

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Others (TH/2010/3)**

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

DEPUTY PRESIDENT SWAN  
COMMISSIONERS FISHER AND THOMPSON

18 February 2011

Application to amend trading hours order - Other appearances - Inspections - Evidence - Locality - Weighs in favour - Needs of the tourist or other industry - Shopping largely incidental to tourism - Needs of an expanding tourist industry and expanding population - Finding neutral - Public, consumers and business interest - Criterion not satisfied - Factors considered in deliberations - Southern Downs Regional Council opposition - Lack of local support - Application refused.

DECISION

**WARWICK AREA**

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

"1. By inserting a new clause (22) in clause 3.2 as follows:

(22) The Warwick Area:

	Opening Time	Closing Time
Monday to Friday	8.00 a.m.	9.00 p.m.
Saturday	8.00 a.m.	5.00 p.m.
Sunday	9.00 a.m.	6.00 p.m.
Public Holidays (as defined) (excluding Good Friday, 25 April, Labour Day, 25 December)	8.30 a.m.	5.30 p.m.

2. By inserting a new clause (29) in Schedule 1 as follows:

(29) *The Warwick area* - The area within the following boundaries:

Commencing from the point where the Cunningham Highway intersects with Ogilvie Road; from that point in a straight line in a westerly direction until it intersects with Lyndhurst Lane; from that point following Lyndhurst Lane in a southerly direction until it intersects with Bracker Road; from that point in an easterly direction along Bracker Road; and then in a northerly direction along East Street until it intersects with Ogilvie Road; and from that point in a westerly direction to the point of commencement."

***Other Appearances***

- [2] The Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) (QRTSA) and the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees (SDA) were granted leave to appear and be heard in relation to this matter.
- [3] The Southern Downs Regional Council (SDRC) and the Warwick Chamber of Commerce (WCC) also sought and were granted leave to appear.

***Inspections***

- [4] Mr Bellingham, Mayor of the SDRC, asked to participate in the inspections. As the SDRC had been granted leave to appear and Mr Bellingham proposed to give evidence in the proceedings, the Commission wrote to the other parties on 28 September 2010 seeking their advice as to whether they had any objection to Mayor

Bellingham participating in the inspections scheduled for 29 September 2010. No objections were received to this course being followed.

- [5] The Commission, in the presence of the NRA, QRTSA, SDA and SDRC inspected the following locations:

Aldi, Corner Fitzroy and Albion Streets, Warwick;  
 Caltex, 48 New England Highway, Warwick;  
 Foodworks, 148 Wood Street, Warwick;  
 Target Country, 116 Grafton Street, Warwick;  
 Toyworld, 92 Palmerin Street, Warwick;  
 Rose City Shoppingworld, 81 Palmerin Street, Warwick;  
 Supa IGA, 18 Palmerin Street, Warwick;  
 Food For Less, Corner Palmerin and Victoria Streets, Warwick; and  
 Foodworks Clifton, 58 Clark Street, Clifton.

All locations were via drive-by except for Rose City Shoppingworld where the parties walked through the centre.

### *Witnesses*

- [6] The following witnesses provided evidence:

### **NRA**

- [7] **Marcus Barlow, Owner, Brumby's Bakery, Rose City Shoppingworld** currently trades seven days per week opening at 6.00 a.m. Mr Barlow is an external tenant open to the outside on Palmerin Street. He supports the application as he considers he will benefit commercially if the centre is open on Sundays.
- [8] In cross-examination by Mr Rieck on behalf of the QRTSA, Mr Barlow indicated that even though the centre is closed on Sundays his shop is open. Since Toowoomba commenced seven day trading turnover on Sunday has dropped between 20% and 25%. At the current time Mr Barlow said a seventh of the weekly trade in his shop occurred on Sunday. Mr Barlow also stated that an IGA full-sized supermarket including a small bakery had recently opened in the main street of Warwick providing seven day trading.
- [9] In re-examination by Mr Moore on behalf of the NRA, Mr Barlow said a few of his regular customers stated that if they are going to Toowoomba to shop for something which might not be available in Warwick then they do their Sunday shopping in Toowoomba as it is more convenient.
- [10] **David Stout, State Compliance Manager, Coles** in supporting the application stated Coles has one Bi-Lo store affected which will trade all allowable hours should the application be granted. Mr Stout said 85% of Coles stores trade on Sundays and holidays for a minimum of 12 hours per day. In Queensland only 12% of stores do not trade on Sundays.
- [11] Mr Stout said Sunday trading continues to grow in popularity and remains the fastest growing trading day of the week and from his experience consumers have positively and enthusiastically embraced the concept.
- [12] He said feedback to the Coles customer call centre shows a number of complaints regarding the lack of trading hours in Queensland generally relating to the closing times and that trading should be seven days per week.
- [13] Coles has three stores in Toowoomba which commenced Sunday trading on 16 May 2010. Since then changes in trading pattern have shown a re-distribution of sales across the week. Sunday trading has also had a significant impact on employment with increases in hours worked over four weeks from March - June 2010 of 7.87% at Grand Central, 14.39% at Toowoomba Plaza and 10.03% at Highfields.
- [14] Based on experience with the conversion of other six day trading stores to seven day traders, Mr Stout estimates an additional 50 hours of employment will result if the application for seven day trading in Warwick is successful. He also said that 40% of employees at Warwick Bi-Lo are under the age of 21 years making Coles a significant employer of youth in the area.
- [15] In cross-examination by Mr Martin on behalf of the SDA, Mr Stout indicated that work performed during extended trading hours should the application be granted will be voluntary and that existing employees will not suffer any detriment should they choose not to work at that time.
- [16] Mr Stout said Coles Grand Central Shopping Centre, Toowoomba has generated a 22% improvement in operational efficiencies attributed to the change to seven day trading. He believes the Warwick community will

benefit from the introduction of seven day trading as a result of increased employment, spending and convenience.

