

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**National Retail Association Limited, Union of Employers, AND Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees (TH/2011/10)**

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

DEPUTY PRESIDENT SWAN  
COMMISSIONER FISHER  
COMMISSIONER THOMPSON

24 January 2012

DECISION

**INNER BRISBANE CITY**

- [1] The application before the Queensland Industrial Relations Commission (Commission) has been made by the National Retail Association (NRA) seeking to modify the current trading hours Order as it relates to the Area of the City Heart of the Inner City of Brisbane.
- [2] The application relates to the weekday starting time and the Saturday closing time for non-exempt stores in the Inner City of Brisbane. Currently, non-exempt retailers (other than supermarkets) can trade from 8 a.m. to 9 p.m. on weekdays and from 8 a.m. to 5.30 p.m. on Saturdays. This application seeks an opening time on weekdays for non-exempt stores of 7 a.m. and on Saturdays a closing time of 7 p.m.

By deleting clause 3.2(4) and inserting the following in lieu thereof:

(4) Area of city Heart of Inner City of Brisbane:

	Opening Time	Closing Time
Monday to Friday	7.00 a.m.	9.00 p.m.
Saturday	8.00 a.m.	7.00 p.m.
Sunday (excluding Easter Sunday)	9.00 a.m.	6.00 p.m.
Public Holidays (as defined) (excluding Good Friday, Easter Sunday, 25 April, Labour Day, 25 December)	9.00 a.m.	6.00 p.m.

Notwithstanding the opening and closing times prescribed herein for public holidays, the opening and closing times for non-exempt shops Easter Saturday shall be:

	Opening Time	Closing Time
Easter Saturday	8.00 a.m.	6.00 p.m.

**Parties**

- [3] The parties are NRA and the Shop Distributive and Allied Employees Association (Queensland Branch) Union of Employees (SDA).
- [4] SDA opposed the application as it related to the 7 p.m. closing time for Saturdays but did not oppose an opening time of 7 a.m. from Monday to Friday.

**The Legislation**

- [5] Pursuant to s. 26 of the *Trading (Allowable Hours) Act 1990*, when the industrial commission is making an order under s. 21 of the Act, it 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; and
- (i) such other matters as the industrial commission considers relevant.

**(a) The locality, or part thereof, in which the non-exempt shop or class of non-exempt shop is situated**

[6] NRA's submissions on this point are not primarily disputed by SDA. The submissions are as follows:

- Flexibility in trading hours is relevant to the City Heart as it enhances its contribution to the marketing of the area as a "vibrant retail, leisure and hospitality precinct". [NRA Submissions - point 3]
- There are clear differences between the City Heart retail infrastructure and that of suburban areas. Those differences are as follows:

*"A number of factors and/or characteristics distinguish our CBD stores from our standard suburban supermarkets. Fundamentally the trade of our CBD stores is drawn from different market segments an important part of which is commuter driven demand. This demand is unique to the overall city because:*

- a) The pedestrian traffic flows through the CBD (including its shopping precincts) are substantially in excess of those experienced anywhere else in the Brisbane area;*
- b) No other part of Brisbane experiences the quantity of commuter traffic;*
- c) No other part of Brisbane experiences traffic flows at the times of the day associated with the arrival and departure of commuters from the CBD; and*
- d) No other part of the city experiences the diversity of consumer demand that is met by CBD supermarkets in particular". [Mr Stout (State Compliance Manager for Coles) - Exhibit 4]*

[7] Similar evidence was given by Mr Wizenberg (District Manager for Target Australia Pty Ltd in Queensland) (Target) and Mr Waters (Regional Manager for Big W Discount Stores) (Big W).

[8] SDA's position was as follows:

- Within the city heart, the majority of customers between Monday to Friday are city workers who live outside of the city heart;
- Most of these customers tend to shop during their lunch break; and
- The type of purchases can include those which may be viewed as a necessity - e.g. stockings and other personal items.

**Consideration**

[9] We are of the view, having considered all evidence and submissions made around this criterion, that the locality in question is significantly different to other areas within Brisbane, attracting a different customer base and requiring different consideration as to the availability of appropriate trading hours.

**(b) the needs of the tourist industry or other industry in such locality or part and**

**(c) the needs of an expanding tourist industry**

[10] The Commission has long recognised the City Heart of Brisbane as being a significant tourist precinct.

[11] SDA claims that there has been no specific evidence put before the Commission by NRA around this criterion. While only general tourism statistics have been put to the Commission on the degree of tourism within the City Heart, we acknowledge that the City Heart of Brisbane is a tourist drawcard. This view has been reiterated in cases before the Commission on prior occasions and these are to be found in QGIG 184, 218-225 and QGIG 159, 228 at 222.

**Consideration**

[12] We see no need to traverse the views expressed in those decisions. Suffice it to say that the Full Bench accepts as a matter of prior decisions of the Commission and of common knowledge that there is a demand by tourists for appropriate trading hours within the City Heart.

**(d) the needs of an expanding population**

[13] NRA relies upon previous decisions of the Commission to establish that within the Inner City area of Brisbane there has been a steady growth in residential population. In Matter TH/2006/5, the Commission stated that:

*"the rise in residential living in the CBD in the immediate past years has brought with it an expanding population which is a key matter for consideration in this application".*

- [14] Further statistical material was put to the Commission by NRA which highlighted the following:
- The South-East Queensland region is Australia's fastest growing region attracting on average 55,000 new residents each year over the past two decades;
  - Over the next 20 years, employment within the Inner City area is expected to increase by 200,000 jobs;
  - In the 2006 census, 13,289 persons were residing in the Brisbane City area. Of that number, 21% were overseas visitors;
  - Currently there are approximately 100,000 persons employed within the CBD area of Brisbane;
  - The Brisbane City Centre Master Plan sets a 20 year vision for the funding of Brisbane's city centre; and
  - This area is projected to increase in population size by 70% by 2026.

