event declaration is likely to have an impact.
- [38] While the Application was lacking in any evidence to demonstrate a need for the non-exempt shops to trade greater hours, the submission of Mr Thinee as to the anticipated patronage of those stores during and after the event was compelling. While the submission was not evidence in the true sense, I am prepared to give it weight given the Act contemplates (and compels) the Commission to receive such a submission.
- [39] In all of those circumstances I am inclined to grant the declaration sought.
- [40] Finally, and for completeness, I am satisfied that the Act provides adequate protections for retail employees potentially impacted by the application being granted. They are set out s 36BA of the Act and the parties in attendance at the hearing each acknowledged these.
- [41] In all of the circumstances, I will issue an order declaring the Mount Isa Show 2023 a special event.

Declaration

- [42] I make the following declaration:

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

- 1. The Mount Isa Show is for the purposes of s 5(1)(c) a special event.**

- 2. The declaration shall apply for a period commencing on Friday 23 June 2023 and shall continue up to and including Sunday 25 June 2023.**
- 3. The declaration applies to the area described as: Starting at Abel Smith Parade, turning south onto Sunset Drive, through to Camooweal Street, then on to Patricia Street and West Street, travelling south through to Isa Street, then onto Pamela Street, then to East Street, turning east onto Barkly Highway, then onto Abel Smith Parade to the starting point at Sunset Drive.**
- 4. Section 36BA of the Act applies in relation to an employee of particular shops in the area to which the declaration applies.**