

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Re: National Retail Association Limited, Union of Employers* [2015] QIRC 204

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

CASE NO: TH/2015/1

PROCEEDING: Application to amend Trading Hours Order
(Goondiwindi Area)

DELIVERED ON: 27 November 2015

HEARING DATES: 23 July 2015
27 and 28 August 2015
13 October 2015 (Applicant's Submissions)
14 October 2015 (SDA's Submissions)
9 November 2015 (MGA's Submissions)

HEARD AT: Brisbane and Goondiwindi

MEMBER: Industrial Commissioner Thompson

ORDERS: **The Application is not granted.**

CATCHWORDS: INDUSTRIAL LAW - TRADING HOURS
ORDER - Application to amend trading hours
order - Inspections - Witness evidence - Insert
clause allowing Sunday trading - Matters relevant
to ss 21 and 26 considered - Insufficient evidence
to support the approval of the Application -
Application not granted.

CASES: *Trading (Allowable Hours) Act 1990, s 21, s 26*
Retailers' Association of Queensland Limited,
Union of Employers AND Queensland Retail
Traders and Shopkeepers Association (Industrial
Organization of Employers) and Others [2000]
165 QGIG 164
Retailers' Association of Queensland Limited,
Union of Employers AND Queensland Retail
Traders and Shopkeepers Association (Industrial
Organization of Employers) and Others [2000]
165 QGIG 128
TRADING HOURS - NON-EXEMPT SHOPS
TRADING BY RETAIL - STATE (TH/2007/7) -
Decision - <http://www.qirc.qld.gov.au>

National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organisation of Employers) and Another (TH/2009/3) - Decision <http://www.qirc.qld.gov.au> Re: National Retail Association Limited, Union of Employers [2014] QIRC 063
Re: National Retail Association Limited, Union of Employers [2014] QIRC 157
Trading Hours Order - Non-Exempt Shops Trading by Retail - State (2003) 174 QGIG 1339
Retailers' Association of Queensland Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Others [2000] 165 QGIG 128

APPEARANCES:

Mr M. Cole for the National Retail Association Limited, Union of Employers, Applicant.

Mr D. Sztrajt for the Master Grocers Australia Limited.

Mr D. Kerr for the Shop, Distributive and Allied Employees Association (Industrial Organization of Employees).

Ms C. Janetzki for The Australian Workers' Union of Employees, Queensland.

Decision

[1] An Application to Amend the *Trading Hours - Non-Exempt Shops Trading by Retail - State* (the Order) by the National Retail Association Limited, Union of Employers (NRA) was lodged with the Industrial Registrar on 31 March 2015 for the Goondiwindi Area.

[2] A schedule attached to the application identified the Orders sought:

"1. In clause 3.2 of the Order by inserting the following new subclause (35):

(35) Goondiwindi Area

	<u>Opening Time</u>	<u>Closing Time</u>
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. In Schedule 1 (Definitions) of the Order by inserting the following new definition:

(43) *The Goondiwindi Area* - The area within the following boundaries:

Commencing at the junction of the Macintyre River (NSW/QLD Border) and Newell Highway; then in a northerly direction along Cunningham Highway to the intersection of Polo Road; then in an easterly direction to the intersection of Leichhardt Highway; then in a southerly direction to its junction with Barwon Highway; then in a straight line south to Macintyre River (NSW/QLD Border) following the river/border in an easterly direction to the point of commencement."

Legislation

[3] Section 21 of the Act states:

"21 Trading hours orders on non-exempt shops

- (1) The industrial commission may decide trading hours for non-exempt shops.
- (2) However, the industrial commission 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.
- (3) The industrial commission 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.
- (4) In this section -

public holiday includes, if another day is substituted for a public holiday under the *Holidays Act 1983*, section 3, the day that would have been the public holiday if the substitution had not happened."

[4] Pursuant to s 26 of the Act, when the Industrial Commission is making an order under s 21 of the Act, it 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."

Inspections

- [5] The Commission on the morning of 27 August 2015 undertook a "walk through" of the shopping precinct in the company of representatives of those appearing in the proceedings.
- [6] The inspections included visits to the following business locations:
- Coles Supermarket;
 - Goondiwindi Co-operative Supermarket;
 - Target; and
 - Toyworld.

Appearances in the Proceedings

- [7] Appearances in the proceedings were as follows:
- NRA - Applicant;
 - Master Grocers Australia Limited (MGA);
 - Shop, Distributive and Allied Employees Association (Industrial Organization of Employees (SDA); and
 - The Australian Workers' Union of Employees, Queensland (AWU).

Witnesses

- [8] Witnesses were as follows:

NRA

- Gerard Winzenberg (Winzenberg); and
- Darren McClarty (McClarty).

MGA

- David Zampech (Zampech);
- Bruce Perri (Perri);
- Alison Hilton (Hilton);
- Sharon Lee (Lee);
- Wayne Mason (Mason);
- Phillip Percival (Percival);
- Michael Marschall (Marschall); and
- Thomas Schofield (Schofield).

Applicant

[9] A Statement of Facts and Circumstances supporting the application was filed by the NRA that contained, amongst other things, information that included:

- Goondiwindi is approximately 350 kilometres South West of Brisbane with most of the area surrounding the town being farmland.
- The town is a major transport nexus between the southern States and Queensland where a number of highways merged.
- Goondiwindi Area is a commercial hub of a vast agricultural and pastoral sector that produces:
 - cotton;
 - grain;
 - wool;
 - poultry;
 - beef;
 - lamb;
 - pork;
 The product is for domestic and overseas markets.
- There is a 210 hectare recreational water park that offers activities for all ages.
- Goondiwindi has an active sporting community.
- Goondiwindi region currently has a population of 11,188 persons with predictions of 14,317 residents by the year 2031.
- Goondiwindi is isolated from any major shopping seven day precinct - about 222 kilometres from Toowoomba.
- Significant expenditure in smaller communities is foregone because of the prohibition on seven day trading.
- Tourism visitation is recorded at inland towns such as Goondiwindi.
- Different shopping hours is the cause of unnecessary confusion for travellers and visitors moving through the Goondiwindi region.
- The introduction of more uniform trading hours throughout the area is highly desirable and minimises confusion and inconvenience for visitors.
- Additional employment associated with seven day trading would be a significant opportunity for employment in the region.

Winzenberg

[10] The current Queensland District Manager for Target Australia, Winzenberg has the responsibility for the business performance of 15 stores throughout Queensland. He

had been authorised by his employer to give evidence in support of the application to extend trading hours in Goondiwindi to introduce Sunday and public holiday trading.

[11] Winzenberg gave evidence regarding the operations of 290 Target and Target Country stores across Australia that indicated the vast number of those stores traded on Sundays with the hours typically between 9.00 am and 5.00 pm or at least 10.00 am and 4.00 pm. In terms of the percentage weekly sales, nationally they were said to be as follows:

- Monday - 9.4%,
- Tuesday - 9.4%;
- Wednesday - 10.4%;
- Thursday - 20.9%;
- Friday - 15.5%;
- Saturday - 22.2%; and
- Sunday - 12.2%.

[12] Target Country stores that trade on Sundays in Queensland recorded the following percentage sales for Sundays:

- Biloela - 11%;
- Gladstone - 12%;
- Emerald - 12%;
- Innisfail - 10%;
- Atherton - 9%; and
- Gatton - 9%.

[13] There were expectations that if Sunday trading was introduced in Goondiwindi it would achieve a similar percentage of weekly sales as in other Queensland regional areas. Additionally it would give extra choice to their Goondiwindi customers offering convenience that would be appreciated by families with children.

[14] Target believes that its capital investment in stores located in regional Queensland should be able to be utilised over seven days as it is elsewhere and with trading conditions across the retail sector having been very tough over the last two years it was frustrating for retailers when they were prevented from opening. Additionally there was escape expenditure to adjacent areas such as Warwick and Toowoomba which trade over seven days.

[15] It was estimated by Target that the introduction of Sunday trading in Goondiwindi would create additional employment and the engagement of new employees which was subject to the take up of additional hours amongst existing employees. For existing employees participation in Sunday work would be voluntary with the likelihood that the number of volunteers would not fall short based on the consistent experience in other areas. Following the introduction recently in Dalby of seven day trading Target had needed to employ a new team member along with additional hours for existing employees.

[16] The Target experience suggests:

- only employees who want to work on Sundays do so;

- many Sunday casuals are students who are attracted to working a few hours to generate income; and
- some employees who prefer to work on Sundays are employees whose partners also work weekends and therefore they prefer to arrange for time off to coincide with their partner's days off.

