

**QUEENSLAND INDUSTRIAL RELATIONS COMMISSION**

CITATION: *Re: National Retail Association Limited, Union of Employers* [2015] QIRC 027

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

CASE NO: TH/2014/10

PROCEEDING: Application to amend Order - Trading Hours  
Non-Exempt Shops Trading by Retail - State  
(Gold Coast Coastal Tourist Area)

DELIVERED ON: 18 February 2015

HEARING DATE: 17 December 2014  
12 January 2015 (Inspections)  
13 January, 4 and 17 February 2015

MEMBERS: Industrial Commissioner Fisher

ORDER: **The further amended application is granted.**

CATCHWORDS: INDUSTRIAL LAW - TRADING HOURS ORDER  
- application to amend order - amended application -  
further amended application - to amend boundary -  
inspections - evidence - statements of witnesses  
tendered by consent - whether findings relevant to  
legislative criteria - determined further amended  
application be granted.

CASES: *Trading (Allowable Hours) Act 1990, s 21, s 26*  
*Economic Development Act 2012*

*Trading Hours - Non-Exempt Shops Trading by  
Retail - State Order*

*TRADING HOURS - NON-EXEMPT SHOPS  
TRADING BY RETAIL - STATE (TH/2008/3) -  
Decision <http://www.qirc.qld.gov.au>  
National Retail Association Limited, Union of  
Employers v Shop, Distributive and Allied  
Employees Association (Queensland Branch) Union  
of Employees & Queensland Retailers and  
Shopkeepers Association Industrial Organisation of  
Employers [2014] QIRC 150*

APPEARANCES: Mr J. Franken for the National Retail Association Limited, Union of Employers, the Applicant.  
 Mr C. Dorber, Employment Advocacy Solutions Pty Ltd for the Master Grocers Australia Limited and the Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers).  
 Mr D. Gaffy for the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees.

### DECISION

- [1] The National Retail Association Limited, Union of Employers filed an application pursuant to s 21 of the *Trading (Allowable Hours) Act 1990*, to amend the boundary of the Gold Coast Coastal Tourist Area as defined by the *Trading Hours - Non-Exempt Shops Trading by Retail - State Order*. The amendment sought to extend the boundary at the northern end of the Gold Coast Coastal Tourist Area to include Southport and a shopping precinct in Burleigh.
- [2] The Master Grocers Australia Limited, the Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees were granted leave to appear and be heard.
- [3] On 12 January 2015 and in the company of those organisations appearing in these proceedings, the Queensland Industrial Relations Commission undertook inspections of the areas originally sought to be included in the Gold Coast Coastal Tourist Area.
- [4] Following the inspections, the NRA amended the application so that only the Australia Fair Shopping Centre, located at Southport, was included within the boundary of the Gold Coast Coastal Tourist Area.
- [5] The trading hours for Gold Coast Coastal Tourist Area set out in the Trading Hours Order apply only to supermarkets and permit them to open earlier and close later on each day of the week and public holidays. The application was further amended by the NRA on 17 February 2015 to allow non-exempt stores situated in the Australia Fair Shopping Centre to trade the same hours as supermarkets in the Gold Coast Coastal Tourist Area.
- [6] In making an order under s 21 of the Act, the Commission must have regard to the criteria listed in s 26 of the Act. To assist in making the decision, evidence has been submitted by the NRA, the MGA, the QRTSA and the SDA. The statements of all witnesses called by each of these organisations were tendered by consent.

#### **Evidence relating to the s 26 Criteria**

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

- [7] The Australia Fair Shopping Centre is situated at Southport.

- [8] According to the evidence of David Clare, Principal and Owner of PDC Consulting, the Gold Coast City Council has named Southport as the Gold Coast's CBD. Southport has been the traditional centre of the Gold Coast with regional government administration, medical, retail and commercial business as well as regional, community and recreation facilities.
- [9] Laura Younger, the Chairperson of the Board of Directors of the Surfers Paradise Alliance, said that the Gold Coast City Council had declared the Southport Priority Development Area (PDA) under the *Economic Development Act 2012* on 4 October 2013. The Southport PDA Development Scheme was approved by the State Government on 5 September 2014. She said the purpose of the PDA is to remove barriers and provide developer confidence to position Southport as the CBD of the Gold Coast and to facilitate economic development. The PDA covers the existing Southport CBD and has an area of approximately 195.7 hectares.
- [10] The evidence of Mr Clare, Ms Younger and David Stout, the State Compliance Manager for Coles, all attest to the construction of retail, commercial and residential facilities underway or scheduled in and around Southport. Mr Stout referred to reports of \$1.45 billion in development underway and a further \$1.78 billion planned.
- [11] A Chinatown precinct is being developed in Young and Davenport Streets, Southport, within easy walking distance of the Australia Fair Shopping Centre. This project is intended to revitalise the Southport CBD as an international dining and business precinct. Chinatown opened in 2014 and will evolve as more restaurants and other businesses open and activities in the area occur.
- [12] The first stage of the construction of the Gold Coast Rapid Transit system (light rail) has been completed and a stop is in close proximity to the Australia Fair Shopping Centre.
- [13] Southport is also home to Griffith University's Gold Coast campus and a TAFE College is located adjacent to the Australia Fair Shopping Centre.
- [14] In addition, the Commonwealth Games are to be held on the Gold Coast in 2018 and the first infrastructure project, the Southport Aquatic Centre, has been redeveloped for this purpose. It is within easy walking distance of the Australia Fair Shopping Centre.
- [15] Ms Younger referred to the announcement of a \$15 million redevelopment of part of the Australia Fair Shopping Centre.
- [16] The evidence establishes that Southport is undergoing a period of major development and expansion of commercial, residential and recreational facilities. The light rail system has also added a new dimension, allowing easier access to those facilities, including the Australia Fair Shopping Centre, for residents, tourists and workers.

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

- [17] Much of the data on the tourism industry provided by witnesses called by the NRA related to the whole of the Gold Coast. As such, the Commission cannot draw Southport specific conclusions. The NRA submits that while this criterion and s 26(c) are relevant considerations, they are not as important as other criteria pertaining to this application.
- [18] Mr Stout referred to the Gold Coast Planning Scheme Part 6 Division 2 Local Area Plan Chapter 23 Southport, which states that Southport is the most significant activity centre in the Gold Coast City and is the largest employment centre within the City. Mr Stout also provided information from the Gold Coast City Council showing that Southport is regarded as the centre of the city with the highest concentration of employment and the largest share of office space. Employment in the area is expected to continue to grow particularly in the retail, finance and communication sectors.

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

- [19] Although Southport specific data is not before the Commission, the evidence establishes that a number of high rise residential and hotel developments are under construction or are before the Gold Coast City Council for approval. An example of a residential development is "Rhapsody Surfers North" which includes 223 apartments while "Jewel", being constructed in Surfers Paradise, will include an hotel, two apartment towers and a range of resort, leisure, retail and other facilities. On completion, these developments, and others, will increase the tourism offer as well as providing more residential accommodation.

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

- [20] Much of the population data provided by NRA witnesses concerned the Gold Coast as a whole. However, Mr Stout referred to information from the Gold Coast City Council showing that Southport's workforce is approximately 25,000 people. It is also the most populated centre in the Gold Coast with a resident population estimated at 28,315.
- [21] Allen Wright, the State Support Manager, Queensland, for Woolworths Limited, said that despite the population growth in the Gold Coast, the Southport area is serviced by only one principal shopping Centre, the Australia Fair Shopping Centre.
- [22] Mr Clare listed a number of significant commercial and residential construction projects that are underway in Southport for prospective residents and students of Griffith University.
- [23] These projects, together with those referenced in the evidence relating to the locality and the needs of industry, suggest that the population of Southport is likely to increase as the construction projects are completed.

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

- [24] In relation to the public interest, the NRA submits that the Commission should consider the evidence of Mr Clare and Ms Younger who both attest to the ongoing developments within Southport and nearby vicinity. In particular, Mr Clare said that it was important for the retail infrastructure of Southport and the trading hours of this infrastructure to keep pace with the developments in the area.
- [25] The Commission has taken account of the competing views of large business as against other business interests whose interests were represented by the MGA and the QRTSA. In short, the small and medium size business operators are concerned about the impact of this application on their viability were it to be granted. However, and without resiling from this view, the MGA and QRTSA have advised the Commission that they and their witnesses do not oppose consideration of the amended application on the basis that:
- the Australia Fair precinct is, and can be seen as a stand alone shopping centre; and
  - a current development application exists to create a "night time precinct" opposite the Australia Fair precinct which could stimulate demand for extended trading hours within the Australia Fair precinct.
- [26] The joint MGA and QRTSA submission states that a substantial number of the current "exempt" stores in the Australia Fair Shopping Centre were canvassed about the application. Those traders advised they were not opposed to the application as if successful, it may increase foot traffic in the centre. In addition, they are protected by legislation from being compelled to open the additional hours.
- [27] No particular evidence from consumers is available for consideration, however, the Commission notes the evidence of Mr Stout concerning the high volume of customers between 4.00 pm and 5.30 pm on Saturdays at the Coles' store in the Australia Fair Shopping Centre. Mr Stout provided data from other Coles' stores in the Gold Coast Coastal Tourist Area to show consumer support for trading after 6.00 pm on Saturdays. In comparison, the peak period for the Southport store was around midday. Mr Stout contends that were the application to be granted then the Coles' store at the Australia Fair Shopping Centre was likely to follow the pattern of trading of other stores in the Gold Coast Coastal Tourist Area.
- [28] Mr Wright provided data showing strong demand from consumers in the first hour of trade for the Woolworths store in the Australia Fair Shopping Centre and relied on data from the Woolworths Surfers Paradise store to contend that transactions would also be high at the Australia Fair Shopping Centre were the application to be granted.
- [29] Mr Stout also stated that the turnover of the Coles' store in the Australia Fair Shopping Centre had increased by 15 per cent since the light rail commenced operations. Further, consumers of Asian appearance frequent the store in "huge numbers" after 5.00 pm particularly on Saturdays. It is not clear whether these consumers are residents or tourists.

- [30] Against the evidence from the NRA witnesses about consumer demand is that of the two witnesses called by the SDA. Jennifer Brown works at Woolworths in the Australia Fair Shopping Centre. She said that the Woolworths store becomes very quiet from 7.00 to 9.00 pm between Monday and Saturday; from 5.30 pm on Sunday and between 5.00 and 6.00 pm on public holidays.
- [31] Melanie Nicholls, who is employed by Coles in the Australia Fair Shopping Centre, also attests to that store becoming very quiet from 7.00 pm onwards Monday to Saturday. She said that she works a late night duty management shift and very few customers are in the store after 7.00 pm. Three team members are rostered for service - one in kiosk; one in assisted checkouts and one in main register.
- [32] The evidence supports the conclusion that the interests of large business will be promoted if the application is granted. Although the interests of the MGA and QRTSA members will be affected, those organisations and their members have adopted a pragmatic approach to this application for the reasons cited above.

*(f) The alleviation of traffic congestion*

- [33] The evidence of Mr Wright and Mr Stout shows that traffic congestion is not a relevant criterion in the determination of this application.

*The impact of the order on employment*

- [34] Both Mr Stout and Mr Wright gave evidence that they believed the granting of the application would create additional employment opportunities for their employees and any additional hours would be offered to employees on a voluntary basis. Both also referred to their respective certified agreements and confirmed the provisions to:

- discuss any proposed roster changes with permanent staff;
- offer additional shifts to casual and part-time staff on a voluntary basis; and
- enable staff to revoke agreement to work an additional shift at any time.

- [35] Jeff Wilson, Zone Manager Queensland South for Kmart Australia Ltd, said that were the application to be granted it was anticipated that an additional 80 hours of employment would be created in its store at the Australia Fair Shopping Centre. He also stated the longer working hours would be voluntary for existing store employees.
- [36] Ms Nicholls stated that she believed that any additional hours would be worked by existing staff and they would be required to rearrange their hours to suit the business.
- [37] Small and medium sized store owners gave evidence of their belief of the negative impact on employment levels were this application to be granted.
- [38] It is clear that the application will have limited positive impact on employment. For the non-exempt stores it is more likely that the additional hours will be offered to

existing employees and new employees would only be engaged if existing staff did not take up the additional hours on offer.

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

[39] No relevant evidence is before the Commission on this criterion.

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

[40] The witnesses for the SDA expressed concern over access to transport particularly if the later closing time was granted. Concern was also raised over access to car parking. Further, in light of these matters, concern was also expressed over staff safety.

**Consideration and Findings**

[41] The Gold Coast Coastal Tourist Area was established by the Commission on 29 August 2010.<sup>1</sup> This (further amended) application seeks to extend the boundary of that Area to encompass the Australia Fair Shopping Centre only and to have the trading hours for that Area apply to non-exempt shops in that Shopping Centre.

[42] The evidence given about the criteria of locality, the needs of industry including the tourist industry, and the needs of an expanding population shows that Southport is a burgeoning centre with substantial major development and construction planned or in train. The Gold Coast City Council's PDA for Southport and the naming of Southport as the CBD of the Gold Coast will also contribute to the continued economic development of Southport.

[43] The substantial construction underway or planned for the area, including Chinatown, and the access provided by the light rail will make Southport attractive to residents and tourists. These developments will also see an increase in the residential population as well as an expansion of the number of businesses and workers in Southport.

[44] The development of Chinatown and its evolution will add considerably to the development of a night time economy at Southport with a range of dining and entertainment options.

[45] The Australia Fair Shopping Centre is situated in close proximity to Chinatown and several commercial, residential and retail developments in Southport. It is also situated close to a number of educational providers.

[46] Extended trading hours for non-exempt retailers will add to the development of the night time economy and may prove particularly beneficial to those who enjoy the night time activities on offer in and around the Australia Fair Shopping Centre. The expansion of hours as sought also provides a greater number of consumers with greater choice and flexibility in their shopping.

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<sup>1</sup> TRADING HOURS - NON-EXEMPT SHOPS TRADING BY RETAIL - STATE (TH/2008/3) - Decision  
<<http://www.qirc.qld.gov.au>>

[47] In considering the totality of the evidence, the Commission is satisfied that the criteria of locality, the needs of industry, including the tourist industry and the expanding population weigh in favour of the grant of the application and outweigh the other criteria. In the circumstances the Commission grants the further amended application with an operative date of 16 March 2015. To be clear, the boundary is amended to include the Australia Fair Shopping Centre and an additional proviso is added to clause 3.2(8) of the *Trading Hours - Non-Exempt Shops Trading by Retail State Order*.

### **Final Remarks**

[48] The Commission notes the undertakings given by the NRA on the transcript on 4 February 2015 that should the application be granted, all existing employees of those non-exempt employers represented or covered by the amended application, will not be required or rostered to work such extended hours. Further, all work performed within such extended hours remain voluntary for existing employees at the time any such order is made to amend trading hours pursuant to the amended application. These undertakings are endorsed by the Commission.

[49] The Commission notes the comments of the Full Bench in the Ipswich Trading Hours case<sup>2</sup> that safety concerns are not unique to employees in the retail sector. However, unlike that case, and because of the way in which this application was conducted, evidence was not given about the steps taken to address safety issues. The Commission considers that the non-exempt retailers should advise their staff as to the steps to be taken to minimise safety risks with the extended hours now approved.

[50] The Commission also records that the position of the MGA and the QRTSA adopted with respect to this application is not indicative of its position concerning any future applications made for the Southport or Burleigh Heads retail trading areas.

[51] Order accordingly.

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<sup>2</sup> *National Retail Association Limited, Union of Employers v Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees & Queensland Retailers and Shopkeepers Association Industrial Organisation of Employers* [2014] QIRC 150.