

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Trading (Allowable Hours) Act 1990 - s. 21 - trading hours orders on non-exempt shops

National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organisation of Employers) and Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees (TH/2009/2)

TRADING HOURS NON-EXEMPT SHOPS TRADING BY RETAIL – STATE

DEPUTY PRESIDENT BLOOMFIELD
COMMISSIONER FISHER
COMMISSIONER ASBURY

17 November 2009

DECISION

- [1] The National Retail Association Limited, Union of Employers (NRA) has made Application to the Commission to amend the *Trading Hours - Non-Exempt Shops Trading by Retail - State Order* (the Trading Hours Order) pursuant to s. 21 of the *Trading (Allowable Hours) Act 1990* (the Act) as follows:

“By inserting a new clause (1)(i) in Schedule 1 as follows:

(i) *the area within the following boundaries:*

Commencing at the junction of the Noosa River with the sea coast; then in a northerly direction along the coast line to Inskip Point; then in a straight line in a south-westerly direction to the intersection of the Wide Bay Highway and the Bruce Highway; then in a straight line in a south-easterly direction to the intersection of the Eumundi-Kenilworth Road and the Mary Valley Highway; then in a straight line in a north-easterly direction to the point of commencement.”

- [2] The overall effect of the Application, if granted, would be to move the existing northern border of the South-East Queensland 7 day trading zone to the north to include the town of Gympie and the townships of Rainbow Beach, Tin Can Bay, Cooloola Cove, Pomona and Cooroy, respectively. However, the real impact would be limited to those non-exempt stores currently located in Gympie as well as a Woolworths' store which was, at the time of inspections and hearing, under construction at Cooloola Cove, which would be able to trade on Sundays (except Easter Sunday) and the majority of public holidays.

Appearances

- [3] In accordance with the provisions of s. 23 of the Act, the Industrial Registrar granted leave to appear and be heard to each of The Australia Workers' Union of Employees, Queensland (AWU) and Queensland Retail Traders and Shopkeepers Association (Industrial Organisation of Employers) (QRTSA), respectively. At the initial mention of the matter, on 9 April 2009, the AWU informed the Commission it had no Members affected by the Application and sought leave to withdraw from the proceedings. Leave was so granted.
- [4] During the course of the same proceedings the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees (SDA) sought, and was granted, leave to appear and be heard in relation to the Application.

Inspections

- [5] Inspections of the area covered by the Application were arranged to be undertaken by the three Members of the Full Bench on Friday 1 May 2009 in accordance with an inspection program agreed between Mr J. Moore, of NRA, and Mr K. Murphy, of QRTSA. However, by the afternoon of Wednesday 29 April 2009 it became apparent that Commissioner Asbury might not be in a position to participate in the inspections because of an emergent family circumstance. The Full Bench decided to list the matter for urgent mention at 10 a.m. on the following day to canvass with the parties whether they still wished the inspections to proceed if Commissioner Asbury could not attend.

- [6] The Notice of Listing so close to the scheduled inspections prompted a number of enquiries to be made to the Commission about the reason for the matter being listed at short notice. In those circumstances, an email was forwarded to the parties to inform them of the background to the matter being called on and to let them know that the Bench wished to canvass with the parties their reaction to Commissioner Asbury's likely absence from the scheduled inspections on Friday 1 May 2009.
- [7] Late on the afternoon of 29 April 2009 an email was received from Ms Town, of SDA, addressed to the Full Bench which read:
- "Thank you for the update. I would appreciate it if you could inform the Bench that the SDA has no objection to Commissioner Asbury's absence. As stated earlier, we too shall be absent."*
- [8] A short while later an email was received from Mr Murphy of QRTSA which read:
- "QRTSA seeks leave to not attend the short notice mention for TH/2009/2 tomorrow at 10am. QRTSA has no objection to Commissioner Asbury's likely absence from the scheduled inspections on Friday."*
- [9] At the mention on the morning of 30 April 2009, Mr Moore (who was the only appearance) informed the two Members of the Full Bench then present that NRA had no objection to the Bench proceeding with inspections in the absence of Commissioner Asbury. On the basis that all parties consented to Commissioner Asbury's absence from the inspections, the Full Bench (by discussion between all three Members), decided to proceed with the inspection program as previously agreed between Mr Moore and Mr Murphy.
- [10] As it turned out Mr Murphy did not participate in the inspections, apparently because of other work commitments. As a result only Deputy President Bloomfield, Commissioner Fisher and Mr Moore undertook the program of inspections in the manner, and the order, agreed in writing between Mr Moore and Mr Murphy. In doing so, the Members of the Bench and Mr Moore proceeded in separate vehicles, briefly stopping outside those stores that were designated as "drive by" on the inspection program, only alighting their respective vehicles to conduct more significant inspections at three other locations identified on the inspection program.
- [11] These three locations were the under-construction Woolworths' store at Cooloola Cove, the Gympie Centro Shopping Centre in Gympie and the Goldfields Shopping Centre, also in Gympie. In the course of inspecting the latter two shopping centres the Commission was accompanied by Mr Andrew Provan of the Centro Properties Group, the owner of those shopping centres. The Commission was also accompanied during the inspection of the Goldfields shopping complex by an additional Centro employee, being Centro's Manager at that facility. In the course of visiting the Goldfields Shopping Centre several shop owners, listed as witnesses in the proceeding, also joined the inspection party and pointed out various aspects of the Centre and/or their own businesses.

Witness Evidence

- [12] The following witnesses were called by NRA in support of its Application to amend the Trading Hours Order:
- **Mr Andrew Amos**, Owner and Manager of two Gloria Jeans franchises (one in Noosa and one at Gympie Centro). Mr Amos trades very successfully in Noosa on Sundays and hopes to replicate that success if the Gympie Centro Shopping Centre opened on Sundays. He also believes that providing people with more opportunity to go shopping on an additional day, even if it is just to go and have a cup of coffee, results in people tending to build that type of activity into their normal lifestyle and routine. This can only be of benefit to retailers who open on a Sunday.
 - **Mr Wade James**, Director of Rush Surf Clothing. Rush has 24 stores in Queensland, four in New South Wales and two in the Northern Territory, with 19 of these stores trading on Sundays. The only stores that do not trade on Sundays are those located in areas where non-exempt stores are not permitted to open on a Sunday. One of these is in the Gympie Centro Shopping Centre. Mr James' experience is that being open on a Sunday, including in regional towns, assists not only his business but also those towns as well. He believes there is escape expenditure from towns where Sunday trading is not permitted. If non-exempt shops are allowed to open it will create jobs in Gympie and keep money in the town.
- Mr James also did not agree with the general proposition put to him by Mr Murphy that small independent retailers would be adversely impacted if non-exempt shops were allowed to trade on Sundays. He said that while some small retailers might be impacted others would do well out of the additional trading opportunities available to them. Mr James said it was not all that long ago he was in that position himself but his Company had done quite well out of Sunday trading.
- **Mr Andrew Provan**, Centre Manager for Centro Gympie, Centro Goldfields and Centro Northshore (located at Mudjimba). Mr Provan said Centro Goldfields opened in 1985 and has gross lettable area (GLA) of 8,038m²

with 432 car spaces. It is anchored by a large Coles supermarket of 4,440m² and a Target Country, with 25 speciality retailers. Centro Gympie was redeveloped in 2007 from a Woolworths store and a small number of speciality shops in a strip retail environment to a large, modern, enclosed shopping centre, anchored by a Big W and a fully refurbished and expanded Woolworths. This Centre has a GLA of 13,658m² with 752 car spaces, a food court and 50 specialty retailers.