- [17] Under cross-examination Winzenberg indicated he attended the Goondiwindi store for a full day every four weeks [Transcript p. 2-9]. The store currently had no difficulty catering for their customers [Transcript p. 2-9]. He recalled there had been a complaint received from a customer about the Goondiwindi store not being open on Boxing Day 2014 [Transcript p. 2-10]. A number of questions were put to Winzenberg regarding his evidence about stores in a number of locations throughout the nation [Transcript pp. 2-10 to 2-12].
- [18] Winzenberg conceded he had not provided any evidence regarding the Target loyalty program [Transcript p. 2-12]. Sunday trading percentages were greater than three other days of the week when the fact that less hours were worked on Sundays was taken into account [Transcript p. 2-14]. It was acknowledged the percentage figures for Biloela were not correct in that they added up to more than 100% [Transcript p. 2-16]. Target stores were open in Moree and Toowoomba on Sundays however for Goondiwindi residents to visit those stores there was inconvenience due to travel time [Transcript p. 2-17].
- [19] Target had received some "online" feedback from Goondiwindi customers supporting Sunday trading [Transcript p. 2-18] but he had not had any contact with visitors to the region supporting Sunday trading [Transcript p. 2-19]. In the past 12 months a number of Target Country stores had been closed but "at the moment" there was no intention to close the Goondiwindi store [Transcript p. 2-20]. He accepted that his evidence regarding Warwick being a seven day trading store was incorrect [Transcript p. 2-21]. The Toowoomba Target store was a full range store [Transcript p. 2-21]. If the Goondiwindi store was able to trade on Sundays there would be additional employment available [Transcript p. 2-22] and they would be remunerated for Sunday work at the applicable rate in the Target Agreement which he conceded was less that provided for in the Award [Transcript p. 2-23]. There were currently 12 employees in the Goondiwindi store [Transcript p. 2-26] and any of the current staff that worked on a Sunday would do so on a voluntary basis [Transcript p. 2-29].
- [20] In re-examination the evidence was the loyalty program (Flybuys) is an independently operated business across a number of Wesfarmers Group of companies. On the matter of the different loading between the enterprise agreement and the Award, that had been negotiated with the unions and had been subject to the better overall test.

McClarty

- [21] McClarty, the State Change and Transformation Manager for Coles in Queensland, gave evidence of Coles' support for the NRA application, that if successful would have Coles trading all the allowable hours which would enable the Goondiwindi store to better service their customers, travellers and the local community.

[22] He gave evidence regarding the national operations of Coles stating:

- there were 2,200 stores including supermarkets, convenience stores and liquor outlets;
- currently employed almost 100,000 team members; and
- Coles are investing in 68 new stores in the next three years including regional and rural Australia.

[23] Coles were involved with a number of charity (partners) and together since January 2013 had raised \$13.7 million providing essential support for children and young people with cancer as well as assisting with food donations in excess of four million kilograms. In partnership with Australian Defence Force Assistance Trust (ADFT) Coles had raised and donated \$3.1 million to support "Aussie Diggers and their families". The Goondiwindi store alone had supported various community groups in fundraising efforts with donations of bread, sausages and drinks. Further the store had assisted an Aged Care facility, State School breakfast program, Care Flight and the ADFT.

[24] Evidence was given on Coles' state-wide uniform pricing and a campaign since 2010 that had lowered prices on thousands of grocery items as part of their "Down, Down" campaign. The savings to customers had been assessed by Deloitte Access Economics on 1,200 items as a volume-weighted average of 8%. In the period from June 2009 to June 2013 the Consumer Price Index had increased by 10.7% and over the same period Coles customers actually paid 4% less for food and liquor.

[25] The Goondiwindi community, which includes visitors, residents, employees and retailers would derive a benefit from the introduction of seven day trading through its contribution to increased convenience and additional working opportunities. In Queensland less than 5% of Coles' stores do not trade on Sundays with Sunday trading remaining the fastest growing trading day of the week. Wherever Sunday trading had been introduced it had been positively and enthusiastically embraced.

[26] McClarty's affidavit in pages 6 to 13 (inclusive) contained a number of graphics which demonstrated amongst other things transactions by time of day for stores that included:

- Gatton;
- Toowoomba - Wilsington;
- Toowoomba;
- Goondiwindi;
- Albury;
- Armidale;
- Ballarat; and
- Tamworth.

[27] Evidence was given with regards to feedback to the Coles customer call centre where it was said that in January 2015 a customer had enquired about whether there were any plans for the Goondiwindi store to open on Sundays. A further example given related to a customer speaking to the Store Manager in February 2015 about the hours of operation and failure to trade on Sundays.

[28] The benefits of Sunday trading were identified at paragraphs 23 and 24 of McClarty's affidavit:

"23. A common misconception in relation to Sunday trading is that it provides a redistribution of sales across the week but does not result in incremental sales growth. We have found that proposition to have no basis in truth. It is correct to say that there is some welcome easing of congestion. However, there is also an incremental growth to the business by virtue of a number of factors:

- Ease of congestion;
- Opportunity to shop in a more leisurely fashion;
- Opportunity to shop at times convenient to customers;
- Opportunity for one parent to shop alone or
- Opportunity for the whole family to shop together
- Impulse buying; and
- Increased spend of discretionary dollar.

24. It is more efficient for supermarkets to trade on all seven days of the week for the following reasons:

- Refrigeration must be maintained when the store is closed. The impact of this significant operational overhead is diminished if revenue is able to be generated over seven days
- In seven-day supermarkets, there is no requirement to run perishable stock down or deplete stock on Saturday afternoons before closure. This is a very inefficient practice on one of the busiest trading days of the week.
- Inefficiencies also arise from the 'start up' of six-day trading supermarkets on Mondays following the closed day on Sundays."

[29] McClarty quoted figures from the 2011 Census of Population and Housing said to suggest that young people in Goondiwindi are a significantly higher proportion of the population than the rest of Queensland which potentially highlighted a greater demand on the young adult population in relation to managing the responsibilities of paid employment and parenthood. Reference was made to attractions in Goondiwindi that brought visitors to the area. These included:

- a number of museums;
- Hell of the West Triathlon - February;
- Goondiwindi Show - May;
- Gourmet in Gundy Festival - September;
- Texas Country Music Roundup - September;
- Goondiwindi Cup - racing;
- Goondiwindi Gala Charity Ball - October;
- Texas Races - December; and
- Lions Club Christmas Eve in the Park - December.

[30] All existing employees, if the NRA application was granted, would undertake Sunday work on a voluntary basis with the historical position being any additional hours would

be offered to existing employees. The extension of trading hours would create an additional 100 hours per week of employment.

- [31] Under cross-examination McClarty informed the Commission that he had only been to Goondiwindi once in the past three years [Transcript p. 2-35]. On donations made by Coles to the community the donations included customer donations [Transcript p. 2-35]. On new investments to be made by Coles there was no intention to build a new store in Goondiwindi [Transcript p. 2-36]. McClarty maintained Coles' involvement with the Goondiwindi community was significant [Transcript p. 2-37]. On proceedings before the Australia Competition and Consumer Commission in May 2014 McClarty stated he was aware of claims that "Coles took advantage of your superior bargaining position by seeking payments from suppliers when Coles had no legitimate basis to do so" [Transcript p. 2-38].
- [32] McClarty had not personally seen data that Goondiwindi residents visited the Moree and Toowoomba stores but had relied on feedback from the stores [Transcript p. 2-40]. On his evidence regarding visitors, residents, employees and retailers it was not as a result of a personal involvement but the information had been provided through the Goondiwindi Store Manager [Transcript p. 2-40]. Increased patronage of Coles if there was seven day trading would assist the Main Street businesses but McClarty was not aware of any independent studies to support this evidence [Transcript p. 2-41]. In giving evidence around additional work opportunities he had not considered lost working opportunities that may flow from a successful application [Transcript p. 2-40]. A series of questions were asked about the graphs contained in McClarty's affidavit [Transcript p. 2-43].
- [33] In terms of store congestion McClarty conceded the recent introduction of self-service checkouts at the Goondiwindi store would relieve some of the congestion [Transcript p. 2-44]. In the current business footprint it was not possible to commercially offer an online service in Goondiwindi [Transcript p. 2-45]. McClarty was unable to provide any details regarding the most recent customer complaint about trading hours and the information he did have generally did not enable him to identify whether it related to Goondiwindi [Transcript p. 2-46]. On Goondiwindi having a population of roughly 5,000 people and for there to be only one complaint from a local resident about trading hours was not seen by McClarty as a positive sign [Transcript p. 2-47]. He acknowledged he had no evidence to support his claim that seven day trading results in growth beyond Coles [Transcript p. 2-47]. There was potential that incremental sales growth from Sunday trading could be growth acquired from local businesses [Transcript p. 2-48].
- [34] On energy usage at the Goondiwindi store he had not seen evidence of that but was aware Coles had made efforts to reduce energy on Sundays with the use of fridge blinds [Transcript p. 2-49]. It was conceded that the energy usage on a day when the store was closed would be less than on a day when the store was open [Transcript p. 2-50]. In terms of population growth it was accepted that the growth predicted for Goondiwindi was less than for South-East Queensland [Transcript p. 2-50]. Following the introduction of seven day trading in Dalby 75 per cent of existing staff expressed a desire to work whilst 25 per cent said "No". There were no repercussions for the "No's" [Transcript p. 2-51].
- [35] The Collective Agreement for Coles provides 50 per cent loading on ordinary rates for Sunday work whilst the Award allows 100 per cent loading. The rates for Coles

employees' was \$31.45 whereas the Co-operative employees' rate was \$37.05 [Transcript p. 2-51]. With the introduction of self-service checkouts there was no reduction in headcount or hours removed from roster with staff redeployed to other areas [Transcript p. 2-52]. The Store Manager had consulted with employees regarding an interest with Sunday work if the NRA application was granted [Transcript p. 2-53] He had not had access to the material from these meetings [Transcript p. 2-54]. McClarty confirmed all Sunday work for existing employees would be voluntary [Transcript p. 2-55].

- [36] In re-examination McClarty gave evidence regarding the considerations when expanding the size of a store and of the area required for operating an online shopping venture. The penalty rate for Sunday work had been negotiated with unions and was subject to the better off overall test. It was evidenced that it was not standard practice for him to review on the ground interactions between the Store Manager and staff.

