

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Another (TH/2008/4)

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

DEPUTY PRESIDENT SWAN
DEPUTY PRESIDENT BLOOMFIELD
COMMISSIONER FISHER

12 July 2010

DECISION

MISSION BEACH AREA AND BARGARA AREA

- [1] The National Retail Association Limited, Union of Employers (NRA) has made an application to amend the *Trading Hours Order - Non-Exempt Shops Trading by Retail - State* (the Order) in the Bargara and Mission Beach areas (as defined) and All Other Tourist and/or Seaside Resorts (as defined).
- [2] This matter had previously been listed before another Full Bench of the Commission. That Full Bench had permitted the hearing of the two matters under the one application.
- [3] When allocated to this Full Bench, a determination was made to continue the hearings in that vein, primarily because the parties had proceeded to prepare for hearings on that basis. This Full Bench made it clear to the parties that the matters were to be heard and determined separately and that this Full Bench would not, in future, permit multiple applications, incorporated within the one application.
- [4] The parties advised that a number of witnesses who had prepared affidavits for the original hearing would either rely upon the original statements which had been prepared with updates or would seek to provide a new statement.
- [5] The earlier Full Bench had given permission for some witnesses, whose evidence would be common to both hearings, to give that evidence at the end of the hearings in Brisbane. That evidence, common to both hearings, is referenced in the Mission Beach decision and is applicable as well to the Bargara decision. The evidence will not be referenced twice.
- [6] All of these earlier arrangements were acceptable to all parties and to the Commission, in the discreet circumstances of this case.
- [7] The amendment sought is as follows:

"1. By deleting clause 3.2(7) and inserting the following in lieu thereof:

(7) The Bargara and Mission Beach Areas (as defined) and All Other Tourist and/or Seaside Resorts (as defined)

The Bargara Area and Mission Beach Area (as defined):

	Opening Time	Closing Time
Monday to Friday	8.00 a.m.	9.00 p.m.
Saturday	8.00 a.m.	5.30 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.

All Other Tourist and/or Seaside Resorts (as defined):

	Opening Time	Closing Time
Monday to Friday	8.00 a.m.	9.00 p.m.
Saturday	8.00 a.m.	5.30 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 deleting clause (5) of Schedule 1 and inserting the following in lieu thereof:

(5) *Tourist and/or Seaside Resorts* - Rainbow Beach; Tin Can Bay; Burrum Heads; Woodgate; Elliott Heads; Moore Park; Keppel Sands; Emu Park; and the islands off the sea coast of Queensland being part of the State of Queensland.

Provided that for the purposes of trading on Sundays and Public Holidays this definition excludes the islands as defined in clause (1) of Schedule 1.

3. By inserting the following new clauses in Schedule 1:

(25) *The Bargara Area* - The area within the following boundaries:

Commencing at the junction of Hughes Road and Blain Street in Bargara, then continue along Blain Street in a north-easterly direction until its end; then continue from the end of Blain Street in a straight line in a north-easterly direction until the Esplanade; then along the Esplanade in a Northerly direction until its junction with McCavanagh Street; then along McCavanagh Street in a westerly direction until its junction with Hughes Road and then along Hughes Road in a southerly direction to the point of commencement.

(26) *The Mission Beach Area* - The area within the following boundaries:

Commencing at the junction of Banfield Parade and Wongaling Beach Road in Wongaling Beach; then along Wongaling Beach Road to its junction with Tully Mission Beach Road; then along Tully Mission Beach Road in a southerly direction until its junction with Webb Road; then along Webb Road in an easterly direction until its junction with the Esplanade; then along the Esplanade in a northerly direction until it joins with Banfield Parade; then along Banfield Parade in a northerly direction in a northerly direction until the point of commencement."

The Legislation

[8] Section 21 of the *Trading (Allowable Hours) Act 1990* (the Trading 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) 8a.m. and 9p.m. for Monday to Friday;

(b) 8a.m. and 5p.m. 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."

[9] Section 26 of the Trading Act states:

"26 Matters relevant to s 21 order

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

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

Applicants and Respondents

[10] Both components of the application have been made by the NRA. Both parts of the application are supported by Australian Workers' Union of Employees, Queensland (AWU) and the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees (SDA) and opposed by the Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) (QRTSA). The AWU, whose members work within the Mission Beach area under consideration, was unable to be represented during that part of the hearing. The SDA, whose members work in the Bargara area under consideration, stated that it would be unable to be present during the Bargara hearing. However, both advocates from the AWU and SDA would be present at the continuation of the hearing in Brisbane.

Inspections

[11] At the request of the parties, inspections were undertaken by the Full Bench at the following locations. [Note: Most inspections were undertaken by driving past the location, however, the Full Bench conducted some walk-through inspections. These will be identified hereunder.]

Bargara

Bargara Central Shopping Centre, Cnr Davidson and Bauer Streets (Walk through)
 Bargara Beach Convenience Store, Shop 9, Bauer Street (Drive past)
 Bargara Esplanade (Drive past)
 Learmonth's Foodworks, 56 Walker Street, Bundaberg (Drive past)

Mission Beach

Mission Beach Supermarket, Porter Promenade (Drive past)
 Woolworths, 38-40 Dickinson Street (Drive past)

- [12] The evidence which has been adduced during this hearing will be considered pursuant to the requirements of s. 26 of the Trading Act. After considering all evidence under these specific headings, the Full Bench will make either an observation or finding.
- [13] Note: In response to questions posed by AWU in Mission Beach and SDA in Bargara, all retailing businesses which would be affected by the granting of this application stated that work on a Sunday for employees would be on a voluntary basis.

Mission Beach

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

- [14] Mission Beach is located mid-way between Townsville and Cairns and is made up of four beachside communities which include Bingil Bay, Wongaling Beach, South Mission Beach and Garners Beach.
- [15] After Council amalgamations in March 2008, Mission Beach is now included within the Cassowary Coast Regional Council which has also incorporated the Cardwell and Johnstone Shires.
- [16] The applicant states that Mission Beach is a popular destination for Cairns and Townsville residents. There is an array of accommodation from which to choose.
- [17] There are many developments underway at Mission Beach, including a Meetings/Incentive, Conference and Exhibition Centre (MICE). MICE will cater for clients by providing 20 motel rooms, 120 apartments, three swimming pools, 250 basement car parks and 40 above-ground car parks. [Applicant's Statement of Facts and Circumstances - point 16].
- [18] Significant construction is occurring in the region. At Wongaling Beach, four shops and 44 units will be developed and construction valued at \$28 million will be completed in December 2009. Further construction is planned for a Beach Club and Spa at Mission Beach with 120 two-bedroom units being built. This project is valued at \$75 million. Fairways Country Club is also under development. This is a residential golf course consisting of 55 architecturally designed homes and 40 terrace units. The value of this construction is \$56 million.
- [19] There are a number of smaller convenience stores located throughout this region which have unrestricted trading hours. Woolworths is situated at Wongaling Beach which is south of Bingil Bay and Mission Beach and north of South Mission Beach. It is around the opening hours of the Woolworths store that this application is based.

