

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 Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Another (TH/2010/1)**

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

DEPUTY PRESIDENT SWAN  
COMMISSIONER FISHER  
COMMISSIONER THOMPSON

17 June 2010

Application to amend Trading Hours Order - Seven-day trading - expand "South-East Queensland Area" - Legislative requirements not satisfied - Application refused.

DECISION

**SOUTH-EAST QUEENSLAND AREA**

**Preamble**

- [1] An application was filed by the National Retail Association Limited, Union of Employers (NRA) on 25 January 2010 seeking to amend the Order - Trading Hours - Non-Exempt Shops Trading by Retail - State (Trading Hours Order) in the following terms:

"By deleting subclause (g) of clause (1) of Schedule 1 and inserting the following in lieu thereof:

(g) the area within the following boundaries:

Commencing from the point where the Bruce Highway intersects with Bells Creek Road; from that point following a line due west until the line intersects with Old Gympie Road; from that point following a direct line in a south westerly direction to the point where the Daguilar Highway intersects with Webb Lane; from that point in a south easterly direction along the Daguilar Highway to the intersection with Peterson Road; from that point in a direct line in a north easterly direction to the point where the Bruce Highway intersects with Red Road; and from that point in a northerly direction along the Bruce Highway to the point of commencement."

- [2] The application, in essence, sought to expand the "South-East Queensland Area" to include the town of Woodford which is situated 25 kilometres north-west of Caboolture.
- [3] The town, as a consequence of Local Government amalgamations had since March 2008 been in the Moreton Bay Regional Council area which, according to the "Statement of Facts and Circumstances" (attached to the application) currently has the third largest population and population growth of Local Government areas in Queensland.
- [4] The Full Bench conducted inspections on the morning of 19 April 2010 by way of bus which enabled the parties to observe the Woodford shopping precinct which included the recently completed development in which the Woolworths Limited (Woolworths) store is housed and other relevant businesses in the immediate vicinity including the Woodford Village Hotel/Motel, Luke's Supa IGA and Clews News.

**Witnesses**

Witness evidence was provided in the proceedings by the following:

**NRA**

Les Pullos  
Narelle Poulton  
John Innes  
Bruce Mansfield  
Darrin Wells  
Sue Bidgood  
Caroline Bennett

**QRTSA**

Andrew Clews  
Melville Luke

**The case for the Applicant****Witness Evidence***Pullos*

- [5] Mr Pullos, the owner of the Woodford Hotel/Motel gave evidence of having invested heavily in a substantial refurbishment of the establishment which was said to be a central part of the Woodford community. The Hotel/Motel has opened a detached bottle shop in the new Woodford Shopping Centre, but would be unlikely to trade on Sundays unless Woolworths was opened.
- [6] The witness was supportive of the NRA application to extend trading hours.
- [7] Under cross-examination, the witness did not accept that the granting of the application would have a negative effect on small business and expressed an opinion as to whether the Supa IGA store was a small trader.

*Poulton*

- [8] Ms Poulton, the owner/manager of a ladies fashion shop in Kilcoy gave evidence of that store trading seven days per week and of a second shop in the Woodford Shopping Centre that had opened the previous Wednesday. The Woodford shop would certainly open on Sundays providing that Woolworths were open, however if they were not open, there may be insufficient customer traffic to warrant opening.
- [9] Any trade on Sundays may lead to an offer of additional hours for staff or the engagement of additional staff.
- [10] Under cross-examination, the witness refused to accept that the granting of the application would have a negative effect on small business.