MGA

Zampech

- [37] Zampech is the owner of a company named Grocery Gurus Australia Pty Ltd that is currently engaged by Goondiwindi Co-operative to manage their store. His experience in the retail industry was of some 25 years with 17 years being with Woolworths in various roles and three years with the FoodWorks Group where he was the Queensland New Business Manager. During his employment with Woolworths he saw the implementation of allowable Sunday trade for non-exempt stores in the Ipswich area where he found there was a "spread of business, no so much an increase in business". He holds the view that if the NRA application was successful it would harm several of the small, medium and large businesses (excluding Coles and Target) in the Goondiwindi area.
- [38] On review of Coles trading on the two Sundays before Christmas the FoodWorks store in Goondiwindi had a 33 per cent reduction in sales. An extension of trading hours in Goondiwindi would have a detrimental impact on the broader public interest as less wages would be distributed into the economy due to the Coles business model. At paragraph 9 of his affidavit he gave the following example to support his claim:

"For every \$1,000 lost in sales by FoodWorks Goondiwindi is equal to roughly \$140 in wages. For every \$1,000 gained by Coles they spend approximately \$90 on average."

In terms of employment FoodWorks whilst committed to their staff would need to drop casuals (of eight to ten staff), full-time and part-time staff would likely have their hours reduced. FoodWorks if unable to sustain their business could see all current 67 employees lose their jobs.

- [39] Zampech had undertaken a review of claims made by the NRA and their witnesses in previous trading hours' matters which lead him to believe their claims had been misleading. At paragraphs i(a), i(b) and ii(b) of his affidavit he stated the following:

- "i. Maryborough QLD Decision - 11 May 2012.
 - a. Maryborough was granted Sunday trade to commence on 28 June 2012. Following claims by the NRA, Woolworths, Coles and Target on of the reasons in granting the application was for the apparent job creation which would flow from the extension of trading hours to non-exempt stores.
 - b. Point 46 of the decision states:
 - [46] All witnesses for the non-exempt stores stated that employment opportunities in their stores may be increased if the application was granted. 23,000 extra hours of additional employment was identified within the submissions made by NRA, however, we note that witnesses placed a caveat on those estimates to the extent that potential employment opportunities would be relative to how the business was performing at the time.
 - c. This needs to be considered in comparison with the Bundaberg matter below.
 - ii. Bundaberg QLD Decision 16th April 2012
 - a. In the 2012 decision concerning the trading hours in Bundaberg (TH/2011/5) the following was stated as to why the commission granted the application concerning the order of employment:
 - [97] Evidence was given by Mr Barnes that retail trade was the largest industry of employment in the Bundaberg Region (Exhibit 16-18). Unemployment in the region (7.1%) was higher than the Queensland average (5.6%). From those statistics, NRA stated that seven day trade would create greater employment prospects in the region.
 - [98] NRA witnesses attested to an extra 23,000 hours of employment on Sundays per annum if the application was to be granted.
 - [99] Against these statistics, those opposed to the application said that jobs would be lost if there was a significant loss of trade on a Sunday as a consequence of a successful application.
 - [100] In our view, evidence presented by NRA witnesses showed a degree of certainty in terms of job creation, where evidence in opposition to the claim was primarily speculative in nature."
- [40] There is an interesting comparison between the Maryborough and Bundaberg decisions in that Maryborough has four "majors" and Bundaberg eight "majors" yet the NRA witnesses had each centre generating the exact same amount of hours of employment with in one case only half the number of stores.

- [41] There were said to be similar circumstances with the City of Toowoomba Decision on trading hours of May 2010 where it was said there would be 115,528 extra hours of employment created by extending trading hours yet Australian Government Department of Employment figures shows that from the commencement of trading unemployment in Toowoomba increased. It was said that this clearly raised the obvious question as to whether the 115,000 hours of employment ever materialised or were simply a misleading comment made before the Commission to bring about a desired outcome.
- [42] The issue of self-service checkouts reducing available hours in Goondiwindi Coles is also relevant as one of the primary functions was to replace the need to employ staff. If Sunday trade was allowed there could be a net reduction in employment which is in standing with all other areas.
- [43] Following the introduction of Sunday trade in Maryborough and Bundaberg there were a number of job losses.
- [44] The final argument against the NRA application was contained in an article in the Courier Mail on 11 December 2012 which the NRA Chief Executive Offer was quoted:

"National Retail Association CEO Trevor Evans confirmed the issue was high on its agenda for the year to come. 'Our view is that deregulation of trading hours could happen in southeast Queensland,' he said. 'There's sufficient population density and there's enough of a retail footprint to ensure that there's still strong competition. 'But he said the group did not support full deregulation, and the retail environment was different in rural and regional areas."

Goondiwindi was certainly one of the areas where deregulation of trading hours would be a clear detriment to the community.

- [45] Under cross-examination Zampech explained that his business had officially started up about five months previous with the role of the business to help people manage stores by providing guidance regarding the operation of stores with currently two stores involved in this process of which the Goondiwindi Co-operative is one [Transcript p. 2-61]. In the case of the Co-operative the manager is employed by his company and he provides operational assistance [Transcript p. 2-61]. On evidence given with regards to the management behaviour of Coles and Target being cost driven companies it was his evidence that he had not managed in either of those two businesses [Transcript p. 2-65]. The numbers relied upon in his affidavit regarding wage percentages and sales it was conceded he had no direct evidence but relied on years of experience [Transcript p. 2-67]. With rostering for Sunday work at the Goondiwindi store it goes to those who are available and if someone is not interested in Sunday work they put "unavailable". There were no issues for those who were unavailable [Transcript p. 2-69].
- [46] On the Goondiwindi store's decision to open seven days, it was Zampech's evidence that he had no involvement with the store at the time [Transcript p. 2-69]. In the media article quoted in his evidence he accepted the NRA had not claimed "the ability for non-exempt stores to open on a Sunday would influence the unemployment rate" [Transcript p. 2-70]. On the evidence around additional hours with the introduction of seven day trading he conceded it was possible that new employment could be

created and the unemployment rate still go up [Transcript p. 2-71]. There were other figures relied upon in his evidence regarding retail numbers across the employment sector of which he was unable to comment on [Transcript p. 2-71].

- [47] At the time of the introduction of seven day trading in Toowoomba he was employed with the FoodWorks Group which required him to call on independents in the town where he was informed of loss of trade, job losses and reduced hours [Transcript p. 2-72]. He was unable to quantify the numbers of staff affected [Transcript p. 2-73]. He was unable to provide evidence to support claims made about the absorption of hours in Woolworths (Toowoomba) stores on the introduction of seven day trading [Transcript p. 2-74]. On the introduction of self-serve checkouts he accepted staff would be redeployed into other positions in the store [Transcript p. 2-75]. Other figures relied upon by Zampech were shown to be without a basis [Transcript p. 2-77].
- [48] On the loss of staff through the introduction of self-serve checkouts it was his evidence that whilst he had never worked in a store when these had been in operation he was able to make his calculation based on what occurred when Woolworths introduced "auto-stocker" which was an automated program for stock ordering [Transcript p. 2-78]. He had no evidence of Goondiwindi Coles staff having lost out as a result of the introduction of automated checkouts or evidence regarding automated checkout usage at the store [Transcript p. 2-78]. On the figures relied upon regarding the introduction of seven day trading in Maryborough, the information was based on verbal information from the FoodWorks store owner at that time [Transcript p. 2-80]. On the reduction to the FoodWorks store if Coles were able to open on Sundays, the evidence was "it's going to be more than \$12,000 a week" [Transcript p. 2-85]. The staff numbers at the store (currently) on Sundays was said to be no more than 20 [Transcript p. 2-86]. On a range of assumptions regarding economic modelling, Zampech's evidence in reply to a suggestion they were "fairly rudimentary" was that he had not been to university and was relying on his own experience [Transcript p. 2-89]. Coles were able to run at a loss in some areas because they had another 800 or so stores to back it up [Transcript p. 2-91]. FoodWorks Goondiwindi could only compete with Coles because of the current advantage of Sunday trade [Transcript p. 2-92].
- [49] In re-examination he acknowledged that the Co-operative had an automated stock system that when introduced led to two staff being redeployed in the store. Goondiwindi was not, according to Zampech, part of South-East Queensland.

Perri

- [50] Perri, a long-term resident of Goondiwindi (37 years) is the owner operator of Goondiwindi Milk which provides milk to both the Goondiwindi Co-operative and Coles. On the basis of his retailing, sales experience and ongoing interaction with the customers it was his experience there was an overwhelming opposition against the extension of trading hours for non-exempt shops.
- [51] His main opposition to the NRA application was for financial reasons and the likely impact on the Co-operative and the flow on effect that would cause his business to suffer a substantial financial loss and affect the capacity of the business to employ staff and to reinvest in the business.

- [52] Perri identified the generosity of the Co-operative over 40 years as being "legendary" and exceeded what Coles and Target give back to the community. The Commission ought to consider the ramifications to small businesses if the proposal was ratified particularly with the town economy currently in a slump with the "rental housing barometer" showing 55 vacancies which was said to be unprecedented.
- [53] Under cross-examination Perri confirmed that his business was paid by Norco Foods to "strictly on a freight basis" to deliver milk to Coles three times a week which was about 10 per cent of their dairy capacity [Transcript p. 2-95]. In terms of the Co-operative the business would make deliveries of about 80 per cent of their milk product. The Co-operative contributed to his business profits whilst the payments for the Coles delivery was described as a "pittance" [Transcript p. 2-96]. He conceded he had not conducted any formal survey and his evidence was based on discussions during deliveries to about 40 places in town [Transcript p. 2-96]. Perri acknowledged that he made deliveries to Coles Express stores in Goondiwindi and Boggabilla with both stores operating on a Sunday but were more like convenience stores [Transcript p. 2-99]. On the 55 vacancies in rental properties in Goondiwindi it was said to result in less population [Transcript p. 2-100].
- [54] In re-examination Perri gave evidence that the Co-operative satisfied the need in town for fresh vegetables, chicken and sliced meat [Transcript p. 2-100].

