

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 Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees and Another (TH/2011/15)

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

DEPUTY PRESIDENT SWAN
COMMISSIONER FISHER
COMMISSIONER BROWN

13 June 2012

Application to amend trading hours order - Hours - Legislation - Parties - Other interested persons - Inspections - Witnesses - Individuals who had submitted sworn statements - Evidence - Locality - Tourist industry or other industry - Needs of expanding tourist industry - Expanding population - Public interest, consumers' interest and business interest - Alleviation of traffic congestion - Likely impact on employment - View of local government - Primary opposition from local independent retail traders - Impact on employment positive - No opposition by any other party - No cross-examination of applicant's witnesses - Small retailers disadvantaged by not having representation - Application granted.

DECISION

GYMPIE AREA

[1] This application is made by the National Retail Association Limited, Union of Employers (NRA) The application relates to the Gympie Area and seeks to introduce Sunday trade to non-exempt shops within that area by amending 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 Act) as follows:

"1. By inserting a new clause (27) in clause 3.2 as follows:

(27) Provided that the allowable trading hours for non-exempt shops located in the Sunshine Coast Coastal Tourist Area (as defined) shall be 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)	8.30 a.m.	5.30 p.m.

2. By inserting a new clause (36) in Schedule 1 as follows:

(36) *The Gympie Area* - The area within the following boundaries:

Commencing at the intersection of Tin Can Bay Road with the Bruce Highway; then in a straight line in a westerly direction to the intersection of Eel Creek Road and Regan Road; then in a straight line in a northerly direction to the intersection of the Bruce Highway with Benson Road; then in a straight line in an easterly direction to the intersection of the Gympie Connection Road and Tin Can Bay Road; then in a straight line in a southerly direction 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."

Relevant 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."

Background to the application

- [4] A similar NRA application for trade on a Sunday by non-exempt stores in Gympie was made in 2009. At that time, the Queensland Industrial Relations Commission (the Commission) rejected the application.
- [5] There has been no formal challenge made by any party to these proceedings that the Commission should refrain from hearing this application pursuant to s. 27 of the Act.

Parties

- the NRA;
- the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees (SDA) stated that it would have supported the application save for the inclusion of Easter Sunday as a trading day; and
- the Gympie Regional Council (the Council) opposed the application.

Other interested persons

- [6] No other registered organisation sought to be a party to these proceedings. However, the Queensland Industrial Registry (the Registry) received a number of emails from members of the Gympie community opposed to the application together with sworn statements opposing the application. All correspondence received by the Registry from these persons was acknowledged and all persons were advised that the question of whether they could be heard at the formal hearing in Gympie would be considered on the first day of hearing.
- [7] At the commencement of the hearing in Gympie, the NRA and the SDA stated that they had no opposition to hearing the evidence of those who had made sworn statements, but opposed those persons who had written emails to the Commission from being heard.
- [8] In the discrete circumstances of this case, the Full Bench acceded to this request given that there was no opposition from other parties.

Inspections

- [9] Inspections were undertaken by the Commission with the NRA and SDA.

NRA witnesses

- Professor John Mangan, Professor of Economics and Associate Dean (Research) within the Faculty of Business, Economics and Law at the University of Queensland [Exhibit 1];
- Professor Judy Drennan, Professor in QUT Business School and Director of the Services Innovation Research Program within the Faculty of Business at Queensland University of Technology [Exhibit 2];
- Ms Elena Marshall, Retail Support Manager in Queensland for Woolworths Limited [Exhibit 3];
- Mr John Murray, employee - Big W Gympie [Exhibit 4];
- Mr William Hill, Area Manager for Big W Discount Stores in Queensland [Exhibit 5];
- Mr Paul Mollard, Regional Manager for Queensland for Best & Less Pty Ltd [Exhibit 6];
- Mr Richard Terhorst, Queensland State Manager for the Centro Properties Group [Exhibit 7];
- Mr David Stout, State Compliance Manager for Coles [Exhibit 8]; and
- Mr Gerard Winzenberg, Queensland District Manager for Target Australia Pty Ltd [Exhibit 9].

Individuals who had submitted Sworn Statements

- Mr Timothy Long, Owner and Manager, Primmtina Trust, Trading as Longs Crescent Road 1 Stop Shop [Exhibit 10];
- Ms Lorraine Broadley, Landlord of retail premises located in the Mary Street precinct of the Gympie CBD [Exhibit 11];
- Ms Fiona Petersen, Business owner and employee of Mick-Fee's Horseshoe Bend Store Pty Ltd [Exhibit 12]; and
- Mr David Nixon, Pharmacist and proprietor of Goldfields Fullife Pharmacy situated in Goldfields Plaza Shopping Centre [Exhibit 13].