Consideration and/or finding re: (a)

- [20] Within this locality there are a range of smaller exempt stores primarily centred around the Mission Beach Village area. That Village has an array of retail outlets - e.g. a supermarket, a beauty salon, the post office, hairdressers, clothing and variety stores and various food outlets and restaurants.
- [21] Woolworths is not in close proximity to these stores, being located some distance from the Mission Beach Village area at Wongaling Beach and is by far the largest store within the area.

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

- [22] The applicant asserts that Mission Beach is a significant tourist area. The area attracts tourists because it offers an array of accommodation and activities which include eco-friendly and environmental tours which cater to the needs of birdwatchers, adventure travellers, and those who enjoy extreme sports such as tandem skydiving and white water rafting. [Statement of Facts and Circumstances - point 13]
- [23] Tourists are also attracted to the area because of its walking tracks (Tam O'Shanter National Park), rainforests filled with Fan Palms and the Bicton Hill Lookout. Other popular tourist activities within the area include fishing, horse riding and parachuting. Dunk Island is a nearby island which attracts local and international visitors. Boat cruises operate from Mission Beach to the island as well as from Mission Beach to the Great Barrier Reef.
- [24] Mr William Cummings, principal of Cummings Economics, gave evidence that in early 2007 he had been commissioned by the Cardwell Shire Council to provide a research paper on the "Economic Impact of Tourism in Cardwell Shire", "aimed at obtaining reliable data for the Shire on visitor numbers and demographics, length of stay and expenditure and tourism facilities and services available within the Shire." [Exhibit 1 - point 3]

- [25] In June 2007, Mr Cummings provided a report to the Cardwell Shire Council entitled "Value of and Development of Tourism in the Cardwell Shire/Mission Beach Area".
- [26] The report highlighted a number of factors:
- 180,000 visitors stayed overnight in the Cardwell/Shire/Mission Beach area, accounting for 730,000 visitor nights;
 - Day visitors were estimated to account for a further 120,000 extra visitor days;
 - The type of activities sought by tourists included visits to Dunk Island, visits to the reef (sight-seeing), and visits to a national park. For backpackers, the activities of swimming, rafting and visiting waterfalls rated highly and for caravan park visitors, visits to Paronella Park;
 - Tourism industry employees tended to live in the local area;
 - Approximately 40% of tourist expenditure is on accommodation. [Exhibit 1 - Value of and Development of Tourism in the Cardwell Shire/Mission Beach Area];
 - Under the heading of "Estimated Tourism Employment", much of Mr Cummings' statistical data, whilst compiled in June 2007, relied upon the 2001 Census Visitor Data;
 - Mr Cummings referred to "base industries" stating that within particular non-metropolitan areas in Australia "a service structure builds up including transport and energy, wholesaling, retailing, business services, medical and government services, that often comes to employ more people than those employed directly in the 'base' industries.". Within the Cardwell Shire (which includes the Mission Beach area), the economy has traditionally been built upon exploitation of outstanding plant growth potential, along with marine and tourism resources. [Exhibit 1 - Impacts of Tourism on the area's economy - point 4.3.1];
 - Tourism within this region now accounts for about a quarter of the value of the region's "base" industries earning income from outside the region; and
 - Mr Cummings says that the 700 jobs directly related to the tourism industry, accounted for about 13% of the region's estimated workforce. [Exhibit 1 - The Position of Tourism in the Area's "Base" Industries and Economy - point 4.3.3]
- [27] Ms Jennifer Downs (elected representative for Division 3 of the Cassowary Coast Regional Council) (the Council) gave evidence on an individual basis and emphasised that she was not giving evidence on behalf of the Council. Ms Downs believed that there was a "culture" within Mission Beach which attracted tourists to the area. This "culture" incorporated activities such as the markets which opened most weekends. She believed that the revenue gained from this and other like activities ensured that there was a share of revenue going to coffee shops, speciality stores and newsagents.
- [28] Ms Downs made reference to the 2031 [sic] Regional Plan for the area which stated "Protection of the natural attractions and character of the region is important to the sustainability of the tourism industry in the region. Although the tourism industry is looking to diversify into areas such as cultural and business tourism, nature based activities are expected to remain the major drawcard and the focus of product promotion for the region. Sustainable opportunities must be identified and developed to cater for nature-based tourism needs over the long term.".
- [29] A number of witnesses (Ms Salter [Exhibit 5], Ms Holland [Exhibit 6] and Mr Salleras [Exhibit 9] made reference to meeting the needs of tourists in the area. The evidence showed that the major retail activities were centred in and around the Mission Beach Village area with the availability of a supermarket, the post office, a beauty salon, hairdressers, clothing and variety shopping as well as various eateries and restaurants.
- [30] With regard to the needs of "other industries" within the locality, NRA point to the evidence given by Mr Scott Wallace (Regional Retail Support Manager in Queensland for Woolworths Ltd (Woolworths) where he stated that:
- Sunday trading relieves congestion at the shop registers on Saturdays;
 - Sunday trading alleviates car parking congestion experienced by supermarkets on a Saturday by spreading over the week-end the hours in which customers can shop;
 - In departments such as meat, bakery and delicatessen, there are inefficiencies encountered as a result of a shut-down at 5.30 p.m. on a Saturday and a start-up on Monday at 8.00 a.m.;
 - Efficiencies would also be found in the areas of refrigeration and air-conditioning as there would be no shut-down period. This would produce better economies of scale as there would be a more appropriate use of energy resources; and
 - Seven day trading also alleviates the peaks in scheduled deliveries and the store replenishment processes providing a more efficient work environment for employees and a better shopping environment for customers. [Exhibit 20]

Consideration and/or finding re: (b)

- [31] The Mission Beach area attracts a significant number of tourists. The statistical data obtained from Mr Cummings supports that proposition.
- [32] What has been clearly drawn from the evidence given by witnesses opposed to the application is that the attraction of Mission Beach is its uniqueness. Reference has been made to the "culture" and character existing within the area. Tourists are drawn to the Mission Beach Village Area to experience this culture.
- [33] The evidence shows that there is a vibrant village atmosphere present and that there is a real desire to preserve that sense of uniqueness not only for the local residents but also for the tourist industry.

