

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Trading (Allowable Hours) Act 1990* - s. 21 - trading hours orders on non-exempt shops

**National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Another (TH/2010/10)**

**TRADING HOURS - NON-EXEMPT SHOPS TRADING BY RETAIL - STATE**

DEPUTY PRESIDENT SWAN  
DEPUTY PRESIDENT BLOOMFIELD  
COMMISSIONER THOMPSON

12 May 2011

DECISION

**THE TABLELANDS AREA**

[1] On 23 June 2010 the National Retail Association Limited, Union of Employers applied to amend the *Trading Hours - Non-exempt Shops Trading by Retail - State Order* (the Trading Hours Order) pursuant to s. 21 of the *Trading (Allowable Hours) Act 1990* (the Trading Hours Act) seeking as follows:

1. By inserting a new clause (22) in clause 3.2 as follows:

(22) The Tablelands Area:

	Opening Time	Closing Time
Monday to Friday	8.00 a.m.	9.00 p.m.
Saturday	8.00 a.m.	5.00 p.m.
Sunday	9.00 a.m.	6.00 p.m.
Public Holidays (except 25 December, Good Friday, 25 April, Labour Day,)	8.30 a.m.	5.30 p.m.

2. By inserting a new clause (29) in Schedule 1 as follows:

(29) *The Tablelands Area* - The area within the following boundaries:

Commencing from the point where Carrington Road intersects with Atherton Herberton Road; from that point in a straight line in a northerly direction to the intersection of Springs Road and Mareeba Dimbulah Road; from that point in a straight line in an easterly direction to the intersection of Gilmore Road and the Kennedy Highway/Savannah Way; from that point in a straight line in a southerly direction to the intersection of Aerodrome Road and Gordonvale Atherton Road; from that point in a straight line in a westerly direction to the point of commencement.

**Legislation**

[2] Section 21 of the Trading Hours Act states:

**"21 Trading hours orders on non-exempt shops**

- (1) A full bench of the industrial commission may decide trading hours for non-exempt shops.
- (1A) However, the full bench is not to decide trading hours that are less than the following hours on a stated day, other than a public holiday -
  - (a) 8 a.m. and 9 p.m. for Monday to Friday;
  - (b) 8 a.m. and 5 p.m. for Saturday.
- (2) The full bench may make any order it considers necessary or convenient to give effect to a decision made under subsection (1), including, for example, an order specifying

- (a) the earliest time when non-exempt shops may open on any day and the latest time when non-exempt shops must close on any day; or
- (b) hours for trading wholesale different from the hours fixed for trading retail; or
- (c) different trading hours by reference to -
  - (i) classes of non-exempt shops; or
  - (ii) localities, or parts of localities, where non-exempt shops are situated.

(3) In subsection (1A) -

**public holiday** means -

- (a) a public holiday under the *Holidays Act 1983*; or
- (b) a day that would have been a public holiday had there not been a substitution under the *Holidays Act 1983*, section 2(2) or (3) or 3."

[3] Section 26 of the Trading Hours Act provides as follows:

**"26 Matters relevant to s 21 order**

In relation to making an order under section 21 the industrial commission must have regard to -

- (a) the locality, or part thereof, in which the non-exempt shop or class of non-exempt shop is situated;
- (b) the needs of the tourist industry or other industry in such locality or part;
- (c) the needs of an expanding tourist industry;
- (d) the needs of an expanding population;
- (e) the public interest, consumers' interest, and business interest (whether small, medium or large);
- (f) the alleviation of traffic congestion;
- (g) the likely impact of the order on employment;
- (h) the view of any local government in whose area the order is likely to have an impact;
- (i) such other matters as the industrial commission considers relevant."

**Parties**

National Retail Association Limited, Union of Employers (NRA);  
 Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) (QRSTA);  
 The Australian Workers' Union of Employees, Queensland (AWU); and  
 Shop, Distributive and Allied Employees Association, (Queensland Branch), Union of Employees (SDA).

[4] The SDA was granted leave to appear. The SDA sought to be excused from attendance at the formal proceedings for the application and notified of its support for the AWU submissions.

**Witnesses**

[5] The NRA called the following witnesses to give evidence:

Michelle Clancy - Owner/Manager of Pets to Pamper Atherton;  
 Doreen Salerno - Manager of Overflow - Mareeba and Atherton;  
 William Cummings - Principal of Compass Research;  
 Darrel Henry - Area Manager - Big W;  
 David Stout - State Compliance Manager - Coles;  
 Scott Wallace - Regional Retail Support Manager - Woolworths Limited; and  
 Gerard Wizenberg - Queensland District Manager - Target Australia Pty Ltd.