*Innes*

- [11] Mr Innes, an Area Manager for Woolworths Limited, gave evidence relating to the operations of the business at a national level, including the use of and the relationship with local suppliers and the fact that there were more than 107,000 employees across the country, 23,000 of whom are employed in Queensland. It was stated through shareholdings that millions of Australian's were beneficiaries of a profitable Woolworths organisation.
- [12] Woolworths was said to be a strong supporter of competition and, at paragraph 9 of a witness statement (Exhibit 3) provided a diagram that gave a breakdown of market share showing that Woolworths had 31%, Coles/Bi-Lo 23% and Metcash/IGA 17% of the grocery food market.
- [13] In recognition of population growth in the Woodford and surrounding areas ("2001 ABS Quick Stats, Woodford" and "2006 ABS Quick Stats, Woodford") were attached to his witness statement.
- [14] Mr Innes went on to identify five Woolworths and two Coles supermarkets located within a 20 to 29 kilometre radius of Woodford that were trading seven days a week.
- [15] Benefits from trading seven days per week were shown in paragraph 18 of his witness statement as:
- relieving in-store congestion;
  - improved efficiencies of energy usage through refrigeration and air-conditioning systems; and
  - smoothing out of peaks in scheduled deliveries and store replenishment.
- [16] Employment hours would increase by 146 hours per week. These hours would be offered to existing staff or may lead to offers of employment being made to other persons.
- [17] Other evidence placed before the proceedings illustrated hours of trading throughout the Brisbane area and in regional stores across a number of States.
- [18] The witness indicated that the Woolworths organisation supported the NRA application to extend the hours of trade in Woodford.

- [19] Under cross-examination, in response to a question from the Bench, the witness advised that 47 of the total staff numbers of 63 were local residents and that 41 were new employees.

*Mansfield*

- [20] Mr Mansfield gave evidence that he was the owner/manager of Eagle Boys Woodford that currently traded seven days per week and he did not consider that the opening of the Woolworths store in Woodford would have a detrimental effect on his business and that Sunday trading at the Woodford Shopping Centre would have a beneficial effect on his business.
- [21] Under cross-examination, the witness did not accept that the granting of the application would have a negative effect on small business.

*Wells*

- [22] Mr Wells, the owner of C.J. Pastries, operates other similar type shops in Caboolture and Woodford and recently opened another store in the Woodford Shopping Centre. Subject to Woolworths opening on Sundays, he was likely to trade the new store on Sundays which may lead to an offer of additional hours to existing staff or the engagement of additional staff. He supported the NRA application.

*Bidgood*

- [23] Ms Bidgood, the owner/manager of Jalla's Café in Woodford gave evidence of opening a business (Woodford Homewares) in the Woodford Shopping Centre. She gave further evidence that Sunday Trading in Woodford, in her opinion, would lead to local residents increasing their spending in Woodford rather than Caboolture which currently has seven day trading.
- [24] In supporting the NRA application, she informed the Commission that she understood the effect of the application, if granted.
- [25] In cross-examination, the witness did not accept that extending trading hours was negative and advanced evidence that Woodford was a "tourist town" and that Sunday was the best trading day for her café.

*Bennett*

- [26] Ms Bennett, the owner/manager of a beauty salon that had recently opened in the Woodford Shopping Centre, gave evidence that if the application was granted she would, subject to sufficient demand, open on Sundays.

**Submissions**

- [27] Written submissions from the NRA were structured to address the criteria of s. 26 of the *Trading (Allowable Hours) Act 1990* (the Act) to which the Commission must have regard when making an Order under s. 21 of the Act.
- [28] The Full Bench had, in the course of inspections, observed the retail infrastructure of Woodford and its proximity to Caboolture. The vast majority of non-exempt shops located within the Moreton Bay Regional Council area were captured within the currently defined "South-East Queensland Area".
- [29] Woodford was described as a "tree change" destination attracting increasing residential and commercial investments due to its location within one hour drive of Brisbane and twenty minutes to Caboolture.
- [30] Tourism, which was subject to extensive commentary in the "Statement of Facts and Circumstances" attached to the application, was again raised in submissions with the Commission's attention drawn to a number of matters including:
- Woodford Folk Festival - 27 December to 1 January;
  - Planting Weekend - 30 April to 2 May;
  - Dreaming Festival - June;
  - Splendour in the Grass Festival;
  - Collection of locomotives;
  - Storeybrook Cottage Herb Garden;
  - Woodford Community Museum and Arts Central;
  - Woodford Golf Club;
  - Delaney's Creek Winery; and
  - Woodford Village Hotel/Motel.