(c) the needs of an expanding tourist industry

- [34] There was no evidence adduced upon this criterion.

Consideration and/or finding re: (c)

- [35] This is not a consideration in this matter.

(d) the needs of an expanding population

- [36] While some information around this consideration would have been presented by a witness for Mission Beach Tourism, ultimately that witness did not attend the hearing.
- [37] The Cardwell Shire's current estimated population is 10,157 which represents a 0.7% increase over the previous year.

Consideration and/or finding re: (d)

- [38] There has been insufficient material given around this criterion for the Full Bench to make any informed comment.

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

- [39] The public interest is met in large part by considering the mandatory requirements as set out in s. 26 of the Act.

Consumer interest

- [40] In 2009, Mr Cummings was commissioned by the NRA to undertake a survey of consumers at the Woolworths shopping centre in Mission beach.

"Compass Research was asked by the National Retail Association to carry out a survey of persons visiting the Woolworths Shopping Centre Mission Beach over the course of Saturday 14th November 2009 to establish attitudes to the proposal to extend tourism area shopping hours to the Mission Beach area, a move that would result in Woolworths' large supermarket at the centre being allowed to open on Sundays." [Exhibit 2 - Introduction - 1.1]

- [41] Interviews were conducted over the hours 9.30 a.m. to 4.00 p.m. at the shopping centre by two interviewers.
- [42] Mr Cummings stated that the "disadvantages" associated with the survey were:
- "That the population surveyed was restricted to persons shopping in the Woolworths Shopping Centre; and that
 - Time constraints meant that there was one day available to carry out interviews and the sample achieved was 123 only."
- [43] Of those surveyed, 76% were from the Mission Beach area and a further 11% were from the Cassowary Coast area. The remaining 7% were from the Far North/North region and 5% were visitors to the region.

- [44] Of those surveyed, 63% gave the following reasons for why it would be convenient to shop on a Sunday in Woolworths:
- Extra choice of goods;
 - Closer to home;
 - Sunday is a convenient shopping day if one works during the week or/Saturday;
 - Paying much more for goods on a Sunday at smaller convenience stores.
 - Convenience;
 - Day off work;
 - Ease of shopping;
 - Extra day to shop;
 - Flexibility of shopping time;
 - Last minute shopping;
 - Less travel, better prices;
 - Local tourism;
 - Normal shopping hours;
 - Extra hours to shop for the family;
 - To be able to shop before Monday; and
 - Purchasing fresh vegetables. [Exhibit 2 - 7/14]
- [45] In response to questions posed under the general heading of "Attitude to Woolworths Mission Beach Opening on Sundays", 65% of respondents said that, in light of seven day shopping in other tourist areas of the State, Mission Beach should be granted seven day trade.
- [46] That element of the survey showed that "those living outside the Mission Beach area tended to be more in favour of the application than those living in the Mission Beach area". [Exhibit 2 - 8/14] The primary reason given by those opposed to seven day trade was that there would be an adverse effect upon local/small businesses, that six days of shopping are sufficient and that Sunday is regarded as a "day off". [Exhibit 2 - 8/14]
- [47] Ms Holland is a permanent resident of the Mission Beach area and gave evidence that she enjoyed a friendly association with the various retailers in the Mission Beach area. Ms Holland said that the Mission Beach area was popular with tourists and local residents and she did not wish to see a drift towards Woolworths at Wongaling Beach. She believed that such a move would cause difficulty for local traders. Local traders had offered enormous support to the community during difficult times, such as during the cyclone season when they were "always there for us". [Exhibit 6 - point 10]
- [48] Mr Harris (President of the Mission Beach Cricket Club) cited Mission Beach AUR Supermarket as one which had sponsored the Cricket Club which encouraged junior sportspeople "in their pursuit of achievement and character building which in turn benefits these young people as they move into their teenage years and then onto adulthood". [Exhibit 7 - point 3]
- [49] Ms Jennifer Jones stated that she was aware of a petition with 1,000 signatures from citizens in opposition to seven day trade by Woolworths which had been presented to the local Council. [Exhibit 4 - point 3]. That survey was not presented to the Commission. The Council did respond to that survey and that detail will be provided under the consideration of the Local Government's view of the application.

Consideration and/or finding re: (e) - consumers' interest

- [50] We are conscious of the fact that the survey conducted by Mr Cummings on behalf of the NRA is very limited in scope. It was conducted over one day and restricted to persons shopping in the Woolworths Shopping Mall. There were only 123 participants.
- [51] While some information can be garnered from that survey (all of which was positive to the application to varying degrees, and for varying reasons), it must be viewed within context. Had it been a broader survey with the inclusion of a wider range of consumers, the results may have been different.
- [52] In all, we accept to a limited degree, the results of that survey. Overall, there was very little support for the application other than by representatives for Woolworths and the small sample of consumers.
- [53] The opposition to the application was much stronger. The application was opposed by all other witnesses - from individual residents, small traders, a sporting association and a conservation group.

Consideration and/or finding re: (e) - Business interest (whether small, medium or large)

Small business interests

- [54] Save for the evidence given by a witness for Woolworths [under "large business" interests], all other evidence, under 26(e), was adduced from small traders within the Mission Beach region and citizens of Mission Beach.
- [55] Ms Jones' was aware that several businesses had closed as a direct consequence of Woolworths Supermarket and Service Station commencing trading. She was also aware of numerous job losses within the region as a consequence. Small business, through the operation of markets on most weekends in Mission Beach, was assisted as visitor spending money spread through the community from sales in coffee shops, speciality stores and newsagents. [Exhibit 3]
- [56] Ms Holland believed extended hours for Woolworths would adversely affect the retailers in the Mission Beach area "with whom locals have afforded an affable and enjoyable friendly association". [Exhibit 6 - point 3] Within the Mission Beach area are two caravan parks and back-packer accommodation together with the Tourist Information Centre and the Community for Coastal and Cassowary Conservation Inc. [C4]. Tourists accessing these facilities would be disadvantaged were any of those local stores to close as a consequence of seven day trade. They would have to travel some distance to Wongaling Beach to purchase their various groceries etc.
- [57] Mr William Harris (President of the Mission Beach Cricket Club) said his association relied upon sponsorship from the local AUR Supermarket. The Cricket Club also makes donations to various sporting clubs, Meals On Wheels and other charities. There had been a reduction in the sponsorship from the AUR supermarket "as they struggle to survive which has forced us to increase our senior membership" fees. [Exhibit 7 - point 4]
- [58] Mr Colin Batts (Manager/Proprietor for Igguldens Clothing, Footwear and Travel Goods of Tully, Cardwell and Mission Beach) gave evidence that he currently operates two full-time stores in Tully, one part-time store in Cardwell and another part-time store in Mission Beach. The original store has been in operation within the area for 58 years.
- [59] Mr Batt's evidence was that it was stores such as his which had taken the risk of introducing new products to consumers; researching and experimenting with products suitable to the local consumers; researching feedback from customers and providing the type of goods most acceptable to these consumers. Woolworths, in his view, has set up a store in the region and obtained the benefit of all the hard work which he has done, but does not provide any other service to the area.
- [60] It was his belief that many new residents to the area had moved into the region because of the prevalence of a village atmosphere. This would be lost, in his view, with the commencement of seven day trade.
- [61] Similar sentiments to those expressed above were given in evidence from Mr Salleras, Ms Rowlands [Marketing Manager from the Tropical Island Picnics and Camping], Ms Gallie [Manufacturer from Liz Gaillie Jewellery Bingil Bay] and Ms Sklenar [owner of Flame Café and Takeaway, Mission Beach] and Ms Falstein [an employee from Mission Beach Supermarket].
- [62] Ms Jennifer Jones is the proprietor of the Mission Beach Supermarket, Beachtown, Mission Beach. This supermarket has been owned and run by the family since 1987. Ms Jones' evidence was that the granting of the application would seriously affect the viability of her business and of those nearby. Ms Jones said her business was open from 6.30 a.m. to 8.00 p.m. seven days per week including public holidays.
- [63] Ms Jones stated that it was often touted by larger traders that tourists did not differentiate between the days of the week and wanted their needs met expeditiously. Ms Jones said the type of business she operated was able to do this. Woolworths, on the other hand, was going to open on Sundays from 9.00 a.m. to 6.00 p.m., and on public holidays from 8.30a.m. to 5.30 p.m. Ms Jones' apprehension was that if smaller businesses were adversely affected by seven day trade and had to close their doors, then tourists in the Mission Beach area would be beholden to the trading hours offered by Woolworths. She believed that this would have dire results for the small traders in the region.
- [64] Ms Jones' business is a sponsor of many local sporting activities.
- [65] Mr Kenneth Henrick (Chief Executive Officer of the National Association of Retail Grocers of Australia (NARGA) gave the following evidence:
- NARGA represents approximately 4,500 independently owned and operated small businesses in Australia;
 - Deregulation of the market has resulted in a shift of market share to the two major supermarket chains - Woolworths and Coles;

- The likely impact of trading hours' deregulation on the region includes a loss of jobs;
- Despite Woolworths and Coles having 80% of the national grocery market, Woolworths, Coles, Aldi and Franklins combined employ only 43% of 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;
- Both Woolworths and Coles offer illusory "benefits" to their customers, such as petrol discount shopper docket, "clearly cross-subsidised by their other businesses, meaning that higher prices in markets where competitive pressures are low cross-subsidise the shopper docket discounts". [Exhibit 22 - point 11]; and
- Mr Henrick stated that because of the market share held by Woolworths and Coles, they became the price-setter in their retail environment often to the detriment of the consumers.

[66] Mr Henrick also submitted into evidence a report undertaken by PricewaterhouseCoopers entitled "The economic contribution of small to medium-sized grocery retailers to the Australian economy, with a particular focus on Western Australia" - June 2007. This report was commissioned by NARGA to assess the retail economy in Western Australia. That Report is now a little dated, and as it relates primarily to the Western Australian retail sector, its value to a trading hours' decision in Queensland in 2010 is debateable. However, as this matter commenced before the Commission [as constituted] in late 2009, the following points are noted by the Commission:

- Approximately 17% of total household expenditure is taken up with purchases of food and non-alcoholic beverages;
- Retail trade plays a vital role in supporting other Australian industries, including:
 - Road transport, commercial refrigeration and storage;
 - Food and beverage manufacturing (representing 21% of the total Australian manufacturing industry);
 - Food wholesaling (representing 16% total Australian wholesale trade); and
 - Gross Value Added of retail trade, food, beverage and alcohol manufacturing, road transport, and transport services and storage was approximately equal to over 11% of GDP in the financial year 2006. This shows the strong economic contribution that retailing and its support services make to the national economy.

[67] Mr Phillip Chapman (Director of Advantage Retail Management Pty Ltd) gave the following evidence:

- With the trend shift towards extended trading hours, Mr Chapman stated that "there are other important underlying factors that can have long term adverse effects on a retail business, and more specifically retail premises under lease." [Exhibit 23 - point 6];
- Those retailers on short-term leases who choose to compete with the major stores during Sunday trading in a shopping centre are exposed to immediate increases in occupancy costs through the applied operating expenses of the shopping centre. [Exhibit 23 - point 7];
- The cost of opening shopping centres on a Sunday includes costs for lighting, air conditioning, cleaning and security amongst other costs and these costs will be apportioned to only those retailers who open;
- Prospective lessees who indicate that they would be prepared to trade on a Sunday are considered more favourably by centre management than those who choose not to do so; and
- Mr Chapman also stated "given that the sensitivity of the commercial markets in these areas are as delicate as the environments that they harbour, such development of large supermarkets and the ancillary speciality retail outlets required to subsidise same these would have a devastating effect on such regions." [Exhibit 23 - point 18]

Medium business interests

[68] There was no evidence adduced around this criterion.