[6] The QRSTA called the following witnesses:

Robert Katter - Federal Parliament Member for Kennedy; and  
 Peter Griffiths - Owner/Manager of Humpy/Nut World.

[7] Ms Renae Broanda, representing the AWU, stated that it had adopted a neutral position with regard to the application.

## Witness Evidence

### *NRA Witnesses*

#### Michelle Clancy

- [8] Ms Clancy is the owner/manager of Pets to Pamper in Atherton. Ms Clancy has owned the store for three years and she has a similar store in Earlville which she has operated for 10 years.
- [9] Currently, Ms Clancy trades from 10 a.m. to 3 p.m. on Sundays in her Atherton store. The biggest trading days of the week for Ms Clancy are Saturday and Sunday.
- [10] Ms Clancy supported the application as she believes *"it will benefit both residents and visitors to have access to a greater range of shops on a Sunday"*. [Exhibit 5 - point 5]
- [11] Ms Clancy advised QRTSA that she did not have any specific data or surveys to support the views she had put to the Commission.

#### Doreen Salerno

- [12] Ms Salerno is the Manager of Overflow at both the Mareeba and Atherton stores.
- [13] These stores currently trade seven days per week with the weekends being the busiest trading periods.
- [14] The application is supported by Ms Salerno because she believes that it will provide *"increased sales, offer additional earning opportunities to our employees and provide added convenience to Atherton residents and visitors"*. [Exhibit 1 - point 5]
- [15] Under cross-examination by QRTSA, Ms Salerno said that she did not have any data or surveys to support the views proffered by her in support of the application.

#### William Cummings

- [16] Mr Cummings is the principal of Compass Research which is the social and market research arm of Cummings Economics.
- [17] Compass Research has worked closely with organisations such as Tourism Tropical North Queensland, Cairns Chamber of Commerce, Regional Councils, Advance Cairns and other North Queensland bodies providing social and market research. [Exhibit 3 - point 2]
- [18] Mr Clancy's evidence was as follows:
- The Tablelands region covers approximately 64,768 square kilometres of diverse landscapes including world heritage rainforests, crater lakes, expansive savannahs and wetlands, and a variety of rural and agricultural farming lands;
  - The towns within this region include Port Douglas, Cairns, Innisfail, Atherton, Malanda, Mareeba and Herberton. The smaller towns within the region are Ravenshoe, Mt Garnet, Kuranda, Dimbulah, Chillago, Mt Molloy, Millaa Millaa, Julatten, Tolga, Walkamin and Yungaburra;
  - As at 30 June 2009, the resident population of the region was 46,366 with a population growth of 2% for 2008/2009 and average annual growth over the past five years of 1.9%;
  - The major centres of Mareeba and Atherton account for 32% of the regional population and form the major retail hub for the Tablelands;
  - There was limited tourism data for the Tablelands area. What is available shows that international and domestic overnight visitation to the Mareeba shire provided an amount of \$18 million annually, and Atherton, \$23 million;
  - Eighty-seven percent of visitors to the Tablelands were there for holidays/leisure purposes and 61% stated that shopping had been undertaken as part of that visit;

- The random household telephone survey of the Tablelands undertaken by Compass Research, showed that 69% of respondents were in favour of extended trading; and
- The primary reason given by respondents for their support of extended trading was "*convenience as work or family commitments make it difficult at other times*". [Exhibit 3 - point 8]

#### Darrel Henry

- [19] Mr Henry is one of the Area Managers for Big W Discount Stores in Queensland.
- [20] The products sold by Big W were either National Branded products or a product which have been tested in Big W's Quality Assurance Department.
- [21] Big W offers services such as Wish Card Vouchers, Lay-by, Parcel Pickup and Home Delivery, Trained Cosmetic Consultants, One Hour Photo Processing, Digital Photo Processing, Everyday Rewards Program, Qantas Frequent Flyers Program and, where possible, seven day shopping.
- [22] Mr Henry believes that the scale and diversity of the Big W stores in regional areas helped "*revitalise local shopping precincts and limits escape expenditure*". [Exhibit 4 - point 7]
- [23] Evidence was given by Mr Henry of the location and trading patterns of Big W stores throughout the Australian States.
- [24] The observation drawn from those other regions was that Sunday trading hours show that there is a higher incidence of family shopping on that day.
- [25] If Sunday trading was introduced, the Distribution Centre could deliver goods on Saturday in peak trading periods, enabling Big W to fill its store prior to opening on a Sunday. As well, goods could be received on a Sunday which would assist in the replenishment of goods for Monday trade.
- [26] If the application was to be granted, it would create increased employment opportunities in the region. The anticipation was that more than 120 hours of work would be generated which could result in the employment of between five to 10 extra staff. This work would be of a voluntary nature for employees.
- [27] In 2002, Big W launched a national campaign called the Big Heart Campaign. This campaign raises funds for local children's hospitals, wards and foundations.

