

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *National Retail Association Limited, Union of Employers* [2015] QIRC 049

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

CASE NO: TH/2012/14

PROCEEDING: Application to amend the trading hours order - Non-exempt shops trading by retail - State, Hamilton Northshore area

DELIVERED ON: 12 March 2015

HEARING DATE: 10 December 2013

MEMBERS: Deputy President O'Connor
Industrial Commissioner Thompson
Industrial Commissioner Knight

ORDERS:

- 1. The application is granted.**
- 2. The *Trading Hours Order - Non-Exempt Shops Trading by Retail - State* be amended in accordance with Schedule 1 of the amended application filed on 6 May, 2013.**
- 3. The operative date of the amendments take effect as and from Friday 27 March 2015.**

CATCHWORDS: INDUSTRIAL LAW - TRADING HOURS - ORDER - APPLICATION TO AMEND - *Trading Hours - Non-Exempt Shops Trading by Retail - State* - Where the applicant sought to amend the application by extending the boundary of the included area - Objectors granted leave to appear and be heard - Matters relevant to s 21 order considered - Application granted.

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

National Retail Association v Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) (2005) 180 QGIG 1211
O'Sullivan v Farrer (1989) 168 CLR 210
Re: National Retail Association Limited, Union

of Employers [2014] QIRC 150
Re: National Retail Association Limited, Union of Employers [2014] QIRC 157
Retailers' Association of Queensland Limited, Union of Employers v Queensland Retail Traders and Shopkeepers Association (Industrial Organisation of Employers and Others (2003) 174 QGIG 912

APPEARANCES:

Ms A. Lamb for the National Retail Association Limited, Union of Employers.
 Mr T. Martin for the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees.
 Mr C. Dorber for Master Grocers Australia Limited.

Decision

- [1] The National Retail Association Limited, Union of Employers ("NRA") applies for an amendment to the order *Trading Hours - Non-Exempt Shops Trading by Retail - State* ("the order") pursuant to s 21 of the *Trading (Allowable Hours) Act 1990* ("the Act"). The Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees ("SDA") and Master Grocers Australia Limited ("MGA") were granted leave to appear and be heard in relation to the application.
- [2] The application seeks to amend the order as follows:

- 1 By inserting a new clause (29) in clause 3.2 as follows:

(29) Hamilton North Shore Area:

	Opening Time	Closing Time
Monday to Friday	6.00 a.m.	10.00 p.m.
Saturday	7.00 a.m.	10.00 p.m.
Sunday	7.00 a.m.	9.00 p.m.
Public Holidays (except 25 December, Good Friday, 25 April, and Labour Day)	7.00 a.m.	9.00 p.m.

- 2 By inserting a new clause (38) in Schedule 1 as follows:

(38) Hamilton North Shore Area - The area within the following boundaries:

Commencing at the intersection of Kingsford Smith Drive and Riverview Terrace; then along Kingsford Smith Drive to the intersection with the Southern Cross Way; then along the Southern Cross Way to where it joins with the Gateway Motorway; then along the Gateway Motorway to the Brisbane River, then along the Brisbane River to the point of commencement.

Provided that where the boundary is comprised of a street, road or highway, shops on both sides of the street, road or highway shall be regarded as being within the area.) Hamilton North Shore Area:

[3] The existing hours are as follows:

	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, and Labour Day)	9.00 a.m.	6.00 p.m.

Legislative requirements

[4] Section 21 of the Act provides:

"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) 8.00 am and 9.00 pm for Monday to Friday;
 - (b) 8.00 am and 5.00 pm 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."¹

[5] Section 26 provides that, in relation to making an order under s 21, the Industrial Commission must have regard to the following:

¹ *Trading (Allowable Hours) Act 1990*, s 21.

- "(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."²

Application of s 26 criteria

- [6] In light of the recent decisions in *Re: National Retail Association Limited, Union of Employers*³ and *Re: National Retail Association Limited, Union of Employers*⁴ it is not necessary to repeat the reasoning adopted by the Full Bench in both of those matters. However, it is worthwhile repeating the passage from the decision of the Full Bench in *Re: National Retail Association Limited, Union of Employers*⁵:

"It may well be unwise for an applicant not to address those matters, but the Commission is still capable of having regard to them in the manner required by the Act, notwithstanding any failure by the applicant to address or adduce evidence in respect of them."⁶

- [7] The approach therefore to be adopted by the Commission in dealing with application's such as this is to consider and evaluate the evidence (if any) and submissions in relation to each criterion, and then to make a decision based on an overall evaluation of the criteria specified in s 26.⁷ In doing so, the Commission is not restricted to material provided by the applicant but may have regard to other relevant material.

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

- [8] The NRA's application seeks to amend Schedule 1 of the Order by inserting a new definition for the Hamilton Northshore Area which would allow non-exempt stores within the proposed boundary to trade the amended hours.
- [9] The Northshore Hamilton Urban Development Area (UDA) was declared by the Minister for Infrastructure and Planning on 27 March 2008.
- [10] The proposed new boundary contained within the application before the Commission has been aligned to the Northshore Hamilton UDA area.

² *Trading (Allowable Hours) Act 1990*, s 26.

³ *Re: National Retail Association Limited, Union of Employers* [2014] QIRC 150.

⁴ *Re: National Retail Association Limited, Union of Employers* [2014] QIRC 157.

⁵ *Re: National Retail Association Limited, Union of Employers* [2014] QIRC 150.

⁶ *Re: National Retail Association Limited, Union of Employers* [2014] QIRC 150 at [10].

⁷ *Re: National Retail Association Limited, Union of Employers* [2014] QIRC 157 at [22].

[11] "Located six kilometres from the Brisbane CBD, the Northshore Hamilton UDA covers 304 hectares of land, with a 3.8 kilometre river frontage. The Northshore Hamilton UDA includes land between Kingsford Smith Drive and the Brisbane River, extending from Bretts Wharf to the west and the Gateway Motorway to the east ... The Northshore Hamilton UDA is close to some of Brisbane's most important economic drivers, including the Brisbane Airport and Australia TradeCoast."⁸

[12] The Urban Land Development Authority (ULDA) is a statutory authority under the *Urban Land Development Authority Act 2007* (the Act). The role of the ULDA is to facilitate the development of declared Urban Development Areas (UDAs).

[13] The vision for the Northshore Hamilton UDA as set out in the statement of Mr Bell is as follows:

"The Northshore Hamilton UDA is the most significant waterfront development opportunity in Brisbane since Expo 88 and Southbank. The Northshore Hamilton UDA is larger than the Brisbane CBD, and its river frontage is greater than the river edges of Southbank and the CBD combined. It possesses remarkable locational advantages, being within 6km of the city, with outstanding views and adjoining Hamilton, one of the most sought after residential addresses in Brisbane. As well, the regional economic and transport infrastructure in the area is driving intensification and redevelopment. The UDA also sits at the heart of Brisbane's rapidly growing inner northeast corridor, anchored by the CBD and Australia TradeCoast, the city's two largest concentrations of employment."⁹

[14] The Full Bench is of the view that the proposed definition of the area is an appropriate one as it accords with the Northshore Hamilton Urban Development Area (UDA) as declared by the Minister for Infrastructure and Planning on 27 March 2008.

- (b) *the needs of the tourist industry or other industry in such locality or part;*
- (c) *the needs of an expanding tourist industry.*

[15] These two matters to which the Commission must have regard can be conveniently dealt with together.

[16] The NRA submits that the proposed boundary in this application contains the Brett's Wharf, Hamilton Harbour development and the Portside Wharf. As was stated in the evidence, Portside Wharf contains the Brisbane Cruise Ship Terminal which services ocean liners, yachts and expedition ships.

⁸ Attachment B to the Statement of Geoff Bell (Exhibit 6).

⁶ Attachment B to the Statement of Geoff Bell (Exhibit 6).

⁹ Statement of Geoff Bell (Exhibit 6) P. 3.

- [17] The only evidence before the Commission as to the impact of the cruise ships on the area came from Mr Peter Tamblyn, the owner of Chalk and Cheese Bottle Shop who, in oral evidence, said that his business received a flow through from the cruise ships.¹⁰
- [18] Attachment C to the statement of Geoff Bell contained a report commissioned by Carnival Australia and prepared by Deloitte Access Economics to undertake an economic contribution analysis of the Australian cruise industry to the Australian economy. The report reveals that the total number of passengers in Brisbane in 2010 to 2011 was approximately 165,000. This figure is expected to increase to 332,000 by 2019 -2020.¹¹
- [19] The Full Bench recognises and accepts the NRA's submission that Northside Hamilton is an area of significance to Brisbane in terms of its existing residential and commercial mix, proximity to the Brisbane CBD, Brisbane Airport and Australia Trade Coast, its growth potential, and its location on a 3.8 kilometre stretch of the Brisbane River.
- [20] Whilst the evidence relevant to a consideration of the criteria in s 26 (b) and (c) is limited, it is possible to say that the needs of the tourist industry or other industry in the Northshore Hamilton locality would be served by granting the application.

(d) the needs of an expanding population;

- [21] The Queensland Government population projections, 2011 published by the Government Statistician, Queensland Treasury and Trade¹² shows a projected population growth of 22.4% by 2031. Pinkenba-Eagle Farm, which adjoins the Northshore Hamilton UDA, is projected to grow by 1510.7%. The population growth for the Hamilton area is fifth behind Fortitude Valley (76.9%).
- [22] The 2011 Census figures show that the population of the Hamilton Statistical Local Area grew from 4,536 in 2001 to 5,204 in ten years to 2011. The 2011 Census data shows that Hamilton and Eagle Farm- Pinkenba recorded the highest percentage of residents in full-time employment, with Hamilton at 67.3% and Eagle Farm-Pinkenba at 63.2%.
- [23] The Full Bench accepts that there is an expanding population which, prior to the Ministerial declaration in 2008 was part of the Port of Brisbane and a mix of light and heavy industry. The Northshore Hamilton UDA permitted the establishment of high density residential apartments. This trend is likely to continue as more land is released for residential development. The evidence suggests that the needs of an expanding population is best served by the provision of adequate retail services to cater for such growth.

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

¹⁰ T. P. 14, L 20.

¹¹ Attachment C to the Statement of Geoff Bell (Exhibit 6).

¹² Attachment C to the Statement of Geoff Bell (Exhibit 6).

Public Interest

- [24] In the Full Bench decision of *Re: National Retail Association Limited, Union of Employers*¹³ "public interest" was described in the following terms:

The concept of "public interest" is referred to in many statutes. It has been described as being of the widest import. In *O'Sullivan v Farrer*,¹⁴ Mason CJ, Brennan, Dawson and Gaudron JJ wrote that:

"... the expression 'in the public interest', when used in a statute, classically imports a discretionary value judgment to be made by reference to undefined factual matters, confined only 'in so far as the subject matter and the scope and purpose of the statutory enactments may enable ... given reasons to be [pronounced] definitely extraneous to any objects the legislature could have had in view.'"

As differently constituted Full Benches of the Commission have observed, public interest matters "encompass a variety of considerations, amongst which is a requirement to weigh and balance relevant issues" and "any competing interests."

The "public interest" in relation to the extent of trading hours might differ from one location to another. In some places, there might be a clear public interest in having extended trading hours (including for reasons referable to other criteria listed in s 26). In other locations, the public interest might favour a different outcome. There is no reason to adopt a narrow construction of the expression "public interest" for the purpose of deciding this or any other trading hours application.

Consumer Interest

- [25] The Commission has previously stated that: "[A]s a matter of general comment," the Full Bench in *Retailers' Association of Queensland Limited, Union of Employers v Queensland Retail Traders and Shopkeepers Association (Industrial Organisation of Employers)*¹⁵ observed, "it is reasonable to state that the interests of consumers are facilitated by extending trading hours."¹⁶
- [26] Professor Judy Drennan, Services Innovation Research Programme Leader, at the Queensland University of Technology, Business School undertook a survey¹⁷ on behalf of the National Retailers Association regarding the proposed trading hours at Woolworths Hamilton Harbour.

¹³ *Re: National Retail Association Limited, Union of Employers* [2014] QIRC 157.

¹⁴ *O'Sullivan v Farrer* (1989) 168 CLR 210.

¹⁵ *Retailers' Association of Queensland Limited, Union of Employers v Queensland Retail Traders and Shopkeepers Association (Industrial Organisation of Employers)* (2003) 174 QGIG 1339.

¹⁶ *Retailers' Association of Queensland Limited, Union of Employers v Queensland Retail Traders and Shopkeepers Association (Industrial Organisation of Employers)* (2003) 174 QGIG 1339, 1345, citing *Retailers' Association of Queensland Limited, Union of Employers v Queensland Retail Traders and Shopkeepers Association (Industrial Organisation of Employers and Others)* (2003) 174 QGIG 912.

¹⁷ Appendix to the Statement of Professor Judy Drennan (Exhibit 8).

- [27] Professor Drennan holds a PhD from Deakin University, and a Master of Education from Melbourne University. Her particular expertise for which she has established an international reputation for her research in services marketing, branding, and m-marketing on which she has published over 80 refereed academic papers.
- [28] The survey was conducted as an "intercept survey" and collected data regarding the proposed weekend, weekdays and public holiday trading at Woolworths Hamilton Harbour.
- [29] The survey was conducted over a week from 21 to 29 September 2013 and 163 respondents participated in the survey. Statistically, Professor Drennan was satisfied with the number of participants.
- [30] Overall, the findings suggest that most respondents, especially females and couples without children at home, embraced the proposed extended hours for Woolworths at Hamilton Harbour. While the survey noted concerns over increasing competition for smaller retailers, long working hours for staff and lack of necessity and parking space, a majority of respondents think that the proposed hours would make their life more convenient, better suit their lifestyles, provide them more options and flexibility, reduce congestion during the peak shopping periods of a weekend and holidays, improve the business for the nearby small businesses and create job opportunities.
- [31] Importantly, the survey revealed that most people do not believe the proposed extension of trading hours will harm the community or have a detrimental effect on themselves.
- [32] The main findings of the report are as follows:
- "More than two thirds or 83% of respondents supported the proposal for extended trading hours at Woolworths Hamilton, 9% oppose and 8% are unsure.
 - 80% of those surveyed lived locally. Of those who lived locally, 80% support the proposed extended trading house on weekdays, weekends and public holidays.
 - A bigger percentage of females (who support the application) tend to support the proposal for weekday trading between 9 am and 10 pm, Saturday between 7 am and 8 am and Sundays and public holidays between 6 pm and 9 pm. While a bigger percentage of male supporters are most likely to do their shopping on weekdays between 9 pm and 10 pm.
 - Of all the males surveyed, 81% were in support, 8% were opposed and 11% unsure. By contrast, 84% of female respondents supported the proposal, while 11% oppose and 5% are unsure.

...

- Respondents showed different interest in the grocery shopping days. However, about one third or 31% normally do their grocery shopping on weekdays after 5 pm and 91% of them support the extended trading hours for Woolworths at Hamilton Harbour.
- Weekdays between 9 pm and 10 pm, Saturdays between 5 pm and 10 pm and Sundays and holidays between 6 pm and 9 pm are the most preferred day for respondents to do their shopping.
- Convenience is cited as the major reason for support (99%) followed by lifestyle (98%), flexibility for the professionals who live in the area (97%) and a necessity (94%)."¹⁸

[33] The report noted under the heading "Attitudes towards listed reasons for support and oppose" that respondents were provided with a list of reasons for supporting or proposing the proposal and asked to state whether they agreed, disagreed or were unsure. The report notes that surveyors asked participants for their own personal opinions in an earlier question regarding the proposal in order to prevent any bias resulting from the given reasons.

[34] The Full Bench accepts the evidence of Professor Drennan and in particular the findings of her survey. The Full Bench has formed the view that the survey provides some objective and non-opinion evidence to assist it in determining whether or not the application should be granted. More particularly, it demonstrates that the consumer generally supports the application emphasising that the expanded trading hours would be, amongst other things, "more convenient, better suit their lifestyle, provide them more options and flexibility"¹⁹.

Business Interest

[35] Mr Ugo Sirianni, an IGA supermarket owner at Oriel Park at Ascot was called by the MGA. Mr Sirianni's supermarket is not located within the proposed boundary but is located some kilometers from Northshore Hamilton area.

[36] In the statement of Mr Sirianni's he says:

"The Northshore Hamilton Development Area is approximately 2 kilometer's from my store in Ascot, however I do not believe that the proposed changes will affect my store particularly, due mainly to my location. I am located in a very affluent area and I have managed over the years to survive several challenges to my business but I fear that other small stores, such as other IGA, small independent and SPAR stores in the adjoining areas, particularly New Farm, will inevitably be affected."²⁰

¹⁸ Appendix to the Statement of Professor Judy Drennan (Exhibit 8) P. 1 - P. 2.

¹⁹ Appendix to the Statement of Professor Judy Drennan (Exhibit 8) P. 1.

²⁰ Statement of Ugo Sirianni (Exhibit 9) P. 2.

[37] It is a matter of note that MGA did not lead any evidence from the owner of the IGA at Portside. It would have been expected that his or her evidence would have been of relevance to the determination of this application. Indeed, no evidence was lead by the MGA from any business located within the proposed boundary under consideration by the Full Bench. Accordingly, the Full Bench did not have the advantage of any evidence, other than that lead by the NRA about the potential impact (positive or negative) of the proposed extension of trading hours at Northshore Hamilton.

[38] Dr Lundberg argues that the application "...distorts economic efficiency and redistributes wealth in an inequitable manner. This has the effect of increasing the dominance of the two major retailing chains in Australia without, as contended by the NRA, improving levels of service to the community of Hamilton Northshore Area or, filling a gap in response to new or emerging changes to consumer behaviour."²¹

[39] Notwithstanding Dr Lundberg's evidence that the approval of this application will have an adverse effect on independent supermarkets in the Hamilton Northshore Area, he was forced to concede in cross-examination that he had not spoken to the owner of the IGA Portside in forming his view. No explanation was given for not calling the proprietor of the IGA at Portside.

[40] Much of the evidence presented to the Commission from the MGA witnesses was based on general experience within the independent supermarket industry but could not properly be said to be specific to the Northshore Hamilton area. By way of example, Ms Smith was called by the MGA. She is the owner of a number of independent supermarkets in Queensland and New South Wales and operates under the FoodWorks banner. In cross-examination, Ms Smith was asked:

"[Q:] In paragraph 7 you say that the current retail trading hours landscape in the Hamilton Northshore area is adequate to service the community. Did you conduct a survey of consumers in the area to form that opinion?

[A:] No. I didn't.

...

[Q:] Well, so how did you form that view then?

[A:] My view is formed based upon my understanding of the area. Like, I've been to that store and I've been to the area. I've been in retail for the last 17 years. I'm in Toowoomba. My stores are – I've got two stores in Toowoomba. Currently there are five Woolworths' in Toowoomba and five Coles'. There's a Woolworths under construction and a Coles under construction. It's based upon the dominance that we have with Woolworths and Coles within the community. I also have three children now living in Brisbane and I have generally a good understanding of the retail landscape."²²

²¹ Statement of Dr Derek Lundberg (Exhibit 11) P. 4, L 20.

²² T. P. 90, L 40 - P. 91, L 5.

- [41] Dr Lundberg maintains that good retailers target their retail offer to their unique market attributes such as, consumer behavior and demographics. This can be best illustrated by the following exchange:

"[Q:] In what way will it impact at IGA at Ascot? Because to get to IGA at Ascot you've got to go past another Woolworths, another Coles, two convenience stores and then drive a substantial way up the road and over a hill to get to IGA at Ascot. So do you think the consumer will do that?"