Large business interests

[69] The only "large business" evidence was adduced from Mr Scott Wallace from Woolworths. Mr Wallace's evidence was as follows:

- Woolworths is an "iconic Australian retailer" which engages with more than 3000 large and small suppliers with a focus on local producers. [Exhibit 20 - point 5];
- Woolworths is the second largest employer in Australia with more than 107,000 employees across the country. In Queensland, there are approximately 23,000 employees engaged by Woolworths;
- Mr Wallace referred to general claims which had been made by the QRTSA to the effect that Woolworths and Coles had contributed to higher prices for consumers;
- In response to that claim, Mr Wallace stated that in 2008, the Minister for Competition Policy and Consumer Affairs directed the Australian Competition and Consumer Commission to hold a public inquiry into the

competitiveness of retail prices for standard groceries. Matters taken into consideration by the inquiry included, but were not restricted to:

- The Current structure of the grocery industry at the supply, wholesale and retail levels including mergers and acquisitions by the national retailers;
- The nature of competition at the supply, wholesale and retail levels of the grocery industry;
- The competitive position of small and independent retailers;
- The pricing practices of the national grocery retailers and the representation of grocery prices to consumers;
- Factors influencing the pricing of inputs along the supply chain for standard grocery items;
- Any impediments to efficient pricing of inputs along the supply chain;
- The effectiveness of the Horticulture Code of Conduct, and whether the inclusion of other major buyers such as retailers would improve the effectiveness of the code;
- The Inquiry found that the grocery retailing in Australia is "workably competitive" and that "any possible weakening in the level of competition in retailing is unlikely to have been a substantial contributor to food price inflation in Australia". [Exhibit 20 - point 11]; and
- Statistics produced by Mr Wallace showed that the typical distribution of trade across Brisbane stores showed that Sunday attracted 12.71% of trade, remembering that the opening hours of a Sunday were shorter than those on Monday to Friday.

[70] Mr Wallace stated that:

- Trade over seven days of the week relieves congestion at the registers on a Saturday;
- There was also a more efficient use of trolleys and a generally improved service environment;
- In departments such as meat, bakery and delicatessen, inefficiencies result from the shut-down on 5.30 p.m. Saturday to the start-up on Monday at 8.00 a.m.;
- More efficient energy results from seven day trading as refrigeration and air-conditioning systems continue to run when the store is closed; and
- Seven day trade also helps smooth out peaks in scheduled deliveries and the store replenishment process.

[71] Mr Wallace stated that the feedback he had received from store managers showed that:

- Customers appreciated the savings they made by being able to purchase food at supermarket prices on a Sunday;
- Young people who traditionally play sport on Saturdays now had the opportunity to earn an income on a Sunday;
- Tourists or visitors whose schedule did not recognise any difference between the days of the week have benefited from shops opening on Sundays;
- Sunday trade had contributed to a reduction in trading peaks on Saturdays which used to place pressure and stress not only on the store and staff, but also on customers; and
- Over-crowding and over trading of the store on Saturdays is a cause of customer dissatisfaction and frustration.

Consideration and/or finding re: (e)

[72] The evidence in this matter from citizens and small traders in the Mission Beach area has been significant in opposition to the application. In fact there was no local support for the application save for the evidence given by Mr Wallace for Woolworths and the rather limited survey conducted by Mr Cummings.

[73] There has been strong evidence which shows that there is a vital village atmosphere present in the Mission Beach area and that it is this "culture" which attracts tourists and visitors to the area. The evidence from the applicant has done nothing to alter that strongly held perspective.

(f) the alleviation of traffic congestion

[74] There have been no submissions around this point.

Consideration and/or finding re: (f)

[75] This is not a matter for consideration in this decision.

(g) the likely impact of the order on employment

- [76] The applicant stated that there would be increased employment in Woolworths if seven day trade was granted. The multiplier effect of increased income to employees within the area would ensure that the community benefited as a whole.
- [77] Against that evidence, small traders and community members were particularly apprehensive that there would be a decrease in trade for small traders in the area if the application was granted and this would result in the loss of jobs for many local residents.

Consideration and/or finding re: (g)

- [78] Similar evidence and submissions arise under this heading in all applications of this type. There will always be increased hours of work available in the stores seeking to trade over seven days and there will always be the prospect of job losses for smaller traders who are dependent upon Sunday trade in order to make their businesses viable.
- [79] In the circumstances of this case, however, there are discretely different facts to be considered. There has been compelling evidence to show that the village-type atmosphere within Mission Beach makes it a unique environment. We have accepted that tourists are drawn to the region for the "cultural" impact of that uniqueness.
- [80] In our view, while there would be an increase in working hours if the application was granted, the prospect of the loss of jobs in exempt stores may have the effect of diminishing the viability of those stores which add to the uniqueness of the Mission Beach area.

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

- [81] There was no representation made by the local Council. However, Ms Downs (Local Government elected representative for Division 3, covering the villages of Mission Beach, Kurrimine Beach, Cowely Beach and El Arish for the Cassowary Coast Regional Council) submitted to the Commission a copy of a Statement of Position issued by the Council with regard to this application. That Statement is as follows:

"Cassowary Coast Regional Council Local Government Meeting November 2009

Item Number 8.2

NOTICE OF MOTION - STATEMENT OF SUPPORT TO THE PETITIONERS OPPOSING WOOLWORTHS APPLICATION FOR SEVEN DAY TRADING AT MISSION BEACH - SUBMITTED BY CR J DOWNS

Moved Cr J Downs

Seconded Cr M Nolan

Resolution Number 0774

"That the Cassowary Coast Regional Council make a Statement of Support to the 950 Petitioners (both local residents and visitors) who have indicated their opposition to the Seven (7) Day Trading Application for Woolworths, Wongaling Beach.'.

THE MOTION WAS CARRIED - 6 votes to 1 with Crs J Downs, M Nolan, 1 Rule, B Horsford, C Silvestro and R Sorbello voting FOR the Motion and Cr B Shannon voting AGAINST the Motion."

Consideration and/or finding re: (h)

- [82] The Full Bench does not challenge the veracity of Ms Downs' evidence, however, in our view the sentiments purportedly from the local Council do not clearly show that the Council supports or opposes the application. Further, Ms Downs was clear that she was expressing her personal views with regards to the application and not those of the Council.
- [83] In evidence given via telephone in Brisbane on 11 December 2009, Mr Bill Shannon, Mayor of the Cassowary Regional Council gave evidence that the Council did not support the application for seven day trade in Mission Beach.
- [84] Initially, it appeared that the Council had supported those citizens who had signed a petition opposed to the application. That in itself would not have indicated specifically that the Council either supported or opposed the application. However during the hearing the following was put to Mr Shannon:

Deputy President Swan

"What view, as Mayor of that Council, what view do you say the Council has taken with regard to this application?"