#### David Stout

- [28] Mr Stout is the State Compliance Manager for Coles.
- [29] Eighty-five percent of Coles stores trade on Sundays and holidays for a minimum of 12 hours per day. In Queensland, only 12% of Coles stores do not trade on Sundays.
- [30] Sunday trading represents the fastest growing trading day of the week.
- [31] The benefits of Sunday trade are as follows:
- ease of congestion;
  - opportunity to shop in a more leisurely fashion;
  - opportunity to shop at times convenient to customers;
  - impulse buying; and
  - increased spend of discretionary dollar.
- [32] Twenty-nine percent of employees at Coles Mareeba are under the age of 21 years. This makes Coles a significant employer of young people in the region.
- [33] There are noted benefits for stores such as Coles to trade over seven days of the week. These include:
- "Refrigeration must be maintained when the store is closed. The impact of this significant operational overhead is diminished if revenue is able to be generated over seven days. In seven day supermarkets there is no requirement to run perishable stock down or deplete stock on Saturday afternoons before closure. This is a very inefficient practice on one of the busiest trading days of the week. Inefficiencies also arise from the 'start up' of six day trading supermarkets on Mondays following the closed day on Sundays."*
- [34] Coles' total community investment for 2009 was \$19.7 million nationally.

Scott Wallace

- [35] Mr Wallace is the Regional Support Manager in Queensland for Woolworths Limited.
- [36] Woolworths employs 23,000 workers in Queensland.
- [37] Woolworths supports community causes and conducts fundraising and charitable partnerships. In 2009, the value of community contributions was more than \$27 million nationally.
- [38] In Atherton and Mareeba, Woolworths has given Fresh Food Kids Community Grants to Tablelands Athletics Centre (\$1,500), Mareeba PCYC (\$5,000) and \$1,390 in community donations to local schools and community organisations in the past year.
- [39] Woolworths is mutually reliant upon country farmers and growers to supply them with produce.
- [40] Woolworths has one store in Atherton affected by the application. It points out that there is currently a Super IGA which has opened in the Silo Shopping Centre which trades seven days per week in Atherton, with a full line supermarket offering.
- [41] Woolworths says that the Supa IGA store is not distinguishable from what Woolworths's offer, yet it trades unrestricted hours.
- [42] Mr Wallace reiterated the type of efficiencies as outlined by Coles which would benefit its stores, if trade over seven days a week was granted.
- [43] In Atherton, Woolworths currently employs 251 people. Forty percent of those employees are under the age of 25. If the application was granted, Woolworths estimated that an extra 190 hours of work would be generated.

Gerard Wizenberg

- [44] Mr Wizenberg is the Queensland District Manager for Target Australia Pty Ltd (Target).
- [45] Target offers consumers products including fashion apparel, a full range of toys, games and entertainment and homewares. Target Country operates in Atherton and Mareeba.
- [46] Target employs 19 people in Atherton and 15 people in Mareeba. If the application was granted, work performed on a Sunday would be of a voluntary nature and an extra 20 hours of employment per week would be created.
- [47] Approximately 90% of the work performed on Sundays is performed by casual employees. These employees wish to work on Sundays as many are students who need to generate an income. As well, mothers with children at home seek casual hours on a Sunday. This creates an opportunity for these mothers to supplement the family income without any offsetting child care costs.
- [48] Target supports the Australian community through a range of activities. For example, Target has partnered with SIDS and Kids, selling over \$290,000 worth of promotional merchandise in June 2009. Target has also assisted disadvantaged people at Christmas time, and in 2009, 65,000 gifts and \$80,000 worth of gift cards were distributed in local communities. Target has been involved in a range of other community-based programs.

