

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

National Retail Association Limited, Union of Employers (TH/2012/4)

TRADING HOURS NON-EXEMPT SHOPS TRADING BY RETAIL - STATE

DEPUTY PRESIDENT SWAN
COMMISSIONER BROWN
COMMISSIONER THOMPSON

17 September 2012

DECISION

BILOELA AREA

- [1] This decision has been delivered from the Bench. The Full Bench reserves the right to amend the decision as necessary before publication.
- [2] The application before the Queensland Industrial Relations Commission (the Commission) has been made by the National Retail Association Limited, Union of Employers (NRA) under the *Trading (Allowable Hours) Act 1990* (the Act), for an amendment to the trading hours fixed by the order, *Trading Hours - Non-Exempt Shops Trading by Retail* - as follows:
- [3] The amendment sought is as follows:

"1. By inserting a new clause 3.2(27) (Allowable trading hours for non-exempt shops) as follows:

(27) Biloela Area:

| | <u>Opening Time</u> | <u>Closing Time</u> |
|---|---------------------|---------------------|
| Monday to Friday | 8.00 a.m. | 9.00 p.m. |
| Saturday | 8.00 a.m. | 5.00 p.m. |
| Sunday | 9.00 a.m. | 6.00 p.m. |
| Public Holidays (excluding 25 December, Good Friday, 25 April, and Labour Day) | 8.30 a.m. | 5.30 p.m. |

2. By inserting a new clause (36) in Schedule 1 (Definitions) as follows:

(36) *Biloela Area* - the area within the following boundaries:

Commencing at the intersection of the Callide Dam Road and Dawson Highway; then in a straight line due west to the point of intersection with the Burnett Highway; then in a straight line due south to the point of intersection with the Dawson Highway; then in a south-easterly direction to the intersection of the Burnett Highway and Van Itallies Road; then in a straight line in a north-easterly direction to the intersection of Linkes Road and Callide Dam Road; then along Callide Dam Road to the point of commencement.

Provided that where the boundary is comprised of a street, road or highway, shops on both sides of the street, road or highway shall be regarded as being within the area."

Parties

NRA

- [4] The Australian Workers' Union of Employees, Queensland (AWU) was unable to attend the hearing, however, stated it supported the application as relevant witness statements attested to work on a Sunday by employees being of a voluntary nature.
- [5] The application is not opposed by any individual, business or organisation.

Inspections

- [6] Inspections were undertaken by the Full Bench and the NRA of the following areas:
- drive-by through the major retail infrastructure within Biloela;
 - visit to the Biloela Shopping World;
 - drive-by of Teys Biloela Meat Works;
 - drive-by of Callide Power Station – A and B;
 - drive-by of Callide Mine; and
 - drive-by of Callide Dam.

Witnesses

- [7] All witnesses were called by NRA. These included:
- Mr Paul Douglas (Manager of Thirsty Camel Bottle Shop) (Exhibit 1);
 - Mr Jason Grocott (Centre Manager for McConaghy Group, Biloela Shopping World) (Exhibit 2);
 - Mr Ashley Smith (Store Manager for Woolworths Limited Biloela) (Exhibit 3);
 - Mr Gerard Winzenberg (Queensland District Manager for Target Australia Pty Ltd) (Exhibit 4); and
 - Mr Paul Elliott (Owner of Donut King and BB's Café located in Biloela Shopping World) (Exhibit 5).

The Legislation

- [8] Pursuant to s. 26 of the *Trading (Allowable Hours) Act 1990*, when the industrial commission is making an order under s. 21 of the Act, it must have regard to:
- (a) the locality, or part thereof, in which the non-exempt shop or class of non-exempt shop is situated;
 - (b) the needs of the tourist industry or other industry in such locality or part;
 - (c) the needs of an expanding tourist industry;
 - (d) the needs of an expanding population;
 - (e) the public interest, consumers' interest, and business interest (whether small, medium or large);
 - (f) the alleviation of traffic congestion;
 - (g) the likely impact of the order on employment;
 - (h) the view of any local government in whose area the order is likely to have an impact;
 - (i) such other matters as the industrial commission considers relevant."

Evidence

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

- [9] Biloela is located 140 kilometres south of Rockhampton, and 120 kilometres south-west of Gladstone. It has road and rail links to both these cities and is serviced by the Leichhardt, Dawson and Burnett Highways which provide road links to Brisbane.
- [10] It also has Qantas air services Sunday to Friday into the Thangool Aerodrome and public road transport is provided by Greyhound Australia and Callide Coaches.
- [11] Biloela is the main population and administrative centre to the Banana Shire and the dormitory town for the Callide Power Stations, the Callide Coal Mine and Teys Biloela Meat Works and is the service centre for the Callide and Dawson Valleys.
- [12] Teys Meat Works is the third largest meat works in Queensland.
- [13] Biloela's retail infrastructure is the main local provider of retail services and products to the Banana Shire residents. (Exhibit 2)