Mr Provan opined that sales lost as a consequence of the closure of tenants in the Goldfields and Gympie Centro Shopping Centres on Sundays were not, in many cases, postponed until Monday. Consumers passing through Gympie would spend their discretionary dollars elsewhere and Gympie residents who wished to shop on a Sunday would simply travel to other shopping centres at, for example, Noosa or Maroochydore. Other discretionary dollars might be spent at hotels, clubs, restaurants or even on poker machines.

Mr Provan said it would be left to the complete discretion of tenants in the two shopping centres owned by Centro to decide whether they traded on Sundays or not, if NRA's Application was granted. No pressure would be applied to try to have them trade.

Under cross-examination Mr Provan conceded that approximately 20 out of the 25 tenants at Centro Goldfields were opposed to Sunday trading (this was later amended in re-examination to 15). He also said he had not conducted a survey of retailers at Gympie Centro to ascertain their views to 7 day trading. However, he opined that the majority of retailers in that centre were chain stores and national retailers which generally supported Sunday trading. He also believed that the independent retailers in Goldfields who were opposed to Sunday trading were looking at the issue from a lifestyle perspective as was, he imagined, the Gympie Regional Council which was also opposed to NRA's Application.

- **Mr Paul Mollard**, Regional Manager for Queensland for Best & Less Pty Ltd. Best & Less has 176 stores nationally (employing 4,700 persons) with 38 of those stores located in Queensland (employing 1,100 persons). Sixteen (16) of the Queensland stores are located in the Brisbane and near metropolitan area, nine in tourist areas and 13 in regional areas. Mr Mollard said Best & Less has a strong parents' market, particularly for larger households on low incomes. The majority of its customers are young parents. Best & Less has one store located in the area subject to the Application, in Mary Street Gympie, which opened in 2003. If the Application is granted this store would trade on Sundays.

Mr Mollard said Sunday was an important trading day for those stores allowed to open, with sales activity per hour commensurate with what stores would experience on traditional trading days. Based upon experience in other stores, Mr Mollard expects there would be a small shift of sales previously made on Thursday, Friday and Saturday across to Sunday, with additional sales also being recorded on that day. It is his experience that more families shopped together on a Sunday than on other days and used this day to purchase children's clothing, ensuring it is of the right size and fit. If Best & Less is allowed to trade he expected 6-10 staff members as well as a store manager would be employed each Sunday.

- **Mr Barry Waters**, Regional Manager for Big W Discount Stores. Big W supports the Application presently before the Commission and would trade on Sundays if it was approved. The Big W store in Gympie opened in 2007 and currently employs a staff of 113 persons, including 10 Managers. Of these, only one employee and two managers do not live in Gympie itself. If the Application is granted Mr Waters anticipates that an additional 215 hours of work would be available to employees on a Sunday. This would be offered to existing employees on either a two shift or three shift structure. Mr Waters said of the 41 stores under his control only 11 of them are not permitted to trade on Sunday, including the Gympie store. He said that where Sunday shopping is permitted customers support it. If they did not there would not be a traffic count and the stores would not generate sales.

Based upon anecdotal feedback, and the number of Gympie-based residents purchasing goods on lay-by in such places as Noosa on a weekend, Mr Waters expected the Gympie store to trade reasonably well if allowed to open on Sundays and public holidays. He does not expect local convenience stores will suffer any significant detriment if the major stores are allowed to open on a Sunday. Consumers who wish to buy a small number of items will still stop at a convenience centre to purchase them because it is a matter of parking, purchasing the products they wish to buy and leaving again with a minimum of inconvenience. Those types of sales would not be affected by the major stores being open on a Sunday.

- **Mr David Stout**, State Compliance Manager for Coles Ltd. Coles and Bilo operate in excess of 740 stores across Australia. The majority of these stores (633 or 85%) trade on Sundays and holidays. Sunday trading continues to grow in popularity and remains the fastest growing trading day of the week. The Coles store in Gympie is located in the Goldfields Shopping Centre. If NRA's Application is granted, Mr Stout expected an additional 120-160 hours of employment would be available. On an annualised basis this would be in excess of \$250,000 coming into the local community.

A significant number of current employees at the Coles Gympie store are under 25 years of age. The additional employment opportunities available from Sunday trade would be attractive to this cohort, and would also assist to reduce youth unemployment levels in the region, which were 2-3 times the national average.

Under cross-examination Mr Stout acknowledged that businesses that are in "direct food competition with Coles Supermarkets" would be adversely impacted if Coles was permitted to trade on Sundays. Outside of that group he did not have enough knowledge of retailing in Gympie to identify whether any other businesses might be affected. He also indicated that in areas where Sunday trade is permitted there is an incremental lift in sales across the week. Part of this is attributable to consumers spending more, the other part of it is from sales taken off other retailers.

- **Mr Gerard Winzenberg**, Queensland District Manager for Target (Australia) Pty Ltd. In his current capacity Mr Winzenberg has responsibility for the business performance of 14 stores throughout Queensland, including a Target Country store located in the Goldfields Shopping Centre. If Sunday trading is permitted the Target Country store would trade, irrespective of the decision adopted by other retailers in that Centre.

Participation in Sunday work would be voluntary. Based on experience elsewhere, there would be sufficient volunteers to operate the store. Typically, approximately 90% of the work performed on a Sunday would be by casual employees who were attracted to work on that day because of lifestyle issues or the ability to earn additional income. Working mothers are especially attracted to weekend or Sunday work because it gives them an opportunity to supplement family income without any offsetting childcare costs.

Mr Winzenberg said he is a little surprised at the level of opposition to the present Application. He does not believe there would be any detriment to independent community retailers based on his observations of the impact on other retailers in areas where 7 day trading applications had been granted. He also expects to see an incremental increase in sales across the week if Sunday trading was permitted. This would be through additional sales and a reduction in "leakage" which occurred when consumers travelled to other locations to shop. In this regard he said 18% of the business conducted at Target's Maroochydore store on a Sunday came out of the Gympie area. That dropped back to 11% when Target's Noosa store opened, but has since come back to about 15%.