QRTSA witnessesPeter Griffiths

- [49] Mr Griffiths is the owner/manager of Humpy/Nut World.
- [50] This store opens over seven days of the week.
- [51] Mr Griffiths says that Sunday is his best trading day because the larger stores are closed. Mr Griffiths believed that seven day trade for the larger stores would *"decimate our local community and interfere with our life style and just plainly stuff up our only time to make any money"*. [Exhibit 8 - point 5]

[52] Mr Griffiths stated that the trading pattern for stores such as his over a typical week in Atherton was as follows:

*"Stores that trade in Atherton that trade 7 days show a steady trade during Monday to Wednesday. Sales then increase by 3% over Thursday and Friday. Additionally we gain another 25% growth on a Saturday and then a 30% increase again on a Sunday. Sales on a Sunday are generally 50% to 70% up on a week day. The introduction of Sunday trading to the Tableland area is expected to decrease the growth on a Saturday and Sunday to 12% or 15% on a week day."* [Exhibit 8 - point 6]

[53] Many of the sole traders are also independent family run businesses. These include bakery outlets, newsagencies, produce shops, bottle shops, video shops, cafes and novelty stores.

#### Robert Katter

[54] Mr Katter is the Federal Member of Parliament for the seat of Kennedy. The seat of Kennedy includes the town of Atherton.

[55] Mr Katter's evidence is as follows:

- The Tableland region covers 64,768 m2 of landscapes including world heritage, rainforests, crater lakes, expansive savannahs and wetlands, rural and agricultural farming. The population of the region is 42,196 This region includes several major towns, which include Atherton and Mareeba.
- Mr Katter has been involved in politics for 35 years and holds a close affinity and connection with the Tableland community.
- The two major towns of the Tablelands are Atherton and Mareeba. These towns are also the home to the duopoly of Coles and Woolworths.
- The independent stores in these towns support the local community with local produce. Most recently, the local community campaigned against the importation of Filipino bananas which were having a detrimental affect upon the locally grown produce.
- The Tablelands region relies heavily upon tourism and the unique nature of the townships.
- The region is adequately served by the local IGA store and the array of local stores. Consumers are not forced to travel beyond these towns for their immediate shopping needs. However, for one-off purchases, locals may travel to Cairns.
- If the application was granted, considerable trade would be taken away from the local independent stores who rely heavily upon the extra trade which they acquire on a Sunday.
- In the campaign against the importation of Filipino bananas, the local IGA store and the smaller traders banded together. However, there was no like opposition from Coles and Woolworths.
- Of major concern to Mr Katter was the concentration of market power in the hands of Woolworths and Coles. In 1991, the share was 50.5%, but by 2002, the share had risen to 76.7%. This has now risen to 85% in 2009.

#### AWU

[56] The AWU advocate sought assurances from the proprietors of the large stores that if the application was granted, employees would work during the extended hours on a voluntary basis. The various representatives of the large stores confirmed that their Certified Agreement clauses on this point would be honoured.

#### **Conclusion**

##### s. 26 (a) the locality, or part thereof, in which the non-exempt shops or class of non-exempt shop is situated

[57] NRA's submissions are that while there is a reasonably sufficient retail infrastructure in the towns of Mareeba and Atherton, those stores are situated one hour's drive west of Cairns where seven day trade is conducted in many of the non-exempt stores.

[58] Atherton and Mareeba are the major service towns for the Tablelands region.

- [59] QRTSA says that the NRA has failed to produce compelling evidence that the location of the towns is a positive factor to the granting of the application.
- [60] QRTSA believes that the unique characteristics of the Tablelands shows that much of the appeal of the area to local people and visitors is its country lifestyle which would be negatively affected by the granting of the application.
- [61] The Supa IGA store in the town of Atherton appears to be on par with the local Woolworths and Coles stores in terms of size and variety of goods. This store trades on a Sunday primarily for the supply of foodstuffs.
- [62] The Commission accepts that the towns in question exude a more laidback atmosphere which distinguishes the area from other more densely populated regions. However, we are also mindful of the fact that there is some distance for local residents and visitors to travel if they wish to avail themselves of extended trade on a Sunday in search of a greater variety of goods not necessarily related to foodstuffs.

s. 26 (b) the needs of the tourist industry or other industry in such locality or part

- [63] Statistical evidence has been provided by Mr Cummings concerning tourist characteristics and visitation to the area. There has been no challenge mounted by the QRTSA with regard to these statistics.
- [64] The statistics show that at June 2007, the three or four year average spend by visitors to Atherton and Mareeba Shires was \$58 million. There was no available data with regard to the spend of day visitors to the Mareeba Shire.
- [65] Mr Katter had also stated that tourism was "extremely important" to the Tablelands as did Ms Salerno.
- [66] The QRTSA believed that the evidence given by Mr Cummings indicated the limited nature of tourism within the area. The statistics given showed a lower level of tourist visitation when compared with the state and national averages.
- [67] We accept that tourism is important and significant within this region, however, we acknowledge that the volume of tourism is not on par with state and national averages. We also accept that the statistics would differ somewhat from state and national figures simply because the draw of tourists to larger cities and noted tourist destinations would always exceed the numbers drawn to a regional area such as the Tablelands. Certainly, the statistics quoted by the QRTSA (from Mr Cummings' survey) confirm this view.
- [68] We do not see this perspective as diminishing the applicant's claim under this criterion.