Hilton

- [55] Hilton, the owner and operator of Toyworld Goondiwindi which she has operated with a business partner for almost six years. The NRA application was opposed on the basis of Target opening seven days a week in Goondiwindi having an "undoubtable detrimental effect on our sales" and whilst it is difficult to quantify what the financial loss would be for the store, there had already been a loss in trade over the last few years due to the drought.
- [56] Hilton and her business partner had invested a significant amount of time and money into the business and worked the store the following hours:
- Monday to Friday - 8.30 am until 5.30 pm;
 - Saturday - 8.30 am to 12.30 pm.

The business does open on Sundays in December for Christmas shopping and whilst that is the busiest time of the year the takings are not necessarily significant.

- [57] The reliance by the NRA on the needs of the tourist industry was said to be incorrect with references to the behaviour of the Council not to encourage tourists or "grey nomads" to stop in town by failing to take action which would encourage tourists to avoid the freeway bypass around the town. Even if tourists were to drive into Goondiwindi on a Sunday they would be able to satisfy their grocery retail needs at the Co-operative.
- [58] If Coles and Target were able to operate on Sundays there would be no guarantee of extra staff as self-serve checkouts would do most of the work. Hilton expressed a view that if Coles were able to open on Sundays the Co-operative would be likely to close down. If Target was to open on Sundays it would be a detriment to her business

also and have a detrimental effect on local independent business which would far outweigh any supposed benefit.

- [59] Under cross-examination Hilton gave evidence that when they started Toyworld the Target store was trading in Goondiwindi as was another small toy store (which had subsequently closed down) [Transcript p. 2-104].
- [60] In relation to the store that had closed down they had made a deliberate decision at the time not to stock the same items which showed they had considered the impact on other businesses at the time of opening the store [Transcript p. 2-104]. Target was their main competitor and during the year hold "big sales" where they totally deck out the top floor of their store. Outside of those times they operated with a couple of aisles [Transcript p. 2-105].
- [61] Hilton had not opposed an application by FoodWorks to operate on Sundays because they did not sell toys and as the Co-operative was owned by the locals and put a lot of money back into the community [Transcript p. 2-105]. The staffing arrangements for Toyworld were Hilton, her business partner, at other times her mother and their children [Transcript p. 2-105]. On Hilton's evidence regarding the introduction of seven day trading in Toowoomba she conceded her evidence was based only on her "understanding" [Transcript p. 2-107]. For their business to trade on Sunday they would incur costs through electricity and staff wages that would not make it worthwhile to open [Transcript p. 2-108]. Toyworld according to Hilton had a competitive advantage over Target through old-fashioned customer service but acknowledged customers may get that service at Target Goondiwindi because everyone knows everyone in the town [Transcript p. 2-109].
- [62] Hilton was taken to a Goondiwindi Regional Council document which described Goondiwindi as a popular stopover destination for travellers which brought a concession from Hilton that the Council was alluding to travel but reaffirmed her evidence that the Council had not wanted travellers to access free campsites [Transcript p. 2-110]. On self-service checkouts Hilton acknowledged that Target at present had no such machines and it was Coles who operated the self-serve checkouts [Transcript p. 2-112]. Hilton did not believe there was a demand from consumers for Sunday trading and that consumers were not aware that Coles would pay lessor penalty rates than businesses such as her business due to their EBA [Transcript p. 2-113].
- [63] In re-examination Hilton gave evidence that she had never been approached by the manager of the Coles Goondiwindi store on any matter and she had opposed the NRA application because it was something she felt strongly about.

Lee

- [64] Lee is the Chairperson of the Goondiwindi Co-operative Ltd of some two years standing with a total of 12 years' service as an active board member.
- [65] The Co-operative opened its doors in 1947 and was developed to serve the community and satisfy the community's retail grocery needs. In 2005 it was branded as a FoodWorks store and operates as a full size supermarket and one stop shop for household needs. Evidence was given that the Co-operative in the period between

2002 and 2011 gave back to the community in excess of \$4.0 million. Further evidence of donations to the community were particularised as:

- \$500 bursary to assist students enrolled in full-time university;
- \$10,000 - Goondiwindi State High School Gallipoli Trip - 2008; and
- donation to a local woman diagnosed with cancer.

[66] Since 1 July 2001 the Co-operative which had returned to shareholders by way of rebate \$2.3 million but had seen a decline in business as a direct result of the arrival of Bi-Lo (Coles) in town which saw staff numbers reduce from 133 in 2002 to the current number of 67 employees. A recent upgrade of the store saw significant expenditure outlaid by the business but in staying true to the fundamental belief in the community all of the contractors were locally based businesses.

[67] The Co-operative support for local businesses was identified at paragraph 15 of Lee's affidavit with a list of business associated with the Co-operative as suppliers or businesses engaged at times in respect of certain tasks. These included:

- Cameron Piggery - pork, ham
- Sunport and Gooralee Port
- Bruce Perri - Norco milk
- Marschalls Transport - all transport
- Stone Amos - all bookkeeping and auditing
- Lavender farm (Inglewood) products - Urangan
- Corish Lamb (currently in negotiations)
- Coolamunda olives - olives and olive products
- Cordina chickens - Girraween - free range chicken
- Dorchester computing - all computer assistance
- Dreiers security
- David Vincent - security monitors
- Boggabilla Orange Farm (negotiations underway)
- Bishops newsagency - magazines stationery etc
- BP Fuel - Depot - all fuel
- Larkara freight
- Lisa screen Art - shirt embroidery
- Lwinn Cleaning Service - footpath etc
- My design - book binding and printing
- Ross Plumbing - plumbing.

All of the above businesses would suffer if the Co-operative were to close or suffer significant financial loss that affected the Co-operative's ability to reinvest into the community.

[68] Following the arrival of Coles into Goondiwindi they picked up approximately 70 per cent of market share which had almost led to the closure of FoodWorks however since the store restructure they are now "seeing the light at the end of the tunnel" with Sunday trade having assisted the business and remains what potentially keeps the doors open. The Co-operative supports local businesses in buying produce and stock independent brand names, many of which are made by struggling Australian companies. A recent comparison by the Co-operative on a shopping basket showed that on a spend of \$170 the Co-operative was \$30 cheaper.

[69] Lee gave evidence of changed business circumstances in Goondiwindi in recent times that has seen the following closures:

- Neens Jeweller and Giftware - 2014
- Vault Clothes - 2014
- Video Ezy - 2015
- Goondiwindi RSL - 2012
- Goondiwindi Leagues Club - 2011.

[70] Lee took issue with the "need" to alter trading hours based on NRA witness evidence regarding projected increases in population in the period 2011-2021. The projections were said to be conditional on a number of factors which included the region being extremely vulnerable to drought which discourages people from moving into the area.

[71] Should the NRA application be successful the Co-operative would expect a reduction of 60 per cent of the staff and potentially the closure of the store. Currently employees who work on Sundays receive a loading of double time whereby in the same circumstances Coles employees would receive a 50 per cent loading.

[72] The comparisons by the NRA regarding other stores across Australia was said to show a clear misunderstanding of the unique challenges faced within Goondiwindi which is isolated from South East Queensland. Goondiwindi was an area where incomes were significantly less than that of city dwellers and certainly not part of a "mining boom". On the issue of congestion that was not a problem in Goondiwindi during the week or on weekends.

[73] The NRA application if successful would in the current economic climate of the region only cause harm to many local businesses and threaten the security of local employment.

[74] Under cross-examination Lee acknowledged there had been a general shift in retail over the past 12 years which had seen many small business closures in Goondiwindi [Transcript p. 3-5]. Lee was unable to provide a credible response to her claim that the Co-operative had donated \$4.6 million to charities in the past 10 years [Transcript p. 3-8]. Evidence was given regarding a number of "small" donations made to a range of recipients over previous years [Transcript pp. 3-9 to 3-13]. The Co-operative in 2001 had around 2000 shareholders but had fallen to around 400 at the present. All shareholders were entitled to attend the Annual General Meeting and all had voting rights [Transcript p. 3-17]. At the end of the financial year shareholders receive a form of dividend through a voucher system which accords with monies spent by them in the course of that year [Transcript p. 3-18]. On the arrival of Coles into Goondiwindi the Co-operative undertook an upgrade of facilities that included additional fridges, freezers, aisle space and increased stock lines [Transcript p. 3-19].