- **Mr Scott Wallace**, Regional Retail Support Manager in Queensland for Woolworths Ltd. Woolworths has two stores affected by the Application, one located in the Gympie Centro Shopping Centre and a new store in Cooloola Cove (scheduled to open on 6 July 2009). If NRA's Application is granted both of these stores would trade the maximum allowable hours.

Mr Wallace said Woolworths' Gympie store services a resident population of over 46,000. Gympie is the regional hub for the Mary Valley, Murgon and Gunalda regions, with many people involved in the agricultural and forestry industries who travel into Gympie for their shopping and service needs. These people only have limited access to shopping facilities during the week and, presently, only have Saturday to meet their retail needs. Mr Wallace also indicated that Gympie acts as the major gateway to Rainbow Beach, Double Island Point and Fraser Island, which in itself attracts approximately 600,000 visitors per year. In addition, Gympie is a popular stop on the Bruce Highway for travellers heading both north and south, being approximately two hours drive from Brisbane. The location of the Gympie Centro Shopping Centre, adjacent to the Highway, makes it an ideal spot for drivers to take a short break. If they did, and the Centre was open on Sundays, the likely result would be some impulse sales as well as sales of food and drink.

Mr Wallace also said Cooloola Cove is a rapidly expanding community with a population of approximately 2,300 people, which now exceeded that of Tin Can Bay. It is the site of a major development by Pradella, known as Cooloola Sands. To date, Pradella have released 233 blocks with approximately half of these sold. It has a further 1,000 parcels of land for progressive development and release, which would boost the local population to around 8,000.

The Woolworths Store at Cooloola Cove, adjacent to the main road to Tin Can Bay and not far off the road to Rainbow Beach, comprises 2,800m² and is part of a \$15 million plus development project which includes 12 speciality shops. The main trade area would include the towns of Rainbow Beach (24kms), Tin Can Bay (7kms) and Cooloola Cove which, between them, have a population estimated at 5,400 with a projected population growth of in excess of 4.5% per annum over the next decade. The Woolworths store will be the only major supermarket in the region, with the nearest alternatives being Gympie (52kms away), and Maryborough (71kms).

Mr Wallace said he did not know whether approval of Sunday trading, in the area the subject of the Application, would have a detrimental impact upon independent retailers. He said "detriment" is a very subjective word. He has seen independent retailers in South-East Queensland do "exceptionally well" in the 7 day trading regime.

He also said that in any 7 day trading debate there would be some that agreed with the concept and some that disagreed while "the reality" was somewhere in the middle.

- **Mr David Evans**, General Manager of Spend-Less Shoes. Spend-Less Shoes currently operates 135 stores around Australia with 38 of those stores being located in Queensland. All but six of the Queensland stores trade on Sundays. One store which did not trade is the Spend-Less Shoe store in the Gympie Centro Shopping Centre. If permitted to trade the store would open on Sundays and would be staffed by voluntary labour.

Under cross-examination Mr Evans conceded that small independent grocery shops would be detrimentally affected if the large grocery chains were permitted to trade on Sundays, but otherwise could not understand why retailers, and communities, would be opposed to 7 day trading. His view was that Queensland should align itself with the other States, except Western Australia, and allow Sunday Trading.

- **Ms Taryn Tyack**, Human Resources Manager for Cardeaux. Cardeaux, a card and giftware retailer, operates 28 stores around Australia, including one in the Gympie Centro Shopping Centre. Twenty four (24) of these stores (85%) trade on Sundays. Cardeaux would trade in Gympie on Sundays if the majority of other retailers within the shopping centre also open for trade.
- **Mr Brad Harker**, National Manager of Electronics Boutique (Australia) Pty Ltd, which trades as EB Games. EB Games is Australia's largest video games retailer with over 315 stores located throughout the country. The vast majority of these stores trade over all 7 days of the week, the exception being some stores located in Western Australia and Queensland.

Mr Harker is strongly supportive of Sunday trading and indicated that his store in Gympie, located in the Gympie Centro Shopping Centre, will open on Sundays if it is allowed.

[13] The following witnesses were called by QRTSA in support of its opposition to NRA's Application to amend the trading hours order:

- **Mr Graeme Cassady**, Financial Controller for the Cornett Group of Supermarkets. The Cornett Group administers and supervises financial and other matters for 40 supermarkets throughout Queensland. This includes the non-exempt Cornetts IGA store in Gympie of approximately 2,100m², which offers all the range of a full-line supermarket, including a self-contained Lenard's Chicken and a full-service seafood outlet. This store is not located in a shopping centre and currently trades the same hours as the Woolworths and Coles stores in Gympie.

Mr Cassady said the Cornett Group opposes NRA's Application on the basis it will cause additional workload and stress on its senior staff who currently have one complete day off each week. It will also lead to a decrease in profits due to the higher employment costs associated with engaging staff on Sundays. Cornetts is also concerned about the additional stress which 7 day trading will place on the IGA's local suppliers of bread, milk and fresh produce if they are required to undertake deliveries on a Sunday as well as the other six days each week.

Mr Cassady is very concerned about the likely shortage of qualified staff, such as butchers and bakers, if the Gympie IGA store is "forced" to open in order to compete with the Woolworths and Coles supermarkets if they are permitted to trade on Sundays. The Gympie store is only one of five scratch bakeries in the Cornett IGA Group and would need to roster bakers if the store was open on a Sunday. In addition, it employs qualified butchers who cut and package fresh meat on a daily basis. Based on experience elsewhere, Mr Cassady anticipates significant difficulties in being able to engage, and roster, the necessary staff to enable these departments to operate as they would on a normal trading day.

Mr Cassady also informed the Commission that the Gympie store is one of several stores in the Cornett's IGA Group whose rent is based on turnover. This makes the store vulnerable to additional rent increases if turnover reaches a rental escalation point. This is a different situation, as Mr Cassady understands it, to the Woolworths and Coles stores in Gympie, which each pay a fixed rental.

Finally, Mr Cassady said Cornetts IGA do not see any significant advantage in 7 day trading in Gympie. Based upon past experience, in the Sundays prior to Christmas, any increase in trade was more than offset by the additional wage cost involved. The area is adequately serviced by approximately six small independent mini-marts on Sundays, which Cornetts understands will be detrimentally affected if 7 day trading is introduced. Mr Cassady said the Cornetts Group deliberately do not trade in some areas on a Sunday, even where it is permitted to do so, because it believes it should *"leave a little bit of salt on the table for the smaller people to be able to service the areas..."* and also allow the senior staff to take a break.

- **Ms Heather Scheffe**, Director of Campnstore Pty Ltd. Campnstore is a retail outlet for outdoor and camping gear located in Duke Street, Gympie. The store trades Monday to Friday from 8.30 a.m. to 5.00 p.m. and on Saturday from 8.30 a.m. to 12.30 p.m. Ms Scheffe said while the Directors have tried to position the store by providing excellent customer service and offering different product lines to establish a point of difference *vis a vis* other major stores, it could not stay competitive just on that basis. Based on turnover it can not afford the overheads associated with trading on Saturday afternoons and Sundays.

Outside the family unit Campnstore engages four other employees (one full-time, one part-time and two casuals) who work one Saturday morning each three weeks on a rotational basis. Apart from the financial considerations mentioned above, Ms Scheffe also said the Directors' opposition to Sunday trading is based upon lifestyle considerations. It is simply not possible for the Directors to work every day of the week.

- **Mr David Dickson**, Pharmacist and Proprietor of Goldfields Fullife Pharmacy which is situated in the Goldfields Shopping Centre. He purchased the pharmacy approximately four years previously and worked in the business as a Pharmacist for two years prior to that.

Mr Dickson opposes the Application in its entirety. He opined that the current population of the region will be unable to support an extension of the current trading hours in the Gympie region. Extending the trading hours, as sought in the Application, will seriously affect the viability of his business and also, in his view, other small businesses in the region. It will lead to lower turnover, lower profit, longer hours, and ultimately less choice for the consumer.

Mr Dickson further opined that the extension of trading hours will substantially lessen retail competition by giving an unfair advantage to major retailers over small business operators. He claimed there is ample evidence of this in the Gympie CBD where a significant proportion of retail tenancies in the Mary Street precinct are vacant. Further, large retailers have the ability to spread their staff over extended hours to a far greater degree than small businesses.

Mr Dickson also said that the Gympie region enjoys a climate and lifestyle where individuals and families are better able to obtain a balance between work and leisure time. He expressed the view that extending trading hours will be detrimental to that balance. It will reduce the ability of individuals and families to participate in such things as sport, community events and leisure time. He said that any economic benefit from the major retailers opening on a Sunday will be greatly outweighed by the detrimental effect on small business operations and the loss of quality leisure time for individuals, families and the community as a whole.

Finally, Mr Dickson indicated that his store had lost money trading on the two allowable Sunday trading days in the lead up to Christmas. Despite significant promotion and marketing efforts, trading figures and customer numbers for these days did not justify the expense in opening. This experience supported his view that regular Sunday trading would not be a viable proposition in Gympie. In this respect, he expressed his concern that if Sunday trading is permitted the landlord will, over time, require all tenants to open on that day and will make it a condition of his lease or the renegotiations of his lease.

- **Mr Timothy Long**, Owner (with his wife) of Long's Crescent Road "One Stop Shop" - a mini supermarket. This store sells a full range of grocery products, fresh fruit and vegetables (much of it locally grown), meat (packaged by a local butchers), and has a deli section. Mr Long said that in addition to the four family members who work in the supermarket he and his wife employ six other staff. Three of these are over 50 years of age with two of those staff members being the sole income earners in their households.

Mr Long opined that the advent of 7 day trading in the large supermarkets in Gympie will bring about the demise of his business, the loss of 10 jobs, the loss of his own home and possibly the homes of his staff members as well. He said Sunday trading is critical to his survival. He purchased the business four years previously and, with the assistance of Foodworks and a consultant, had turned the business from a loss making venture into one where he had finally become viable in early 2009.

Sunday is Mr Long's busiest trading day of the week, with turnover some 25-30% above the other days of the week. This additional turnover is critical to his bottom line result and disappeared in the weeks prior to Christmas when the local major supermarkets were able to trade on Sundays. He is extremely concerned about his future if the Application was granted.

- **Mr David Henwood**, a Director of the Company which owns Heilbronns Friendly Grocer in Duke Street, Gympie. Mr Henwood currently manages Heilbronns having previously managed a larger independent supermarket in Gympie (which has now closed) and working for Woolworths supermarket in a variety of roles, including the role of night-fill manager at the Gympie store.

Heilbronn is a medium size supermarket which has traded on the same site for 94 years. It employs 14 staff members and offers a full supermarket range, including barbeque chickens, large variety section, and an extensive fruit and vegetable section. It also sells hot food over 7 days each week. A 7 day butcher is located in adjoining premises.

Mr Henwood said his store financially supports two netball teams, one soccer team and the local speedway as well as supplying groceries to three charitable institutions which conduct raffles at local hotels.

Based on previous experience when the major supermarkets were allowed to trade on Sundays, Mr Henwood estimates Heilbronn will suffer a 50-60% drop in Sunday trade if NRA's Application is granted. If this occurs he will be forced to cut staff as there will be insufficient volume to support the current number of staff members engaged on that day, or over the week. He estimated he will need to reduce Sunday staffing levels from eight down to four persons, at a total loss of 32 hours of employment on that day.

- **Ms Catherine Thomas**, Co-owner (with her partner) of the Go Vita Health Food Store, located in the Goldfields Shopping Centre in Gympie. This store has been a family owned and operated business since May 1987. Ms Thomas first joined the business in 2002, taking control of the day-to-day running of the store at that time while her father continued to manage its financial affairs. In October 2007 she and her partner purchased the business from her parents and took full control of the business.

The Go Vita store employs three staff and also contributes to generating income for four practitioners who consult from the store. All of the staff and practitioners live in the local community.

Ms Thomas works in the store on a full-time basis as well as doing other work, associated with the management of the store, from home on most evenings of the week. Her partner supports the business and herself by running the household and working in the store for three days each week.

Ms Thomas questioned whether the population of the Gympie area will be sufficient to support and sustain profitable 7 day trading.

Ms Thomas said her only free day is Sunday and she uses this day for relaxing and to catch up with family and friends as this is the only free day most of them have away from their working activities. She is concerned that if Sunday trading is approved by the Commission it will eventually become a requirement of her lease that she also trade on this day. She said that because of this concern, and because of her naivety about the whole process whereby the Queensland Industrial Relations Commission considers applications such as this, she and another store owner had organised a petition amongst retailers and staff and the Goldfields Shopping Centre recording their opposition to NRA's Application. This petition had been signed by a number of retailers, and staff members within those retailers, and forwarded to the Commission when the Application had first been drawn to everyone's attention.

- **Mr Darren Roach**, part Owner/Operator of The Donut Shop, located in the Goldfields Shopping Centre. Mr Roach said he has been involved in The Donut Shop for the past 3 years and works in the business with his wife. He is also part Owner/Operator of a floor sanding business in Gympie. Currently, The Donut Shop employs 11 people (two of whom are seniors), all of whom are engaged on a casual basis.

Mr Roach opined that extending trade to include Sundays will increase his costs, decrease his profit and "*dilute the spending money of the people of Gympie*". His business, like many others in Gympie, has been adversely impacted by the opening of the Gympie Centro Shopping Centre and its 50 speciality shops. He has witnessed a dramatic decrease in trade on Thursdays and Saturdays, with trade on some Saturdays down by more than 40%. He attributed this to be a direct result of the opening of Gympie Centro.

Mr Roach was also (with Ms Thomas) involved in the gathering of a petition from retailers in the Goldfields Shopping Centre who are opposed to Sunday trade. He said that apart from financial institutions and two shops which have managers in them, all of the other retailers in that centre signed the petition opposing 7 day trading in Gympie. Like Ms Thomas, he believes he could eventually be forced to trade on Sundays if the building owner makes it a condition of his lease, or 80% of the tenants vote to trade on Sundays.

- **Councillor Ian Petersen**, who was authorised by the Gympie Regional Council at its meeting on 10 June 2009 to appear before the Commission and represent the views of the Council in relation to NRA's Application.

Councillor Petersen said he did not attend the Council meeting on 10 June 2009 at which time the Regional Council resolved to oppose the present Application. However, the issue of Sunday trading had been previously canvassed by the Council and he was fully familiar with the range of matters Council took into consideration in arriving at its decision to oppose NRA's Application.

The Council's written submission to the Commission, under the hand of its Chief Executive Officer, canvassed the following matters:

- Council is concerned that the larger operators will dominate the market within increased trading hours on Sunday. Many small businesses are family owned and operated, with the support of a small number of employees, and have business plans which rely on 7 day trading. Their viability is reliant on Sunday trading without the competition of the larger operators;
- many other small business owners, who do not trade over 7 days, have also represented their concerns to Council. A number have indicated their choice to live and work in the Gympie region was mainly on the basis of lifestyle. These owners have indicated they would be required to work the extra hours involved if 7 day trading was approved because they would be unable to afford to pay senior staff and would be unable to leave the store in the charge of a junior staff member;
- some proprietors who have said they do not wish to work on Sundays are located in shopping centres *"managed by larger retailers such as Woolworths and Coles and may, under the centre management agreement, be forced to open their doors whenever the larger store is open."*;
- small business owners within the Gympie region appear to have greater empathy for local charities and the local community and provide ongoing support for these local charities, sporting and community organisations. Council acknowledges the support larger organisations also give to charities but notes that this support tends to be given at a more national level;
- the Gympie community has over 280 sporting and community clubs. These clubs simply would not exist without volunteers. Should trading hours be increased, volunteerism will be negatively affected. Larger traders who do trade on Sundays will have the ability to employ juniors but this may be at the expense of the sporting, social or educational involvement of these juniors; and
- extended trading hours will not increase expenditure. Households have a finite amount of disposable income and extending trading hours will not alter this amount.

The submission from the Council concluded as follows:

"Gympie Regional Council objects to Sunday trading because such a step will be detrimental to the lifestyle of its residents and the family focus of its community. Small business has traditionally provided a stable, solid foundation for the Gympie region and Council believes any measures which may damage this foundation are not in the community's best interests."

Under cross-examination Councillor Petersen did not see any inconsistency in the fact that, on the one hand, Council welcomed significant retail infrastructure investment by large corporations but, on the other hand, opposed the Application for extended trading hours. He said *"the Gympie retail market is a very unique demographic. I believe it is the two separate sectors. One is the high volume market which is catered for during normal trading hours. The other one is the niche market where convenience shopping is the norm and some of the small businesses rely on that Sunday trading to retain their viability."*

Councillor Petersen said Council's deliberation on the issue was assisted by a study by Access Economics which gave a profile of the business community, including the retail business community. The study clarified the number of small companies involved as well as their turnover. It gave quite an insight into all businesses, but particularly the retail trade.

The Councillor also clarified that the word *"managed"* (in the third dot point of the summary of Council's submission to the Commission) is not correct and a more accurate description would be *"anchored"*. He also said that Council's belief that lease agreements might require smaller operators to trade in shopping centres if the major retailers opened only had a marginal impact on Council's decision to oppose NRA's Application.

Councillor Petersen also clarified that the Council did consider the positive impact on youth employment that would flow from the granting of 7 day trading. However, he said Council is of the view that those employment opportunities would have an adverse impact on sporting clubs, through the inability of young people to participate. Council also considered the fact that a lot of people who run those sporting organisations are volunteers and some of them may be required to work on Sundays. Consequently they would not be available to volunteer. Council had also considered the increased employment that might occur within stores operated by the major retailers but noted that it could very well result in decreased employment within the smaller operators.

Council had also considered the issue of escape expenditure to places such as the Sunshine Coast and that was why it was very supportive of the Gympie Centro development. However, even if Sunday trading is approved, that would not stop Gympie residents travelling to the Sunshine Coast, for example, to shop.

Councillor Petersen also said Gympie is not a tourist destination and the Council had been fighting very hard for the Pacific Highway to bypass Gympie. He also noted that the Access Economics study established Gympie has

304 accommodation beds available, with an average stay of 1.9 nights, compared to the Sunshine Coast which has in excess of 6,000 beds with an average stay in excess of 3 nights.

In response to a question about whether Council considered the proportion of Queenslanders which have access to 7 day trading in arriving at its decision, Councillor Petersen responded "*I am not sure whether Council did consider that, but Council did consider that the opportunities for shopping are quite adequate when you consider Thursday nights and Saturdays. Council is firmly of the view that the additional day, Sunday trading, is not necessary, that consumers have plenty of opportunity to shop, the large companies have plenty of opportunity to make a profit and the small operators have an opportunity to preserve some sort of viability so they can plough investment back into the community.*".

Finally, in response to a question from the Commission, Councillor Petersen indicated that he did not know whether the Council specifically discussed how NRA's Application might affect the Woolworths Cooloola Cove store, then under construction. Nonetheless, he informed the Commission that Council's views in relation to 7 day trading had been formed over a period of time and related to the whole of the region covered by the Gympie Regional Council, including Cooloola Cove.

Statutory Criteria

- [14] In determining any application under s. 21 of the Act, the Commission is required to have regard to the elements contained in s. 26, which relevantly provides:

"26 Matters relevant to s 21 order

In relation to making an order under section 21 the industrial commission must have regard to—

- (a) the locality, or part thereof, in which the non-exempt shop or class of non-exempt shop is situated;*
- (b) the needs of the tourist industry or other industry in such locality or part;*
- (c) the needs of an expanding tourist industry;*
- (d) the needs of an expanding population;*
- (e) the public interest, consumers' interest, and business interest (whether small, medium or large);*
- (f) the alleviation of traffic congestion;*
- (g) the likely impact of the order on employment;*
- (h) the view of any local government in whose area the order is likely to have an impact;*
- (i) such other matters as the industrial commission considers relevant."*

Gympie - consideration of s. 26 criteria

- [15] We considered each of the criteria in s. 26 of the Act in turn:

(a) Locality

The town of Gympie is located on the main north-south Pacific Highway some two hours drive north of Brisbane. It is approximately 30-35kms by road north of the existing northern border of the South-East Queensland 7 day trading zone, 67kms from Noosa, 68kms from Nambour and 83kms from Maroochydore. Each of these three localities is permitted to trade on Sundays (except Easter Sunday) and certain public holidays.