Mr Shannon

"The view that the Council have taken with regard to the application is to say it supports the - by a majority vote they support the retention of the existing arrangements."

Deputy President Swan

"All right though. So they're not supportive of the application?"

Mr Shannon

"That's correct. The application for the seven day trading.". [Transcript page 6-4]

[85] The Full Bench accepts those statements as being reflective of the Council's opposition to the application.

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

[86] Mr Salleras (Chairman of the Community for Coastal and Cassowary Conservation Inc.) (C4) gave evidence that his association "is mandated to uphold the natural values of our high bio-diversity region, retain the aesthetic and cultural values of Mission Beach and protect the listed endangered southern cassowary".

[87] Mr Salleras stated that the southern cassowary (*cassarius cassarius*) is listed as endangered in Australia by the Department of Environment, Water, Heritage and the Arts. The Mission Beach area has the highest density of cassowaries in Australia. The approximate number is around 40-50 birds.

[88] The road linking Bingil Bay and Mission Beach to Wongaling Beach where the Woolworths store is located is a recognised cassowary crossing area. Regrettably, vehicle strike is the primary killer of cassowaries.

[89] Consequently, Mr Sellaras says that increased traffic resulting from locals and visitors needing to travel to Woolworths would have "a deleterious effect on the dwindling population" of cassowaries.

Consideration and/or finding re: (i)

[90] The Full Bench considers that the evidence given by Mr Sellaras favourably supports the case in opposition to the application.

[91] The area in question is well-known as a habitat of cassowaries. Within reason, we accept that there is an argument that increased traffic flow through the cassowary crossing by consumers *en route* to Wongaling Beach, where Woolworths store is situated, could be detrimental to the cassowary population.

[92] Clearly there are mandatory considerations which must be given to a number of factors when determining an application of this type. This factor could arguably have been considered under the heading of "public interest" concerns. In any event, this factor will be considered together with all other factors but it does not of itself attract greater significance than any of those other factors.

Conclusion

[93] The Full Bench has determined to dismiss the application as it relates to Mission Beach.

[94] A summary of the considerations and findings pursuant to the mandatory requirements of s. 26 of the Act are as follows:

- The locality in which the non-exempt shop (Woolworths) is situated shows there are a number of smaller exempt shops centred around the Mission Beach area. From the evidence adduced during this hearing, we accept that these shops (including a supermarket, a beauty salon, a post office, hairdressers, clothing and variety stores, food outlets and restaurants) cater adequately for the needs of the local population together with the needs of the tourist population.
- The Full Bench accepts that there are a significant number of tourists who visit the Mission Beach area. We have accepted the evidence which shows that many tourists are drawn to the area because of its particular "culture" and its village-like atmosphere. The exempt stores to which general and specific reference has been made in this decision appear to more than adequately cater to the needs of this tourist population.
- There has been no evidence around the criterion "the needs of an expanding tourist industry" to consider.
- The evidence around the "needs of an expanding population" has been insufficient for the Full Bench to make any particular commentary on this point.

- Consumer interest considerations show that there is strong support against and little support for the application.
- In terms of the consideration of "small business interests" and "large business interests", the evidence shows that there has been significant support for a continuation the *status quo* with retail hours within this region. It is simply the case that there has been clear and compelling evidence from small traders of the need to preserve the unique circumstances surrounding the Mission Beach region.
- The "likely impact of the order on employment", in the circumstances of this particular matter, is difficult for the Full Bench to ascertain. Certainly there would be increased working hours for employees engaged by Woolworths on a Sunday. The applicant can be certain about the increased working hours attached to a successful application for increased trading hours, but this is always an uncertain area for small traders. Overall, the increased hours of work for employees is favourable to the applicant's case.
- The Council has stated its opposition to the application.
- The evidence from Mr Salleras on behalf of C4 has been favourably considered by the Full Bench.

[95] Overall, the weight of evidence is against the applicant. The more meritorious evidence has been provided by those opposing the application.

[96] The application is dismissed as it relates to Mission Beach.

Bargara

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

[97] Bargara is the largest township on the Coral Coast of Queensland and has attracted "tourism" status under the Trading Hours Order. This recognition has permitted trading until 5.30 p.m. on Saturdays and trading on all public holidays except Christmas Day, Good Friday, Anzac Day and Labour Day. The current allowable trading hours regime is identical to that which is applicable in other tourist areas except in respect to the forced closure of non-exempt shops on Sundays.

[98] Bargara is situated at the beginning of the Great Barrier Reef and is the starting point for whale watching and boat trips to the coral islands of Lady Musgrave and Lady Elliott Islands. The Woongarra Marine Park preserves the coastline and offers fishing and snorkelling from the shore. Within this area there is also a golf course and a bowling green.

[99] The Mon Repos Turtle Rookery is within the area and turtles often nest at Bargara on Kelly's, Rifle Range and Nielson Park Beach.

[100] The Bargara beaches are stinger free and often patrolled. There is also a Surf Club at Bargara and the local beaches of Innes Park and Elliot Heads provide shallow surf and white sand. These are areas popular for windsurfing, kayaking, kitesurfing and waterskiing.

[101] There are a range of retail and hospitality outlets in the Bargara area. The Bargara Central Shopping Village has traded since 1998. Within the plans for that Village is a second supermarket, plus another 12 speciality shops and commercial offices. Overall, there will be three supermarkets, 32 speciality shops and 366 car parks. While this village is the largest retail facility in the Bargara region, there are a number of smaller convenience shops within the area.

Consideration and/or finding re: (a)

[102] Bargara and its immediate surroundings are regarded as a tourist destination. There is an extensive range of tourist activities within the area.

[103] There are a number of retail outlets within this area. However, it is clear that there is a concentration of more diverse retail outlets within the Bargara Central Shopping Village.

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

[104] The applicant stated that Bargara is the largest township on the Coral Coast region. Bargara offers an assortment of accommodation, dining facilities and activities catering for locals and tourists alike. Bargara is a starting point for tourists wishing to explore the area's aquatic life with reef trips, diving courses and the turtle sanctuary.

[105] Tourists are also drawn to the Woongarra Marine Park as well as a range of beaches in or around Bargara.