- [31] The uncontested evidence of John Innes was that the Moreton Bay Regional Council had the third largest population of Queensland Local Government areas and the third fastest rate of growth in the 12 months to 30 June 2008, with predictions of further growth of 13% from 2006 to 2013.
- [32] In previous matters, it was said that the Commission had consistently acknowledged that the interests of consumers have been advanced by the extension of trading hours and in a number of States, trading hours have been completely deregulated. The 1996 Knox Inquiry had (it was said) reached a similar conclusion.
- [33] The introduction of uniform trading hours was said to be highly desirable in that it contributes to a more equitable and sensible set of arrangements for residents of South-East Queensland and minimised confusion and inconvenience for visitors.
- [34] These considerations were said to have, in part, prompted legislature in 2002 which introduced a uniform South-East Queensland trading zone through the *Trading (Allowable Hours) Amendment Bill*.
- [35] Evidence before the proceedings from five local small businesses supported the application and each witness believed that there would be a positive impact if the application was granted.
- [36] The evidence from the businesses opposed to the application were from businesses that currently trade seven days per week with the evidence of Melville Luke in cross-examination said not to accord with the evidence provided in his witness statement.
- [37] There was evidence that attested to increases in direct employment flowing from the granting of the application with the overall net effect undoubtedly being positive in terms of employment.
- [38] According to the submissions, the Moreton Bay Regional Council had not passed a resolution in either support or opposition to the application.
- [39] Similar applications extending the boundary of the South-East Queensland Area had previously been considered and approved in relation to Nambour/Beerwah and Beaudesert and the Commission was requested to grant the application.

### **The case for the QRTSA**

#### **Witness Evidence**

##### *Clews*

- [40] Mr Clews, a Director of Clews News Pty Ltd, has been operating a full delivery/retail Newsagency in Woodford for the past 30 years. He gave evidence that he operated the business on a seven day a week basis having extended his hours of operation when the Folk Festival was on, and found that the cost of employing staff (at the time of the Festival) was not, in the circumstances, financially viable.
- [41] Since the opening of Luke's Supa IGA, he had lost sales of 100 Sunday Mails and anticipated, along with other sales, would lose a further 100 Sunday Mails to Woolworths if seven day trading was granted. The employment of a casual staff member (4 hours each Sunday) would need to be reviewed.
- [42] Mr Clews, in evidence, expressed a view that the level of tourism in Woodford did not necessitate seven day trading.
- [43] Under cross-examination, the witness acknowledged that he received a share of the margin on newspaper sales from both Luke's Supa IGA and Woolworths.

##### *Luke*

- [44] Mr Luke, a Director of Carwoola Pty Ltd, has operated the Supa IGA in Woodford since December 2007. The business, an independent retail grocery store, is a full line supermarket and trades seven days per week, currently employing 58 local staff.
- [45] Woolworths had opened a supermarket on 14 April 2010 some 300 metres from the Supa IGA store which, according to the witness, will have a devastating effect on his business and that effect would be compounded if Woolworths were able to trade seven days per week. A current estimate in respect of lost sales is around 30% with the potential for 15 local staff to lose their Sunday rates and six jobs to be lost.
- [46] Supa IGA, at present, was said to offer support to the local community, however this would cease if the application to extend trading hours in Woodford was successful.

- [47] Under cross-examination, the witness stated that his company opened six Supa IGA's and one IGA Supermarket located in and around the Sunshine Coast region and west to Kilcoy. All of the stores traded seven days a week.
- [48] On questioning about the loss of sales if the application was granted, the witness gave evidence that since the opening of the Woolworths store, his sales were down some 38% and expected similar losses would be incurred on his Sunday trade if the application was granted.