[A:] I believe that any change to the trading hours in Hamilton will have some effect on the store at Ascot. The Ascot – I know that store, the Sirianni store. It has a particularly unique offer as a lot of IGAs do. You know, Coles and Woolworths stores – you know, they're excellent stores. They're excellent supermarkets, but they repeat pretty much the same model in every store with the possible exception of the Hamilton store which is a little bit different to what we see, but they replicate the same box and the same model. Now, where IGA stores and independent stores achieve their competitive advantage, your Honour, is by providing something different and the Sirianni store provides something different in terms of what it offers, its range. It has a very strong continental range about the store, a very strong market kind of feel, European kind of feel and that attracts a certain shopper."²³

- [42] The Full Bench is of the view that the extension of trading hours would benefit large business interests but the extent to which the increased trading hours would impact on small business was not clear on the evidence. The evidence of the MGA was of general application and lacked specific detail concerning the area under consideration. It was disappointing that the MGA did not call any evidence from the proprietor of the IGA at Portside. It would be expected that if any impact was to flow from the granting of the application then it would be the Portside store that would be most likely potentially have the greatest impacted. Whilst evidence was given by Mr Sirianni from the Ascot IGA, it is our view that any impact on his store would be minimal, if at all.

(f) the alleviation of traffic congestion;

- [43] This criterion is not a significant factor for consideration in this application.

(g) the likely impact of the order on employment;

- [44] The SDA submits that it was unable to present any evidence to assist the Commission in its deliberations.

- [45] In relation to this criteria, the only evidence before the Commission is the evidence of Mr Geoff Bell who states:

²³ T. P. 111, L 5 - 15.

"We expect that the grant of the application will create additional employment opportunities for our employees and any additional hours will be offered to employees on a voluntary basis. Woolworths is bound by the terms of the Woolworths National Supermarkets Agreement 2012, to discuss any proposed roster changes with permanent staff. In addition, clause 4.12 provides that any additional shifts offered to casual or part-time employees shall be on a voluntary basis, and the team member may revoke the agreement to work an additional shift at any time. We acknowledge that there may be staff members who are willing to work the extended trading hours, however it is also just as likely that there will be employees who are seeking to work additional hours."²⁴

- [46] The NRA submits that the additional trading hours applied for are expected to have a positive impact on employment, providing additional earning opportunities for existing permanent and casual employees employed by non-exempt retailers, and new employment opportunities.
- [47] The SDA submitted that the applicant and Mr Bell made no guarantee that increasing trading hours will result in more sales and so more employment. The Full Bench understands why no such guarantee could be given. There are many variables with the retail industry with trading hours being only one of them.
- [48] In the absence of any evidence to the contrary, the Full Bench, having regard in particular to the evidence of Mr Bell, and after noting the provisions of the certified agreement, has come to the conclusion that any perceived concerns can be readily addressed by the recognition that the working of any additional hours would be strictly on a voluntary basis.

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

- [49] The Brisbane City Council did not make any comment in relation to the current proceedings before the Commission. It is possible therefore to infer that the Council has elected to take a neutral stance in relation to the application.

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

- [50] As often is the case, the Commission's attention was drawn to the Report of the Productivity Commission titled *Economic Structure and Performance of the Australian Retail Industry* and, in particular, Chapter 10 of that report. However, these are matters of policy which are the domain of the Executive Government and not properly the province of the Commission.

Conclusion

- [51] Consequently, the application is to be assessed principally by reference to:

(a) the locality in which the non-exempt shop or class of non-exempt shop is located (s 26(a));

²⁴ Statement of Geoff Bell (Exhibit 6) P. 13, L 31.

- (b) the needs of the tourist industry or other industry in such locality or part and the needs the needs of an expanding tourist industry (s 26 (b) and s 26 (c));
- (c) the needs of an expanding population (s 26(d));
- (d) the public interest, consumers' interest, and business interest (whether small, medium or large) (s 26(e)); and
- (e) the likely impact of the order on employment (s 26(g)).

[52] Having regard to the matters prescribed by s 26 of the Act, the Full Bench is of the view that the evidence before the Commission is, on balance, sufficient for the application to be granted. Accordingly, we believe that the application should be granted and an order made pursuant to s 21 of the Act.

[53] Orders

We order that:

1. The application is granted.
2. The *Trading Hours Order - Non-Exempt Shops Trading by Retail - State* be amended in accordance with Schedule 1 of the amended application filed on 6 May, 2013.
3. The operative date of the amendments take effect as and from Friday 27 March 2015.