

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

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

CASE NO: TH/2012/2

PROCEEDING: Application to amend Trading Hours Order (Inner City Brisbane)

DELIVERED ON: 7 April 2014

HEARING DATES: 24 May 2012
27 September 2012
15 November 2013
20 February 2014
18 December 2013 (applicant submissions)
17 January 2014 (respondent submissions)
21 January 2014 (submissions in reply)
6 February 2014 (respondent submissions)
20 February 2014 (submissions in reply)

MEMBERS: Deputy President Swan
Industrial Commissioner Thompson
Industrial Commissioner Knight

ORDERS : **1. The application is granted.**
2. The operative date for the amendment is 19 May 2014.

CATCHWORDS: INDUSTRIAL LAW - TRADING HOURS ORDER
- Application to amend trading hours order -
Inspections - Opposition to the application by
QRTSA and SDA - Clarification of s 26 criteria - No
evidence from any exempt store in the current and
proposed boundary - Extension of boundary
appropriate to be included in Inner City of Brisbane
boundary - Backpacker statistical data relevant - no
response from local government authority - On
balance application granted.

CASES: *Trading (Allowable Hours) Act 1990, s 21, s 26*
National Retail Association v Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Anor (2005) - 180 QGIG 1211

APPEARANCES: Ms A. Lamb, for National Retail Association Limited, Union of Employers, the Applicant.
 Mr T. Martin, for Shop Distributive and Allied Employees' Association (Union of Employees).
 Mr C. Dorber for Queensland Retail Traders and Shopkeepers Association (Industrial Organisation of Employers).

Decision

[1] This application is made by the National Retail Association Limited, Union of Employers (NRA) to amend the *Trading Hours - Non-Exempt Shops Trading by Retail - State* (the Order) pursuant to s 21 of the *Trading (Allowable Hours) Act 1990* (the Act).

[2] The application seeks the amendment to the Order as follows:

1. By deleting clause 3.2(3) and inserting the following in lieu thereof:

(3) Inner City of Brisbane (*excluding the Area of City Heart of Inner City of Brisbane and Area of New Farm of Inner City of Brisbane*):

	<u>Opening Time</u>	<u>Closing Time</u>
Monday to Friday	7.00 a.m.	9.00 p.m.
Saturday (including Easter Saturday)	7.00 a.m.	7.00 p.m.
Sunday (excluding Easter Sunday)	9.00 a.m.	6.00 p.m.
Public Holidays (as defined) (excluding Good Friday Easter Saturday, 25 April, Labour Day, 25 December)	9.00 a.m.	6.00 p.m.

2. By deleting clause (2) from Schedule 1 and inserting the following in lieu thereof:

(2) The Inner City of Brisbane - The area within the following boundaries:

Commencing at the centre of the William Jolly Bridge; then along such bridge north to Skew Street; then along Skew Street to Upper Roma Street; then along Upper Roma Street to Milton Road; then along Milton Road to Hale Street; then along Hale Street to Kelvin Grove Road; then along Kelvin Grove Road to L'Estrange Terrace; then along L'Estrange Terrace to Herston Road; then along Herston Road to Bowen Bridge Road; then along Bowen Bridge Road to the centre of Bowen Bridge; then along the midstream of Enoggera Creek to Breakfast Creek; then along the midstream of Breakfast Creek to the Brisbane River; and then along the midstream of such river to the point of commencement at the centre of the William Jolly Bridge.

Provided that where the boundary of such part of the Inner City of Brisbane is a street, road or avenue, shops on both sides of the street, road or avenue, shall be regarded as being within such part.

The Legislation

[3] Section 21 of the Act states:

"21 Trading hours orders on non-exempt shops

- (1) A full bench of the industrial commission may decide trading hours for non-exempt shops.
- (1A) However, the full bench is not to decide trading hours that are less than the following hours on a stated day, other than a public holiday -
 - (a) 8.00 am and 9.00 pm for Monday to Friday;
 - (b) 8.00 am and 5.00 pm for Saturday.
- (2) The full bench may make any order it considers necessary or convenient to give effect to a decision made under subsection (1), including, for example, an order specifying -
 - (a) the earliest time when non-exempt shops may open on any day and the latest time when non-exempt shops must close on any day; or
 - (b) hours for trading wholesale different from the hours fixed for trading retail; or
 - (c) different trading hours by reference to -
 - (i) classes of non-exempt shops; or
 - (ii) localities, or parts of localities, where non-exempt shops are situated.
- (3) In subsection (1A) -

public holiday means -

 - (a) a public holiday under the *Holidays Act 1983*; or
 - (b) a day that would have been a public holiday had there not been a substitution under the *Holidays Act 1983*, section 2(2) or (3) or 3."

[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] Inspections of the local retail area of Inner City of Brisbane were conducted by the Full Bench with all representatives involved in the matter present. These inspections were conducted in 2012. The Full Bench was reconstituted in 2013 (due to the retirement of a Member) and representatives in this current hearing did not request further inspections.

Party to the Proceeding

- [6] In support of the application:

- NRA.

- [7] Organisations granted leave to be heard and opposed to the application:

- Queensland Retail Traders and Shopkeepers Association, Industrial Organisation of Employers (QRSTA);
- Shop, Distributive and Allied Employees' Association (Union of Employees) (SDA).

Witnesses

- [8] Witnesses for the NRA were:

- Mr Geoff Bell (Queensland Support Manager for Woolworths);
- Mr David Stout (Queensland Compliance Manager for Coles).

[9] Witnesses for the QRSTA were:

- Mr Bradley Hopper (Hopper Group);
- Dr Derick Lundberg (Innovate Coaching Pty Ltd).

[10] Witnesses for the SDA were:

- Mr David Elkington (Employee of Coles).

Section 26 Criteria

[11] Section 26 of the Act requires the Commission to consider all of the criteria contained within this section.

[12] However, on many occasions, it has been found that not all criteria requires consideration e.g. when there is no evidence or concern regarding traffic congestion.

[13] It is relevant to refer to the views expressed by previous Full Benches of the Commission as it relates to s 26 of the Act. In Matter B1437 of 2003 the Full Bench stated:

"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 weighed 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.

That statement was recently endorsed by another Full Bench in Matter No. B1354 of 2003. We similarly endorse the statement."

We, likewise endorse those statements.

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

[14] Currently, the Inner City of Brisbane boundary incorporates in full or in part the areas of:

- City Heart;
- Bowen Hills;
- Newstead;
- Fortitude Valley;
- Spring Hill;
- Teneriffe;
- New Farm; and
- Herston.

- [15] This application concentrates upon the areas of Kelvin Grove and Petrie Terrace and the proposed inclusion of those areas within the trading boundary of the Inner City of Brisbane. The application will directly impact upon two non-exempt shops within the proposed boundary to the extent that they will be able to trade an additional 7.5 hours per week if the application is accepted.
- [16] NRA states that both Kelvin Grove and Petrie Terrace are significant inner city areas of Brisbane and have been identified as areas for urban growth and renewal by the Brisbane City Council.
- [17] Mr Stout submitted that the Local Plan developed by the Brisbane City Council for Petrie Terrace and Spring Hill shows that the Petrie Terrace precinct (where a Coles store is located) is surrounded by low-rise commercial precincts and detached housing precincts on the fringe of the Brisbane CBD ["Petrie Terrace and Spring Hill Local Plan" - Exhibit 2 - Attachment B].
- [18] Mr Stout viewed the inner CBD area of Brisbane as accommodating commercial and administration interests, whereas the Petrie Terrace precinct had a combination of commuter, resident and administrative interests. He likened this area's residential component as being similar to that of suburbs such as West End, Toowong and possibly Woolloongabba [T 62 - 63].
- [19] Reference was also made to the fact that those living within the vicinity of Petrie Terrace are in close walking proximity to the Brisbane CBD [T1 - 74].
- [20] Dr Lundberg stated that at the time of the 2011 Census, the largest employment group for usual residents in this region was professionals, representing 37.9 per cent of the employed labour force [Exhibit 5 - point 20].
- [21] The Kelvin Grove Urban Village Local Plan [Exhibit 1 Attachment A] considers the Village Centre Precinct where Woolworths is located and states that services were planned for the area together with commercial, residential and educational uses.
- [22] Mr Bell's evidence included reference to the Kelvin Grove Urban Village planned community. This community brings together residential, educational, retail, health, recreational and business opportunities into this area.
- [23] To this end, \$1 billion has been committed to the development of infrastructure, commercial, educational and recreational facilities [Exhibit 1 - point 15].
- [24] The document entitled "Kelvin Grove Urban Village - Design Guidelines March 2010 is co-authored by the Queensland Government and the Queensland University of Technology [Exhibit 1 - Attachment B].
- [25] That document states: *"The Kelvin Grove Urban Village will be an intelligent and sustainable community, where people can live, learn, work, shop and recreate within one accessible and walkable neighbourhood. It will be a place to meet neighbours and friends, and be part of a community in the traditional sense."*
- [26] Envisaged as well will be *"the other parts of the Urban Village [which will] become progressively more residential in character. Residential units in the Urban Village*