s. 26 (c) the needs of an expanding tourist industry

- [69] NRA advised the Commission that data relating to tourism is no longer collected specifically for the Atherton and Mareeba region. Rather it is captured under the general banner of "Tropical North Queensland". Therefore, one needs to consider the broader data which shows that:

*"... tourism is an expanding industry in this region. The Tropical Tablelands Visitor Profile and Satisfaction Report (Exhibit 3 - Attachment 3) showed that 56% of visitors were 55 years or over, with 39% being older nonworking visitors and 51% were repeat visitors. These results support a view that a significant proportion of visitors to the Tablelands area are "grey nomads", which is a rapidly increasing demographic with the ageing population."* [Submissions of the NRA - point 9].

- [70] QRTSA states that since NRA concedes that it does not have statistical data upon this criterion, the Commission should not see the general statistics provided as assisting the NRA in its application.
- [71] In our view, it is not inappropriate to give consideration to the broader statistical material supplied by the NRA which is often supportive of NRA's claim under this criterion.

s. 26. (d) the needs of an expanding population

- [72] The statistical data received from Mr Cummings showed an expanding population within the area of 2% (2008-2009). The region is expected to attract a further 10,000 residents in the period from 2006/2026.
- [73] QRTSA says that the rate of growth in population is less than the state average. Further, the projections made by Mr Cummings relating to the 2006/2026 period was far less than that predicted for the state average - viz 1.8%.

- [74] QRTSA states that NRA has failed to prove that not granting the application would adversely affect the region over time.
- [75] In our view, while the projections for population growth are below the State average, there has been slow and steady growth. The statistical data available does not suggest that there is such a strong population growth pattern within this region sufficient to heighten a concern that the current trading hours regime would not cope with increased demand from consumers in terms of the supply of foodstuffs for example. However, for the purchase of a wider range of goods, it remains the case that consumers would still be required to travel some distance to access non-exempt stores trading on a Sunday.

s. 26. (e) the public interest, consumers' interest, and business interest (whether small, medium or large)

- [76] NRA states that the *"different shopping hours is a cause of unnecessary confusion for travellers and visitors when moving through the Far North Queensland region."* [Submissions of the NRA - point 11] This is particularly so when one considers that Cairns generally has extended trading hours as does Port Douglas and Mossman.
- [77] NRA says that the uniformity of trading hours throughout the area is highly desirable as it *"not only minimises confusion and inconvenience for visitors but also contributes to a more equitable and sensible set of arrangements for residents of Queensland"*. [Submissions of the NRA - point 12]
- [78] NRA states that further public interest considerations centre upon two factors:
- (a) other comparable stores in this location which can trade on a Sunday; and
  - (b) the 1966 Knox Inquiry into Trading Hours.
- [79] Re (a) NRA pointed out *"the indistinguishable features of Supa IGA supermarkets and non-exempt supermarkets," in terms of their range and pricing of products. Neither of the Supa IGA's within the locality gave evidence opposing the application, "despite their monopoly on Sunday trade"*. [Submissions of the NRA - point 14]
- [80] Re (b) The 1996 Knox inquiry into trading hours came to the following conclusion: *"It is also evident that extended hours are in line with mainstream consumer preferences. The consumer survey undertaken for the Inquiry found that the majority of people surveyed had a positive attitude toward extended trading hours and were utilising the extended trading hours."* [Submissions of the NRA - point 15]
- [81] QRTSA rejected NRA's submissions around alleged confusion on the part of travellers and visitors to the area; that uniform trading hours in the area create more equitable arrangements for Queensland residents and the widespread availability of trading hours in different areas.
- [82] QRTSA was critical of the lack of supporting data to support NRA's claims in these instances.
- [83] QRTSA also questions NRA's assertion that Supa IGAs are indistinguishable from Coles and Woolworths generally and in particular in this area. QRTSA says *"having regard to such context, it is not accurate for the Applicant to contend that Supa IGA supermarkets and non-exempt retailers are indistinguishable. Clearly the broader market dominance of the larger retailers affords them significant advantage in the marketplace, as does their buying power and network of resources."* [QRTSA submissions regarding application to amend Trading Hours Order -Tablelands - point 37]
- [84] After considering these competing views, we state the following:
- While not in evidence in this particular case, we acknowledge that it would at least be arguable that an element of confusion around trading hours may exist when tourists travel around the North Queensland region.
  - It should be stated that each Trading Hours application for extended hours differs to varying degrees often depending on local issues in the various towns/locations applicable to the application.
  - On the question of uniform trading hours, that is a matter for the Legislature of the State. Regarding trading hours across the state generally, it is a matter of fact that many areas of Queensland enjoy extended trading hours.
- [85] The Commission has previously commented upon the presence of Supa IGA supermarkets in many regional areas of the State [TH/2010/3 at points 143-144] and we adopt those views in this matter.