Evidence

- [10] As the witnesses opposed to the application (who were not parties to the proceedings) were not in a position to cross-examine the NRA witnesses, save for questions from the SDA representative, the NRA evidence went largely unchallenged. The SDA did, however, pose questions as to the voluntary nature of Sunday work for employees if the application was to be granted. That assurance was given by all relevant NRA witnesses.

[11] The SDA also cross-examined Mr Murray upon the question of the application including Easter Sunday. If the application was successful, then an employee who would not be required to work on Easter Saturday and Easter Monday (both being public holidays) may be required to work on Easter Sunday which was not a public holiday. This element of cross-examination will be considered under specific witness evidence.

[12] The Council made submissions to the Full Bench regarding its opposition to the application but took no other role in the matter in terms of cross-examining witnesses in support of the application.

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

[13] Gympie is situated reasonably close to the South-East Queensland boundary. The NRA states that there are "high levels of mobility" for Gympie residents between Gympie and the adjoining south-east area of the State (NRA Statement of Facts and Circumstances - point 1).

[14] Gympie is in close proximity to the townships of Nambour and Noosa areas where seven day trade for non-exempt stores exists. The NRA believes that Gympie residents can access seven day trade within the region, but without the convenience of doing so within their own township (NRA Statement of Facts and Circumstances - point 2).

[15] Currently, the shopping regime within Gympie appears as follows:

A number of small independent convenience stores;
Some larger exempt stores;
Centro Gympie shopping centre;
Centro Goldfields shopping centre;
Gympie Marketplace shopping centre;
Gympie Plaza;
James Nash Arcade; and
Sovereign Cinema Complex.

[16] A more detailed description of Gympie is contained within documents accepted into evidence from Mr Terhorst [Exhibit 7].

[17] Gympie is located on key road, rail and air transport corridors. There are more than 4,500 businesses located in Gympie including some major manufacturers. The estimated gross regional product is around \$1.9 million (Gympie Region Economic Brief - November 2011 - Gympie Regional Council) [Exhibit 7].

[18] The Council believed that there was no evidence that Gympie needed extended hours. Specifically, the Council stated:

"There is a range of opportunities for shopping on a Sunday currently, noting that the full range of retail opportunities is not available."

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

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

[19] To the June quarter 2011, there had been a decrease of 5.3% in room occupancy rates for all establishments (15 and more rooms) within Gympie. The statistical data, however, shows that this decrease was largely due to an increase in the capacity of all establishments. Overall, there had been an increase in takings in all establishments of around 4.8% (Gympie Region Economic Brief - November 2011 - Gympie Regional Council) [Exhibit 7].

[20] Within the Gympie region are a number of noted tourist attractions. These include Tin Can Bay, Rainbow Beach on the Cooloola Coast as well as the historic townships of Kilkivan and Goomeri.

[21] As part of its tourism profile, Gympie hosts the following events, including:

- Gympie Heart of Gold Film Festival;
- Kilkivan Great Horse Ride;
- Dingo Creek Wine, Jazz and Blues Festival;
- Bay to Bay Yacht Race;
- International Rally of Queensland;
- Gympie Show;
- Goomeri Pumpkin Festival;

- Mary Valley Art Festival;
- Race the Rattler;
- Rainbow Beach Fishing Classic;
- National Country Music Muster;
- Tin Can Bay Seafood Festival;
- Gympie Gold Rush Festival;
- Mary River Festival; and
- Tin Can Bay Foreshore Carnival.

[22] The Gympie Regional Council Economic Development Strategy [Exhibit 7] shows that:

Industry revenue in the tourism industry is projected to grow at around 1.4% per annum;

This growth has largely been attributed to increasing domestic travel and increasing per trip expenditure;

It is expected that there would be more robust tourism growth from 2012/13 onwards. While growth in domestic and international tourism is expected to remain "volatile", "increased growth in international tourism may be offset by more Australians travelling overseas as a result of more favourable exchange rates";

As has been noted in other areas of Queensland, while domestic overnight visitors to the township was down for the year ended June 2010, there had been an increase in overnight visitors from Brisbane and domestic day trip visitors with an increase in day trip expenditure; and

[23] The view of the Council was that Gympie was not a tourist town and while areas such as Rainbow Beach attracted tourists, the turnoff from the Bruce Highway to Rainbow Beach is 3 km before the first potential retail opportunity.