[75] Lee was taken to a newspaper article that appeared around the time of the introduction of seven day trading by the Co-operative and acknowledged the following quotation attributed to her was a true reflection of what she had said:

"The retail world is different to that of past decades. It changes constantly and as all small business owners are aware, you have to move with the times or shut

the doors. Twenty-four hour news cycle, seven days shift work, everything changes and we must change with it". [Transcript p. 3-20]

- [76] At that time the Co-operative had entered into discussions with small business owners (Bakers) around how the additional trading could be helpful to their business [Transcript p. 3-20]. There was no question that at the time of the store renovations the Co-operative was "struggling to compete" with Bi-Lo/Coles [Transcript p. 3-21]. Lee acknowledged that seven days after commencing seven day trading at the Co-operative that "Gundi Quality Fruit and Veg" closed their doors but did not accept responsibility for the closure [Transcript p. 3-22]. Whilst the Co-operative was trading "reasonably well" at the moment, the business was still "not out of the woods yet" [Transcript p. 3-25].
- [77] The Co-operative operates with one supplier and does not have the national buying power of Coles or Woolworths [Transcript p. 3-26]. The deregulation of trading hours in New South Wales had the effect of removing independent stores from Moree and increasing prices [Transcript p. 3-28]. Lee refused to accept that the small businesses that had closed down in Goondiwindi was as a result of bad management but due more to the economic climate at the time [Transcript p. 3-30]. Lee was unable to provide comment on a previous application by the Co-operative which sought an amendment to the trading hours for the store which had been made by a manager no longer in the employ of the business [Transcript p. 3-32]. The application was withdrawn by the Co-operative with Lee accepting that there had been advice given at the time by FoodWorks that if the application was successful Bi-Lo would have been able to open also [Transcript p. 3-34]. The Co-operative according to Lee had been able to trade on Sundays due to the size of the business having less than twenty employees on the store floor at any one time [Transcript p. 3-35].
- [78] On her evidence that if the current application was approved the Co-operative would see a reduction of 60 per cent of their Sunday trade, it was said to be based on the experience of Coles having traded on "trial" days prior to Christmas [Transcript p. 3-39]. The Co-operative were required to pay double time loading for employees required to work on Sundays whilst Coles only paid a 50 per cent loading through their EBA [Transcript p. 3-42]. The Co-operative stocked local produce at the store which did not happen at Coles [Transcript p. 3-45]. In respect of the Co-operative's trading days it was the case that Sunday was the best trading day [Transcript p. 3-46].
- [79] In re-examination Lee reaffirmed her evidence regarding donations made to the local community.

Mason

- [80] Mason, the Queensland State Operations Manager of FoodWorks, gave evidence opposing the application. The views expressed by him in his evidence were based upon his observations and experience in the retail industry since 1991 during which time he had held positions in areas including:
- marketing;
 - cost control;
 - staff management;
 - financing;
 - stock control; and
 - technology.

- [81] In his current position he provides advice and assistance to around 140 independently owned supermarkets and convenience stores.
- [82] The expansion of trading hours has caused a number of adverse effects to small businesses and family-run stores which were said to include:
- weekly turnover drops between 20 and 50 per cent;
 - costs increase;
 - cost ratios become unsustainable;
 - staff hours are cut; and
 - profitability is reduced.
- [83] Evidence was given in respect of three businesses that had suffered as a result of trading hour's expansion. These stores were located at Morningside, Townsville and Dalby.
- [84] The FoodWorks store in Goondiwindi was owned by the Co-operative and was a major part of the Goondiwindi business community. Customers of the business were amongst other things convenience shoppers, inter and intrastate travellers and people who do their full weeks shopping. The Co-operative runs accounts for local businesses, rural/agricultural organisations and farms. Sunday trade was important to the Co-operative with an extension to the trading hours likely to damage the business through a decrease of 25 per cent of weekly turnover which could potentially make the store unviable. Mason identified the negative effect on store sales of independent businesses when they were required to compete against Coles and Woolworths.
- [85] Further evidence from Mason went to challenging aspects of the evidence given by Winzenberg and McClarty in the proceedings and of comparing the retail circumstances in Australia against overseas countries such as the United Kingdom and China.
- [86] Mason provided opinion evidence on the position of various organisations regarding the deregulation of trading hours. These included:
- Productivity Commission'
 - Master Grocers; and
 - SDA.

He strongly opposed the full deregulation of trading hours at a national level and in Goondiwindi where there will be a breakdown in the small business sector with significant implications on employment if the application was granted.

- [87] Under cross-examination Mason gave evidence of his current role which required him to guide, advise and mentor retailers in the operation of their businesses. Success in his role would be for a business to improve their sales and profitability although in some cases such improvement would simply allow the business to survive [Transcript p. 3-51]. Since 1991 there had been changes to the "market share" which is around "sub" 12 per cent for independents as opposed to 38 per cent for the same grouping in 1974 [Transcript p. 3-52]. In Goondiwindi the main competition for the FoodWorks store was said to be Coles although they competed with other businesses which included convenience stores and fuel outlets [Transcript p. 3-54]. Increases in trading

hours leads to wage costs increasing, sales being down and reduced profitability [Transcript p. 3-55].

- [88] Mason gave evidence of the impact of Sunday trading on stores in Dalby and Oxley where the independents had lost up to half their turnover [Transcript p. 3-58]. It was conceded that a significant amount of the income generated by the Co-operative was spent on replenishing stock and it was incorrect for him to claim that 100 per cent of income remained in the local community [Transcript p. 3-62]. The role of FoodWorks in opposing this application was to protect small business and not for commercial gain [Transcript p. 3-65]. Views expressed in his evidence around the operations of Coles and Target in Goondiwindi were based on his knowledge without the assistance of any particular survey [Transcript p. 3-66]. If the application was successful it was likely the Co-operative would lose half its business on a Sunday and that the "rules" in place are to protect small business [Transcript p. 3-68]. The Co-operative was able to compete with Coles at present however if Coles were able to open on Sundays it would lead to job losses [Transcript p. 3-76]. Mason accepted a position that following the change to trading hours in Dalby there had been a net gain of 60 hours per week of employment but held the view they were likely to disappear over the course of time [Transcript p. 3-81].

Percival

- [89] Percival, the Deputy Chair of the Co-operative, gave evidence regarding the history and structure of the Co-operative which included:
- commencement of the Co-operative (approximately 60 years ago);
 - initial issue of 10 shares per person at \$2 each;
 - purchase of current premises in 1983;
 - joined Foodmaster Group in 1985;
 - changed to Foodstore Supermarket Group in 1991; and
 - operated under FoodWorks since 2005.
- [90] The Co-operative currently has approximately 2,722 shareholders although all are not active. Over time the business purchased additional land around the Co-operative and have continued to live by the motto of "owned by the people for the people". In the period between 2002 and 2011 some \$4.6 million had been given back to the community.
- [91] Whilst the business has struggled as a result of drought and other economic conditions, the Co-operative has continued to employ staff at a time when a number of other businesses in the town had closed down. However there had been a reduction in staff numbers that allowed the Co-operative to abide by the "no more than 20 staff on the floor at any given time" rule which enabled trading on a Sunday to occur. If the application was approved there was a real chance that the Co-operative would have to close its doors which would be a calamity for the employees and their families.
- [92] Under cross-examination Percival gave evidence of being a board member of the Co-operative for around 35 years. For a number of years the Co-operative had chosen not to open on Sundays as they did not want to go into competition with the corner stores but as the business deteriorated it was either open on that day or "go down the gurgler" [Transcript p. 3-87]. The Board had previously approved an application to extend trading hours being lodged that contained the following commentary:

"The Goondiwindi Co-Operative Society Pty Ltd seeks amendment to the Trading Hours Act due to the benefits Sunday Trading would provide the community and surrounding districts. Currently the community has to compete with traders in a two (2) hour radius - they being, Moree, NSW (one hour) and Toowoomba, Qld (two hours) for supermarket shopping on a Sunday." [Transcript p. 3-88]

Percival was of a view that monies spent at the Co-operative remained in the local economy whilst money spent at Coles was "out of town that night" [Transcript p. 3-92]. When FoodWorks commenced operating on Sundays the impact on small businesses had broken his heart however it was about survival [Transcript p. 3-93].

Marschall

- [93] Marschall operates a transport company in Goondiwindi which employs around 20 staff with the Co-operative being one of their main customers with three deliveries a week and five deliveries in peak times. Due to these deliveries other businesses in the town are able to be accommodated with deliveries through the same loads at a cheaper rate. If the Co-operative volume was to decrease there would be a flow on effect for all small businesses in town. The business some 20 years ago had purchased a specific "fridge van trailer" to service the Co-operatives cold orders and he gave evidence that since Coles had moved to town he had noticed a 20 per cent decline in cold orders.

Schofield

- [94] Schofield is the general manager of a family business that had been trading under its current name since 1950 but had been part of the Goondiwindi landscape since 1930. The business had 11 employees. The business was opposed to the application for a number of reasons that included:

- there was no social or community need for non-exempt businesses to open;
- his business would be almost forced to open and employees were not positive towards working on Sunday;
- not likely to generate more revenue; and
- no major change in Goondiwindi's demographic to support approval of the application.

- [95] Under cross-examination Schofield gave evidence of becoming aware of the application following a conversation with the manager of Coles which initially did not "faze" him as he thought the application only applied to Coles [Transcript p. 3-98]. Whilst the Target store was not seen by Schofield as a competitor he acknowledged they both sold underwear, socks etc. [Transcript p. 3-98]. The opposition to the application was based more on social issues than competition issues [Transcript p. 3-99]. The objection to Coles opening and not having issues with FoodWorks opening went to Coles not being a locally owned business [Transcript p. 3-100]. Additionally there would be flow-on effects on other businesses forcing them to consider opening on Sundays [Transcript p. 3-101].

Submissions

[96] The parties provided extensive written submissions for consideration by the Commission - NRA (26 pages) and MGA (48 pages) which have been read in full by the Commission but *precised* for the purposes of this decision.

NRA

[97] The application sought to introduce seven day trading in Goondiwindi following changes to the landscape of trading hours since 2002 with the current position being that of all Coles stores in Queensland less than 5 per cent do not currently trade on Sundays.

[98] The submission addressed the s 26 criteria of the Act for which the Commission must have regard in determining applications of this nature.

Section 26(a) - Locality

[99] The submission addressed the following:

- identified the geographical area;
- major transport nexus between the southern states and Queensland;
- five highways merge around Goondiwindi;
- major administrative centre for the region; and
- popular stopping place for interstate travellers.