- [17] **Charles Watson, Area Manager, Big W Discount Stores** (Big W) controls 10 stores in Queensland. These stores form part of the Queensland region, which has 42 stores in total. Big W has one store in the area affected by the application at Rose City Shoppingworld and supports the application.
- [18] Mr Watson said all Big W regional stores in Australia currently trade on Sundays except non-tourist Queensland regional stores and Western Australia stores with the exception of Mandurah and Bunbury which do trade.
- [19] Currently Warwick customers have to travel to Toowoomba approximately 76 km away to shop on Sunday.
- [20] If the application is granted Mr Watson anticipates increased employment opportunities would result in 100 or more additional hours being generated by the Warwick store each week based on stores with similar trading patterns in Queensland. Mr Watson stated all Sunday work is voluntary and would remain so if the application is granted.
- [21] In cross-examination by the QRTSA, Mr Watson acknowledged that generally employees who work on Saturday will work on Sunday. Mr Watson said that the employees who work on Sunday comprise half of existing employees and the balance are new employees.
- [22] In cross-examination by the SDA, Mr Watson confirmed that any additional hours of employment would be offered to existing employees, that any additional hours will not be offered under duress and that any employees who refuse to work additional hours will not suffer any detriment.
- [23] During further cross-examination by the QRTSA, Mr Watson stated that if the application for extended trading was granted Big W would continue to support and increase that support to charities within the community.
- [24] **Scott Wallace, Regional Retail Support Manager in Queensland for Woolworths Limited** (Woolworths) states Woolworths has two stores in Warwick affected by the application. Woolworths supports the application for seven day trading in Warwick and if the application is granted both of these stores will trade the full allowable hours.
- [25] Mr Wallace said as one of the largest employers in Australia Woolworths is committed to supporting the community through a range of causes including fundraising and charitable partnerships.
- [26] He stated Warwick is the largest centre in the Southern Downs Region. He believes that the introduction of Sunday trading will provide operational benefits such as:
- reduced congestion at the registers, in-store and car park by providing an improved service environment;
  - better efficiencies of energy usage for refrigeration and air-conditioning systems; and
  - more efficient work environment for staff and better shopping environment for customers.
- [27] Mr Wallace said Woolworths stores in the greater Brisbane area have been trading well on Sundays since August 2002 and that Sunday trading has been taken up rapidly by stores in the Toowoomba area since it commenced on 16 May 2010.
- [28] Woolworths in Warwick employs 125 people through its two stores with 39% of these employees under 25 years of age. Should the application be successful Mr Wallace estimates 198 additional hours for the Woolworths store and 36 additional hours for the Food for Less store would result and that Sunday work will be voluntary for all employees. In cross-examination by the SDA, Mr Wallace confirmed that should the application be granted then any additional hours will be voluntary and will be offered to existing employees in the first instance. Further he advised that no employee will suffer any detriment if they choose not to work during those additional hours.
- [29] Mr Wallace said feedback from managers in other stores which recently commenced Sunday trade include:
- customers appreciate the savings by being able to purchase food at supermarket prices on Sundays;
  - young people who traditionally play sport on Saturdays now have the opportunity to earn an income on Sundays;
  - tourists or visitors appreciate the benefit from shops opening on Sundays; and
  - Sunday trade has contributed to a reduction in trading peaks on Saturdays reducing pressure and stress not only on the store and staff but also on customers.
- [30] In cross-examination by the QRTSA on this point Mr Wallace conceded the feedback was hearsay.

- [31] Mr Wallace's Statement had attached to it the following documents:
- Australian Bureau of Statistics 2006 Census QuickStats: Warwick (Urban Centre/Locality);
  - Warwick Economic Brief, SDRC, February 2010; and
  - Office of Economic and Statistical Research: Population and Housing Profile, SDRC, April 2010.
- [32] Mr Wallace relied on data contained in these documents to provide information about the population of Warwick. He said that Warwick had a population of 12,562 at the 2006 Census and the district had an overall population of 23,611 in 2008 with an annual increase of 1.9% from 2007 and an average growth over the last five years of 1.7%.
- [33] **Gerard Winzenberg, Queensland District Manager, Target Australia Pty Ltd** (Target) has responsibility for the business performance of 14 stores in Queensland. Mr Winzenberg said Target operates 167 stores in metropolitan and major regional centres and Target supports the application. He said the vast majority of over 290 Target and Target Country stores across Australia trade on Sundays.
- [34] Similar to Coles and Woolworths, Mr Winzenberg said Target stores in the greater Brisbane area have been trading well since Sunday trading commenced in August 2002. Despite the generally depressed retail spending across the country and State, sales growth in the Target store, Grand Central Shopping centre, Toowoomba has been 2.2%.
- [35] Mr Winzenberg stated that Target has 20 employees in Warwick and that participation by existing employees on Sunday will be voluntary. He estimates that the introduction of Sunday trading would create an additional 25 hours of employment per week. He said that typically employees who want to work on Sundays do so because it suits them. In cross-examination by the SDA in relation to Sunday work being voluntary, Mr Winzenberg confirmed that additional hours and not roster changes will be offered to existing employees prior to advertising outside. He also agreed that no employee will suffer any detriment whatsoever if they choose not to work.
- [36] Mr Winzenberg also said that Target supports the Australian community by partnering with organisations that support safe and happy families and that many team members also raise funds for local and national causes through Target stores.
- [37] In cross-examination by the QRTSA Mr Winzenberg confirmed that Sunday trading in some stores located in regional areas of other States revealed the lowest percentage of weekly sales. He added though, that Sunday has the least number of hours of trading.
- [38] Further in cross-examination in relation to alleviating the pressure on Thursday nights and Saturdays by the introduction of Sunday trading, Mr Winzenberg said this has been shown by the evidence in Toowoomba.
- [39] **Jason Gard is Centre Manager for Rose City Shoppingworld** which is part of the McConaghy Group, property developers specialising in the investment, management and leasing of shopping centres in regional areas of Queensland and New South Wales. Occupants of Rose City Shoppingworld include Woolworths and Bi-Lo supermarkets, Big W as well as 40 speciality stores and services.
- [40] Mr Gard said Rose City Shoppingworld supports the application. He stated that Rose City Shoppingworld serves as a retail destination utilised not only by consumers for purchasing goods but also as a leisure activity and that sales lost as a consequence of closure on Sundays will be lost forever. Consumers would dispose of their discretionary spend in leisure or entertainment activity at places not subject to trading hours restrictions, for example, shopping at Toowoomba.
- [41] In cross-examination by the QRTSA as to data or empirical research conducted to support loss of sales, Mr Gard was unable to provide such and relied on reports from retailers in the centre who under their current leases are required to report their sales. This information showed a decrease of 5% to 20% by retailers since seven day trading commenced in Toowoomba. In re-examination Mr Gard confirmed there is a high level of competition between shopping centres in Warwick and Toowoomba.
- [42] If the application is granted Mr Gard stated Rose City Shoppingworld will open on Sundays however trading for all tenants will be voluntary.
- [43] **Margaret Cairns, Chair, Southern Downs and Granite Belt Regional Tourism Inc.** (SDGBRT) stated that SDGBRT is a non-profit incorporated association comprising individuals from companies and organisations interested in the promotion and development of tourism on the Southern Downs and Granite Belt. The association addresses the needs and issues affecting the long-term viability of the tourism industry in the area.