There are several shopping precincts in Gympie. The original CBD shopping centre (of approximately 500m in length) is in Mary Street. Other retail and commercial premises are located either side of Mary Street, including the Goldfields Shopping Centre (approximately one block to the east) and the Cornetts IGA (one block to the west). There are a number of vacant tenancies in the Mary Street area and in the Goldfields Centre. The new (completed in 2007) Gympie Centro Shopping Centre is located approximately 1-1.5kms to the southwest of the Mary Street shopping precinct. This Centre is located adjacent to the Pacific Highway and is directly accessible, through traffic lights, from the Highway.

A limited number of retail outlets, including a pharmacy, are open in Mary Street for at least part of the day on a Sunday. None of the retailers in either Goldfields or Gympie Centro are open on that day of the week. At the time of the hearing a Harvey Norman Store was due to open in Gympie. Several witnesses believed, but could not say for certain, that this store would be open for trade on a Sunday.

Several mini supermarkets and convenience stores, located away from the main shopping precinct, also open for trade on Sundays and most (if not all) public holidays.

The population of Gympie was estimated by different witnesses to be between 35,000 (lower estimate) and 46,000 (upper estimate). It appears the upper estimate includes the population not only of Gympie but also the immediately surrounding areas.

(b) Needs of the tourist or other industry

Apart from some personal, anecdotal, views by several witnesses called by the NRA to the effect the needs of passing tourists are not being met because the Gympie Centro Shopping Centre is closed on Sundays and public holidays, there was no suggestion that the needs of the tourist industry, or any other industry, are not being met because non-exempt shops in Gympie are closed on Sundays and public holidays.

One witness, Mr Wallace of Woolworths, suggested that tourists travelling to Fraser Island, Tin Can Bay and Rainbow Beach via Gympie are prevented from undertaking grocery shopping because the major supermarkets in Gympie are closed on Sundays. However, this submission has to be viewed in the context that the main road to those locations leaves the main Pacific Highway just to the south of Gympie and only touches its southern outskirts.

On the basis of the evidence presented, the needs of the tourist industry, or any other industry, is not a relevant consideration in the determination of this Application.

(c) Needs of an expanding tourist industry

This issue was not addressed in the evidence and is not a relevant consideration.

(d) Needs of expanding population

Other than the limited evidence about the projected population growth in the Cooloola Cove area, there was no evidence about expected population growth in the Gympie area generally. The projected growth in the Cooloola Cove area is considered later, in connection with the Commission's decision in relation to NRA's Application to allow non-exempt shops in that locality to trade on Sundays and certain public holidays.

(e) Public, consumer and business interests

With the exception of Mr Amos (of Gloria Jeans) all of the witnesses who gave evidence in support of NRA's Application were representatives of major national chain stores. Each of these witnesses spoke about the increase in actual trade their respective businesses had experienced in areas where 7 day trade was permitted. They all expressed a desire to be allowed to trade in Gympie on the basis of their expectation that the results in other areas would be replicated in that location.

With the exception of Councillor Petersen and Mr Cassady of the Cornett Group, all of those who gave evidence on behalf of QRTSA in opposition to NRA's Application were owners, or managers, of small businesses located in Gympie. These witnesses had a variety of reasons for opposing the Application.

Ms Schefe, Mr Dickson, Ms Thomas and Mr Roach did not believe that the population of Gympie and the surrounding regions was sufficient to support Sunday trading. They were also of the view, based upon past experience, that being "forced" to trade on a Sunday (either to remain competitive or to meet lease requirements) would be unprofitable.

Mr Dickson, Ms Thomas and Mr Roach were of the belief that if 7 day trading was approved their lease obligations would ultimately be varied to require them to open on a Sunday, even if trading on that day was unprofitable.

Ms Schefe, Mr Dickson, Ms Thomas and Mr Roach were each of the view that if their businesses were required to open on a Sunday (to remain competitive or to meet lease requirements) they and their partners/directors (as the case might be) would be forced to work on a Sunday because they could not afford to engage other staff to work on that day. These same witnesses were also concerned about the loss of personal leisure time if they were forced into the situation of being required to work over 7 days of each week.

Mr Cassady, of the Cornett Group, was opposed to 7 day trading for a variety of reasons, all of which are recorded in the summary of his evidence (above). Most noteworthy amongst his concerns was the likely shortage of qualified staff, such as butchers and bakers, if the Cornett IGA store was forced to open in order to compete with Woolworths and Coles. In addition, he was also concerned about the loss of leisure time of his senior staff members, the financial implications of opening on a Sunday based upon previous experience in his Gympie store and the potential for rent increases if the turnover of the store increased.

Mr Long was, as noted, extremely concerned about the future viability of his business if the Application was granted. Although his turnover was relatively small in real terms, the additional turnover he experienced on Sundays, compared to other days of the week, was critical to his bottom line result and his survival. To a lesser

degree, Mr Henwood was also concerned about the impact on the overall viability of Heilbronn's if the Application was granted. He was also concerned about the loss of employment on a Sunday which would occur if the major supermarkets were open.

There was no evidence from anyone representing consumer interests and, therefore, no indication whether consumers supported or opposed 7 day trading in Gympie. However, there was evidence from several of NRA's witnesses to the effect that Gympie residents were travelling to other centres, such as Noosa, Maroochydore and Nambour, to shop on a Sunday. Whether this situation would be reversed if Sunday trading is permitted in Gympie is impossible to determine. It might just be the situation, as postulated by Councillor Petersen, that Gympie residents would still travel to those centres to shop "*as an outing*" even if the stores in Gympie were open.

(f) Alleviation of traffic congestion

There was no evidence to suggest this was a relevant consideration in the determination of this Application.

(g) Likely impact on employment

Each of the witnesses who appeared for NRA informed the Commission there would be increased employment within their respective stores if NRA's Application was granted. A number of these witnesses also provided an estimate of the number of additional hours of employment which would be made available and this is shown in the summary of their evidence (above).

However, several of the witnesses called by QRTSA also informed the Commission of the likely reduction in their employment levels if the Application was granted. In addition to this, several of NRA's witnesses acknowledged that at least some of the increased trade they expected to generate, if they were allowed to open on Sundays and certain public holidays, would be at the expense of other smaller convenience-type retailers. This same point was also made by Councillor Petersen.

On the basis of the evidence presented, there is likely to be an overall increase in employment levels in Gympie if the Application is granted, although the actual amount is difficult to quantify.

(h) Local government view

For reasons set out in its written submission, and expanded upon by Councillor Petersen under cross-examination, the Gympie Regional Council is strongly opposed to 7 day trading in the area administered by the Council.

Councillor Petersen's evidence suggests to us that Council's decision was arrived at over a period of time, after extensive consultation with the community, and involved a consideration of a number of competing elements, both in support of and in opposition to 7 day trading.