[106] Mr Gregory Barnes (Councillor for Division 5 of the Bundaberg Regional Council and President of the Coral Coast Chamber of Commerce and Tourism for the past 12 years) gave the following evidence based upon his personal perspectives and not as a spokesperson for the many organisations of which he is a member:

- Bundaberg Regional Tourism is one of the State's 14 Regional Tourism Organisations accredited by Tourism Queensland.
- The extension of trading hours for Bargara would encourage new retail investment into the area. It would also extend the range of services which are available to local residents and tourists.
- The encouragement to prospective retail investors would help alleviate the problems associated with many vacant retail premises.
- The south-eastern tourism catchment area is derived from the four to five hour drive market which extends from the Gold Coast to Mackay.
- Comparable towns as close as 90 minutes from Bargara enjoy extended trade on a Sunday and tourists would find it difficult to envisage why trading hours altered within such a small tourist region.
- In 2007, the Bundaberg area attracted 1.4 million visitors who injected approximately \$342 million into the economy.
- In June 2007, there were 2562 tourism related businesses in the Bundaberg region.
- Domestic overnight visitors accounted for 75% of tourism expenditure. These tourists spent \$256 million in the region in 2007 and retail shopping accounted for approximately 10% of this expenditure.
- International visitors accounted for 11% of visitors to the region in 2007 and spent around \$20 million within the region.
- There had been a 24% increase in international visitors to the year ended 2007 compared to the Queensland average of 2%.
- With these increases in tourism, a comparable increase was required in extended trading on a Sunday.

[107] Mr Barnes also cited the considerable development which was underway in Bargara. Twenty-three development sites were listed ranging from resort developments, apartments, the proposed Golf Club development and various other forms of accommodation. Mr Barnes supported the introduction by reference to these other factors:

- "The relationship between tourism and economic development in regional townships is undeniable.
- The co-dependency between the tourism and retail industries is equally undeniable and visitor surveys have consistently shown that shopping is ranked as a priority amongst all categories of tourists.
- Seven day trading facilitates the ease with which tourists can meet their needs and directly contributes to increased tourism and residential spending.
- Seven day trading assists in lessening confusion for tourists about shopping hours between the various localities within the state and the granting of similar access to trading hours between the regions will help unite Queensland's tourist industry rather than providing competitive advantages between the regions.
- Tourism is a labour-intensive industry and creates many job opportunities, especially for young people who are then encouraged to stay in local communities.
- Tourism creates opportunities to establish new and expanded infrastructure, products, facilities and services. It provides existing businesses with an opportunity to expand and to better absorb the significant costs of leasehold premises which would not otherwise be sustainable based on the resident population alone." [Exhibit 16 - point 32]

[108] Ms Kathy Baldwin (owner and operator of the exempt Zarraffa Coffee franchise located at the Bargara Shopping Village) says she has been trading in the Village from 8.00 a.m. to 6.00 p.m. on a Sunday notwithstanding that the Woolworths store was closed.

[109] Ms Baldwin says that she notices, on a Sunday, approximately 70 people trying to gain entry to Woolworths.

Consideration and/or findings re (b)

[110] There is little doubt that the area in question is a tourist destination. Bargara is a growth area and this is reflected in the increase in tourist numbers to the region and also seen in the marked increase in residential development. We note, however, that there was no documentary evidence put to the Commission by Mr Barnes to support his claims. Consequently, the views expressed by the Full Bench on this point do not and could not constitute findings, but are for consideration only given Mr Barnes' status and elected role within the Bargara area.

[111] The evidence given by Messrs Wallace, Henrick and Chapman, as previously cited in the Mission Beach decision, will be considered under this heading without restating that evidence.

(c) the needs of an expanding tourist industry

[112] Mr Barnes gave evidence that tourism in the region was generally expanding at approximately 2% per annum with business-related travel increasing, in his view, to 5% per annum. [Transcript - 7-4]

[113] In response to these trends, Mr Barnes highlighted the increase in residential developments and those under construction.

Consideration and/or findings re (c)

[114] The Full Bench notes that evidence as it purports to be representative of the growth of tourism within the area. However, Mr Barnes was unable to produce any specific documented evidence under this heading.

(d) the needs of an expanding population

[115] Before the Council amalgamations in March 2008, Bargara formed part of the Burnett Shire. This Shire along with the Bundaberg City Council, Isis Shire Council and Kolan Shire Council has now amalgamated to form the Bundaberg Regional Council.

[116] Prior to the amalgamations, the population of the Burnett Shire was approximately 27,856 people. This showed a 4.3% increase in the year to June 2005 and a 3% increase in the year to June 2006.

[117] It was estimated that by the year 2026, the population of the Burnett Shire is projected to have grown to between 41,100 and 52,000 residents.

[118] Mr Barnes stated that in November 2009, the Bundaberg Regional Council in its 2008/2009 Annual Report listed the Estimated Resident Population Statistics for Urban Centres and Localities within the region as at 30 June 2008.

[119] The statistics within this Report show that Bargara and The Sloping Hummock are the most densely populated localities in the region. Those statistics exceed the population of the predominantly urban area of Bundaberg City.

[120] The respondent claimed that Mr Barnes' evidence was not supported by any credible data. The respondent reiterated the point made by Mr Barnes - that the views expressed were his personal views and not those of any of the organisations of which he was a member, unless otherwise stated.

Consideration and/or finding re (d)

[121] The Full Bench accepts the evidence of Mr Barnes under this specific heading as it relates to the applicant's claim. The Annual Report of the Bundaberg Council 2008-2009 has been relied upon.

[122] That being said, generally Mr Barnes' evidence is noted because of his extensive community involvement in the area and the fact that he has been in public life in the region since the mid to late 1990's when he was President of the Coral Coast Chamber of Commerce and Tourism. Mr Barnes has held a range of public positions including most recently that of elected Councillor for Division Five of the Bundaberg Regional Council. In our view, Mr Barnes' evidence around questions concerning tourism and population growth is, within context, viewed as acceptable when supported by statistical evidence, however, when statistical material has not been provided, it is viewed as not being definitive on the point.

[123] The Full Bench accepts that there is a degree of population growth within the area under consideration which may require adequate retail facilities to cater for such growth.

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

[124] The public interest is met in large part by considering the mandatory requirements as set out in s. 26 of the Act.

Consumer Interest

[125] There were no specific surveys conducted reflecting the views of consumers in the application as it relates to the Bargara area.

Small business interest

[126] Ms Kathy Baldwin supports the application. Ms Baldwin owns the Zarraffa Coffee franchise located at the Bargara Shopping Village. As previously stated, Ms Baldwin trades on a Sunday from 8 a.m. to 6 p.m. even though the Woolworths store is closed. Ms Baldwin believes that if Woolworths was able to trade over seven days, then this would enhance sales within her store.