- [44] Ms Cairns stated the SDGBRT Board at a meeting held on 15 July 2010 voted unanimously to pass a resolution in support of the application for trade on Sundays and certain public holidays.
- [45] Data provided to SDGBRT from the Warwick Visitor Information Centre (VIC) showed the annual number of visitors has increased from 18,018 in 2005 to 22,901 in 2009. SDGBRT recognises the strong link between tourism and retail with shopping consistently nominated as a preferred leisure activity for visitors. If the application is granted, SDGBRT consider the amenity and offering of the region would be enhanced for the many weekend visitors.
- [46] In cross-examination by Mr Rieck, Ms Cairns stated she relied on information received from the VIC concerning complaints received in relation to the lack of shops open on Sundays. Ms Cairns conceded she had no verifiable evidence to support her claim that visitors generally have limited retail offering available and expenditure is lost for the Warwick economy. Ms Cairns also could not substantiate her claim as to the link between tourism and retail but relied on the VIC data.
- [47] **Jane Summers, Associate Professor in Marketing and Associate Dean of Learning and Teaching, Faculty of Business, University of Southern Queensland (USQ)** undertook a face-to-face mall intercept survey at Rose City Shoppingworld in July 2010 on the issue of Sunday trading in Warwick at the request of the NRA. The survey was conducted on one Saturday between the hours of 9.00 a.m. and 3.00 p.m. and one Thursday evening between 4.30 p.m. and 7.30 p.m. A total of 370 shoppers were surveyed with 80% of those surveyed being Warwick residents.
- [48] The Executive Summary of the Survey Report stated that a majority of respondents (47%) said they would like to see Sunday trading in Warwick, 27% did not care if there was Sunday trading and 26% said they would not like to see retailers open on Sundays. Respondents were evenly divided on the issue of whether Warwick's economy will suffer now that Toowoomba has Sunday trading. Similarly, opinion was equally divided on whether or not it was fair that Warwick does not have the same shopping hours as Toowoomba.
- [49] The survey revealed 90% of respondents indicated that they anticipated the introduction of Sunday trading in Warwick would have a positive or no impact on their household's lifestyle.
- [50] Mr Moore referred Dr Summers to the Statement of Mayor Bellingham, SDRC in relation to the surveys conducted in Stanthorpe and Warwick by the SDRC. Dr Summers indicated that some of the information was not as complete as it could have been to allow a "really informed position on the results of the data". In particular there was no demographic data provided from any of the surveys. She said such information makes a difference when shopping profiles of consumers are being investigated and its absence made it difficult to determine how representative the data is when it is not known how well it represents the population profile.
- [51] Dr Summers also expressed reservations about the data collection methods of the Stanthorpe survey and was unclear about to whom it was administered given the various data collection methods employed, viz., online, hard copy and hand-delivered in the street.
- [52] In cross-examination by the QRTSA in relation to the SDRC surveys, Dr Summers agreed with the results that people were not in favour of seven day trading, however she noted the results as contradictory in that Stanthorpe retailers who currently operate seven days said it was a positive move.
- [53] In cross-examination by the QRTSA in relation to conducting the USQ surveys on Thursday evening and Saturday and the possibility of the population being skewed towards Sunday trading, Dr Summers indicated that she had observed Thursday evening respondents were mostly elderly, retired, pensioners or unemployed whereas Saturday respondents were families, younger people and employed. However Dr Summers was surprised the results of the survey revealed not a biased response rate but completely the opposite.

### QRTSA

- [54] **Stephen Dyball, Owner/Operator, Foodworks Clifton** has a medium size retail store situated 30 minutes from both Toowoomba and Warwick and trades seven days a week from 7.00 a.m. to 7.00 p.m. Mr Dyball said he has experienced a 10% reduction in sales since the introduction of Sunday trading in Toowoomba. He felt if Warwick were to follow Toowoomba and sales are taken out of Clifton the growth and prosperity of the town will decline dramatically.
- [55] In cross-examination by the NRA Mr Dyball claimed residents of Clifton travel to Toowoomba to conduct a full shopping experience. Even though Mr Dyball did not oppose Sunday trading in Toowoomba at the time he said if he had been given the opportunity he would have objected.

- [56] **Andrea Bushman, Owner/Manager, Caltex on Wallace** operates a convenience store and sells fuel seven days per week from 6.00 a.m. to 7.00 p.m. Ms Bushman said that due to the Supa IGA store opening in Warwick she has experienced a 30% downturn on Sundays.
- [57] Ms Bushman said that approving seven day trading will devastate small business in the Warwick community. She relies on the benefit of Sunday trade and she said her business would not survive if Woolworths and Coles were permitted to trade on Sundays.
- [58] In cross-examination by the NRA Ms Bushman said that approximately 70% of her customers were local and 30% were tourists as her business is located on the New England Highway.
- [59] In further cross-examination Ms Bushman said that her biggest competition was weekend trade by Woolworths, Bi-Lo, Food for Less, IGA, Aldi and Westside. Ms Bushman also said that convenience lines were her main incentive for business and not petrol.
- [60] Ms Bushman in response to questions from the NRA said she has experienced approximately 15% growth with turnover in excess of \$2.8 million over a period of three years. She also said that approximately 80% of total sales would be for fuel.
- [61] In response to a question from the Bench, Ms Bushman said that as a result of the Supa IGA store opening her store had experienced a 30% downturn and two other store managers had spoken directly to her advising they had been similarly negatively affected.
- [62] **Peter Tansky, Owner/Operator of Warwick Toyworld**, said his small family-owned and operated independent retail business currently operates 5½ days per week. His business does not open on Thursday nights or Saturday afternoons. Mr Tansky said if Sunday trading was permitted it would have a significant negative impact on his business forcing him and other businesses to open to try and maintain their market share. He said seven day trading will threaten the viability of his business which has already suffered a 30% decrease in overall sales since Big W opened in Warwick. Any additional decrease in sales would put him out of business.
- [63] He said Sunday was the only day of the week where he could spend time with family and friends.
- [64] Mr Tansky referred to the survey by the local WCC which showed that 83% of small business and a large percentage of the community surveyed in Warwick are opposed to seven day trading. However he said only 17 out of the 70 members of the WCC turned up to vote and questioned whether the view of the WCC could be taken seriously.
- [65] In cross-examination by the NRA, Mr Tansky stated that Big W opened in Warwick approximately 15 years ago and that his business has suffered a 30% decrease in sales over that time. Mr Tansky also said that he has not suffered any decline in sales since Toowoomba commenced trading on Sundays.
- [66] **Jason Franklin, Store Manager, Supa IGA Warwick** stated he relocated to Warwick in October 2009 to help establish and promote the new store which opened in January 2010. Mr Franklin said the Supa IGA supermarket offers a full range of grocery items including fresh produce, meat and deli lines as well as a bakery and an instore Lenard's chicken franchise. The Supa IGA operates seven days per week and public holidays from 7.00 a.m. until 9.00 p.m. and employs approximately 100 employees. The Supa IGA has strong trade on a Sunday and has not been affected by the granting of Sunday trade in Toowoomba.
- [67] Mr Franklin said as a Sunday trader his business would be affected significantly if he was to lose turnover on this particular day of the week.
- [68] If the application is approved for Sunday trading he estimates between 15-20 jobs would be lost per week and the ability to help local charity would be reduced effectively tarnishing the Supa IGA brand in the Warwick community.
- [69] In cross-examination by the NRA Mr Franklin said Supa IGA is an independent retailer which does not try to follow the supermarkets like Woolworths, Coles and Aldi. He said IGA are more of a community-based supermarket with a comparable pricing structure to the other supermarkets.
- [70] In further cross-examination by the NRA Mr Franklin agreed that Supa IGAs in other areas of Queensland and in other States compete in a seven day trading environment successfully.
- [71] In answer to a question posed by the NRA as to Supa IGA's viability should Sunday trade be granted, Mr Franklin indicated it would impact Supa IGA as Sunday is a big part of the business and obviously there would be a downturn in trade and it would not be as successful as it is currently. He indicated that Friday, Saturday and

Sunday trade represent approximately 50% of the weekly sales, and Sunday sales represent around 20% of weekly sales.