(d) *the needs of an expanding population*

[24] Over the previous five years, there has been an annual increase of 2.8% in population growth - a rate again higher than the State average of 2.5%.

[25] The population projections to the year 2031 indicate that that there would be an increase of approximately 1.6% per annum (Gympie Region Economic Brief - November 2011 - Gympie Regional Council) [Exhibit 7].

[26] The Council believed that the available retail infrastructure in Gympie was sufficient to satisfy this criterion.

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

[27] It was in connection with this criterion that most of the opposition to the application centred.

[28] Opposition to the claim came primarily from exempt independent retail outlets, and also from the Council.

[29] The following generally represents the evidence given by witnesses, opposed to the application, who had provided sworn statements to the Commission:

- that the NRA application is made primarily for the purpose of achieving uniform trading hours within the south-east Queensland area and for increasing the opportunity to the larger traders to increase their earning potential [Exhibit 12];
- whether or not seven day trading was introduced in Gympie, there would always be escape expenditure because Gympie consumers enjoyed going to the Sunshine Coast to do their shopping [Exhibit 12];
- the population of Gympie could not support seven day trade [Exhibits 12, 13, 11];
- Sunday is the largest trading day for small retailers [Exhibit 12];
- there would be a considerable flow-on effect to other businesses if small traders were to compete with the non-exempt stores on a Sunday - e.g. butchers, milk suppliers, fruit and vegetable shops, bakeries and other local suppliers [Exhibit 12];
- the loss of jobs in the small retail sector would be significant [Exhibit 12];
- for a small trader operating within a shopping centre, it would be unprofitable to open their store on a Sunday. On a prior occasion, before Christmas, when Sunday trade for non-exempt stores was permitted, this witness states that his takings did not cover his expenses for the day [Exhibit 13];
- that since 2006, the Council has approved three major shopping developments with Woolworths as the anchor tenant. Consumers do not have extra money to spend at these stores and "the unfettered expansion by major retailers, together with the current subdued economic climate has resulted in a crisis of

confidence in local investors, as evidenced by more than 35 empty retail premises in the CBD" [Exhibit 11];

- not working on a Sunday was essential for families to ensure that quality family time could be spent together [Exhibit 10];
- employees currently employed by independent, exempt retail stores could face loss of employment if the application was to be granted as a consequence of decreased sales on a Sunday [Exhibit 10];
- local independent stores support local primary producers by purchasing their products when possible [Exhibit 10]; and
- Gympie residents travel to the coastal areas where there is seven day trade for the purpose of enjoying a day at the beach and attending other tourist facilities. There is no need for these consumers to travel to those areas for the purpose of grocery shopping when there are an ample number of retail outlets in Gympie open on a Sunday which could cater for all of their food and other requirements [Exhibit 10].

[30] The Council's objection was generally as follows:

- while the Council accepted that consumers may welcome a greater spread of hours on the basis of convenience alone, a range of other considerations was required to comply with the legislation; and
- primarily, the Council's view was that small business would be disadvantaged by a successful application and that it was in the community's interest to continue to retain a viable and vibrant network of independent retailers.

[31] The following is a summary of the evidence of the NRA witnesses in support of the application as it relates to reports commissioned by the NRA.

[32] Professor Judy Drennan gave the following report:

- the NRA had requested that the Queensland University of Technology conduct research into the views of shoppers and/or visitors to the Centro Goldfields and the Centro Gympie Shopping Centres concerning the proposed new trading hours, and to prepare a report detailing the findings of the research;
- the research was undertaken over the weekend of 17 to 18 December 2011 and the Saturdays on 14 and 21 January 2012;
- 314 respondents participated in the survey; and
- the primary findings of the report are as follows:
 - almost two-thirds (64%) of respondents supported the proposal of the extended trading hours at shopping centres in Gympie while 33% opposed the proposition and 3% were unsure;
 - Eighty-seven per cent of the respondents agreed that residents of Gympie should be allowed the same choice of shopping hours as south-east Queensland;
 - of those who live locally, 60 supported the proposed Sunday and limited holiday trading in Gympie;
 - a larger percentage of females than males supported the proposal for Sunday and limited holiday trading. Of female respondents, 68% supported the proposal while 50% of males surveyed were in support;
 - the highest percentage of supporters was found in part-time workers with 80% of those respondents supporting the proposal. In contrast, the lowest percentage of supporters was found in the non-working respondents' category where only 53% supported the proposal;
 - respondents who are single with children at home showed more support for the proposal (95%) than couples with children at home (73%), other types of households (60%), and people living alone (59%);
 - of the respondents surveyed, 61% have travelled outside of Gympie on a Sunday to shop;
 - two-thirds (66%) of the respondents have shopped on a Sunday with some of the large retailers already trading in Gympie, for example Harvey Norman, Chemist Warehouse, Crazy Clarks, and Supercheap Auto;
 - over half (56%) of the respondents often found it necessary to do some grocery shopping in Gympie on a Sunday;
 - just over two-thirds (68%) of the respondents found it expensive to have to shop for groceries in Gympie on a Sunday when the Supa IGA, Woolworths, Coles and Aldi remained closed. Sixty-two per cent of the respondents found it would assist if the large supermarkets were able to trade on Sundays;
 - convenience is cited as the major reason for support (55%) followed by lifestyle (36%);
 - the most cited reasons for opposing the proposed changes were that "It is unnecessary" (26%) and "It will disadvantage smaller businesses" (21%);
 - a majority of respondents agreed that "It will mean that people who want or need to shop on Sundays no longer have to travel to Cooroy or Nambour or the Sunshine Coast" (81%) and "it will reduce escape expenditure which occurs when Gympie people have to leave town to shop"(79%); and

- over half of the respondents (59%) were concerned that the extended trading hours may increase competition for small retailers who already trade on Sundays [Exhibit 2].

[33] Professor John Mangan was asked to undertake his research by the NRA during 2009. Research undertaken by the Productivity Commission is incorporated within this report.

[34] At the core of the report is the analysis that has been undertaken into the "socio-economic impacts of the deregulation of retail shopping hours, both in Australia and overseas" [Exhibit 1 - Executive Summary 1].

[35] The report also concentrates upon the retail shopping environment in Cooroy, Cooloola and Gympie. Below is a brief synopsis of those findings:

- trends which have emerged in the Australian retail industry since the initial report was made in 2009 include the growth in on-line shopping and the perceived low productivity growth in recent years of the Australian retail sector;
- the benefits of a deregulated market produce larger efficiency gains while regulated markets protect inefficient producers;
- the Productivity Commission in its Inquiry into the economic structure and performance of the Australian retail industry concluded:

"For consumers, restrictions on trading hours impinge on consumer choice regarding when (and where) to shop, causing inconveniences and congestion costs. For retailers, there are efficiency costs and administration costs in complying with state trading regimes. But the largest costs are reserved for those retailers who are prevented from trading to the extent they would like: they forego trade to other retailers and also to other avenues of discretionary consumer spending."; and

- the report also stated that longer shopping hours (especially when consumers had more leisure time such as at weekends) permit more time for them "to compare prices, search for bargains and make more efficient shopping decisions" [Exhibit 1].

[36] The evidence given by the following witnesses was in support of the application:

Mr David Stout [Exhibit 8];
 Ms Elena Marshall [Exhibit 3];
 Mr John Murray [Exhibit 4];
 Mr William Hill [Exhibit 5];
 Mr Paul Mollard [Exhibit 6];
 Mr Gerard Winzenburg [Exhibit 9]; and
 Mr Richard Terhorst [Exhibit 7].

[37] There was a general theme to the evidence given by the following witnesses, with additional evidence given by Mr Winzenberg to which previous mention has been made:

- seven day trade would permit a more efficient use of capital;
- in seven day supermarkets there is no requirement to run perishable stock down or deplete stock on Saturday afternoon before closure;
- six day trade for the retail sector in Gympie has resulted in lost escape expenditure for the tenants of some shopping centres;
- the economic benefit of this consumer expenditure is lost to Gympie to the detriment of local retailers and those who rely upon the retailers for a living;
- seven day trade would permit non-exempt retailers to compete on an even playing field with other parts of the broader retail and entertainment market;
- competition for non-exempt retailers supporting this application comes from other large retailers who can trade over seven days - these include Supercheap Auto, Mitre 10, Barbeques Galore, Flash Harrys, Autobarn, Amcal Chemist, Dimmeys, King Kong and Crazy Clarks;
- as the overwhelming population of Queensland enjoys seven day trade, it is unfair and inequitable that Gympie consumers are not permitted to access retail precincts during all seven days of the week;
- the prohibition to seven day trade in Gympie has inhibited employment growth within this town;
- one witness, who is an employee working for a non-exempt store, supported the application from a "life-style" perspective. Working on a Sunday would provide this witness with the convenience he requires as a single parent [Exhibit 4];

- work performed by employees on Sunday, if the application was granted, would be of a voluntary nature; and
- many of these larger stores contribute significantly to local community bodies - financial and product donations, customer and office fundraising, in-kind support, team member volunteering and workplace giving.