- [14] In order to access other retail services on a Sunday, residents must travel to Gladstone and Rockhampton.
- [15] The main industries within the region are coal mining, beef production, power generation, dry land cropping and irrigation cropping (mainly cotton and lucerne). Teys Biloela Meat Works on the outskirts of Biloela, along with a variety of small businesses, provide major employment for this community and the surrounding area.
- [16] There are 11 public and three private primary schools, two high schools, three prep to year 10 schools, one TAFE College, most churches, five public hospitals and most business and popular sports within the Banana Shire. (Exhibit 2)
- [17] The Banana Shire has become the largest commodity producer in the Fitzroy statistical area contributing \$123m to the State's economy from rural industries alone.
- [18] Evidence given during the hearing shows that there are no comparable stores to Woolworths in Biloela. While there are fruit stores and a larger butcher store in the town, there appears to be only one small convenience-type store providing basic food necessities.
- [19] The other store in Biloela which would be affected by the granting of this application is Target Country. There are comparable stores in Biloela selling women's and men's fashions, but Mr Wizenberg stated that it was the provision of children's clothing which stood this store apart from others in the town. (Exhibit 4)

Consideration

- [20] There are no comparable stores to Woolworths in Biloela in terms of product variety and while there are fruit and meat stores in the township, it is our view that this is a location which is without a vibrant and/or competitive retail infrastructure.

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

(c) the needs of an expanding tourist industry;

- [21] NRA has submitted that the following local attractions draw tourists to the area:

- Exhibition National Park (Kroombit, Isla Gorge, Cania Gorge and Mount Scoria Conservation Park);
- man-made attractions include Silo (Biloela's primary industries exhibition) and the Myella Farmstay;
- mines, power stations and other industrial developments attract tourists;
- the Dawson River and Callide Dam provide opportunities for fishing and recreational activities; and
- there are also opportunities for indigenous based tourism packages.

- [22] Evidence given by Mr Smith states that Biloela sits on the alternative north-south highway and is a popular stop on the Dawson Highway for travellers heading both south and north. He further states that on Sundays, when working with the cleaners in his store, around 20-25 travellers passing through Biloela enquire as to whether the store is open. (Exhibit 3)

Consideration

- [23] While the tourist attractions cited may provide interest for tourists visiting and/or passing through the township, it would be our view that any tourist industry and/or expanding tourist industry would be relatively limited.

(d) the needs of an expanding population;

- [24] While there was no evidence produced discretely upon this criterion, the following evidence was provided by Mr Grocott:

The town of Biloela is the main population and administration centre in the Shire and the dormitory town for the Callide A, B and C power stations, the Callide and Boundary Hill coal mines, and Teys Biloela Meat Works and is the service centre for the Callide and Dawson Valleys. (Exhibit 2)

Consideration

- [25] In our view, this criterion is not positively met by evidence given by witnesses in this hearing.

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

[26] Evidence of all witnesses canvassed the following areas:

- the introduction of Sunday trading would give extra choice to Biloela customers;
- this convenience would be appreciated by families with children;
- there has been a leakage of retail trade to adjacent townships where trade over seven days is available;
- a successful application would see this money spent within the township of Biloela;
- seven day trade would allow for a more efficient use of capital;
- sales lost as a consequence of the closure of tenants in the shopping centre on a Sunday are not generally postponed until tenants re-open on a Monday. A significant portion of these sales are lost;
- most overheads do not increase when stores shift from six day to seven day trading;
- the cost of fitting out and stocking a store does not alter and rents remain the same;
- seven day trade provides a greater choice of product and convenience for residents of and visitors to Biloela. This is particularly so in the case of tradespersons, shift workers and farmers;
- better efficiencies of energy usage would result from the extension of trade as refrigeration and air conditioning systems currently must continue to run when the store is closed; and
- there would be greater opportunities for stock replenishment with trade over seven days.

Consideration

[27] All of the factors listed within this criterion are supportive of the granting of the application.

(f) the alleviation of traffic congestion;

[28] There was no evidence given upon this criterion.

Consideration

[29] In a town the size of Biloela, it is hardly surprising or detrimental to the application, that this criterion is not given any consideration by the Full Bench.

(g) the likely impact of the order on employment;

[30] If the application was to be granted, Woolworths stated that it would be able to provide employment for a further 23 people.

[31] These employees would be employed from the local community and work on a Sunday would be of a voluntary nature.

[32] The general consensus from witnesses in support of the application was that seven day trade would enhance employment opportunities for citizens of Biloela.

Consideration

[33] This is a positive factor in support of the application.

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

[34] The Local Government Association of Queensland, on behalf of the Banana Shire Council, stated that the Council did not oppose the application.

Consideration

[35] This is a positive factor in support of the application.

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

[36] There are no other matters for the consideration of the Full Bench.

Conclusion

[37] We have determined to grant the application. There has been no opposition to the application.

[38] We have been influenced by that factor, as well as the fact that there are no comparable stores to Woolworths and (in part) to that of Target Country in Biloela. All of the evidence supports the granting of the application and where relevant, the criteria listed in s. 26 of the Act has been positively satisfied.

[39] It has been previously stated by the Commission that it is not unusual that some of the criteria to be considered by the Commission under s. 26 of the Act is not activated by the factual situation found in applications.

[40] We order that the operative date for the implementation of this decision will be 22 October 2012.

Order accordingly

D.A. SWAN, Deputy President.
D.K. BROWN, Commissioner.
J.M. THOMPSON, Commissioner.

Hearing Details:
2012 13 September (*Inspections and Hearing*)

Appearances:
Ms A. Lamb for National Retail Association Limited, Union of Employers.

Released: 17 September 2012