- [72] The Bench pointed out to Mr Franklin that the hours sought by the application are 9.00 a.m. to 6.00 p.m. on Sundays whereas the Supa IGA opens from 7.00 a.m. to 9.00 p.m. Although the Supa IGA trades for a longer period on that day Mr Franklin said that the opening by the non-exempt stores would still have a substantial effect on his business as trade between 9.00 a.m. and 7.00 p.m. is heavy and after 7.00 p.m. is very minimal.
- [73] In a further question from the Bench Mr Franklin agreed Supa IGA gets the majority of the trade on a Sunday as it is a full range supermarket and its prices are probably better than Caltex. He also agreed that in effect Caltex are complaining about Supa IGA opening and now Supa IGA are opposing the possible introduction of Sunday trade in other larger supermarkets even though their stocks are comparable.
- [74] **Roslyn Plant, Chief Financial Officer for the Hyslop group of companies including Southern Downs Aisles Pty Ltd trading as Supa IGA Warwick**, controls approximately 10 companies, four of which are IGAs. She provided a computer printout of Sunday Customer Count for the Supa IGA Warwick store from 24 January 2010 to the week ended 5 September 2010. Ms Plant said the customer count during this period shows that Sunday trade commenced in Toowoomba on 16 May 2010 and this did not noticeably impact upon the customer count at the Warwick store.
- [75] In cross-examination by the NRA Ms Plant agreed with the evidence by Mr Hyslop, Director of Supa IGA Warwick in his Witness Statement that the store operated on a non-competitive Sunday to remain viable and that it would cease to be a viable business if it lost any market share on any day.
- [76] In further cross-examination by the NRA Ms Plant agreed that both Kingaroy and Gatton Supa IGAs trade at higher levels than the Warwick store. Ms Plant also indicated that approximately 20% of weekly sales in Supa IGA Warwick occur on Sunday.
- [77] **Gary Kelly, Owner/Manager, Bank of Queensland Franchise, Warwick**, said he chooses not to open his office on a Sunday and is not on site from 12 noon Saturday until 8.00 a.m. Monday. He will not open his office on a Sunday for the following reasons:
- it is economically unviable;
  - it is not sustainable;
  - he is unable to take recreational leave as it is;
  - it does not provide extra employment;
  - it does not stimulate extra spending; and
  - it takes market share from the small retailers and hands it to large retailers.
- [78] Mr Kelly said seven day trading is about large retailers getting larger and squeezing out the small independent operators.
- [79] In cross-examination by the NRA, Mr Kelly said that he was aware bank trading hours are not impacted by this application. He said even though he does not open his office from 12 noon Saturday until 8.00 a.m. Monday he is available 24/7 on his mobile telephone.
- [80] **Kenneth Henrick, Chief Executive Officer, National Association of Retail Grocers of Australia (NARGA)** represents approximately 4,500 independently owned and operated small businesses in the grocery retailing sector in Australia.
- [81] Mr Henrick said deregulation of trading hours in Australia has led to a shift of market share to the two major supermarket chains, Woolworths and Coles which now have a joint market share close to 80%. He said independent grocery operators which are mostly family owned and operated businesses do not have the personal or financial resources to open longer hours than at present.
- [82] Mr Henrick referred to a report by PricewaterhouseCoopers<sup>1</sup> as to the likely impact of trading hours deregulation on the region including the loss of jobs. This showed that despite the larger supermarkets having 80% of the national grocery market combined they only employ 43% full-time equivalent employees in the Australian retail grocery sector. Independent grocery retailers with 20% of the market employ 57% of the full-time equivalent employees.

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<sup>1</sup> PricewaterhouseCoopers, *"The economic contribution of small to medium-sized grocery retailers to the Australian economy"*, June 2004 p. iv.

- [83] In cross-examination by the NRA, Mr Henrick said the Supa IGA stores are direct competitors of the major chains. He also acknowledged that IGA businesses vary in size from the minimum of 800 square metres to 1,000 square metres for Supa IGA stores and that within the Australian retailing sector some are quite big businesses.

### Southern Downs Regional Council

- [84] **Ronald Bellingham, Mayor of Southern Downs Regional Council** provided two Statements to the Commission. The first Statement included the resolution of the Council at its General Meeting held on 25 August 2010 as follows:

*"THAT the report of the Economic Development Officer dated 19 August 2010 in relation to 7 day Trading Survey be received and that Council presents to the Industrial Relations Commission information gathered in gauging community attitude towards 7 days trading, recognising that there has been an indication from the community both for and against the proposal, but judging from the information it is apparent that the community is not in favour of 7 day trading."*

- [85] In his Statement Mayor Bellingham indicated that two separate surveys were conducted in Stanthorpe and Warwick by Economic Development Officers of the SDRC.
- [86] The survey for Stanthorpe sought business and community feedback on the effects seven day trading in Warwick and Toowoomba would have on Stanthorpe business and also on consumers. The survey revealed businesses were evenly divided on whether they believed Sunday trading was economically viable. The biggest impediments as to the viability of Sunday trading revealed staff wages (69.2%) and time constraints on family/personal time (53.8%) in particular affecting owner/managers. Unavailability of staff (38.5%) was also a significant impediment to the viability of Sunday trading.
- [87] The survey of consumer respondents revealed (56.4%) indicated they did not want to see more shops open on Sunday in Warwick and 65.8% of respondents doubted they would shop on Sunday if more shops were open.
- [88] Mayor Bellingham stated the WCC surveyed all affected exempt businesses in the Warwick area and the results were overwhelmingly against seven day trading.
- [89] Mayor Bellingham also stated that the Economic Development Unit of the SDRC conducted a telephone survey of 304 randomly selected residents. This survey revealed 28.9% were in favour of introducing seven day trading, 52.9% were not in favour while 8.2% were unsure and 9.8% did not have an opinion.
- [90] The second Statement submitted by Mr Bellingham indicated that at a General Meeting of the SDRC held on 22 September 2010 the Council resolved as follows:

*"Further to the resolution of Council on 25 August 2010 in relation to 7 Day Trading:*

- 1. Council's position is that it is against 7 Day Trading based on the research that has been conducted; and*
- 2. That Council forwards a second submission to the Queensland Industrial Relations Commission; and*
- 3. That the Mayor advise the Queensland Industrial Relations Commission at the hearing that Council has passed a second resolution that it is against 7 Day Trading."*

- [91] In cross-examination by Mr Moore, Mayor Bellingham stated that in previous trading hours matters for Toowoomba and Warwick in approximately 2004/2005 Council was against seven day trading. This was with the proviso that if Toowoomba was granted seven day trading then it was imperative that Warwick also had seven day trading at that time. He further indicated that there has been a change to the structure of the SDRC since the council amalgamations in 2005 and that the situation is now different. The SDRC now includes the original Warwick shire and the area of Stanthorpe.
- [92] In continuing, Mr Moore sought clarification from Mayor Bellingham as to what occurred between the SDRC meeting of 25 August 2010 when it passed a resolution effectively not taking a particular position, to the later meeting held on 22 September 2010 when the SDRC passed a resolution to oppose seven day trading. This was despite survey results being available on 25 August 2010. Mayor Bellingham stated that there were some reservations by councillors when the first motion was moved and passed. Additional information was provided directly to councillors and in the view of Mr Bellingham this changed the minds of some councillors.
- [93] Mr Moore questioned Mayor Bellingham in relation to research and the methodology undertaken by the SDRC in conducting surveys. Mayor Bellingham said the most significant survey was undertaken by the Economic Development Officers by telephone across the geographic area of the region. Mayor Bellingham was unaware of

the methodology used as to the person in the household responsible for undertaking the shopping or whether respondents to the survey currently utilise Warwick for any of their shopping needs.

- [94] Mayor Bellingham agreed that 35% of respondents to the survey indicated they would shop in Warwick if it was open on Sundays and that this is a fairly significant proportion of the shopping population.
- [95] Mayor Bellingham further agreed in cross-examination that from the script, specific information about the details of the Application, such as the hours sought, was not provided by officers of the SDRC who administered the survey to telephone respondents.
- [96] In terms of the second resolution submitted by the Council, Mayor Bellingham as a representative indicated there was not universal agreement to the resolution.
- [97] In cross-examination by Mr Rieck, Mayor Bellingham stated leakage of business from Warwick to Toowoomba to be significant and had been for many years. Further Mr Rieck sought and Mayor Bellingham confirmed that the current position of the SDRC is against seven day trading within their boundaries and he believed this to be in response to the survey that was conducted.

### **Warwick Chamber of Commerce**

- [98] **Mr John Randall, President of the Warwick Chamber of Commerce** stated that at the meeting of the WCC on 16 August 2010 the following resolution was passed:

"The Chamber acknowledges the importance of the retail sector in Warwick as being both the major employer and a key economic driver for the region. The Chamber also acknowledges that Warwick must maintain its position as a key regional sector. As the voice of Warwick business, the Chamber takes the broader view of the long-term benefit for the overall business community. Given that Seven Day Trading is optional, the Chamber respects the right of individual Warwick businesses to decide whether to trade seven days or not. Therefore, whilst recognising the views and opinions of its members and potentially-affected retailers on the matter of Seven Day Trading gained through the Chamber's research and consultation, the Warwick Chamber of Commerce supports the introduction of Seven Day Trading in Warwick at this time."

- [99] In cross-examination by the NRA, Mr Randall said when the WCC was aware of the application a public information evening was held with representatives of the applicant, the major shopping centre owner and a solicitor to provide as much information as possible. A survey was then conducted among approximately 120 retailers who would be affected within a designated area. Media articles, both editorial and paid, were prepared on the basis of the decision reached.
- [100] Mr Randall said the WCC reached the position that it was a personal view of each person that they did not want to open on a Sunday not that seven day trading was good or bad for the economy. The WCC took the broader, more holistic view to consider the prosperity of the Warwick economy which they had to protect, sustain and encourage by supporting the application.
- [101] In cross-examination by the QRTSA, Mr Randall confirmed that the level of awareness in the general Warwick community about seven day trading was quite low. When questioned about whether all members of the WCC who were eligible to vote were present Mr Randall said there was probably 23%, approximately 17 out of the 70 members, however more than 10 members constituted a quorum. Mr Randall said all members and non-members were advised and none of the members who were not there had voiced concerns. He said 83% said they were not in favour of seven day trading in Warwick.
- [102] In cross-examination by the NRA, Mr Randall said that 79% of members indicated they would trade if Sunday trading was granted.

### ***Consideration of the evidence and submissions***

- [103] In relation to making an order under s. 21 of the Act the Commission must have regard to the criteria listed in s. 26 of the Act. In making its decision the Commission will consider the evidence and submissions with reference to the criteria listed in s. 26.

#### **(a) Locality**

- [104] The NRA noted that Warwick is located approximately 80 kilometres south of Toowoomba and 160 kilometres south-west of Brisbane. The town falls within the SDRC area and the majority of non-exempt shops located in the SDRC area fall within the defined "Warwick" area. Warwick is the major regional service town for the SDRC area and the NRA submitted it has a diversified and sustainable economy.

- [105] In its submissions the QRTSA submitted that the NRA failed to adduce any compelling evidence that the nature of the locality supports the granting of the application. Rather, the evidence of Mr Tansky and Mayor Bellingham reinforced the conservative nature of the community and in this regard Mayor Bellingham said that this was a feature the Council had taken into consideration in formulating its position.

*Consideration and finding*

- [106] We accept that Warwick is a major regional service town for the SDRC area and is located a short distance away from Toowoomba. This view was reinforced by the inspections that were undertaken by the Full Bench. We note the extent of the retail infrastructure found within Warwick, including the presence of a number of major chain stores in Rose City Shoppingworld.
- [107] We also have considered the evidence of Ms Cairns that Warwick is strategically located at the junction of the major highways from Melbourne, Sydney and Brisbane. Given this and the importance of Warwick as a major regional service and shopping centre we are satisfied that the criterion of locality weighs in favour of the grant of the Application.

**(b) Needs of the tourist or other industry**

- [108] In respect of this factor the NRA referred to the evidence of Ms Cairns that the board of the SDGBRT unanimously supported the Application and her other evidence outlining the various tourist attractions in the Warwick area. Reference was also made to the data contained in her statement that the SDGBRT estimated that tourism contributed between \$60 and \$65 million to the Warwick economy in 2009.
- [109] The NRA also noted that Mayor Bellingham had characterised the tourism industry as "very significant" and said there are "a lot of visitors to the region".
- [110] In contrast the QRTSA said only limited evidence was before the Commission in relation to this factor. In particular, the QRTSA took issue with much of Ms Cairns' evidence, contending that no firm or verifiable data underlined her assertions about the link between tourism and retail or the complaints about inadequate retail offer on Sundays; the finality of loss of expenditure to Warwick when shops were not open on Sundays and that improvement in the amenity and offering in Warwick would be improved were trade on Sundays to be permitted.
- [111] The QRTSA relied on the evidence of Mayor Bellingham and Mr Tansky that tourists were attracted to Warwick because of its charm rather than the availability of seven day trading. In addition, the evidence of Mr Franklin was that the shopping needs of tourists could be accommodated by the Supa IGA Warwick. On this point the NRA noted that the Supa IGA could not provide the same diversity of retail offer as the other non-exempt stores, particularly the non-supermarket stores.