[86] The emergence of these Supa IGA stores has moved the goalposts somewhat from the traditional debate between small and medium sized independent traders seeking to supplement their income out of Sunday trade (when the non-exempt stores are closed) and those non-exempt stores such as Coles and Woolworths which are seeking to trade on a Sunday. It has been evident in some cases before the Commission that small independent traders have lost sales on a Sunday to Supa IGA stores.

*Consumer interest*

[87] To satisfy that the granting of the application would be in the public interest, NRA relies upon the survey conducted by Mr Cummings. That survey (of 300 Tablelands residents) showed that 69% of respondents supported Sunday trading, with only 2.6% stating that it would have a negative impact on their household lifestyle. Other than for the views expressed by Mr Katter, there has been nothing of substance put to the Commission by the QRTSA to dilute the impact of the survey.

*Small business interest*

[88] Evidence was given by Ms Clancy in support of the application. That support was based upon her "positive experience with the introduction of seven day trading for the environment of her other pet store in Earlville". [Exhibit 5]

[89] For QRTSA, Mr Griffiths gave evidence in opposition to the claim. Other than for such opposition (which has been duly noted), Mr Griffiths made reference to "Calculations of estimated trading impact upon my business". While there was criticism of Mr Griffiths being unable to substantiate his estimates because he had not asked any of the traders about their actual turnover, and his concession that his evidence around that point was unreliable, we have accepted that he held genuine views with regard to his opposition to the claim. Mr Griffiths also saw Supa IGA at Atherton as a competitor stating that his business had lost around 3% of its trade when that store opened.

*Medium business interest*

[90] Ms Salerno, who is the manager of two Overflow stores in Mareeba and Atherton gave similar evidence to that given by Ms Clancy in support of the application.

*Large Business interest*

[91] NRA witnesses (Messrs Stout, Henry, Wallace and Wizenberg) all gave evidence saying that there were considerable operational benefits of seven day trading. All referred to the success of seven day trading in other areas of Queensland as well in other Australian states.

[92] QRTSA says that there is little by way of verifiable evidence to substantiate the views being expressed by the NRA witnesses. QRTSA stated that Mr Henry had advised that a Big W store had not yet opened in the area under consideration but that Sunday trade in other areas produced the second lowest percentage of sales across its stores generally on available trading days. It was also claimed that similar evidence had been given by Mr Stout. Mr Wizenberg said that currently stores were able to cope in terms of its customer service and stock replenishment under the current trading hours' regime.

[93] Considering the above we conclude that this criterion has been positively addressed by NRA.

s. 26. (f) the alleviation of traffic congestion

[94] There was no evidence produced regarding this criterion.

s. 26. (g) the likely impact of the order on employment

[95] Both Mr Griffiths for the QRTSA and Mr Katter gave evidence around this point.

[96] Mr Katter stated that notwithstanding that the independent grocery retailers maintained 20% of the market, it was a group which employed around 57% of fulltime equivalent employees in Australia.

[97] Representatives from the large business interests all stated that additional hours would be available for employees (hours given to either existing employees or new employees) if the application was granted.

[98] In our view, this criterion is positively addressed in favour of the application.

s. 26. (h) the view of any local government in whose area the order is likely to have impact

- [99] While the Registry of the Queensland Industrial Relations Commission (QIRC) received a copy of the correspondence from the Tablelands Regional Council (the Council) on 26 August, 2010, it appears that the Council may not have served all of the parties to the proceedings with a copy.
- [100] In its correspondence, the Council stated:
- "I refer to the application made by the NRA for an amendment to the trading hours to allow non-exempt traders on Sundays. After consultation with the United Retail Federation and the National Retail Federation, Council resolved at its meeting on 18 August 2010 to oppose the application to vary hours on non-exempt retailers."*
- [101] There was no representative of the local Council before the Commission and the NRA says that there was nothing in the correspondence to indicate whether any report, research or debate occurred prior to the passing of the resolution.
- [102] NRA submits that the views of the local Council should not be afforded any higher status than any of the other criteria.
- [103] QRTSA says that the Commission should attach full weight to the views expressed by the local Council. It says that the Council is an elected tier of representation, and in essence it represents the views of the broader community.
- [104] In other decisions concerning trading hours the Commission has noted that the view of local government carries the same weight as any of the other factors under s. 26 of the Trading Hours Act [*Trading Hours - Non-Exempt Shops Trading by Retail - State (Mackay Area*<sup>1</sup>].
- [105] Added to that consideration are the comments of the Full Bench of the Commission in TH/2010/8 at points 123-125 and we adopt those views in this matter. That is, that it would assist the Full Bench if a representative of the council appeared in the hearing to discuss the issues considered by the council in making its decision.

s. 26. (i) such other matters as the industrial commission considers relevant

- [106] NRA submits that the evidence given by Mr Katter does not fall within any of the defined criteria of s. 26 of the Trading Hours Act, thereby leaving this criterion (s.26.(i)) the only avenue through which Mr Katter's evidence could be considered.
- [107] NRA was critical of Mr Katter's evidence in that he had not provided any documentary evidence to support his propositions. The lack of supporting evidence went to Mr Katter's reference to (a) current market share held by Coles and Woolworths; (b) the market share of Metcash and whether it had increased substantially over the past 10 years; (c) Metcash published company results for the year ending 30 April 2010 amongst other concerns.
- [108] NRA says that Mr Katter's evidence went largely to pricing issues arising from the deregulation of various primary industries, occurring in the late 1980's through to 2000. NRA states that the *"issue of deregulation of pricing on certain grocery items is completely removed from the question before the Commission in relation to the extension of trading hours"*. [Submissions of NRA - Point 30]
- [109] QRTSA's response was that Mr Katter's evidence related to many of the criteria listed in s. 26 of the Trading Hours Act.
- [110] In its view, Mr Katter, as an elected representative in the region under consideration, has developed a significant understanding of a range of issues relevant to s. 26 of the Trading Hours Act.
- [111] As the Commission has previously stated, the views of local politicians can not be disregarded. There is an acceptance that local politicians (and especially those who have held their position for many years, as has Mr Katter) are in touch with their electorates and can be seen, to some degree, to be expressing the views of their constituents.
- [112] We have viewed Mr Katter's evidence within this context and while some of his statements are not supported by any documentary evidence, much of what has been submitted relates to general and factual knowledge held by the community. The factual knowledge would relate, for example, to the unique nature of the Tablelands; debate surrounding the importation of bananas into the region; the size of the area under consideration in the

<sup>1</sup> *Trading Hours - Non-Exempt Shops Trading by Retail - State (TH/2007/7) - Decision* <<http://www.qirc.qld.gov.au>>

application; the various landscapes of the area and population in the area. General knowledge would include knowing that Coles and Woolworths and many of the larger stores in the area are national and not local stores. General knowledge would also include the local population knowing which of their stores were independently owned - for example newsagents and video shops.