### **Submissions**

- [49] Written submissions expressed opposition to the application on the grounds that the evidence before the proceedings in relation to the factors specified at s. 26 of the Act failed to support the amendment of trading hours as sought by the NRA.
- [50] The format of the submissions encompassed the relevant factors of s. 26(a) to (i) (inclusive), these being addressed in significant detail and stating that the NRA had failed to adduce any compelling evidence to suggest that a case had been made for the application.
- [51] In regards to s. 26(a) of the Act, "generic reference had been made to Woodford being a popular 'tree change' destination and the relative proximity to Brisbane and Caboolture" as factors to support the amendment to trading hours, however the evidence before the Commission did not demonstrate, in either case, that the existing retail trading regime was in need of change.
- [52] On the needs of the tourist or other industry at s. 26(b) of the Act, it was said that extremely limited evidence was presented before the proceedings. Further, it was submitted that the NRA had relied upon generic references and descriptions of events, that it seems had been organised successfully under the existing trading hours. The same could also be said of the presence of tourist attractions within the area subject to the application.
- [53] The needs of the tourist industry were being adequately met by the existing retail infrastructure and regime and it would seem on the evidence to provide also for the needs of an expanding tourist industry at s. 26(c) of the Act.
- [54] The NRA, in their submissions, had referenced the population growth rates within the Moreton Bay Regional council and Woodford areas, however had failed to demonstrate how such figures necessitated amendment to the current retail infrastructure. There was evidence from Mr Luke that since the opening of his full-line supermarket in December 2007, that "sales had been hard to come by due to the lack of population in a rural area" and this would appear to negate s. 26(d) of the Act as a supportive measure.
- [55] The area of public interest, consumer interest and business interests (whether small, medium or large) at s. 26(e) of the Act had brought significant evidence from QRTSA witnesses that the granting of the application would have an adverse impact on their businesses (Luke and Clews). The evidence from businesses supporting the application was said to have, during cross-examination, been revealed as unsubstantiated and anecdotal in nature.
- [56] The NRA had failed to adduce any discernable evidence concerning the alleviation of traffic congestion and as such the Commission should not consider that the criterion of s. 26(f) of the Act provides any support for the granting of the application.
- [57] The QRTSA submitted that, apart from an increase in employment through the Woolworths store, the general outcome on employment under s. 26(g) of the Act, if the application was granted, would be a negative destabilising of employment within the region.
- [58] The criterion of s. 26(h) of the Act had not been enlivened as the NRA had failed to adduce any discernable evidence concerning the view of Local Government supportive of the application.
- [59] The final criterion for consideration at s. 26(i) of the Act, which concerns other relevant matters, had limited evidence offered that could be said to provide a sufficient basis to support the current application.
- [60] In summary, it was said that on the weight of evidence before the proceedings, the criteria of s. 26 of the Act had not been satisfied to the extent that the application should be granted in full or with any alternative form of relief.

### **The case for the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees (SDA)**

- [61] The SDA entered an appearance in the proceedings, however did not wish to call witnesses evidence and confined their participation to a brief cross-examination of John Innes.
- [62] Permission to be excused in the course of the proceedings was granted by the Bench, with the SDA advising that they would lodge a written submission. Consequently a written submission was filed in which it was stated, having heard the evidence of John Innes on 19 April 2010, that if the application was granted, Woolworths

would ensure work is voluntary for all employees during extended hours, the SDA would not be opposing the current application before the Commission.

### **Conclusion**

[63] The Commission, in the determination of applications of this nature that seek to extend the trading hours of a region, is required to have regard for the provisions of s. 26 of the Act. Those provisions being:

#### **"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."

[64] For this particular application to succeed, it is necessary that the NRA successfully prosecute the argument that the provisions of s. 26 of the Act have been enlivened to the extent that would warrant the making of an amendment to the Trading Hours Order, although it should be noted that each individual criterion of s. 26(a) to (i) (inclusive) do not have to be satisfied equally.

[65] In respect of Woodford, it is located 25 kilometres north-west of Caboolture and was not included in the current south-east Queensland trading hours zone as defined in the *Trading (Allowable Hours) Amendment Act 2002 No 3* that became operative on 1 August 2002. It would not be unreasonable to suspect that the Legislators of the day were conscious of the proximity of Woodford to both Caboolture and Brisbane at the time of framing the aforementioned Act and that the exclusion of Woodford at that time may have been a deliberate outcome. Woodford, as with the case of many small regional areas, became part of a larger Local Government region by way of the state-wide amalgamations of Councils in 2008, however this in general terms does not, for this application, alter the locality status of Woodford.