will cater to a mix of ownership patterns, price and building types suited to different income levels, lifestyles and age groups."

- [27] SDA stated that if the application was "genuine" and related to a growing residential and business population, then other areas near to the CBD of Brisbane would have been included - e.g. South Brisbane.
- [28] QRTSA's objection generally to the application was that Mr Bell's evidence did not warrant consideration as it related to generalities, rather than the specifics required when considering the various criteria which an application of this type must consider.

s 26(b) the needs of the tourist industry or other industry in such locality or part

- [29] Mr Stout's evidence was that in a major city such as Brisbane, tourism is an important and growing industry. *Tourism Research Australia's International Visitor Survey for June 2013* shows that expenditure in Brisbane from tourism is considerable with over 1 million visitors in the year ending June 2013.
- [30] Reference was made by Mr Stout to the significant number of back-packers (around 140,000 in the preceding year) visiting Brisbane and staying generally within the CBD area, near to the major rail and bus transport links [Exhibit 2, Attachment D].
- [31] Of backpackers Australia wide (579, 000) Queensland attracts 58 per cent of those backpackers [Exhibit 2, Attachment C]. The average expenditure of backpackers Australia wide is \$5759 with \$2914 being spent on food, drink and accommodation [Exhibit 2, Attachment C].
- [32] SDA witness, Mr Elkington stated that there had been no evidence of backpackers wanting to shop during late or early hours at Coles, Petrie Terrace but he also accepted that he had not surveyed anyone who might be a backpacker as to their views regarding trading hours.
- [33] Mr Stout believed that backpacker buying behaviour reflected small and regular shopping due generally to the unavailability of storage and refrigeration in backpacker accommodation [T1 - 61].
- [34] Dr Lundberg stated that tourists visiting any city often stay in a central location, and backpackers in particular are usually drawn to inner city areas.

s 26(c) the needs of an expanding Tourism Industry

- [35] The only significant commentary regarding this criterion was made by Mr Stout who referenced the growth in tourism generally from March 2012 to 2013.
- [36] The number of nights for backpackers staying in Queensland was 19 and this figure had grown from 17.9 nights for the year ending March 2012 [Exhibit 2 - Attachments D and E].

s 26(d) the needs of an expanding population

- [37] Queensland Treasury provides population projections for suburbs within the existing and proposed boundary for the Inner City of Brisbane. The information is obtained from the *Queensland Government Population Projections 2011 - Office of Economic and Statistical Research, Queensland Treasury and Trade*. Population growth in the Kelvin Grove area is projected to grow at a rate of 21.8 per cent between 2012 and 2031. There is no data supplied for the Petrie Terrace area. However, for the Brisbane City area, the growth projection is 12.6 per cent for the same time period. Mr Bell states that when averaged, the population growth for the areas currently and proposed within the Inner City of Brisbane area is around 16.25 per cent [Exhibit 1].
- [38] NRA submits that the growth of residential developments on the city fringe is partly fuelled by those in the work force wanting to be closer to workplaces and leisure activities.
- [39] Additional statistical data was supplied by NRA to the effect that in the category of "both employed full-time or one full-time, one part-time" within the areas under consideration in this application, Kelvin Grove recorded 46 per cent and Petrie Terrace 57.5 per cent.
- [40] NRA submitted that these statistics highlight that the areas under consideration have shown significant population growth predictions and a high level of employment.