## Conclusion

- [113] We have determined to grant the application.
- [114] In making our decision, we have drawn our conclusions from considering all of the criteria outlined in s. 26 of the Trading Hours Act.
- [115] In terms of s. 26 (a) of the Trading Hours Act, we would say that the locality within which the application is made is unique. It is not able to be compared to densely populated, coastal tourist regions of the State. It is a locality which enjoys a more relaxed lifestyle. Consumers have ample opportunity to shop on a Sunday for their foodstuffs of the type offered by Coles and Woolworths. Consumers are unable to shop for a broader range of goods which are supplied by many non-exempt stores in the Cairns region on a Sunday.
- [116] Section 26 (b) and (c) consider the needs of the tourist industry and an expanding tourist industry. We have accepted that tourism, even if somewhat limited, is important to the region. Mr Cummings report shows the level of tourism as being lower than the State average. We have commented that we understand the reason for that occurring. Likewise, we accept the statistical data produced by Mr Cummings which shows that there were a number of repeat visitors to the area and that there seemed to be a significant proportion of visitors to the Tablelands who are identified as "grey nomads". To some degree, this represents an increase in tourist population within the area.
- [117] Having said that, we have received no statistical data showing that tourists are confused or disadvantaged by the unavailability of shopping on a Sunday in the area under question. We have previously stated that immediate foodstuff supplies are available from smaller traders and the Supa IGA on a Sunday.
- [118] In all, it is our view that currently the needs of tourists are reasonably met by the existing retail trading regime in the towns of Atherton and Mareeba save for non-foodstuff type of goods. A steady increase in tourist numbers, as predicted, would create greater demand for retail services over time.
- [119] Section 26 (d) addresses the question of an expanding population. The rate of growth in population is lower than the state average and this is hardly surprising. However, there is nothing in the population growth projections of Mr Cummings which would suggest problems would occur if the current trading regime continued as is. What is evident, though, is that for the purchase of goods other than foodstuffs and general items, there would be a requirement on the part of residents of this area to travel some distance to avail themselves of other purchases.
- [120] Section 26 (e) considers that the interests of consumers, small, medium and large business interests. Mr Cummings' report shows that 69% of residents surveyed supported extended Sunday trade. From that survey, only 2.6% of respondents believed that a successful application would have a negative impact on their household lifestyle.
- [121] The fact that some comparable stores in the region can trade on a Sunday shows that evidence which satisfied the criteria to be considered under s. 26 of the Act has been presented and accepted by the Commission sufficient to grant the application in a particular town. The same circumstances simply may not be present in another town within the region.
- [122] We are generally unable to accept QRTSA's submissions where it attempts to draw distinctions between the Supa IGA stores and Coles and Woolworths. We accept that distinctions may be able to be drawn as it relates to purchasing power and network of resources between Supa IGAs and Coles and Woolworths, but what is evident to the Commission is that the Supa IGA store in Atherton appeared to be as large as the Coles and Woolworths stores, and appeared to have as wide a range of products as did these competing stores. The only difference between the Supa IGA store and Coles and Woolworths, was that the Supa IGA could trade on a Sunday.
- [123] There has been confusion around the evidence given by Mr Henry (Area Manager for Big W). In its final submissions, QRTSA was of the view that Big W had not yet opened a Big W store in Atherton.
- [124] It may well be the case that the confusion has arisen because of comments made by Mr Henry during the course of his cross-examination by QRTSA. On two occasions, Mr Henry made comment that the Big W store in Atherton had not yet opened. [Mr Henry - T 1-25 and T 2-26]

- [125] However, inspections undertaken by the parties to this matter had been conducted prior to the commencement of the hearing and Big W Atherton had been noted as a "drive by" by the parties.
- [126] Given that a Big W store is situated in Atherton, we have taken Mr Henry's comments to mean that he could not comment upon the likelihood of the success or otherwise of a Big W store in Atherton if it was able to open on a Sunday because the store had not yet opened on a Sunday.
- [127] Section 26 (f) has not been enlivened in this matter.
- [128] Concerning s. 26 (g) there would always be an increase of employee hours when an application of this type was granted. Other than for the general comments made by Mr Katter in this context, the extended hours available in a non-exempt store is a reality.
- [129] The local Government was opposed to the granting of the application s. 26 (h). However, the non-attendance of any representative from the local Government does not permit any party to examine the methodology or reasoning adopted by the Council to explain its position. Notwithstanding that, the opposition is duly noted and must be considered together with all criteria under s. 26 of the Act.
- [130] We have previously stated that we have taken into consideration the evidence given by Mr Katter.
- [131] We have duly considered the opposition to the application from the Tablelands Regional Council and Mr Griffiths. We have also noted the general opposition mounted by Mr Katter. However, pitted against that opposition are the strong results of the survey conducted by Compass Research showing that local consumers were largely supportive of extended Sunday trade coupled with the views of a small local trader (Pets to Pamper) and a medium sized trader (Overflow Mareeba and Atherton). Others in support of the application were the non-exempt stores in the area seeking to trade on a Sunday. In our view it is reasonable to draw the conclusion that there was more support for the application at a local level than opposition to it.
- [132] On balance we have determined to grant the application.
- [133] The operative date for the amendment to the Trading Hours Order is Sunday 19 June 2011.
- [134] Order accordingly.

D.A. SWAN, Deputy President.

A.L. BLOOMFIELD, Deputy President.

J.M. THOMPSON, Commissioner.

*Hearing Details:*

2010 10 and 11 November

*Appearances:*

Mr J. Moore, National Retail Association Limited, Union of Employers.

Mr N. Rieck, Neumann and Turnour Lawyers on behalf of the Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers).

Ms R. Broanda, The Australian Workers' Union of Employees, Queensland.

Released: 12 May 2011