

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/2009/5)

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

DEPUTY PRESIDENT SWAN
DEPUTY PRESIDENT BLOOMFIELD
COMMISSIONER THOMPSON

29 March 2010

DECISION

MOUNT ISA 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 Mount Isa area.
- [2] The amendment sought is as follows:

"1. By inserting the following new provisions in clause 3.2 of the Order as follows:

(17) Mt Isa 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 (except 25 December, Good Friday, 25 April, and Labour Day)	8.30 a.m.	5.30 p.m.

2. By inserting the following new definitions in Schedule 1 of the Order:

(24) *The Mt Isa Area* - the area within the following boundaries:

In the city of Mt Isa, commencing at the corner of Barkly Highway and Ryan Road; then in a straight line in a south easterly direction to the intersection of Barkly Highway and Breakaway Drive; then in a straight line in a south westerly direction to the intersection of Twentythird Avenue and Railway Avenue; then along Railway Avenue in a northerly direction to Camooweal Road; then along Camooweal Road in a northerly direction to Barkly Highway; then along Barkly Highway in a northerly direction to the point of commencement."

The Legislation

- [3] 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) 8 a.m. and 9 p.m. for Monday to Friday;
- (b) 8 a.m. and 5 p.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."

[4] 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

[5] The application has been made by the NRA. The application is supported by The Australian Workers' Union of Employees, Queensland (AWU) as it relates to Mission Beach. The Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees (SDA), which took no part in the substantive proceedings for the Mission Beach application, supported the position adopted by the AWU. The Bagarra application was supported by the SDA and the AWU, while taking no part in the substantive case, supported the SDA's position in that application. Both elements of the application was opposed by the Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) (QRTSA).

Inspections

[6] 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.]

JRs Sunset Supermarket SPAR, 43 Sunset Drive (Drive past);
 Woolworths - Abel Smith Parade (Drive past);
 JRs Turanga Supermarket SPAR, Cnr East & Enid Streets (Drive past);
 Foodworks, 15 Pamela Street (Drive past);
 Walters Supa IGA, 119 Marian Street (Drive past);
 Kmart Plaza, Simpson Street (Walk through); and
 Woolworths, 2 Miles Street (Drive past).

[7] The evidence which has been adduced during this hearing will be considered pursuant to the requirements of s. 26 of the Trading Act.

[8] Note: In response to questions posed by AWU, 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.

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

- [9] Mt Isa city covers an area of 41,000 square kilometres and has an urban population of 23,500 with approximately 36,000 people living in the surrounding district.
- [10] Mt Isa is the major service centre for north-west Queensland, including towns such as Cloncurry and Julia Creek. Originally Mt Isa was primarily a mining town but now has an administrative, industrial and commercial centre, offering many modern metropolitan conveniences.
- [11] There are a range of amenities within Mt Isa which include the Splashez Aquatic Centre, a cinema, a hospital, and a range of educational facilities including public and private primary and secondary schools, the School of the Air, a TAFE and James Cook University Centre for Rural and Remote Health.
- [12] Mt Isa and its surrounding region is known as the "Carpentaria Minerals Province" due to its world class copper, gold, phosphate, lead, silver and zinc deposits. The region contains 28% of the world's known lead and zinc reserves, 5% of the world's silver resources and 1.5% of the world's copper reserves, and has major phosphate and uranium deposits. There are some 19 mines operating in the region.
- [13] Mt Isa Mines commenced operation in 1924. This operation is now owned by Xstrata which acquired the business in 2003. Xstrata employs approximately 5,660 people in its copper and zinc/lead operations. There are two underground copper mines as well as an underground and two open pit zinc-lead mines. Xstrata also operate the Ernest Henry Mine, producing copper and gold, located 38 kilometres north-east of Cloncurry and employing approximately 500 people.
- [14] BHP Billiton operates the Cannington Mine located approximately 250 kilometres south/south-east of Mt Isa on a fly-in/fly-out basis. The Cannington mine is the world's largest producer of silver and lead.
- [15] Twenty-five percent of the employees in the metal ore mining operation within the Mount Isa Urban Centre are shift workers.
- [16] Mt Isa is also the regional hub for the area, servicing communities within a 300-400 kilometre radius.
- [17] Mt Isa is an isolated location being some 1829 kilometres from Brisbane and 883 from Townsville, the nearest major city. There are no public bus services operating in Mt Isa.