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

Public interest and consumer interest

- [41] NRA submits that in relation to public interest considerations concerning retail businesses which would be affected by the application, evidence was drawn from the two non-exempt stores within the location under consideration and the owner of exempt shops outside of the immediate location.
- [42] There is an IGA store in the Valley and within the Inner City Brisbane boundary and it was inspected by the Commission and the parties before the commencement of the formal hearing, but there was no evidence given by anyone associated with that business.
- [43] Mr Hopper, of Hopper Group of independent supermarkets and bakeries, employs over 500 employees and the closest of his stores to the locality under consideration are those situated in Milton and New Farm. Mr Hopper's evidence was that his group office is based in Brisbane and it employs the services of many local people.
- [44] The question posed by NRA is whether the interests of one business group with businesses located outside of the current and proposed boundary should out-weigh the benefits afforded to the community by non-exempt stores. Within that context NRA submitted that what was offered by the non-exempt stores was the opportunity for "time poor" consumers, students, tourists etc to have greater access to a wider range of supermarkets than the current allowable hours provide.

- [45] Dr Lundberg opposed the application because he believed that it distorted economic efficiency and redistributed wealth in an inequitable manner. All that occurred in an application such as this was an increased dominance of the two major retail chains without improving the level of service and convenience to the community of Inner City Brisbane or filling a gap in response to new or emerging changes to consumer behaviour.
- [46] Dr Lundberg said that he agreed with NRA's submissions that consumer behaviour has changed to the extent that a new category of consumer has emerged – i.e. those who need to "top up" purchases and "emergency" shoppers. However, he believed that those shoppers were more than adequately catered for by the current range of exempt stores within the region under consideration and also in New Farm and the Valley [Exhibit 5 - point 26]. The exempt stores in the locality were not specifically identified.
- [47] While commentary was made by both NRA and those opposed to the application concerning the back-packer influence in the area under consideration, those opposed to the application stated that there was no direct evidence relating to this group of people and only speculation as to what their shopping preferences might be and whether or not they were more inclined to visit the CBD for the purpose of visiting cafes and restaurants.
- [48] Mr Elkington was of the view that no discernible pattern of shopping behaviour could be made from back-packers visiting the area and the store at which he worked [Exhibit 3 - point 8].
- [49] Mr Elkington works in the Coles Supermarket store in Petrie Terrace.
- [50] His evidence was that the store was never busy between 8.00 am and 9.00 am on weekdays and on Saturdays.
- [51] A particular concern expressed by Mr Elkington related to the incursion into a Saturday evening of longer working hours if the application was granted. He reserved Saturday nights for social activities. He also expressed concerns regarding safety of employees if required to work into Saturday evening as patrons of local hotels, bars and night clubs were often intoxicated.
- [52] A further impact upon employees if required to commence work at 7.00 am was that many travel to work via public transport. The availability of suitable transport was a matter which had been raised by fellow employees of Mr Elkington [Exhibit 3 - point 12].
- [53] A further element for consideration was submitted by Mr Hopper in that IGA stores contribute significantly to local communities, charity groups, sporting and recreational clubs and events and local schools. In the past nine years, the IGA Community Chest program has resulted in providing approximately \$60 million dollars back into local communities across Australia.

Business Interest

- [54] NRA provided documentation relating to its stores' operations in various states of Australia. The relevance of that information was queried by those opposed to the application. As has been stated on many occasions by the Commission, other States of Australia determine trading hours matters pursuant to the relevant Legislative scheme for each State. While the information may be informative, such statistical data is formulated from research in areas of Australia which often have entirely different levels of regulated/de-regulated trading hour's regimes. Nonetheless it is relevant to the extent it can represent a barometer of shopping patterns generally dependent on the area under consideration.
- [55] NRA states that there was no evidence adduced by QRTSA from any exempt store operating within the proposed boundaries. The only evidence adduced concerning exempt businesses was that of Mr Hopper whose closest stores to the region under consideration was one at Milton and another at New Farm – both outside of the current and proposed boundary.
- [56] Mr Hopper stated that his interest in the matter related to the operation of his Milton store in Brisbane. He claimed that the opening of the Coles store at Petrie Terrace had a significant effect upon his business when it opened. He had suggested that the extension of trading hours impacted upon his New Farm store as well, but he also agreed that he had not opposed another NRA application for extended trading hours for a non-exempt store in New Farm in 2011.
- [57] This sentiment was supported by Dr Lundberg who stated that the impact on local business of a successful application would be felt by all small business suppliers, service providers and local producers.
- [58] Mr Hopper stated that a typical Saturday's trade between 7.00 am – 8.00 am and 5.00 pm – 7.00 pm contributed to around 24.61 per cent of trade for that day. A reduction of 40 per cent loss of trade from the 24.61 per cent trade currently achieved would reduce Saturday turnover considerably so much so that there would be less staff employed and the business would lose viability [Exhibit 4 - para 9].
- [59] Dr Lundberg stated that the approval of this application would have an adverse effect upon exempt stores in the following ways:
- a decline in the value of the exempt store;
 - a loss of employment for local employees; and
 - an adverse impact upon local producers; local service providers; local manufacturers and local farmers and suppliers [Exhibit 5 - paras 38, 39, 42].
- [60] Currently, Queensland IGA stores source \$156 million per annum from Queensland based suppliers, manufacturers and farmers [Exhibit 5 - Attachment 4].

Consumers' Interests

- [61] NRA stated that the Commission had consistently acknowledged that the interests of consumers are advanced by extended trading hours.

[62] Mr Bell's statement had made reference to the percentage of working families in suburbs within the Inner City of Brisbane boundary "which when compared to Queensland overall, show higher percentage of families with both parents employed full-time or one working full time and one working part-time [NRA submissions - point "c" - Consumer's Interests].

[63] While Mr Hopper had said there was no evidence of any need for non-exempt stores in Kelvin Grove or Petrie Terrace to open at 7.00 am Monday to Friday, he had not surveyed consumers in the area and had not shopped at either the Kelvin Grove or Spring Hill stores at 8.00 am in the morning.

s 26(f) the alleviation of traffic congestion

[64] There were no specific submissions made regarding this criterion, however, SDA made reference to Mr Elkington's evidence where he stated that the additional hours on a Saturday night whenever an event was held at Suncorp Stadium would in all probability lead to a further increase in the traffic congestion experienced on those nights [Exhibit 3 - paras 9, 10].

s 26(g) the likely impact of the order on employment

[65] NRA submitted that additional hours would be granted to employees in the vicinity of 80 hours per week if the application was granted and that work on a voluntary basis for the extra hours would be provided to employees.

[66] SDA's concern regarding this criterion was that, if the extra trade was not achieved with the expanded trading hours, there may be no benefit to any employee.

[67] Specifically, SDA stated:

"...if the trading hours are extended then it has been the experience of SDA members that consumer buying patterns change. While there may be sales transacted during the additional times, an indeterminate number of those sales would have occurred in the same store at another time if the trading hours had not changed" [SDA written submissions page 6].

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

[68] NRA advised that it had served the Brisbane City Council with the application, but there had been no correspondence received from that body with regard to its position concerning the application.

s 26(i) such other matters as the industrial commission considers relevant

[69] NRA submitted that the shopping arena had changed significantly by becoming a more competitive, globalised retail shopping environment where consumers can acquire goods through on-line suppliers, and there was a greater need for non-exempt traders to be permitted to cater to changing tastes and preferences.