Section 26(b) - Tourist Industry Needs and Section 26(c) - Needs of an Expanding Tourism Industry

[100] The submission focussed on the 210 hectare recreational waterpark that opened in early 2004. The purpose built facility was a favourite spot for water skiing and other water sports.

[101] There was less reliance on this criteria other than submitting that a greater uniformity in trading hours would benefit tourists and visitors to the area.

Section 26(d) - Needs of an Expanding Population

[102] The submission highlighted:

- growing population with high level of population aged between 0 to 14 years;
- projected increase of 8.7 per cent in the period 2011 and 2021; and
- close proximity to mining resource boom in the area.

Section 26(e) - Public Interest, Business Interest and Consumers' Interest

[103] The submission relied upon comments of Full Benches in matters:

- *Retailers' Association of Queensland Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Others*¹; and
- *Retailers' Association of Queensland Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Others*².

[104] The interests of one group of supermarkets should not outweigh the benefits to consumers of Goondiwindi and surrounding areas of having access to a wider range of retailers. The additional hours would benefit other retailers in the Town Centre. Other benefits of an operational nature were identified in the evidence of McClarty as:

- refrigeration must be maintained even when the store is closed with the impact of this significantly diminished if revenue is generated over seven days;
- no requirement to run down perishable stock; and
- "start up" inefficiencies avoided.

[105] Competition is an integral part of a dynamic and healthy retail sector.

Section 26(e) - Consumer Interests

[106] It was submitted that:

- the Commission has consistently acknowledged the interests of consumers are advanced by extending trading hours;
- the great majority of Queenslanders and Australians now enjoy convenient access to seven day trading;
- it would mean the introduction of uniform trading hours between Goondiwindi, Toowoomba and Moree; and
- Goondiwindi customers should be able to have the choice between FoodWorks and Coles on a Sunday.

Section 26(f) - Traffic Congestion

[107] This was not a significant factor.

Section 26(g) - Employment

[108] It was submitted that:

- the introduction of seven day trading would have a positive impact on employment with new employment and additional hours at Coles and Target;
- 100 additional hours per week or additional opportunities for 20 people;
- Sunday work would be voluntary; and

¹ *Retailers' Association of Queensland Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Others* [2000] 165 QGIG 164

² *Retailers' Association of Queensland Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Others* [2000] 165 QGIG 128

- the evidence from Zampech regarding the operations of Coles and Target bore no resemblance to the facts and was without substance.

[109] The granting of the application would be positive and result in additional hours for those seeking such hours.

Section 26(h) - Local Government

[110] In a memorandum from the Goondiwindi Mayor (dated 3 August 2015) he stated:

"The council does not object to the application for seven-day trading made by the NRA, and considers it appropriate to maintain a neutral position on the basis that the application has been public advertised, and we are happy to allow due process to occur."

Section 26(i) - Other Matters

[111] A number of other matters were the subject of submissions that included:

- a bias existed in the evidence of Perri due to his own business interests;
- the claim by Lee of donations to the community of \$4.6 million over 10 years was ambitious and without substance;
- both shareholders in FoodWorks and Wesfarmers derive benefits from the businesses;
- Definitions in the Act:
 - Independent Shop
 - Co-operative shareholder base conflicts with the definition of Independent Shop;
 - FoodWorks business
 - Co-operative has been managed back from a negative profit to a positive one;
 - currently the business is in a healthy state;
 - FoodWorks had lodged a Trading Hours Application for Sunday trade in April 2013;
 - role of Metcash;
- questions raised regarding the accuracy of claims regarding the loss of trade in Dalby following the introduction of extended hours.

Conclusion

[112] The implications of the decision by the Commission were significantly greater than a factual contest between the two parties. The evidence before the Commission unequivocally demonstrated the wider social and financial repercussions for the Applicant.

[113] In granting the application it would:

- diminish the need for Goondiwindi residents to travel to Toowoomba and Moree to shop on Sundays and holidays; and
- be in the best interest of small, medium and large retailers.

[114] On the balance the criteria is strongly in favour of the NRA's application.

MGA

[115] The submission identified the detail of the NRA application with regards to:

- the amendment sought;
- definition of the Goondiwindi Area; and
- current trading hours for non-exempt shops in Goondiwindi.

The requirement is for the Commission to consider the elements of s 26 of the Act when making an order under s 21 of the Act.

Section 26(a) - The locality, or part thereof, in which the non-exempt shop or class of non-exempt shop is situated

[116] The submission relied upon the Full Bench decision in *TRADING HOURS - NON-EXEMPT SHOPS TRADING BY RETAIL - STATE*³.

[117] Additional matters raised included:

- Goondiwindi covers an area of 19,294 square kilometres;
- retail footprint being of one main street with several other shops located close to intersections that cross the main street;
- town serviced by two large supermarkets within 300 metres of each other;
- Target Country operates a store in Goondiwindi;
- close towns surrounding Goondiwindi that currently trade seven days are Moree and Toowoomba;
- no evidence led by the NRA to the effect there was confusion relating to existing hours; and
- Goondiwindi was not part of South East Queensland and could not be compared with other areas of the state.

[118] The town is well serviced by the Co-operative which is conveniently positioned within the opportune driving distance of a number of satellite towns that provide Sunday trading.

Section 26(b) - the needs of the tourist industry or other industry in such locality or part; and Section 26(c) - the needs of an expanding tourist industry

[119] There was no probative evidence before the Commission of any tourist industry in or around Goondiwindi that indicated this application would benefit the tourist industry. In undisputed evidence Percival as a volunteer at the Visitor Information Centre identified that the number of visitors had declined in 2014 from visits in 2012.

[120] There is acceptance of the existence of limited tourism within Goondiwindi and passing traffic through the town although this does not automatically translate to a need to allow non-exempt shops to trade on Sunday.

[121] There was insufficient evidence before the Commission for tourism or tourist activities to support a conclusion in favour of the application.

³*TRADING HOURS - NON-EXEMPT SHOPS TRADING BY RETAIL - STATE* (TH/2007/7) - Decision - <<http://www.qirc.qld.gov.au>>

Section 26(d) - the needs of an expanding population

- [122] There was evidence before the Commission which clearly indicated that there was a declining rate of growth in Goondiwindi in addition to the overall area's growth rate being marginal. The growth rate predicted for the period between 2011 and 2021 of 8.7 per cent equates to growth of less than 95 persons per year.
- [123] There was consistent evidence that customer shopping needs across Goondiwindi were broadly satisfied whereas a need to extend trading hours for non-exempt stores remains unproven.
- [124] There was insufficient evidence to support the application based upon this criteria.

Section 26(e) - the public interest, consumer's interest, and business interest (whether small, medium or large)

Public Interest

- [125] The submission adopted the comments of the Full Bench in *National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organisation of Employers) and Another*⁴ which stated:

"Primarily, the 'public interest' test in these circumstances is incorporated within the specific requirements which the Commission must consider within s 26 of the Trading Act. A mandatory consideration by the Commission of factors (a) to (i), broad as these sections are, ensures that an appropriate 'public interest' consideration has been met."

- [126] It was not unreasonable to suggest that prior to lodging the application that there should have been some tangible consultation between NRA and the Goondiwindi public for the purpose of canvassing their views. In previous trading hours applications in Mount Isa and Dalby there had at least been an "independent" survey of public opinion on the issue.
- [127] The NRA had failed to accurately address the "public interest" aspect in their submission. The only direct public interest evidence had been from MGA local witnesses who all opposed the application.
- [128] The importance of a healthy Co-operative and the financial benefits to the Goondiwindi residents was evident in the evidence of a number of witnesses whereas the support from Coles and Target for the community was described as "underwhelming" and negligible relative to the profits they take from the community. These matters were said to highlight the importance of the Co-operative remaining strong and competitive within the Goondiwindi community. The broader community would be detrimentally affected if the profits of the independent local retailers were diminished.

⁴ *National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organisation of Employers) and Another (TH/2009/3) - Decision*
<http://www.qirc.qld.gov.au>

Consumer's Interest

[129] The MGA was mindful of a previous decision of a Full Bench in *Re: National Retail Association Limited, Union of Employers*⁵ for a matter outside of Goondiwindi that identified extended trading hours as favourable however in this matter insufficient evidence was adduced to show that consumers in Goondiwindi "need" or "want" Sunday trading for non-exempt retailers. Nor was there any probative evidence before the Commission which shows consumer dissatisfaction with the existing trading hours' arrangement. On the argument advanced by the NRA witnesses regarding escape expenditure there were said to be clear doubts over the veracity of that evidence.

[130] The submission raised concerns regarding the evidence that Goondiwindi residents were required to travel to Toowoomba due to shortcomings in the Goondiwindi trading hours and in any event it was the assessment of the MGA that escape expenditure would continue even if the application was successful. Their evidence remains that Goondiwindi consumers are extremely well serviced under the current trading hour's arrangements.

Small Business Interests

[131] The NRA led no direct evidence to indicate that any extension of trading hours would assist small business interests nor had there been any reasonable indication of having consulted with any small business retailers in Goondiwindi apart from McClarty that the Coles manager had conducted confidential discussions with some store managers in Goondiwindi.

[132] There was probative evidence from MGA witnesses Perri, Hilton, Schofield and Marschall regarding the detriment that would be suffered by small businesses in Goondiwindi if the application was approved. The witnesses evidence was sufficient to conclude that all four businesses would suffer a level of detriment to their individual businesses should the application be approved. The role of small businesses in small towns should not be undervalued.

Medium Business Interest

[133] There was no evidence led by the NRA to indicate that an extension of trading hours for non-exempt shops would assist medium business interests which was said to be a defect in the application which solely focussed on the large business interests.