*Consideration and finding*

- [112] The evidence of Ms Cairns sets out at some length the various tourist attractions of, and the events that are held annually in, Warwick. An Attachment to her Witness Statement listed the 2010 calendar of events for the Morgan Park Raceway, where dragway, raceway, polocrosse and equestrian events take place. This calendar shows events were scheduled on more than half of the Sundays in the 2010 calendar year. In addition, a range of other events occur annually, including on weekends. These include the Warwick Rodeo and the Jumpers and Jazz festival in July. While many tourists may be attracted to the charm of the town the events taking place in Warwick show that there are other reasons to visit Warwick on weekends. When considered with the tourism data supplied by Ms Cairns we accept that the tourist industry in Warwick is significant for its size and its contribution to the local economy. This view is supported by Mayor Bellingham.
- [113] Although Ms Cairns was unable to provide statistics of the complaints received from tourists to the VIC about the lack of shops open on Sundays, we note her uncontested evidence that during the Morgan Park events visitors to the town can be seen wandering on the main street searching for open shops. We accept as a reasonable possibility that some visitors from other towns and cities may not be aware that Sunday trading does not exist in Warwick. The submission by the NRA that the Supa IGA cannot supply the same retail offer as other non-exempt stores is accepted insofar as the non-supermarket stores are concerned.
- [114] We also note the submissions of the QRTSA that the evidence of Ms Cairns did not make the link between tourism and retail. It is true that Ms Cairns could not do this in her testimony, however, her evidence also was that shopping is consistently listed as a preferred leisure activity for tourists. We continue to accept as a matter of logic that seven day trading can assist in meeting the needs of tourists who are visiting the town on Sundays or for longer periods including Sundays: see *Trading Hours - Non-Exempt Shops Trading by Retail - State*

(Mackay Area).<sup>2</sup> However, consideration of the evidence overall leads the Commission to the view that shopping is largely incidental to tourism in Warwick.

[115] For these reasons we consider that this factor weighs in favour of the grant of the Application.

**(c) Needs of an expanding tourist industry**

[116] In support of this factor the NRA again relied on the evidence of Ms Cairns. Her evidence was that visitation to the VIC had increased by 45% over the past five years, with an average growth of 9% per year.

[117] The QRTSA highlighted the absence of any verifiable data showing that the expansion of the tourism industry is reliant on the availability of Sunday trading now or into the future. Rather, the increase in visitation has occurred despite the absence of such trading.

*Consideration and finding*

[118] The Commission accepts the submission of the NRA that this factor does not require the Applicant to demonstrate that the expansion of the tourism industry is dependent upon the granting of the application. However, the criterion does require evidence to satisfy the Commission that the needs of an expanding tourist industry would be better able to be met were seven day trading to be available. We do not consider that sufficient evidence in this regard has been provided to satisfy the Commission. However, rather than this factor having a negative impact we consider it to be neutral.

**(d) Needs of an expanding population**

[119] The NRA referred to the evidence of Mr Wallace who included in his Statement data about population growth in the area. The data, taken from the Office of Economic and Statistical Research: Population and Housing Profile - Southern Downs Regional Council April 2010, showed that Warwick has experienced an average of 1.7% per annum growth in population over the last five years. The regional population for the local government area is estimated at 34,456.

[120] The QRSTA pointed out that the population growth in Warwick is lower than the State population growth average and the data included in Mr Wallace's Statement showed that the projected population growth rate for Warwick and the Southern Downs is lower than that projected for the State. Moreover, the NRA had failed to adduce evidence to show how the current retail infrastructure was failing to meet the needs of the current and expanding needs of the Warwick population. In all, it was the submission of the QRTSA that the NRA had failed to demonstrate that the ongoing population needs are dependent on the granting of the application or the ongoing population needs cannot be met under the existing trading hours.

[121] In response the NRA submitted that the evidence of Mr Franklin and Ms Plant about the popularity of Sunday trading at the Supa IGA shows that the expanding population requires retail service over seven days and the evidence of witnesses from the large non-exempt stores highlighted the customer patronage, especially by families, on Sundays in those stores which are allowed to trade.

*Consideration and finding*

[122] The Act requires the Commission to consider the needs of an expanding population and thus the rate of population growth is not a relevant consideration.

[123] In our view the establishment of the Supa IGA in Warwick showed a level of unmet demand especially in respect of those hours outside the allowable trading hours for non-exempt stores, including Sundays and public holidays. Given the recent addition of the Supa IGA to Warwick, there is no evidence to suggest that the existing trading hours regime in Warwick is unable to meet the needs of the population.

[124] The evidence around this factor was not compelling such that we have considered it to be neutral.

**(e) Public, consumers, and business interest**

[125] The main focus of the submissions by both the NRA and the QRTSA concerned this factor.

[126] The NRA submissions largely referred to the evidence given by the witnesses about consumer sentiment (Dr Summers and Mayor Bellingham); business sentiment (Mr Randall and Mayor Bellingham) and retailers both supporting and opposing the application. Much of that evidence has already been outlined (see summary of

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<sup>2</sup> *Trading Hours - Non-Exempt Shops Trading by Retail - State (TH/2007/7) - Decision* <<http://www.qirc.qld.gov.au>>.

witness evidence above) and is not repeated here. Suffice to say that the NRA was critical of the methodology of the surveys conducted by the SDRC and thus submitted that weight should not be placed on them and the NRA survey preferred.

[127] In respect of the business interest, other than that of the Supa IGA, the NRA said that:

- Ms Bushman had lost sales due to the opening of the Supa IGA and was unlikely to lose more if seven day trading was granted;
- Mr Tansky's main complaint related to the decrease in sales experienced with the opening of Big W in Warwick about 15 years ago. He currently trades fewer hours than his competitors and indicated he did not intend to trade on Sundays if the application was granted. Accordingly, Mr Tansky was not in a position to give reliable evidence about the effect of seven day trading when he was choosing not to compete on a range of hours with the local and Toowoomba based competitors; and
- Mr Kelly's evidence should be afforded limited weight given he was providing a personal view unsupported by evidence and with a strong bias against large retailers.

[128] The NRA said the Supa IGA business was the main opponent of the Application and was not, in its submission, the type of business the Legislature had in mind when forming the restrictions in the Act. In this regard the NRA referred to the evidence of Ms Plant who said that the Hyslop Group, which owned the Supa IGA in Warwick, controlled 10 companies in the Group including four IGA stores, a fresh buying company, a newsagency, a bakery and a strip mall in Gatton. Staff in the Warwick store were employed by two different employment companies - one for employees in a butchery and the remainder by a separate company. Mr Franklin's evidence was that at any given time between 16 and 20 staff could be employed on the floor of the store and that the staff in the butchery and bakery were additional to this.

[129] The submissions of the QRTSA also drew on the evidence of the witnesses with the focus on the evidence given in opposition to the Application. Again the submissions of these witnesses is not repeated here, it has however been considered in reaching our conclusions.

[130] In relation to consumer interest the QRTSA particularly relied on the consumer survey conducted by the SDRC and the evidence of Mayor Bellingham in relation to it where he said "... it is clear that the majority of residents are not in favour of introducing 7 day trading to Warwick".

[131] Just as the NRA had been critical of the survey undertaken by the SDRC, the QRTSA criticised the survey undertaken by the USQ. The QRTSA was especially critical of the commercial relationship between the NRA and the USQ, leading, in the view of the QRTSA, to a "skewed product".

[132] In respect of business interest the QRTSA relied again on the survey undertaken by the SDRC in preference to the position adopted by the WCC at its August 2010 meeting. The QRTSA noted that in a survey undertaken by the WCC, 79% of Warwick traders surveyed were opposed to seven day trading and did not believe it would lead to increased profitability.