Consideration of evidence and conclusion

- [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 ...".¹
- [71] Primarily the case mounted in opposition by both QRTSA and SDA is that there was no or insufficient evidence adduced highlighting any need for the additional hours sought in the nominated areas of Brisbane when one assessed the criteria which is to be considered by the Commission.
- [72] The Full Bench has previously stated that it should not be inferred in all applications for an extension of trading hours that all matters identified in s 26 of the Act would be weighed equally. Further, it is the case that in some applications some s 26 criteria are more relevant than others and occasionally other criteria are deemed irrelevant because of the discrete nature of the application.
- [73] In considering s 26(a) of the Act, the area/boundary sought to be altered in the application has the nomenclature of the "Inner City of Brisbane". It is appropriate firstly to ask whether the areas sought to be included in the Inner City of Brisbane area could genuinely and naturally fit under this heading.
- [74] In our view, that question can be answered positively. While it may be the case, as put by those opposed to the application, that the exclusion of similar areas on the rim of the Inner City of Brisbane boundary have been excluded without explanation by NRA, the Full Bench must deal with the application before it and not be drawn into speculation on any other possible scenario.
- [75] While the Full Bench, through inspections, has been made aware particularly of an independent, exempt IGA store within the current boundary (situated at Wickham St, Fortitude Valley) because there was no opposition to the application from any small or medium sized exempt business, those businesses were not specifically highlighted by those involved in the inspections. Within the proposed boundary, there are two non-exempt stores - i.e. one store (Coles) at the Petrie Terrace precinct and one (Woolworths) at the Kelvin Grove precinct.
- [76] General commentary was made by witnesses for QRTSA that the area under consideration did not require expanded hours for non-exempt stores as there were sufficient smaller retailers in the area who could cater for the needs of consumers outside of the trading hours already provided to the non-exempt stores.
- [77] From the evidence before the Full Bench, it has been accepted that the location under consideration has two non-exempt stores and, one would presume, some smaller convenience stores (although they have not been identified). Of those two areas under consideration, one, the Petrie Terrace precinct, is within easy walking distance from the CBD of Brisbane and the other is also in reasonable proximity to

¹ *National Retail Association v Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Anor* (2005) - 180 QGIG 1211.

the CBD of Brisbane. There is no direct evidence of the number of exempt stores in the area or their location, except for IGA.

- [78] With regard to the needs of the tourist industry and the needs of an expanding tourist industry [s 26(b), (c) and (d)] there has been specific evidence put to the Full Bench by NRA.
- [79] Back-packer tourists have been particularly identified by NRA in this application. QRTSA and SDA state that there has been no direct evidence given by any back-packers visiting the areas under consideration, and there is no direct evidence given of their consumer preferences for shopping for foodstuffs.
- [80] There are around 589,000 backpackers touring Australia yearly, and of that number, 58 per cent visit Queensland. Roughly, some 140,000 backpackers visited Brisbane in the preceding year and stayed largely but not exclusively within or around the CBD area of Brisbane because of its proximity to major rail and bus transport. Further statistical evidence produced by NRA showed that the average expenditure of backpackers Australia wide is \$5,759 with \$2,914 being spent on food, drink and accommodation.
- [81] While criticism has been levelled at NRA for not providing direct evidence from backpackers or tourists in the areas under consideration, from our perspective, this is not a sustainable criticism. Information of those who might qualify as a tourist has usually been provided by way of statistical evidence from reputable sources.
- [82] It is a matter of general knowledge that there is backpacker accommodation within in and around the areas under consideration, and particularly so near to the CBD of Brisbane city. It is also a matter of general knowledge, that accommodation of this type does not lend itself to providing refrigeration storage for those inclined to undertake a weekly shop at supermarkets whilst on holidays. It is a feature of tourism generally that 'top-up' and 'emergency' shopping for foodstuffs is more prevalent than not. The Full Bench has accepted that.
- [83] The statistical data provided by the NRA in this matter is positive to the extent that tourism within the Petrie Terrace area, specifically, is a factor to be considered in this application.
- [84] Statistical evidence also produced by NRA was such that the number of nights for backpackers staying in Queensland was 19 and that figure had grown from 17.9 nights for the year ending March 2012. These figures are not outstanding, but sufficient to show that there has been steady growth in tourist nights within Queensland and for the purpose of this application presumably within the Petrie Terrace backpacker area.
- [85] The statistical evidence provided from the *Queensland Government Population Projections 2011 - Office of Economic and Statistical Research, Queensland Treasury and Trade* show that population growth for the Kelvin Grove area is anticipated to be 21.8 percent between 2012-31. There is no specific statistical material provided for the Petrie Terrace area. There is data for the Brisbane City area, and that is projected to be around 12.6 per cent for the same period.