Included in these considerations was:

- the viability of a number of small businesses who have business plans that rely on 7 day trading;
- the impact on life and work balance for business owners and employees alike if 7 day trading was approved;
- the potential impact on local charities, sporting and community organisations;
- the impact on employment levels (both positive and negative) if the Application was granted; and
- the impact that Sunday trading would have on the lifestyle of residents of Gympie and the family focus of the community.

(i) Other relevant matters

Mr Cassady, of the Cornett Group, was the lone representative of a non-exempt store to oppose NRA's Application. The reason for his (and the Cornett Group's) opposition is recorded in the summary of his evidence (above). Of all of the evidence presented in these proceedings, two aspects of the evidence given by Mr Cassady particularly stood out.

Firstly, Mr Cassady was extremely concerned about the store's ability to recruit and roster qualified staff such as butchers and bakers. He gave evidence of the company turning to overseas sources to recruit suitably qualified tradespeople to undertake such work. He generally indicated that while it would not be impossible, it would be extremely difficult for the company to be able to manage its workforce to accommodate 7 day trading at its Gympie store if the Application is approved. A number of compromises - not necessarily in either IGA's interests nor the interests of its customers - would be required in order to offer meat and bakery products on a Sunday. Mr Cassady was also concerned about the potential for these tradespeople, who currently work across a

six day week, to resign their employment and move to other positions if they were required to make themselves available across seven days of the week.

Secondly, Mr Cassady indicated it was a policy of IGA to, in effect, foster and encourage smaller competitors in the areas in which it operated. To use his words, IGA liked to "*leave a little bit of salt on the table for the smaller people...*". In that sense, he, on behalf of Cornetts was concerned about the future viability of the half dozen or so small convenience stores and mini supermarkets located in Gympie if IGA, Woolworths and Coles were allowed to trade on Sundays and certain public holidays.

Conclusions - Gympie

[16] Reduced to its essentials, this case involves:

- a number of major national chains who wish to trade on Sundays and certain public holidays because they believe that trading on that day will generate additional sales and, thereby, profits;
- a number of smaller retailers who are opposed to the concept of 7 day trading because -
 - they hold a belief that the local population is insufficient to support Sunday trading, thereby making trading on that day unprofitable; and
 - Sunday trading will adversely impact on their leisure time.
- several other retailers who are opposed to the non-exempt supermarkets being allowed to trade because it will lead to a reduction in employment levels within their stores and a reduction in turnover, which will adversely impact on their bottom line and, potentially, their viability;
- the Cornetts IGA Group which does not believe Sunday trading in Gympie would be profitable and is concerned about its ability to engage sufficient tradespeople (most particularly butchers and bakers) to allow it to offer its normal range of products on a Sunday; and
- the Gympie Regional Council which is strongly opposed to 7 day trading for a variety of reasons, the most notable of which is the potential to detrimentally affect the lifestyle of its residents and the family focus of the community.

[17] After considering all of the evidence and submissions presented in respect of NRA's Application to allow trading on Sundays and certain public holidays in non-exempt stores, we have come to the conclusion that the material advanced does not support the granting of the Application in relation to Gympie. Although the Application was strongly supported by the (senior) representatives of a number of major chains the Application was equally as strongly opposed by a number a smaller retailers, as well as by the Gympie Regional Council.

[18] In the context of this case, as presented, we regard the opposition to the Application by the Gympie Regional Council to be of particular significance.

[19] On the evidence before us, the Council has canvassed, and considered, the types of issues and arguments traditionally presented to this Tribunal in support of, or in opposition to, a 7 day trading application. While the Council might not have been conscious of the criteria this Commission is required to consider in its determination of any application made under s. 21 of the Act, the Council has, nonetheless, looked at many of those same issues, plus a number of others, in arriving at its decision to oppose the Application.

[20] Given this background, we have come to the view that we should, on this occasion, place weight on Council's decision as well as the reasons which led to its arrival at that decision.

[21] A reading of the Council's submission to the Commission leads to a clear conclusion that, despite the potential for positive employment benefits to flow from a granting of the Application, the Council came to a view that the introduction of 7 day trading would be "*detrimental to the lifestyle of its residents and the family focus of (the) community.*".

[22] It is clear that Gympie Regional Council has made a deliberate decision about the preferred type of community it wishes to foster. We consider that it is not inappropriate to consider the impact of 7 day trading in Gympie in light of the Council's clear expression of concern. In that regard, we accept that the Council has a legitimate role in determining the type of community it wishes to promote and encourage.

[23] In addition, the evidence of Councillor Petersen suggests that Council wishes to preserve the two separate sectors of the retail industry it has identified in Gympie - the first being the high volume market catered for during normal business hours, with the second being the niche, convenience, market where a number of small businesses rely on Sunday trading to retain viability.

- [24] In this application the Commission has not been provided with any evidence concerning consumer demand for 7 day trading or evidence relating to the needs of an expanding population. Further, only minimal anecdotal evidence has been presented about the needs of the tourist industry. Against this, there is other anecdotal evidence from some small retailers that the needs of tourists are presently being met - including at their own convenience stores.
- [25] Although granting the Application may lead to some employment growth, the view of the Gympie Regional Council about the type of community it wishes to encourage and, in that context, its opposition to 7 day trading is a strong countervailing factor.
- [26] Taking all of the above matters into consideration, in the context of s. 26 of the Act, the case against 7 day trading in Gympie is stronger than the case in support. Accordingly, we refuse the Application insofar as it might relate to non-exempt stores in Gympie.

Cooloola Cove - consideration of s. 26 criteria

- [27] We consider each of the criteria in s. 26 of the Act in turn:

(a) Locality

Cooloola Cove is a community with a population of approximately 2,300 people. It is located adjacent to the main road between Gympie and Tin Can Bay (7kms away), and not far off the road between Gympie and Rainbow Beach (24kms away). The townships of Tin Can Bay, Rainbow Beach and Cooloola Cove have a combined population estimated at 5,400 with a projected population growth in excess of 4.5% per annum over the next decade.

At the time of the inspections the only convenience store in Cooloola Cove had a prominent sign placed in its front window advising residents, and visitors, of its imminent closure coinciding with the opening of the adjacent Woolworths supermarket. Upon its closure Cooloola Cove residents would need to travel to Tin Can Bay or Rainbow Beach on Sundays and public holidays to purchase whatever goods might be available at convenience stores in those townships.

(b) Needs of the tourist or other industry

Although the evidence disclosed that approximately 600,000 visitors per year travel to Fraser Island there was no information provided to show how many of these visitors travelled to that destination through Cooloola Cove/Tin Can Bay or Cooloola Cove/Rainbow Beach/Inskip Point. Equally, there was no evidence to disclose the number of tourists to Tin Can Bay and Rainbow Beach, respectively.

Nonetheless, it is reasonable to assume, based upon the Commission's observation of the number of 4-wheel drives, campervans, caravans and the like on the day of inspection in Cooloola Cove and adjacent areas, that a reasonable proportion of the visitors who travel to Fraser Island each year do so by using either Tin Can Bay or Rainbow Beach/Inskip Point.