Large Business Interest

[134] MGA does not dispute that an extension of allowable trading hours to include Sunday and certain public holidays would benefit Coles and Target due to an inevitable increase in their sales and overall profits. It should be noted that both Coles and Target entered the Goondiwindi retail market on the understanding that trading was limited to six days per week excluding Sunday and it is unrealistic to expect their trading hours should be changed on a whim when there is no evidence to suggest trading hours are inadequate.

⁵ *Re: National Retail Association Limited, Union of Employers* [2014] QIRC 063

[135] Whilst it was said to be difficult to quantify the exact losses the Co-operative would suffer if the application was approved the submission contained a reference to matter B/2015/12 (*Simpson v National Retail Association Limited, Union of Employees*⁶) where the Dalby FoodWorks store had shown losses of 47 per cent in Sunday sales as a direct result of Coles and Woolworths being permitted to trade.

[136] It was evident that the Co-operative would suffer significant losses should the application be approved which would require consideration of their sustainability although the Co-operative conceded that closure of the store was not in the circumstances certain. The case does clearly involve competing interests as submitted by the NRA however the expansion of trading hours for Target and Coles at the expense of the Co-operative neutralises any perceived large business interests being served and therefore the NRA has not satisfied the criteria of large business interests being benefited by the changed hours.

Section 26(f) - the alleviation of traffic congestion

[137] There was evidence before the Commission that traffic congestion was a major concern in Goondiwindi therefore it should be concluded that existing infrastructure and trading hours are sufficient to manage the current traffic flows in town.

Section 26(g) - the likely impact of the order on employment

[138] Any alleged positive impact that may flow from the granting of the application would be neutralised or outweighed by the detriment to employment opportunities in independent stores across the town. Evidence was given by Zampech that a successful application would have a negative impact on the order of employment with the prospect of up to eight to ten casual staff being terminated and reduced hours for other staff.

[139] The NRA claims regarding job creation was said to be largely speculative with the MGA being of the view that the most likely result would be either negligible increases to employment opportunities with Coles and Target or no increase at all in employment. Effectively the order of employment would remain largely unchanged even if the application was unsuccessful. The introduction of self-serve checkouts in the Coles (Goondiwindi) store would have had an effect on the order of employment.

[140] There is insufficient evidence to show that a positive increase in order of employment will occur in the community by providing non-exempt stores with an additional nine hours trading per week.

Section 26(h) - the view of local government in whose area the order is likely to have an impact

[141] The Goondiwindi Regional Council had elected to remain neutral on this matter.

Section 26(i) - such other matters as the Industrial Commission considers relevant

[142] Other matters mentioned in the submission included:

⁶ *Simpson v National Retail Association Limited, Union of Employees* [2015] QIRC 172

- penalty rate differential between the Co-operative employees and Coles/Target employees for Sunday work;
- effect on the social fabric of the community;
- no evidence adduced by the NRA from the local community members to support the application; and
- trading success in towns outside Goondiwindi following the introduction of seven day trading does little to alleviate the concerns of Goondiwindi residents.

Conclusion

[143] The evidence adduced indicates that the criteria in s 26 weighs strongly against the approval of the application.

[144] The following authorities were cited:

- *Re: National Retail Association Limited, Union of Employers*⁷:

"[70] President Hall in C/2008/40, C2008/43, and C/2009/44 has stated that 'a decision to enlarge trading hours for non-exempt shops on Sunday and/or public holidays requires departure from the *status quo*. To that extent NRA carries the "onus" of satisfying the ...!'"

- *Re: National Retail Association Limited, Union of Employers*⁸:

"[19] Although, strictly speaking, there is no onus of proof, the Commission has previously stated that a decision to enlarge trading hours for non-exempt shops requires a departure from the *status quo*. To that extent an applicant for orders under s 21 of the Act, in this case the NRA, carries the onus of satisfying the Commission that the application should succeed."

[145] The NRA it was submitted had failed to discharge the onus satisfactorily to demonstrate a departure from the existing trading hour's regime through probative evidence in relation to some or all of the criteria contained in s 26 of the Act. The NRA presented insufficient evidence to warrant any changes to the trading hours in Goondiwindi.

[146] The MGA demonstrated that Goondiwindi residents are well serviced by existing retail opportunities and that tourism was in fact in decline with the cross-examination of the MGA witnesses failing to adequately refute the evidence in opposition to the application.

[147] The application should be unsuccessful.

⁷ *Re: National Retail Association Limited, Union of Employers* [2014] QIRC 063

⁸ *Re: National Retail Association Limited, Union of Employers* [2014] QIRC 157

SDA

[148] The SDA provided limited submissions which did not seek to express a view on the merits of the case and given the unequivocal and unqualified assurances that work performed during the times and dates of the application would be voluntary for existing employees of non-exempt stores, the application was not opposed.

Conclusion

[149] The application sought to extend the trading hours for non-exempt stores in Goondiwindi to in effect allow for trading on Sundays and certain public holidays excluding Good Friday, 25 April, Labour Day and 25 December. An area "The Goondiwindi Area" was identified in the application as:

"The Goondiwindi Area - The area within the following boundaries:

Commencing at the junction of the Macintyre River (NSW/QLD Border) and Newell Highway; then in a northerly direction along Cunningham Highway to the intersection of Polo Road; then in an easterly direction to the intersection of Leichhardt Highway; then in a southerly direction to its junction with Barwon Highway; then in a straight line south to Macintyre River (NSW/QLD Border) following the river/border in an easterly direction to the point of commencement."

[150] In consideration of the application there is a statutory requirement for the Commission to have regard for the criteria identified in s 26 of the Act when making orders for non-exempt shops pursuant to s 21 of the Act:

[151] In the matter of *Trading Hours Order - Non-Exempt Shops Trading by Retail - State*⁹ the Full Bench in addressing s 26 of the Act made the following statement:

"Section 26 of the Trading Hours Act requires the Commission to have regard to a number of elements in relation to whether it will make an Order under s. 21 of the same Act. In that respect, we note another Full Bench of this Commission stated in Matter No. B1156 of 2002 (172 QGIG 542) that:

'... It should not be inferred in all applications for an extension of trading hours that all (matters identified in s. 26 of the Trading Hours Act) would be weighted equally, e.g. some applications may substantially rely upon one or two (2) of the matters outlined in s. 26 of the Act, whilst in other applications substantial reliance will be placed on many more of the s. 26 matters.'"

[152] Full Benches following on from the B1156 of 2002 matter have continued to observe similar principles as I do in consideration of the application currently before the Commission.

⁹ *Trading Hours Order - Non-Exempt Shops Trading by Retail - State* (2003) 174 QGIG 1339

Application of s 26 criteria

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

[153] The application for extending trading hours related to the town of Goondiwindi which is situated some 350 kilometres south-west of Brisbane and around eight kilometres north of the New South Wales border.

[154] In the course of the proceedings there was a variance of evidence as to whether Goondiwindi was located in the South-East Queensland region or otherwise. For the purposes of trading hours matters with regards to non-exempt shops there is a *Trading Hours - Non-Exempt Shops trading by Retail - State - Order* which at Schedule 1 - Definitions identifies South-East Queensland in significant detail as taking in locations including Brisbane, Sunshine Coast, Gold Coast, Beaudesert, Fernvale, Plainland and Gatton but does not extend to areas such as Warwick and beyond.

[155] Clearly Goondiwindi is not, in terms of the Order considered as part of South-East Queensland.

[156] In respect of the Coles and Target stores the subject of evidence in these proceedings they are not located in a stand-alone shopping centre as more often than not is the case in applications of this nature, but in fact are in separate and distinct locations apart from each other.

[157] The Coles store is located one street back from the main shopping thoroughfare of the town with a number of building structures between the store and the main street that does not allow for a line of sight between the two non-exempt stores. Coles has a designated car park for the use by customers attending the store. The Target store is situated in the main street and is located in a closer proximity to the Co-operative as opposed to the Coles store.

[158] The argument often relied upon by applicants in trading hours cases is that the "non-exempt" stores are anchors in the shopping centres and an extension of the allowable hours of trade assists other retail outlets in the Centre to increase their business as a consequence of the additional patronage of those stores. In these circumstances such an argument cannot be advanced for consideration by the Commission.

[159] The locality of the non-exempt shops in this instance cannot be seen on the evidence as having a positive impact on the application of s 26(a) of the Act.

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

[160] There was limited evidence adduced regarding the aspects of tourism that could be attributed as beneficial in the support of the application other than references to a 210 hectare recreational water park which in itself was less than probative in terms of how that assisted the application.

[161] McClarty identified a list of attractions that were said to occur over the course of a year in the region but such evidence was general in nature and offered relatively little

support to the claim for the introduction of Sunday trade as a result of tourists' specific needs.

[162] The NRA in submissions appropriately conceded there was less reliance on this criteria other than a greater uniformity in trading hours would be beneficial to tourists and visitors to the region. The MGA acknowledged an acceptance of limited tourism exposure within Goondiwindi but did not accept that it automatically translated to a need for non-exempt stores to trade on Sundays.

[163] On consideration of the evidence including the factor of five highways merging in the immediate area of Goondiwindi, I am of the view that s 26(b) and (c) of the Act are not enlivened to the extent that the needs of the tourist industry or an expanding tourist industry would in the circumstances support in a positive way the NRA application.

(d) the needs of an expanding population

[164] A Statement of Facts and Circumstances filed by the NRA in conjunction with the application to vary the allowable trading hours in Goondiwindi contained the following information in relation to the region's population:

- current population - 11,188 persons;
- prediction of 14,317 persons by 2031.

[165] If the predicted growth was to be apportioned for example on a yearly basis the growth in population would be:

- $3,129 \div 16 = 195.56$ persons per year.