- [86] NRA produced demographic statistical data highlighting the category of persons employed and otherwise in the areas under consideration. Of those working full time and/or part time, Kelvin Grove recorded 46 per cent and Petrie Terrace 57.5 per cent.
- [87] NRA submits that those statistics show that the growth of residential developments on the city fringe are partly fuelled by persons in the work force wanting to be closer to workplaces and leisure activities. This, in our view, is not an unreasonable perspective to hold in light of the evidence presented.
- [88] Overall, under this criterion, the material provided is more supportive than not of NRA's application.
- [89] The evidence provided, by way of tendered documents (i.e. the Kelvin Grove Urban Village documentation) relevantly supports NRA's application. There is an increase in residential accommodation in this Kelvin Grove precinct catering for the Queensland University of Technology students and the residential accommodation is a factor which is new to the area.
- [90] In relation to criteria s 26(e) "the public interest, consumers' interest, and business interest (whether small, medium or large)", evidence adduced was somewhat mixed.
- [91] There has been no evidence adduced from any business (whether small, medium or large exempt stores) which operates in the area under consideration, to enable the Full Bench to weigh the competing interests of those stores with the non-exempt stores being considered in this application. While acknowledging that the onus rests with the Applicant in this matter, it is open to draw the inference in these unusual circumstances that the application is of no concern to any other exempt business within the proposed boundary.
- [92] The only exempt store owner who gave evidence opposing the application was one whose stores were outside of the area under consideration. Relevantly, when a similar NRA application was made in an area where this business owner operated an exempt store, the owner did not oppose an application by NRA to extend trading hours for a non-exempt store.
- [93] The question put by NRA was why this business owner's interests, which are located outside of the proposed boundary, should prevail over the interests of consumers within the area under consideration. Given that the Full Bench is considering an application for a specific area, NRA's point is fairly made in our view.
- [94] Mr Hopper states that his IGA Milton (exempt) store had suffered when the Coles store at Petrie Terrace opened, however there has been no similar complaint from any exempt store within the area of the application (either existing or proposed).
- [95] There have been no surveys conducted of consumers within the areas under consideration to gauge levels of support or opposition to this application. Information of trading patterns has been supplied by NRA from precincts outside of the immediate boundary, but while it may not necessarily follow that one area will respond like another, it is reasonably fair to say that consumer patterns do not change significantly and it is also fair to state that the Commission has often

acknowledged that the interests of consumers are generally advanced by extended trading hours.

- [96] While those opposed to the application have stated that NRA has relied upon generalities in some instances to support its claim, the same may be said of those opposed to the application.
- [97] Dr Lundberg stated that the impact of 7.5 hours additional trading hours per week would result in sales of the independent supermarkets declining by up to 25%. NRA held to the view that when that scenario was compared with other situations (i.e. an IGA store in Frankston, Victoria and a Coles store at a nearby location) which had arisen, the evidence more than suggested that non-exempt shops and the exempt supermarket could co-exist satisfactorily.
- [98] In all, these propositions have not been tested beyond submissions from the bar table. However, some do pass the 'assertion' or 'otherwise test' by being accepted by the Full Bench as falling under the category of generally accepted knowledge and where this is so it has been identified in this decision.
- [99] Section 26(f) concerns the question of traffic congestion. Both areas under consideration show that the Woolworths store in the Kelvin Grove Urban Village is located off the major through-roads in Kelvin Grove, and the Peter Terrace precinct has dedicated parking.
- [100] Mr Elkington's evidence has been considered within the context of when events might be held at Suncorp Stadium. His view was based upon speculation of what might occur only.
- [101] Section 26(g) deals with the question of the likely impact of the order on employment. If the application was to be granted, the extra working hours would be 80 hours per week. NRA submitted that any extra hours would only be worked on a voluntary basis by employees. The Full Bench notes that this factor may allay some of the concern expressed by Mr Elkington.
- [102] SDA was of the view that if customers did not respond positively to the extended hours, then those hours may not be of benefit to any employee. That speculative view must be weighed against the reality of an increase of hours. The extra hours worked would presumably be of benefit to those employees who have volunteered to work those hours.
- [103] As the relevant Local Government was not responsive to the application, it is a criterion which is not relevant to the application.
- [104] In weighing all of these considerations, it is the view of the Full Bench that the application should be granted. This case is an example where not all of the criteria to be considered pursuant to s 26 of the Act was relevant.
- [105] The evidence in support of the application has, on balance, been sufficient for the application to be granted.

[106] We order that the operative date for the implementation of this decision will be 19 May 2014.

[107] Order accordingly