(f) *the alleviation of traffic congestion*

[38] There have been no substantial submissions made around this point.

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

[39] Evidence was given by those retail stores in support of the application that there would be an increase in the hours required to be worked on a Sunday if the application was granted. Examples of increased hours are as follows:

Woolworths - 146 hours per week;
Big W - 130 hours per week; and
Target - 28 hours per week.

[40] The Council held the view that the potential increase of employment hours must be weighed against the potential loss of employment for current employees within the independent retail sector.

[41] The Full Bench acknowledges the apprehension expressed by many of the witnesses opposed to the application as it relates to retaining current employees in their stores if the application was granted. While there have been some examples (limited though they were) given of the potential loss of trade which could be experienced on a Sunday by these traders, over-all this is not a certainty. For the applicants, the increase in real hours if the application was to be granted is a factor in their favour.

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

[42] The views of the Council were presented, by authorisation from the Council, to the Commission by Councillor Ian Petersen.

[43] The Council, at its general meeting held on 22 February 2012 voted unanimously to oppose the application.

[44] The Council had issued a media release on 13 December 2011 to garner the views of the public with regard to the application. Forty-eight submissions were received and 33 of those were opposed to the application. Further, six petitions against the application had been received by the Council which contained 1,100 signatures.

[45] Mr Petersen also stated that on 9 February 2012, the Gympie Chamber of Commerce held a community forum for the purpose of discussing the application. That body opposed the application.

[46] Mr Petersen did not seek to give formal evidence, rather relying upon submissions. There was no opposition from the NRA or the SDA to this approach. Having given his submission, Mr Petersen sought leave to discontinue any further participation in the hearing. That leave was granted.

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

[47] The Council raised a number of factors under this criterion and these generally are as follows:

- tenants within large shopping centres are often small family businesses and "their objection is on the basis of the lack of viability of opening on Sundays and the consequent need for the owners to staff the stores themselves for 'no wages' so as to minimise losses" (Council submission - correspondence dated 5 March 2012);
- upon the assertion by the NRA of "leakage" of consumer spending outside of the Gympie area if the application was successful, the Council did not accept that Gympie residents drove to the Sunshine Coast in order to buy their groceries on a Sunday;
- in opposition to the NRA submissions that there should be consistency in trading hours in the south-east of Queensland, the Council reiterates that all of the criteria to be considered under s. 26 of the Act which encompasses much wider scope than simply looking at "leakage" of consumer spending should be considered; and
- upon the question of the SDA's concern regarding trade by non-exempt stores on Easter Sunday, SDA did not press their objection to any extent that would require further consideration by the Commission in this Decision.

Conclusion

- [48] This has been a somewhat unusual matter to hear and determine.
- [49] This is so because, other than for the Council, there has been no opposition to the application by any other party to the proceedings. In saying this, we are conscious of the SDA's position as it relates to trade by non-exempt stores on Easter Sunday.
- [50] The primary opposition to the application has come from local independent retail traders. They have not been represented by any party to the proceedings, however, without objection from any of the registered parties, they have been able to present their evidence. They have been subjected to cross-examination by the NRA and the SDA, but were not in a position to cross-examine any of the NRA witnesses.
- [51] In considering the criteria to be addressed pursuant to s. 26 of the Act, there are occasions when some criteria are not relevant to the case at hand. In this instance, criterion 26(f) is not triggered by any submission or evidence.
- [52] The inspections undertaken by the Full Bench and the parties show that Gympie generally is not bereft of a variety of shopping outlets. It would not be the case, for example, that a consumer could not find relatively suitable foodstuffs in Gympie on a Sunday without the non-exempt stores being open.
- [53] However, the test to be applied in accordance with s. 26 of the Act goes much wider than that. Section 26 sets out mandatory criteria to be addressed (where relevant) in making a decision of this type.
- [54] The fact that there was no cross-examination of the NRA witnesses by any party to the proceedings does not mean, on that point alone, that the NRA's application must be successful.
- [55] All evidence must be tested to determine whether it satisfies the requirements of s. 26 of the Act.
- [56] The statistical evidence supplied by the applicant upon questions of tourism and population growth has been accepted by the Commission. The statistical material provided is from reputable sources and appropriately referenced by the applicant.
- [57] The direct evidence around the question of the likely impact on the order of employment has been positively answered by the various NRA witnesses.
- [58] The more contentious areas of evidence centre upon the opposition from the independent retailers and the Council. We note that there was no opposition to the application from what would normally be identified as medium sized retailers.
- [59] The Full Bench has duly considered the position taken by the Council in this matter, as it must do according to criterion 26(h) of the Act. The further submissions made by the Council have been considered as well, noting that the Council spokesperson did not make himself available for any cross-examination by the other two parties. Appropriate weight will be attributed to those comments.
- [60] Upon the matter of the independent retailers' opposition to the claim, the primary reasons have been identified in the body of this decision. One of the main concerns is that sales for these retailers on a Sunday would be adversely affected by the granting of the application. There were also "life-style" concerns raised by a number of these witnesses together with a unanimous complaint that there were sufficient retail outlets available on a Sunday in Gympie to satisfy consumer demand.
- [61] It would not be questioned that the independent stores opposing the application are unable to offer the range of goods that would be available to a consumer on a Sunday in the non-exempt stores. In terms of non-foodstuff goods sold in stores such as Big W and Target, for example, there appears to be no comparable type of store operating in Gympie in any event. This is not a definitive point that we make, because the only type of competition specified by the NRA witnesses came from Supercheap Auto, Mitre 10, Barbeques Galore, Flash Harrys, Autobarn, Amcal Chemist, Dimmeys, King Kong and Crazy Clarks. It may be the case that some of these stores do sell some of the type of goods available in the non-exempt stores. However, we would be surprised if that range of goods was in fact comparable to that provided by the non-exempt stores. We reiterate, there have been no submissions made in this case from representatives of the stores cited who could be seen to be in competition with the larger non-exempt stores.
- [62] The research conducted by Professor John Mangan and Professor Judy Drennan largely speaks for itself. They were appropriately conducted research projects finding, in the case of Professor Drennan's research, that the majority of Gympie consumers who responded to the questions posed, supported the introduction of seven day

trade for non-exempt stores in Gympie. Against that, the Full Bench must consider the survey conducted by the Council which produced a contrary view. It must be stated that, between the competing outcomes, the research conducted by Professor Drennan was the more comprehensive survey, detailing the range of questions posed together with a break down of the reasons why consumers were supportive of seven day trade for non-exempt stores in Gympie.

- [63] In considering criterion 26(e), we acknowledge the evidence given by witnesses opposed to the application. The evidence given by these witnesses was considerably narrow in scope as it relates to the range of criteria to be considered under s. 26 of the Act.
- [64] The independent retailers conduct their business in geographically different areas of Gympie. It may be argued that these retailers enjoy a considerable amount of local patronage, primarily because they do operate as convenience stores. Generally a convenience store does not offer as wide a range of lower cost goods to the consumer than what is offered by a non-exempt store.
- [65] We have also considered the evidence put to the Commission by witnesses for the applicant in relation to cost savings to the non-exempt stores if they did not have to close on a Sunday. These competing interests must be weighed by the Commission.
- [66] After a full consideration of all of the evidence presented in this case, we have formed the view that the application must succeed. The applicant's witness evidence has been more thoroughly researched in all relevant criteria to be considered under s. 26 of the Act. The evidence produced pursuant to criteria 26(b), (c) (d) and (g) has been positively addressed by the applicant.
- [67] With regard to criterion 26(e), we have had to compare the evidence of "small" and "large" retailers and find, on balance, that the evidence produced by the applicant outweighed the evidence of those opposed to the application. We should state, however, that the small retailers were at a disadvantage because of the invidious position in which they were placed by not having representation. If their case had been presented by a party to the proceedings, then there would have been the opportunity to cross-examine the evidence produced by the applicant.
- [68] The Full Bench proposes to grant the application.
- [69] The operative date for the introduction of Sunday trade for non-exempt stores in Gympie will be 6 August 2012.
- [70] Order accordingly.

D.A. SWAN, Deputy President.

G.K. FISHER, Commissioner.

D.K. BROWN, Commissioner.

Hearing Details:

2011 1 December

2012 19 April

Inspections:

2012 19 April

Written Submissions received:

31 May 2012 (NRA)

14 June 2012 (SDA)

Appearances:

Mr G. Black, National Retail Association Limited, Union of Employers for the Applicant.

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

Mr I. Petersen, Gympie Regional Council.

Released: 13 June 2012