[166] The NRA submissions in addressing this criteria made references to Goondiwindi being in close proximity to the mining boom which was contradicted by the evidence of Lee who described Goondiwindi as an area where incomes were significantly less than that of city dwellers and "certainly not part of a "mining boom".

[167] The MGA in submissions identified the overall regional growth as being marginal with a growth rate for the period 2011 to 2021 of 8.7 per cent equating to an increase of less than 95 persons per year for the period in question.

[168] In any event the growth figures provided by each of the parties do not portray a significant expansion in population growth predictions that would be a "game changer" in terms of this application and in the absence of any substantive evidence regarding the mining boom I am unable to conclude that this criteria supports the application in a positive way.

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

Public Interest

[169] With regards to the public interest the case for the NRA was effectively that the additional hours of trade that would eventuate if the application was successful would provide access on Sundays to a wider range of retailers to consumers in the Goondiwindi region thus provide a beneficial outcome.

[170] The NRA cited a decision of a Full Bench of the Commission in *Retailers' Association of Queensland Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Others*¹⁰ where it had been stated:

"In assessing the public interest this Commission is required to weigh up any competing interests. On the one hand we have the interests of consumers in being able to purchase products in the extended trading hours sought and the interests of Coles Express in wishing to trade the extended hours. On the other hand we have the interests of the twelve independent operators, whether they be small or medium businesses, trading in or around the Brisbane City Heart whose businesses may be affected adversely by the grant of the application."

[171] It was further argued by the NRA that the interests of one group of supermarkets (the Co-operative) should not be allowed to outweigh the benefits extended hours of trade would provide to consumers.

[172] The MGA in addressing the public interest criteria also placed reliance on a decision of a full bench in *National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organisation of Employers) and Another*¹¹ which stated:

"Primarily, the 'public interest' test in these circumstances is incorporated within the specific requirements which the Commission must consider within s 26 of the Trading Act. A mandatory consideration by the Commission of factors (a) to (i), broad as these sections are, ensures that an appropriate 'public interest' consideration has been met."

[173] Issue was taken by the MGA with the failure of the NRA as the applicant to have some tangible consultation with the Goondiwindi public to ascertain any views they may have regarding the application, citing previous trading hour's cases in Mt Isa and Dalby where there had been at least some form of "independent" survey. The MGA stressed the importance of the Co-operative to the residents of Goondiwindi and of the detrimental effect if it was unable to remain a strong and competitive force within the Goondiwindi region.

Consumers Interest

[174] The various arguments advanced by the NRA regarding the interests of consumers was in accord with those previously relied upon in a host of similar applications and included previous decisions of the Commission that found the extension of trading hours was of benefit in the main to consumers and the uniformity of hours with neighbouring regions being seen as a positive.

¹⁰ *Retailers' Association of Queensland Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Others* [2000] 165 QGIG 128

¹¹ *National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organisation of Employers) and Another (TH/2009/3) - Decision* <http://www.qirc.qld.gov.au>

[175] The MGA mindful of the previous decisions of the Commission relied upon and absence of probative evidence to support that consumers in Goondiwindi either "needed" or "wanted" the extended hours sought in the NRA application.

Small Business

[176] The Commission heard evidence from small business owner/operators in the course of the proceedings with two of the businesses, Goondiwindi Milk (Perri) and a transport company (Marschall) having direct business arrangements with the Co-operative. Their evidence was speculative regarding losses each business would sustain should the application be granted and the Co-operative were to suffer a significant decrease in business volume. In the case of Hilton her evidence relevantly identified Target as her direct opposition and of the likely impact on her sales if the application was approved.

[177] Whilst future losses forecast were speculative in nature there was the undisturbed evidence of Zampech regarding the Co-operative experiencing a reduction in sales when Coles had been permitted to trade on two Sundays previously in the period leading up to Christmas of up to 33 per cent which was quantified in dollar terms as \$12,000 a week.

Medium/Large Businesses

[178] In this particular matter in the course of proceedings there was evidence in terms of the Coles store and the Co-operative of being similar in floor size and the number of staff engaged overall in each of the businesses. To establish what is a medium rather than a large business it is necessary to look at the structure of each of the business. Coles according to the evidence of McClarty had in excess of 2,200 stores including supermarkets across Australia and employ almost 100,000 team members whereas the Co-operative is a stand-alone business with 67 staff engaged.

[179] Clearly in the overall context the Co-operative could not be "lumped" in with Coles as a large business but would suitably be regarded in the circumstances to be a medium size business.

[180] Target who operate a total of 290 stores across the Country would also fall within the definition of a large business with the Target Country store whilst of a limited size still part of the overall Target conglomerate.

[181] In respect of the considerations of the s 26(e) criteria it is inarguable that extended hours would provide an increased level of shopping opportunities for Goondiwindi residents however apart from the access to Coles and Target on Sundays there was no evidence of note that it would extend to other shopping options in any reasonable way. With regards the benefit of uniform hours with Toowoomba and Moree the distance between the locations even by country standards is prohibitive of being beneficial.

[182] On the business side I am satisfied on the evidence that small business interests would likely be impacted in a negative manner particularly in respect of Goondiwindi Milk, the transport company and Toyworld operated by Hilton, if the application was approved. The same would apply to the Co-operative except on a much "grander" scale than the previously mentioned small businesses and as a consequence of the ownership of the business by (currently) 400 local shareholders, would have a more

significant impact on the community than may be the case of a privately owned business.

[183] Approval of the application would undoubtedly be beneficial to both the Coles and Target operations.

(f) the alleviation of traffic congestion

[184] There was no evidence before the proceedings that traffic congestion was a relevant criterion that ought to be considered in the determination of this application.

(g) the impact of the order on the employment

[185] The NRA through the evidence of Winzenberg and McClarty support the proposition that the introduction of increased hours of trade would provide additional hours of employment amongst the existing workforce and further provide the opportunity for the possible engagement of new employees. It was the evidence of Winzenberg that as a consequence of a recent decision to allow seven day trading in the western Queensland town of Dalby, existing employees took up some of the additional hours with Target being required to engage a new team member to meet their requirements. It was envisaged by Winzenberg that the same options would be taken up by the Goondiwindi store in the event the application was successful. McClarty estimated that Coles would require an additional 100 hours per week of employment if the application was approved.

[186] On the other side of the argument Zampech in his evidence challenged the NRA assertions regarding the growth of employment opportunities based on previous trading hours decisions in Maryborough, Bundaberg and Toowoomba and forecast the loss of eight to ten casual staff by the Co-operative if the application was granted.

[187] The positions advanced by both the NRA and the MGA with regards to the impact of the order on employment are considered to be in all likelihood scenarios that would come to fruition should the application be approved and would have the effect of cancelling each other out rendering this criterion as being neutral.

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

[188] Neither the NRA or MGA sought to adduce evidence from the Goondiwindi Regional Council to solicit a view in relation to the NRA application and accordingly there was no evidence of any relevance for the Commission to take into account in the consideration of the application.

[189] There was however correspondence received by the Commission from the Goondiwindi Regional Council (dated 3 August 2015) under the signature of Graeme Scheu - Mayor which stated:

"This matter was considered by the Goondiwindi Regional Council ('the Council') at its Ordinary Meeting on 22 July 2015.

The Council does not object to the application for seven day trading made by the National Retail Association, and considers it appropriate to maintain a

neutral position on the basis that the application has been public advertised, and we are happy to allow due process to occur.

The Council, would however, would like to request that in determining the application as it currently stands, the Commission takes into account the relevance of penalty rates and the differing effects that the payment of penalty rates can have on country areas as opposed to urban centres."

[190] The Commission acknowledges the "neutral position" of the Goondiwindi Regional Council which has the effect of rendering this criterion as neutral.

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

[191] There were a number of issues raised in the course of the proceedings that are best dealt with under this particular criterion which included:

- reference by the NRA witnesses to trading hours of Target and Coles stores in a number of Australian States such as:
 - New South Wales;
 - Victoria;
 - South Australia;
 - Western Australia; and
 - Tasmania.
- trading transactions regarding percentage of sales for "non-exempt" stores including both interstate and intrastate locations;
- inefficiencies for Coles supermarket in having to maintain refrigeration whilst store is closed on Sundays and the impact on perishable stock;
- charitable donations made to the community by Target, Coles and the Co-operative.

[192] The trading hours relied upon in other States were of no benefit to the application as those particular stores operate under quite different trading hours regimes and in the case of New South Wales and Victoria trading hours have been the subject of State Government legislation which effectively deregulated trading hours in those States. The inefficiencies identified by Coles regarding no Sunday trade does support the argument advanced for the granting of the application.

[193] The matter of charitable donations are of limited relevance in the considerations of the Commission other than to identify Target, Coles and the Co-operative as good corporate citizens whom provide assistance to various areas of the community from time-to-time.

Finding

[194] On consideration of the s 26 criteria which by statute the Commission must have regard for in determining whether an application to Amend the *Trading Hours - Non-Exempt Shops Trading by Retail - State* (the Order) be granted or otherwise, I have concluded that whilst the NRA had established favourably certain limited aspects of the criteria at s 26 in respect of consumer interests, large business interests and various inefficiencies that supports the granting of the application the failure to do likewise in respect of other important criteria such as locality, needs of the tourist industry, an expanding population, small and medium business interests, traffic

congestion, the order of employment and a supportive position from local government, that overall it has not been established to the requisite standard of proof that the s 26 criteria has been sufficiently enlivened to warrant the approval of the NRA application.

[195] Accordingly the application is not granted.

[196] I order accordingly.