[133] In relation to the consumer interest the SDRC relied on the survey of households undertaken by Council staff and rejected Ms Summers' criticisms. Mayor Bellingham also noted that the SDRC had received correspondence from the Ministers Fraternal opposing the application.

[134] In respect of the business interest the Mayor noted the impact of the Supa IGA on the Rose City Shoppingworld as well as small retailers such as Caltex where the impact had been quite significant. However, he indicated concern if the success of the Supa IGA was used as a catalyst in extending trading hours.

[135] In submissions for the WCC Mr Randall expressed concern that small retailers opposed the Application but declined to engage in the process before the Commission to ensure their position was put. Mr Randall stressed that the decision taken by members at the meeting of August 2010 recognised the importance of the retail industry in Warwick and was in the best interests of the overall Warwick economy.

### *Consideration and finding*

[136] We have previously expressed the view in other Trading Hours applications that all surveys have their limitations: see, for example, *Trading Hours - Non-Exempt Shops Trading by Retail - State (Mackay Area)*.<sup>3</sup> We consider that no survey provides definitive evidence about consumers' interests. At best, they give an indication of consumer attitudes to the vexed question of shopping hours. We accept though that, short of many individual consumers giving evidence to the Commission, surveys are perhaps the best way to ascertain those interests.

<sup>3</sup> *Trading Hours - Non-Exempt Shops Trading by Retail - State (TH/2007/7) - Decision* <<http://www.qirc.qld.gov.au>>.

- [137] In this case we are concerned that the survey conducted by the SDRC does not contain sufficient demographic or household information to be satisfied that the attitudes expressed are representative of the community. Similarly, the survey undertaken by USQ, while professionally prepared, suffers from the fact that it only captured respondents on days and times where it is possible that they may prefer extended trading hours. However, because the USQ survey contained demographic and household information and was able to link this to consumer attitudes we have placed marginally greater weight on it.
- [138] The results from the USQ survey did not disclose majority support for Sunday trading. The survey of the residents/consumers undertaken by the SDRC also showed majority opposition to seven day trading. When the two surveys are considered together the Commission is persuaded that the interests of consumers do not favour the grant of the application.
- [139] The Commission has also been presented with evidence about the survey undertaken by the WCC which was relied on by the SDRC in making its decision to oppose the Application. The survey by the WCC, conducted in September 2009, is at odds with its formal position adopted by vote where a quorum of members was present at a meeting in August 2010. Although there has been criticism of the relatively small number of members of the WCC who were present for the vote, we are satisfied from the evidence of Mr Randall that members were aware that the WCC was intending to make a decision on the issue. One view of the matter is that the members were not so concerned about the question that they felt the need to attend. However, a survey of members had been undertaken in September 2009 which showed overwhelming opposition to seven day trading. This survey excluded tenants of the Rose City Shoppingworld, national operators, banks, solicitors and associated services.
- [140] The Commission has considered the evidence of those witnesses from national non-exempt stores. We accept their evidence that a range of operational efficiencies accrue from being able to open their stores on seven days of the week. We have also noted their evidence of consumer support for Sunday trading where it has been permitted in regional towns and cities by Order of this Commission and where it operates elsewhere in Australia. Determination of trading hours applications made with respect to a particular locality requires the Commission to consider the particular facts and circumstances of the locality in question having regard to the criteria provided by s. 26 of the Act. It follows then that while one seven day trading application may meet the criteria in one locality another may not. The Act demands a case by case consideration of applications.
- [141] The Commission has also considered the support given to the Application by small business owner, Mr Barlow, who considers his business will benefit were the Application to be granted. However, other small business owners believe that Sunday trading will negatively impact on their businesses. This is especially the case of the Foodworks store in Clifton which has already been impacted by the extension of trading hours granted to Toowoomba in May 2010.
- [142] In relation to other small business interests we accept the submissions of the NRA concerning the evidence of Ms Bushman, that is, her sales have been significantly impacted by the opening of the Supa IGA and are unlikely to be further impacted were the application to be granted. The evidence of Mr Tansky also suffers from the fact that he presently does not trade on Thursday nights or Saturday afternoons when his competitors trade and he is unlikely to trade on Sundays. The evidence of Mr Kelly was a personal view and thus not especially helpful to the debate.
- [143] The position of the Supa IGA has brought into sharp focus an issue which has been emerging in trading hours cases in recent times. That issue concerns Supa IGA stores which are able to be structured in such a way to ensure that they are not classified as non-exempt stores. However, as the evidence has shown in this case such stores may be owned by a group, which overall, employs a significant number of people and operates several stores. Often their floor size and retail offer is comparable to non-exempt supermarkets. Because of the way such stores are structured they are able to open on Sundays, public holidays and at other times when non-exempt stores are not permitted to trade. By their structure and resultant trading times it might be considered that such stores can be seen as having an advantage over their non-exempt competitors.
- [144] In making these comments we make clear that we are not suggesting that owners of such businesses are flouting the law; rather they are taking commercial advantage of the law which they are legitimately entitled to do. We also note that such businesses may not have the same buying power as the large supermarket chains but the evidence is that Metcash, a supplier of packaged groceries to the independent sector, is now the third biggest company in that sector of the industry.
- [145] In this case we have heard evidence that the advent of the Supa IGA in Warwick had the effect of reducing Ms Bushman's business by 30%. The Supa IGA was unapologetic about that. However, here, and not unnaturally, it wishes to protect its market share by opposing the prospect of its major competitors trading on Sundays and public holidays. We note the concern expressed by Mayor Bellingham that the success of the Supa IGA should not be used as a catalyst to extend trading hours, however, it appears to us that those who own Supa IGA stores wish to enjoy a privileged position of being able to take trade from smaller grocery stores while retaining a competitive advantage in terms of trading hours over non-exempt stores when for all intents and purposes they are providing a very similar retail offer on similar floor sizes.

[146] We do not know whether the submissions of the NRA are correct when it said that the Supa IGAs were not the type of business the Legislature had in mind when formulating the trading hours restrictions. We were not provided with any parliamentary materials to support that contention. However, the emergence and prevalence of these stores has introduced a new dimension into trading hours cases which we are increasingly being required to address under existing legislation.

[147] Trading hours applications as a matter of course require the Commission to weigh the competing business interests. In this case the direct evidence from business given to the Commission has been supplemented by the evidence of the WCC and evidence from the Mayor about the reliance placed by the SDRC on the survey undertaken by the WCC in 2009. Clearly, in this case the business interests are divided. As there is only one criterion encompassing public, consumer and business interests, in the circumstances of this case we have concluded that given the lack of support by consumers and the divided business interests that this criterion has not been satisfied.

**(f) Alleviation of traffic congestion**

[148] The NRA acknowledged no evidence in relation to this factor was adduced.

[149] The QRTSA submitted that in light of this admission the Commission should not consider this factor provides any support for the granting of the Application.

*Consideration and finding*

[150] In light of the admission by the NRA this factor is not relevant to our determination.

**(g) Likely impact on employment**

[151] The NRA submitted that the witnesses in support of the application identified that over 23,000 hours of additional employment on Sundays would be generated annually if the application was granted. A further 3000 hours would be available on public holidays. Given the penalty rates applicable on Sundays and public holidays, 200% and 250% respectively, the NRA argued that this would have a significant multiplier effect in terms of the benefit to the Warwick economy.