Medium business interest

[127] Mr John Learmonth is the Managing Director of the Olsens Store Pty Ltd trading as Learmonth's Foodworks. This is a family run business and has been in operation in Bundaberg since 1935. The store provides grocery goods, a service delicatessen, fresh produce and meats.

[128] Although the area encompassed by the application in question is a 15 minute drive away from his store in Bundaberg, Mr Learmonth says that his store would be greatly affected by the granting of seven day trade in Bargara to the Woolworths store. Mr Learmonth states that Bundaberg is already over-serviced by three Woolworths and two Coles stores, an Aldi store and a Super IGA. Together with these stores are a number of smaller convenience stores.

[129] Mr Learmonth is apprehensive that there would be a downturn of trade in his store if seven day trade was granted in Bargara. He believes that retrenchments would occur and he could not envisage all of his retrenched staff being employed by the major chains.

[130] Mr Learmonth supports many community fund raising events.

[131] Mr Kevin Cast is the Director of Kancast Pty Ltd trading as SUPA IGA Bargara. Mr Cast has operated his business in Bargara for ten years and trades seven days of the week. He currently employs seventy staff and his store remains open from 7 a.m. to 8 p.m. each day.

[132] Mr Cast states that Bargara has the problem of having two supermarkets, some eateries and no other stores such as hardware, jewellery, or shoe stores.

[133] If Woolworths was to gain seven day trade, Mr Cast believes that there would be a severe cutback in donations going to community funds. In the current year, \$170,000 had been budgeted for community aid. The beneficiaries of such funding aid have been the Bargara Sports and Bowls Club; the Bundaberg Surf Life Saving Club; the Bargara Lions Club; the Bargara Soccer Club; the Baraga Sailing Club; the Bargara Golf Club; the Bargara Little Athletics Club; the Bargara Ambulance; the Bargara Veterans; the Bargara Respite Centre; the Bargara State School; the Kepnock High School; the Anzac Day Celebrations; the Bundaberg Tenpin Bowling Centre as well as hundreds of smaller donations.

[134] Mr Case does not believe that business growth has been strong at the Bargara Central Shopping Village.

Large business interest

[135] The evidence given by Mr Wallace, Mr Henrick and Mr Chapman, as previously cited in the Mission Beach decision will be considered under this particular heading.

Consideration and/or finding on (e)

[136] We have considered the evidence of Messrs Wallace, Henrick and Chapman. The consideration of the Full Bench detailed in the Mission Beach decision is adopted in this decision. However, there were elements of that evidence that were specific to Mission Beach. Where there was more general evidence given encompassing both areas and the interests of "large business", we have taken such evidence into consideration.

[137] Beyond what can be termed the "generic" evidence of Messrs Wallace, Henrick and Chapman, the evidence before the Full Bench under this consideration is that of Ms Kathy Baldwin, a small business owner, who is supportive of the application, and the evidence of medium business operators, Messrs Learmonth and Cast who are opposed to the application.

[138] Ms Baldwin's position is that she has been opening her store within the Bargara Shopping Centre notwithstanding that Woolworths has not been open on a Sunday. If Woolworths was to trade on a Sunday she believes that her business would be enhanced. However, one could reasonably draw from that evidence that Ms Baldwin would continue to trade on a Sunday regardless of whether Woolworths was to open or not. However, against that evidence, the medium sized business owners, Messrs Learmonth and Cast, believe that if Woolworths were to open on a Sunday, their businesses would suffer considerably. Coupled with what they

believed would be a loss in trade and profit and possible employment of staff, there would be the loss in the community of significant funding available to local charitable and sporting communities.

[139] In our view, the evidence given by the medium sized business owners has greater merit under this particular heading than that given by Ms Baldwin.

(f) the alleviation of traffic congestion

[140] There were no submissions made around this point.

Consideration and/or finding re (f)

[141] There is no requirement to considering this component of the Act.

(g) the likely impact of the order on employment

[142] More working hours for employees may occur with the granting of the application. For small and medium sized employees, the estimation is that there would be loss of jobs, but the extent to which this may occur is largely unknown.

Consideration and/or finding re (g)

[143] There is the strong prospect of extra working hours for employees if the application was to be granted as opposed to the prospect of job losses to small and medium traders' businesses. Beyond making those observations, the Full Bench can take those matters no further.

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

[144] The Council has not expressed a view on this application.

Consideration and/or finding re (h)

[145] There is no consideration to be made under this particular heading.

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

[146] There are no other matters for the Commission to consider.

Consideration and/or finding re (i)

[147] There is no consideration to be made under this particular heading.

Conclusion

[148] Having considered all of the evidence, we have determined to dismiss the application.

[149] The applicant's case has been deficient in a range of areas. Other than the "generic" evidence of Messrs Wallace and Chapman, to which previous mention has been made, the substance of the evidence given by Mr Barnes relied upon his personal views rather than the views of any of the organisations to which he belonged. The respondent rightly, in our view, claimed that they were unable to appropriately challenge the personal evidence of Mr Barnes as there was no reliable statistical material presented to support his views.

[150] It could reasonably be presumed that reliable statistical data could have been put to the Full Bench through applicant witnesses, but either through unavailability of or withdrawal by such witnesses when the matter proceeded to hearing, this evidence was not available for the respondent or the Full Bench to consider.

[151] Notwithstanding the paucity of evidence produced by the applicant the Full Bench acknowledges that the area is a tourist destination. Under other circumstances with supporting statistical data this application may have been determined differently.

[152] There has been little support for this application within the area under consideration, and on most of the criteria which must be considered by the Full Bench in an application of this type, the evidence has either been of little substance or non-existent.

[153] The application is dismissed.

D.A. SWAN, Deputy President.

A.L. BLOOMFIELD, Deputy President.

G.K. FISHER, Commissioner.

Hearing Details:

2009 1 July
26 November
1, 2, 7, 11 December
2010 27 January

Appearances:

Mr J. Moore, of National Retail Association Limited, Union of Employers.
Ms C. Schiller, of Neumann Turnour Lawyers, and Mr K. Murphy, of Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers).
Ms S. Schinnerl, Ms R. Broanda and Mr G. Hay, of The Australian Workers' Union of Employees, Queensland.
Ms P. Town, of Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees.

Released: 12 July 2010