[66] In relation to s. 26(b) and (c), the material relied upon in support of the application was focussed on a range of events that have been occurring in the area over time on a regular basis, with the exception of the Splendour in the Grass Festival which may or may not have a lengthy association with the region. The absence of direct evidence relating to increased tourist numbers and accommodation needs was not, in the circumstances, helpful for the applicant. Information contained in the Statement of Facts and Circumstances is not of itself sufficient to satisfy a criterion under s. 26 of the Act.

[67] On the needs of an expanding population, the material relied upon by the NRA was the Australian Bureau of Statistics 2001 and 2006 Census Quick Stats: Woodford (Urban Central/Locality) (attached to the affidavit of John Innes) which showed the population of Woodford on 7 August 2001 and 8 August 2006 as 2,310 and 2,681 respectively. Whilst other material from the Queensland Government's Office of Economic and Statistical Research identified the Moreton Bay Regional Council Area as a whole with a population increase of 3.4% in the 12 months to 30 June 2008. The population growth in the Woodford area itself is not considered by the Full Bench to be of a nature that it assisted the application in accordance with s. 26(d) of the Act.

[68] Consideration of s. 26(e) of the Act requires a number of factors to be taken into account, including consumer and business interests (small, medium and large). The evidence of John Innes, at paragraph 17 of his affidavit, indicated that five Woolworths and two Coles supermarkets trade seven days per week within a 20 to 29 kilometres distance from Woodford which would suggest along with the Supa IGA Woodford, consumers currently have reasonable access to that particular line of retail shopping.

[69] Whilst the Supa IGA has floor staff numbers similar to that of the new Woolworths store and is part of a business structure including five other stores, it does fit (at Woodford) within the grouping of a small to medium

business and on the evidence of Melvin Luke is already suffering losses in the region 30% sales since the opening of the Woolworths store that would be compounded with the granting of the application. Any impact on employment in line with s. 26(g) is likely to see limited job opportunities negated through job losses and likely to lead to, at best, a neutral outcome.

[70] The proceedings were not presented with evidence supportive of the application in relation to s. 26(f), (h) and (i) of the Act and consequently these criteria were not enlivened.

[71] The application before the Commission could, in some respects, be considered similar to that of matter number B/2005/559 and later TH/2007/8 whereby an existing seven day trading area was sought to be extended to include another location.

[72] In matter number B/2005/559, the application was rejected for reasons including:

"(ii) the significant disruption and disadvantage that would be suffered by small traders in the area - as shown by the evidence given by the five witnesses called by the Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers)(QRTSA); and

(iii) the evidence of the tourist industry need was not compelling."

[73] In respect of TH/2010/7/8, the later application was granted on the following grounds:

"Having considered all of the evidence and submissions the Commission considers the application should be granted. The various matters required to be considered by the Commission under s. 26 of the Act have been satisfactorily addressed by the applicant. Moreover, the concerns raised by the Commission in its 2005 decision have been overcome. The centre is now able to be fully tenanted and small traders have not given evidence opposing the application. In addition, the population and tourist statistics and the customer survey suggest the popularity of seven day trading for Redlynch Central."

[74] Having considered the evidence, material and submissions before the proceeding, the Full Bench determines that similar to the outcome in B/2005/559, the application has failed at this time, to meet the requirements of s. 26 of the Act to the extent that that would warrant the amending of the Trading Hours Order.

[75] The application is refused.

[76] Order accordingly.

D.A. SWAN, Deputy President.

G.K. FISHER, Commissioner.

J.M. THOMPSON, Commissioner.

*Hearing Details:*

2010 19 and 20 April  
19 May (NRA Submissions)  
28 May (QRTSA Submissions)

*Appearances:*

Mr J. Moore, of National Retail Association Limited, Union of Employers.  
Ms C. Diefenbach, of Neumann Turnour Lawyers, for Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers).  
Mr D. Gaffy, of Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees.

Released: 17 June 2010