[152] In contrast, the NRA said that in light of the employment mix and the estimated loss in gross sales meant that the evidence from the QRTSA witnesses concerning anticipated job losses was overestimated. The evidence of Mr Henrick concerning job losses was also discounted because of the lack of data to support his claim.

[153] The QRTSA relied on the evidence given by its witnesses called in opposition to submit that job losses would be considerable. The evidence of the retailers from non-exempt stores could not be considered to be reliable given they were only estimates. Further, the evidence of Mr Henrick was that job losses were the result of trading hours deregulation and transfer of market share from non-exempt stores to independent stores, not limited to grocery retailing. In light of all of this the QRTSA submitted that his factor weighed against the granting of the application.

*Consideration and finding*

[154] All of the witnesses appearing for non-exempt retailers estimated the increase in employment that would be generated were the application to be granted. Although the proposed figures were criticised by the QRTSA as being only estimates, we accept that the non-exempt retailers are able to provide reasonably accurate projections based on their experiences from other localities where seven day trading has been introduced. In our view whether the increase results in more hours being available to existing staff or results in new employment being generated is immaterial because any increase in employment hours is generally beneficial not only to the employees concerned but to the local economy.

[155] The Commission is conscious that small retailers fear employment losses as a result of the introduction of seven day trading. In trading hours cases the question of employment impact requires a balance being found between the employment growth experienced by the non-exempt stores and potential job losses by independent stores. Here, we consider the employment growth to be considerable and outweighs any negative impact.

[156] The Commission also notes that based on the undertakings given by non-exempt retailers that work on Sundays and public holidays would be voluntary by existing employees and no employee would be disadvantaged if they did not wish to work on those days, the SDA consented to the application.

[157] In the circumstances outlined above we consider that this factor weighs in favour of the application being granted.

**(h) Local government view**

[158] The NRA submitted that the view of the SDRC should be given limited weight for the following reasons:

- (i) the former Warwick Shire Council had considered it imperative that Warwick be granted seven day trading if Toowoomba gained such trading hours;
- (ii) the research relied on by the SDRC in formulating its ultimate position was known to it when it passed its first resolution not to express a view about the application;
- (iii) in any event the research is deficient in a number of respects; and
- (iv) the alteration to the resolution of the SDRC one week prior to the hearing of the application occurred in circumstances where the research was known and substantial lobbying of Councillors had occurred, leading, in the submission of the NRA, to a "significant question over the independence of the final resolution of the Council".

[159] The QRTSA was most critical of the NRA for trying to rely on decisions of former Councils and for criticising the final decision of the SDRC, including the basis upon which it was made. The QRTSA was firmly of the view that the resolution of the SDRC to oppose the application was made based on "all available information, and the circumstances that affect its locality and people determined to oppose the current Application".

[160] In his submissions to the Commission, Mayor Bellingham said that the SDRC had responded to the opinion of the general community. He noted the importance of retail to Warwick and to the region. However, it was necessary to balance the community impact of seven day trading with the commercial impact. Those interests have been detailed under the heading dealing with consumer and business interests.

[161] The SDRC was also concerned about the potential flow-on effects to retailers in other towns in the region such as Stanthorpe, Killarney and Allora. However, the Mayor discounted the impact of seven day trading in Toowoomba on Warwick.

*Consideration and finding*

[162] The relevant local government has taken a position of opposition to the application. The position of the SDRC strengthened between its meeting of August and September 2010. In making its decision the SDRC took into account the survey of business and the survey of households, both of which showed greater opposition to seven day trading than support. In our view the SDRC was entitled to act as it did.

[163] We consider no weight can be placed on the view of the previous local government. Clearly, the Commission must be concerned about decisions made in respect of the application which is before it for determination.

[164] In other decisions concerning trading hours the Commission has noted that the view of local government carries the same weight as any of the other factors under s. 26 of the Act, *Trading Hours - Non-Exempt Shops Trading by Retail - State (Mackay Area)*.<sup>4</sup> That view is maintained in the present application. Nonetheless, the Commission accepts that the view of the SDRC weighs against the granting of the application.

**(i) Other relevant matters**

[165] The NRA raised the following points:

- (i) Warwick residents are currently accessing Sunday trading in Toowoomba, incurring unnecessary travel time and costs;
- (ii) the comment by Mr Henrick that Supa IGA stores are direct competitors of major chains and such competition was not limited to Woolworths and Coles; and
- (iii) that 85%-90% of the Australian population have access to seven day trading.

[166] The QRTSA submitted that none of the other matters raised by the NRA provide sufficient basis for support of the application.

*Consideration and finding*

[167] We accept the submissions of the QRTSA and find that nothing has been put by the NRA which is relevant to our determination.

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<sup>4</sup> *Trading Hours - Non-Exempt Shops Trading by Retail - State (TH/2007/7) - Decision* <<http://www.qirc.qld.gov.au>>.

## Conclusions

[168] In making this decision the Commission has relied on the evidence and submissions made during the hearing of the application and has taken into account the submissions made in *Trading Hours - Non-Exempt Shops Trading by Retail - State (Natural Disasters)*.<sup>5</sup>

[169] In this matter several of the s. 26 factors have been found to weigh in favour of the granting of the application. These are:

- the locality;
- the needs of the tourist industry; and
- the impact of the order on employment.

[170] Weighing against those are:

- public, consumers and business interests; and
- the view of the SDRC.

[171] The neutral factors are:

- the needs of an expanding tourist industry; and
- the needs of an expanding population.

[172] The alleviation of traffic congestion and other relevant issues have not factored in our deliberations.

[173] In reaching a conclusion as to whether the Application should be granted we are struck by the fact the local community has not shown support for seven day trading. Both of the consumer surveys do not show majority support for Sunday trading. The local business community has been ambivalent about the Application and the SDRC has reached a clear position of opposition to the Application. In our view this lack of local support is significant in our decision to refuse the Application and is sufficient to outweigh the positive employment impact a favourable decision would have and the other criteria weighing in favour of the grant of the Application.

[174] The Application is refused.

[175] Order accordingly.

D.A. SWAN, Deputy President.

G.K. FISHER, Commissioner.

J.M. THOMPSON, Commissioner.

### *Hearing Details:*

2010 24 and 28 May  
15 June  
29 and 30 September  
2011 28 January  
4 February

### *Written Submissions received:*

1 November (NRA)  
26 November (QRTSA)  
3 December (NRA in reply)

### *Appearances:*

Mr J. Moore, National Retail Association Limited, Union of Employers on behalf of the Applicant.  
Mr N. Rieck, Neumann & Turnour Lawyers on behalf of Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers).  
Mr T. Martin, Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees.  
Mr R. Bellingham, Southern Downs Regional Council.  
Mr J. Randall, Warwick Chamber of Commerce.

Released: 18 February 2011

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<sup>5</sup> *Trading Hours - Non-Exempt Shops Trading by Retail - State (B/2010/27 and Others) - Decision*  
<<http://www.qirc.qld.gov.au>>.