**Consideration**

- [15] It is accepted that this area of Brisbane does attract an ever increasing number of commuters and residents.

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

- [16] Mr Waters had conducted a survey to ascertain customer support for an earlier opening time for its Big W store in the CBD. Of 340 customers surveyed, 26% said they would most likely shop between 7 a.m. and 8 a.m.; 14% said they would most likely shop between 7.15 a.m. and 7.30 a.m.; 23% said they would most likely shop between 7.30 a.m. and 7.45 a.m. and 17% said they would most likely shop between 7.45 a.m. and 8.00 a.m.
- [17] Mr Waters highlighted the difference between the Big W store in Macarthur Central and suburban stores. The differences went to factors such as:
- Checkouts on the two levels of the store;
  - No shopping trolleys;
  - Basket usage with the average spend on a basket for Macarthur Central being \$24.85 and a basket in a suburban store being \$35.29;
  - Different periods of peak activity being early morning, lunch time and after work and some departments in the CBD store being substantially smaller than those found in suburban stores.
- [18] Mr Wizenberg submitted that the first hour of trade on a week day was very strong and the demand experienced in the non-exempt supermarkets would be experienced by the remaining non-exempt stores in the City Heart.
- [19] In order to determine the degree of customer support for Target opening within the CBD at an earlier time, Target conducted a survey amongst its customers to canvass whether they would shop at Target if it opened prior to 8 a.m. during week days. Of the 234 customers surveyed, 128 said they would shop in Target if it opened before 8 a.m. and 106 surveyed said they had no need to shop prior to 8 a.m.
- [20] NRA says that the public and consumer interest has been measured by the surveys conducted by Big W and Target. The only "business" interest before the Commission was that presented by NRA.
- [21] In support of the application, evidence was given by Ms Derksen (Regional Manager for David Jones in Queensland) who stated that this store might not utilise the hours being sought in this application, but expanded hours could be beneficial to its interests and the degree of flexibility it may give to the store in the future [Exhibit 1].
- [22] Evidence was given on behalf of the SDA by Ms Clancy and Ms Downey, both of whom work in stores under consideration in this application. Generally, the evidence given was as follows:
- Saturday nights were very important family evenings;
  - Working later on a Saturday evening would seriously impact upon an employee's ability to meet with friends and family within a reasonable time frame; and
  - Issues concerning security (for example on trains) after 7 p.m. on a Saturday night was a matter of concern.

**Consideration:**

- [23] We have accepted that it would be of benefit to consumers generally if the non-exempt stores, the subject of this application, were to open earlier on weekdays.
- [24] However, we have also accepted the evidence of SDA witnesses that the opening of non-exempt stores on a Saturday evening until 7 p.m. would, in the discrete circumstances of this case, be a detriment to those

employees particularly as it relates to work/life considerations. We also reiterate that there has been no compelling evidence put to the Commission as it relates to the need to open non-exempt stores until 7 p.m. on a Saturday evening.

***(f) The alleviation of traffic congestion***

[25] There were no submissions made concerning this criterion.

***(g) The likely impact of the order on employment***

[26] Mr Waters indicated that 78 hours of additional work per week would be generated by Big W's Macarthur Central store if the application was granted. Furthermore, Mr Wizenberg believed that some additional employment would be generated in Target if the application was granted.

***Consideration***

[27] All evidence pointed to a positive employment outcome if the application was granted.

***(h) The view of any local government in whose area the order is likely to have an impact***

[28] There was no evidence produced by the relevant local government.

***(i) Such other matters as the industrial commission considers relevant***

[29] There are no further issues upon which the Full Bench wishes to comment.

***Conclusion***

[30] There has been no real opposition to the non-exempt stores in question opening at 7 a.m. from Monday to Friday.

[31] We accept that component of the application. NRA has satisfied the Commission that, after considering the relevant provisions of s. 26 of the Act, those elements have been positively accepted in favour of granting that part of the application.

[32] However, on the question of the proposed 7 p.m. closing time on a Saturday evening, there has been little to no strength in NRA's evidence and submissions around this point. In fact, one of the larger non-exempt stores within the CBD (David Jones) expressed ambivalence as to whether or not it would choose to stay open until that time.

[33] Against that, there has been clear evidence from two witnesses for SDA who have opposed the proposed closing time of 7 p.m. on grounds previously cited. One of these witnesses is a SDA delegate at the workplace and we have accepted that her evidence was given on behalf of other employees at that workplace. We have been impressed by the evidence given by both of these witnesses and that strong opposition, considered against ambivalence on the part of NRA witnesses, has convinced us that NRA's claim on that point should be rejected.

[34] Consequently, in summary, the Full Bench has accepted that there will be an opening time of 7 a.m. for non-exempt stores (already not trading at that hour) within the City Heart of the Inner City of Brisbane and that the application, as it relates to a 7 p.m. closing time for non-exempt stores within the same area, be rejected.

[35] To this end, we propose that the Amendment will be operative as from Monday 6 February 2012.

[36] Order accordingly.

D. A. SWAN, Deputy President.

G. K. FISHER, Commissioner.

J. M. THOMPSON, Commissioner.

***Hearing Details:***

2011 27 October

Released: 24 January 2012

***Appearances:***

Mr P. Dube, National Retail Association Limited, Union of Employers.

Mr T. Martin, Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees.