

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Trading (Allowable Hours) Act 1990 - s. 22 - orders on exhibitions

Australian Events Pty Ltd (TH/2013/10)

TRADING HOURS - NON-EXEMPT EXHIBITORS - SUNSHINE COAST HOME SHOW & CARAVAN, CAMPING & BOATING EXPO

DEPUTY PRESIDENT BLOOMFIELD
DEPUTY PRESIDENT O'CONNOR
COMMISSIONER FISHER

5 August 2013

Application to amend trading hours order - Permanent Order - Hours - Legislation - Non-exempt exhibitors - Special Exhibition and special displays - Objection to application - Evidence - Legislation - Locality - Public, consumer and business interest - Relevance of s. 26 - Consideration of evidence and submissions - Application granted.

DECISION

- [1] This application is made by Australian Events Pty Ltd (Australian Events/the Applicant) seeking an amendment to Schedule 2 (Permanent Orders for Special Exhibitions and Special Displays) of the Trading Hours - Non-Exempt Shops Trading by Retail - State Order under s. 22 of the *Trading (Allowable Hours) Act 1990* (the Act) as follows:

"By inserting a new clause 34 in Schedule 2 as follows:

34.

TRADING HOURS – SUNSHINE COAST HOME SHOW & CARAVAN, CAMPING & BOATING EXPO

ORDER

1. Notwithstanding the provisions of any other Order to the contrary, this Order shall apply to the non-exempt shops of exhibitors at the special exhibition, known as the Sunshine Coast Home Show & Caravan, Camping & Boating Expo to be held at the premises of Stockland Park, Sunshine Coast Queensland 4575 for three consecutive days from Friday to Sunday in the month of October, every year, commencing in 2013.
2. The trading hours of the abovementioned shops shall be as follows:

	Opening Time	Closing Time
Friday	9.00 a.m.	5.00 p.m.
Saturday	9.00 a.m.	5.00 p.m.
Sunday	9.00 a.m.	4.00 p.m."

- [2] The Applicant was represented by Mr D Taylor, Australian Business Lawyers and Advisers. A mention of the matter was held on 14 May 2013 at which time Mr G Muir, Employer Services appeared on behalf of Nextbridge Pty Ltd t/a Queensland RV (Nextbridge) objecting to the application. Mr Muir sought and was granted leave to appear in the proceedings from the Deputy Industrial Registrar on 13 May 2013.
- [3] By letter dated 7 May 2013, the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees (SDA) advised that because the application included a commitment that "employees of companies mounting displays or exhibits be engaged on a voluntary basis" the SDA offered no objection to the application.
- [4] At the hearing on 17 June 2013 Mr Taylor provided an Affidavit of Service (Exhibit 1) setting out compliance with the Directions Order and attaching copies of advertisements which appeared in The Courier Mail and The Sunshine Coast Daily on Monday 6 May 2013.

[5] Evidence was provided as follows:

For the Applicant

- [6] Robert John Carroll, Director of Australian Events, stated that Stockland Park (Sports Ground) is the host venue for the Sunshine Coast Home Show & Caravan, Camping & Boating Expo (the Expo). He said this is the only appropriate venue located on the Sunshine Coast able to cater for a large exhibition of this nature.
- [7] Based on previous years Mr Carroll expected approximately 90 companies to exhibit products and services for the home and approximately 70 companies to exhibit products and services for the leisure, boating and motoring industries. Some exhibitors promote products while others promote and sell. A high percentage of businesses on show are local businesses or are promoting locally available products. However, under cross-examination Mr Carroll agreed that some businesses which participate are not based on the Sunshine Coast and, as a result, were brought into a market where they would not ordinarily trade.
- [8] In response to a question asked by the Full Bench, Mr Carroll said that all businesses that fall within a particular zone are invited to participate in the Show. It was established under cross-examination that participants are required to pay a fee to Australian Events in order to participate.
- [9] Mr Carroll stated the Sports Ground would suffer financially if this event was not able to operate. The Sports Ground is also an important community venue where regular meetings and functions are held and reliance is placed on assistance from the venue to provide the necessary facilities. He said the Expo is a fund raiser and promotional vehicle for The Australian Volunteer Coast Guard, Buderim Scout Group, Integrated Family and Youth Services, the Kawana Waters Uniting Church, Buderim Rotary Club, Surf Life Saving Association and Deaf Services Queensland. Some local community groups such as Rotary are approached to assist in running the event and in return for doing so Australian Events makes a generous donation to them.
- [10] From Mr Carroll's experience the visitor demographic is very broad but mostly consists of the family unit. His research shows that people will travel up to two to three hours to attend an event however the majority of people are located within one hour's drive of the venue.
- [11] Mr Carroll said that staff working at the Expo are employed by Australian Events and paid in accordance with the *Amusement, Events and Recreation Award 2010*. He was aware that staff working at the exhibitor sites are the responsibility of the exhibitors and understands they are paid their statutory entitlements.
- [12] Mr Carroll also said that Tourism Events Queensland (TEQ) is a new organisation formed from Tourism Queensland and Events Queensland and is the Queensland Government's key marketing and promotional body to develop and stimulate tourism in Queensland. Part of TEQ's "Queensland Drive Tourism Strategy 2012-2015" is to "continue to support regional caravan and camping shows" as they, like other events, "draw many tourists into a region contributing to the economy and promoting unique experiences and attractions".
- [13] He believes this Expo should be permitted to trade on Sundays for public interest reasons including:
- Sundays and week-ends are still regarded as the optimal time for families to attend these types of events and view options and products;
 - the only other similar event is Farm Fantastic at Caboolture which is held at a different time of the year;
 - caravans, leisure vehicles and motor vehicles are seldom available in regional areas;
 - the government is promoting self drive holidays, local tourism options and encouraging people to see Queensland first;
 - small businesses are finding it tough in the current economic climate;
 - events such as these bring communities together and promote civic pride and encourage the community to support local retailers;
 - regional communities rely on the support of charities and organisations such as the Rotary Club and others whose members are more likely to be available to assist with fund raising on Saturday and in particular Sunday; and
 - other groups including sport clubs, school parents and citizens committees, the State Emergency Service and Scouts rely on volunteers to help fund raise and the majority of those people are only available on Saturdays and Sundays.
- [14] Under cross-examination Mr Carroll said that he would have to give serious consideration to the viability of the event if it was not permitted to operate on Sunday.

For Nextbridge

- [15] Tony Roche, Dealer Principal of Nextbridge, 248 Nicklin Way, Warana stated he has been established on this site for 14 years and engaged in the caravan industry for 25 years. He is opposed to the application as he is concerned the making of an Order allowing the special display will be detrimental to his company and his employees.
- [16] Mr Roche states the trading hours for caravan dealers excludes the right to trade on a Sunday and he does not advocate a change nor does the Caravan Trade and Industries Association of Queensland of which he is a member. Under cross-examination he confirmed that his main objection to the Australian Events Show was that he did not wish to trade on Sunday at all. When the Australian Events Show arrives he has to make a decision whether to participate in it to protect his business interest or leave those businesses which operate to take the market from him.
- [17] Further Mr Roche indicated while it may be argued he can participate at the proposed Expo at the Sports Ground he must pay the Applicant a fee for the privilege of protecting his market share and he is not disposed to do so.
- [18] Under cross-examination Mr Roche acknowledged that his business had participated in the Queensland Caravan and Camping Show (the Queensland Show) which had operated for a number of days in June 2013 including a Sunday and public holiday. Mr Roche said the event was relatively successful for his business. He said, under re-examination, that the Queensland Show, which attracted dealers from across the State as well as 70,000 people, is considered to be a State-wide show and is not targeted to any particular area.
- [19] Mr Roche said that although people who were looking to buy a caravan and camper researched products of interest, shows were geared towards sales by the offering of show specials.
- [20] Mr Roche also said that he had participated in the Australian Events Shows at Kawana and Nambour in the past. However, once he lodged an objection to the Australian Events Show at Kawana, the attitude of Australian Events towards his participation altered. In addition, he had also learned that to participate in a show which had not been permitted by law to proceed would invalidate his insurance.
- [21] When the show is on at Kawana, Mr Roche acknowledged that he placed large banners outside of his business advertising show specials. However, this was only done for two days of the show

Relevant legislation

- [22] Section 22 of the Act states:

"22 Orders on exhibitions etc.

- (1) A full bench of the industrial commission may, by its order –
- (a) declare a statement of policy relating to the conditions to be observed, generally or in a particular case, in holding special exhibitions or special displays, whether permanent or temporary, of goods, other than goods that a reasonable person would expect to be sold in an exempt shop, whether the exhibition or display is held in a shop or elsewhere; or
 - (b) declare the conditions to be observed in holding such exhibitions or displays.
- (2) The jurisdiction conferred by subsection (1) includes jurisdiction -
- (a) to fix the earliest time at which a special exhibition or special display may open on any day and the latest time at which a special exhibition or special display must close on any day;
 - (b) to permit, prohibit, or fix conditions pertaining to, the selling and taking of orders for sale of goods exhibited or displayed or of goods of a description of those exhibited or displayed;
 - (c) to fix different hours and different conditions by reference to -
 - (i) classes of special exhibitions or special displays;
 - (ii) localities, or part thereof, in which special exhibitions or special displays are held;
 - (d) where an order provides for the holding of a special exhibition or a special display subject to a grant of a permit, to delegate to the chief industrial inspector (who is thereby authorised accordingly) authority to grant, refuse and cancel a permit for the purpose.

- (3) The industrial commission constituted by a single commissioner may, by its order, approve a special exhibition or special display in accordance with the policy declared under subsection (1) by a full bench of the industrial commission."

Applicant's Submissions

- [23] Given the paucity of precedent cases in respect of these types of Orders, the submissions drew on the matters listed in s. 26 of the Act to which the Queensland Industrial Relations Commission (the Commission) must have regard in determining whether to make an Order for trading hours in respect of non-exempt shops. In broad terms the relevant factors were the locality; public, consumer and business interest; the impact of the order on employment and the view of local government.
- [24] Mr Taylor, who appeared for the Applicant submitted that while the majority of people attending the show came from the local area, people were attracted to attend from Noosa to Caboolture. This was because the show was able to provide a range of exhibitors in the one place across three days. It allowed people to come to the show more than once and those who because of work or other commitments could not visit retailers during the week or on Saturdays. Tourists may also be attracted to the show and thus stay and shop locally.
- [25] Exhibitors preferred to exhibit over three days given the work involved in setting up and taking down the display. Further, all other regions had the benefit of at least a three day show and in Brisbane a seven day caravan and camping show was allowed to operate. The Sunshine Coast should not be disadvantaged compared to all other regions across the State.
- [26] The majority of exhibitors were Queensland businesses and the show promoted purchases from those businesses. Given the range of competition, including 24/7 online purchasing, Queensland businesses should be encouraged in trying to promote and sustain their business.
- [27] Mr Taylor also submitted that the show operating over three days was in the public interest. This was because a wide range of community groups benefited from being able to sell food or collect donations throughout the show. This source of revenue would be denied or reduced if Sunday trade was not permitted.
- [28] Substantial benefits also flowed to Stockland Park where the show was held. The fees paid to Stockland Park enable the maintenance and development of facilities available to local sporting groups. In this regard reliance was placed on a letter attached to Mr Carroll's affidavit on Sunshine Coast Council letterhead from Simon Bell, Manager. Mr Bell advised of the importance of the event to Stockland Park to provide revenue for the venue as well as boosting the revenue of local traders.
- [29] Mr Taylor also submitted that other businesses which did not participate in the show also benefited from its operation. The evidence of Mr Roche was that although he did not exhibit at the show, he hung signs on his premises advertising show specials through the duration of the show. This substantiated the Applicant's case that there was a good business case in favour of the show.

Nextbridge's submissions

- [30] Mr Muir, who appeared on behalf of the Interested Party, Nextbridge, drew an important distinction between the show operated by the Applicant and the Queensland Caravan and Camping Show. In respect of the former, the Applicant's show operated on a for profit basis and according to Mr Carroll's evidence it may not operate at all if the Order did not include Sunday. In contrast, the Queensland Caravan and Camping Show was an industry show run for the benefit of its members. Although the show was based in Brisbane it was regarded as the Queensland show and businesses came from across Queensland to exhibit.
- [31] Mr Muir acknowledged that only one Sunday was being sought but contended that even one day could adversely impact on Mr Roche's business. The reality was that for those wishing to protect their business interests, a fee had to be paid to Australian Events to participate in the show.
- [32] Mr Muir also tendered a copy of the Queensland Government's "Think Queensland, buy locally" strategy to help Queensland businesses. He submitted that the Australian Events Show did not encourage local trade.
- [33] Mr Muir said that the Applicant did not adduce evidence to show that people were travelling within the region to attend the show and disputed that the needs of the tourist industry would be met by the issuing of the Order. In his submission, a statement form TEQ was insufficient to meet the requirements of the Act.
- [34] Issue was also taken with the letter from Mr Bell as it did not specify of what area or facility he was the Manager and whether he had authority from the Sunshine Coast Council to provide the letter of support.

[35] Mr Muir also noted that Mr Roche, and others, had the right to object and to have their views heard.

Conclusion

- [36] The Application seeks that the Commission make a permanent Order in the terms set out in paragraph [1] of this decision. The Commission notes that the Applicant has operated similar shows for approximately 20 years. Only recently did Mr Carroll become aware that an Order from the Commission was required in order to operate on Sundays. Once aware, an application was lodged in 2012 by Australian Events Pty Ltd for a permanent Order under the Act for the Sunshine Coast Expo, however, the Commission decided not to grant that application and made an Order for the show to operate for one year only: *Trading Hours - Non-Exempt Exhibitors - Sunshine Coast Home Show and Caravan, Camping and Boating Expo 2012*.¹
- [37] The Commission should also record that Australian Events Pty Ltd applied to the Commission for permanent Orders to be made for a number of similar shows in a range of locations in Queensland, namely: TH/2013/3, TH/2013/4 and TH/2013/6-15 inclusive. Except for this application, TH/2013/10, the Commission as presently constituted granted applications TH/2013/6-15 inclusive. All were unopposed and all Orders sought were granted. Matter TH/2013/4, before a differently constituted Full Bench, was granted for 2013 only while TH/2013/3, also before that same Full Bench, was deferred for later consideration.
- [38] In essence the present application seeks permission for the event to trade on a Sunday when a number of the exhibitors are not otherwise permitted to trade pursuant to the provisions of the *Trading Hours – Non-Exempted Shops Selling Caravans – State Order* (the Caravan Order) and the *Trading Hours – Non-Exempt Shops Selling Motor Vehicles – State Order* (the Motor Vehicle Order), respectively. Further, while Mr Carroll states that the event provides a benefit for those exhibitors which trade, for a number of community groups and the sports ground on which the show is held, it is also the case that Australian Events, as the event organiser, is a commercial operator.
- [39] This application was opposed by Nextbridge primarily on the grounds that the business does not wish to trade on Sundays and does not wish others to gain a commercial advantage which would occur were this application to be granted.
- [40] The Commission accepts that unlike s. 26, the Act does not set out the matters to be considered in determining whether to make an Order under s. 22 of the Act. The evidence and submissions of the Applicant were directed to the criteria considered relevant in s. 26. Without determining the appropriateness of s. 26 criteria to an application made under s. 22, we will address the matters considered by us to be relevant in reaching a decision in relation to this particular application.
- [41] We accept that an event of this nature has the effect of bringing together in one location over a period of three days, including the weekend, a range of businesses which exhibit products related to the home, caravan, camping and boating. However, the Applicant bears the onus of establishing that the Order should be granted in the terms sought.
- [42] On the matter of business interest, we note that in this case the application is made by the business, Australian Events. Australian Events has also relied on letters of support to argue that business interests seek the granting of the application. Against that is the position of Nextbridge and letters from other businesses opposing the application. The Commission is not bound by the rules of evidence, however, the general practice has been to follow those rules and to ensure that the material parties wish to put before the Commission is capable of being tested. Further, the Commission has long held the view in trading hours cases that such correspondence can only be given limited weight and direct evidence is preferable. It is not sufficient to say that if issue was to be taken with any of the matters asserted in attached correspondence then a request could be made for the author to be made available for cross-examination. It follows that the Commission will consider the matter primarily based on the evidence of Mr Carroll and Mr Roche as well as the submissions made in respect of each of them.
- [43] We acknowledge that there are likely to be benefits for Australian Events and the businesses which exhibit at the Show and note that given the costs of setting up and taking down displays a three day event is likely to be more attractive to exhibitors. In addition, a number of exhibitors gain the advantage of an additional trading day which is ordinarily not available. Mr Carroll has also attested to the commercial viability of a three day event whereas he would have to seriously consider whether to conduct a two day event. Other businesses, like Nextbridge, do not wish to trade on a Sunday and do not wish to participate because of the requirement to pay a fee to a commercial operator. By not participating, Nextbridge has the potential to lose sales to a business which may or may not be a local competitor.

¹ *Trading Hours - Non-Exempt Exhibitors - Sunshine Coast Home Show and Caravan, Camping and Boating Expo 2012 (TH/2012/10) - Order* <<http://www.qirc.qld.gov.au>>

- [44] In this case the position of Nextbridge appears to have been reached in part because it does not wish to trade on Sundays and also because of the attitude adopted by Australian Events on learning of the opposition of Nextbridge to this application. We do not consider the latter point to be a relevant consideration, however, the competing business interests regarding Sunday trading is relevant. It is often a feature of trading hours cases and one which is often finely balanced.
- [45] We have taken into account Mr Carroll's evidence to the effect that the proposed Expo is sufficiently well attended to attract approximately 160 exhibitors, with the bulk of the attendees being family groups who are drawn to the event in order to compare products in a single setting. Because of work and other commitments many of the attendees are only able to attend the event on the weekend, with a number of these only able to attend on a Sunday.
- [46] We are of the view though that the Expo conducted by Australian Events cannot be compared to the Queensland Caravan and Camping Show even though both would operate on a Sunday if this application was granted. As Mr Muir noted, one is run for profit and the other by an industry association for the benefit of members. The Queensland show attracts dealers from around the state and is considered to be a state-wide event.
- [47] That the Expo has been held for more than 20 years is not a factor which we consider weighs in favour of the grant of the application. Nor is the submission that only approval for one day each year is being sought a reason to support granting the application.
- [48] We are of the view that the most compelling arguments, and ones which lead us to favourably consider granting the application, is that the event is a home show, caravan, camping and boating Expo which approximately 90 companies wish to attend to exhibit products and services for the home, with a further 70 exhibitors hoping to display products for the leisure, boating and motoring industries. As such, many of the likely exhibitors would be able to trade on Sundays as exempt stores, independent stores or pursuant to provisions of the *Trading Hours – Non-Exempt Shops Trading by Retail – State Order* insofar as it sets trading hours in the Sunshine Coast Region. The only businesses not able to trade on the final day of the proposed Expo without an Order of the type now sought would be those covered by the Caravan Order and the Motor Vehicle Order, respectively.
- [49] Further, Mr Carroll's evidence established that many local community bodies and organisations, especially Rotary, (see paragraph [9] above) use the Expo as both a promotional vehicle and a fund raising opportunity.
- [50] Mr Carroll's evidence also was to the effect that if non-exempt shows were not permitted to trade on the third day of the proposed Expo then the event itself would probably not be held because many potential exhibitors would not attend as the costs involved in setting up and then dismantling exhibits for a two day event would make their participation unviable. Such outcome would adversely impact not only the potential exhibitors but also the community and supporting bodies mentioned elsewhere, as well as members of the general public who would otherwise have attended the Expo.
- [51] We noted above that competing business interests is often a feature of trading hours cases. In this instance, Nextbridge argues that its interests will be detrimentally impacted if exhibitors with which it might compete are allowed to trade on a Sunday at the nearby Expo. Against that proposition, Australian Events argues that potentially 160 other businesses will be detrimentally impacted if the Expo is not able to be conducted over the proposed three day period. This is quite apart from the detriment to the community bodies and organisations that would otherwise use the event for fund raising and promotional purposes, together with many thousands of potential attendees.
- [52] In the end result, after carefully considering everything put to us, we have reached the conclusion that the evidence and arguments advanced by the Applicant in support of the proposed Expo being able to be trade for a three day period, including one Sunday, in October each year outweighs the evidence and arguments advanced on behalf of Nextbridge. As such, we grant the Application for the making of a permanent Order in the terms sought.
- [53] Order accordingly.

A.L. BLOOMFIELD, Deputy President.

D.L. O'CONNOR, Deputy President.

G.K. FISHER, Commissioner.

Hearing Details:

2013 14 May (Mention)
17 June (Hearing)
17 July (transcript available)

Released: 5 August 2013

Appearances:

Mr D. Taylor, Australian Business Lawyers and Advisers and with him Mr B. Carroll for the Applicant.
Mr G. Muir, Employer Services and with him Mr T. Roche for Nextbridge Pty Ltd trading as Queensland RV.