The location of the Woolworths' store at Cooloola Cove makes it a convenient stopping off point for tourists and/or tourist operators wishing to shop for groceries on their way to Fraser Island through one of the above access points or those who might be travelling to Tin Can Bay or Rainbow Beach as their final destination.

(c) Needs of an expanding tourist industry

This issue was not separately addressed in the evidence, nor in the material presented.

(d) Needs of an expanding population

Mr Wallace gave unchallenged evidence that the population of Cooloola Cove, and adjacent regions, will increase at a rate in excess of 4.5% per annum over the next decade. It was also his unchallenged evidence that Cooloola Cove itself would progressively grow to a population of around 8,000 persons over approximately the next 10 years. In comparison to normal population growth elsewhere in the State this rate of increase is quite significant.

(e) Public, consumer and business interest

There were only two witnesses who gave evidence about NRA's Application insofar as it might relate to the Woolworths' store at Cooloola Cove, namely Messers Wallace and Petersen, respectively. As such, it is difficult to identify the public interest, consumer interest and business interest as it might relate to that site.

Notwithstanding the lack of evidence, it appears from that which has been presented, as well as from the inspections, that the Woolworths' store at Cooloola Cove will be the only supermarket in the region with (as noted above) the nearest alternatives being Gympie (52kms away) and Maryborough (71kms). In addition, with the closure of the small convenience store in Cooloola Cove (also mentioned above) local residents will be required to travel to Tin Can Bay to purchase convenience goods which might be available there (the Commission is unaware of the shopping facilities which might be available at that location) or to Rainbow Beach, where the Commission noted the existence of a small convenience store in the main street.

(f) Alleviation of traffic congestion

This is not a relevant issue in the determination of this Application.

(g) Likely impact on employment

Although Mr Wallace did not provide an estimate of the additional hours which will be available if Woolworths is permitted to open its Cooloola Cove store on a Sunday it is reasonable to assume, based on evidence presented in this and other cases, that approximately 100 hours of additional employment will be made available to the local community. There is no evidence to suggest there would be any loss of employment in any other convenience store in Cooloola Cove, Tin Can Bay, Rainbow Beach or Gympie as a result of the opening of Woolworths' store at Cooloola Cove.

Further, given the evidence about the expected population growth in this area, there is a strong likelihood that employees will be drawn from the Cooloola area itself.

(h) Local Government view

In response to a question from the Commission, Councillor Petersen confirmed that Gympie Regional Council was opposed to 7 day trading by non-exempt stores throughout the whole of the area administered by the Council. However, he cited no particular reasons why Council was opposed to 7 day trading at the Woolworths' store at Cooloola Cove, that store being the only non-exempt store in the area.

(i) Other relevant matters

The Woolworths' store at Cooloola Cove is part of a complex which includes 12 specialty shops. A tavern is proposed to be built on adjacent land and, once fully established, the shopping complex and tavern will effectively share the one car park.

The only local convenience store closed its doors to coincide with the opening of the adjacent Woolworths supermarket, thereby depriving local residents of the opportunity to purchase even basic necessities on a Sunday or public holiday. To do so they must travel to either Tin Can Bay or Rainbow Beach.

Conclusions - Cooloola Cove

- [28] After considering the unusual circumstances involved, most particularly the location and lack of any other alternative shopping availability for local and nearby residents, we have decided to approve NRA's Application insofar as it relates to the Woolworths' store at Cooloola Cove.
- [29] In arriving at this decision we note that the circumstances in Cooloola Cove are vastly different from those presented to us during the course of evidence and submissions in relation to Gympie.
- [30] In particular, there are no other retailers in the immediate area (non-exempt or otherwise) which will be impacted if the Woolworths' store is allowed to open on Sundays and certain public holidays.
- [31] In addition, the concerns raised by the Gympie Regional Council, and Councillor Petersen on its behalf, in relation to the potential impact of 7 day trading in Gympie are simply not relevant to the circumstances prevailing in Cooloola Cove. The type of community the Council wishes to promote and encourage will not be affected if the Woolworths' store is allowed to open. There were, for example, no small business identified which rely on Sunday trading to remain viable. Further, the lifestyle of the residents of Cooloola Cove and the family focus of the community in that area is likely to be enhanced on Sundays if the local population is able to avail itself of the new shopping centre (comprising Woolworths and 12 specialty retailers) in that location.

- [32] Finally, there is the not insignificant positive impact on employment opportunities in the local community if the Woolworths' store is allowed to open. We estimate this to be approximately 100 hours of additional employment per week.
- [33] In effect, the Commission has been presented with a single choice. Does it approve an application which will allow residents of Cooloola Cove, residents of nearby areas and tourists passing through (or near) that centre to purchase grocery and other items locally on a Sunday or does it deprive them of that ability? In our considered view, and notwithstanding the position adopted by the Gympie Regional Council, there are no reasons why the Woolworths' store at Cooloola Cove should be forced to remain closed on a Sunday. Allowing the store to open will not impact on other stores in the immediate environment. Further, there will be additional employment opportunities on that day at the Woolworths' store plus, in our estimation, some of the other specialty stores located in the same complex.
- [34] Accordingly, and notwithstanding the limited material provided in support of its Application in relation to Cooloola Cove, we approve NRA's application as it might relate to the location of the Woolworths' store only at Cooloola Cove. In contrast to the situation in Gympie, the arguments in support of 7 day trading in Cooloola Cove - in terms of the criteria at s. 26 of the Act - outweigh those against it.

Summary

- [35] For the foregoing reasons we reject NRA's Application for non-exempt stores to be allowed to trade in the town of Gympie on Sundays and certain public holidays. However, notwithstanding this decision, and for the reasons cited above, we approve NRA's Application insofar as it might relate to the Woolworths' store at Cooloola Cove from Sunday 27 December 2009.
- [36] Work by any employee of Woolworths at its Cooloola Cove store on a Sunday or public holiday is to be completely voluntary.
- [37] To facilitate the issuing of an Amendment to give effect to our decision we direct NRA to provide, by Friday 27 November 2009, more comprehensive details of the physical location of the Woolworths' store at Cooloola Cove to cite in the ultimate Amendment giving effect to this decision.
- [38] The Commission determines and orders accordingly.

A.L. BLOOMFIELD, Deputy President.

G.K. FISHER, Commissioner.

I.C. ASBURY, Commissioner.

Hearing Details:

2009 1 May (*Inspections*)
 15 & 16 May (*Hearing*)
 7 July (*Submissions*)

Appearances:

Mr J. Moore for National Retail Association Limited, Union of Employers.

Mr K. Murphy for Queensland Retail Traders and Shopkeepers Association (Industrial Organisation of Employers).

Ms P. Town for Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees.

Released: 18 November 2009