Consideration and/or finding re: (a)

- [18] The location of Mt Isa establishes that it is an isolated city. It is also the regional hub being a significant distance from other major cities. Mt Isa is traditionally a mining town, however, with the success of this industry, the city has established itself by providing an infrastructure with all of the typical amenities required in a city of this size.
- [19] Point 6 of this decision details the retail outlets which are primarily impacted by this application. The larger of the stores which can trade on a Sunday (Walters Supa IGA) is situated within the boundaries of this application.
- [20] Mt Isa consumers are not deprived of the opportunity to shop for most of their needs on a Sunday. However, it has been submitted that suburban stores appear to play a more significant role in this city than they might do in larger cities because of the lack of a public transport system in the town. A number of consumers (i.e. the elderly and young mothers) would, it has been submitted, be more likely drawn to suburban and local stores because of ease of access and lack of public transport.

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

- [21] The applicant submits that Mt Isa is a significant tourist destination with an award-winning tourist centre "Outback at Isa" featuring the Isa Experience Gallery and Hard Times Mine tour. Further tourist highlights are the World Heritage listed Riversleigh Fossil area, Lawn Hill Gorge, Lake Julius, Camooweal Caves National Park, Mt Isa Underground Hospital and Museum, Royal Flying Doctor Visitor Centre, Mount Isa School of the Air, the Fossicking Way tourist drive, Lake Moondarra and Kalkadoon Tribal Centre and Cultural Keeping Place.
- [22] It is further submitted that the Mt Isa Rodeo is the biggest event on the Australian rodeo calendar. For the duration of the rodeo (two weeks), all accommodation providers experience a 100% occupancy rate.

- [23] Mr John Molony is the Mayor of Mt Isa City Council. He agrees that the local tourism industry, while not large, is an "important component of our regional economy." [Exhibit 7 - point 5] However, Mr Molony says that the attributes which draw tourists to the township and region relate more to outdoor activities rather than to shopping activities. He believes that the small businesses which currently trade on Sundays provide an adequate service for tourists to the township.

Consideration and/or finding re: (b)

- [24] The available evidence points to tourists being drawn to Mt Isa and the region because of the type of outdoor activities which are, in the main, some distance from shopping areas. This situation removes this matter from the category of cases where there is an identifiable nexus between tourism and retail trade. QRTSA states that the needs of tourists appear to be adequately catered for by the present trading regime in Mt Isa.

- [25] The Full Bench accepts QRTSA's claim on this point.

(c) the needs of an expanding tourist industry

- [26] There is no evidence of any significance under this heading.

Consideration and/or finding re: (c)

- [27] This area is not one for consideration in this application.

(d) the needs of an expanding population

- [28] There has been no evidence advanced by the applicant under this particular criterion.

Consideration and/or finding re: (d)

- [29] This area is not one for consideration in this application.

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

"Public Interest"

- [30] The "public interest" can be described generally as something in which the public as a whole has a stake.

Consideration and/or finding re: (e) - "public interest"

- [31] We adopt the comments of the Full Bench in the Rockhampton Trading Hours case:

"Primarily, the 'public interest' test in these circumstances is incorporated within the specific requirements which the Commission must consider within s.26 of the Trading Act. A mandatory consideration by the Commission of factors (a) to (i), broad as these sections are, ensures that an appropriate 'public interest' consideration has been met." (NRA and QRTSA and Another).¹

"Consumer Interest"

- [32] The interests of consumers are usually obtained through a range of surveys which are conducted by the parties to the application. Surveys have been submitted by Mr Charles Hammersla, National Compliance Manager - Facilities for Kmart Australia Limited and Mr Michael Gardiner, Lecturer in Marketing with the University of Southern Queensland, Faculty of Business, Springfield Campus. The latter survey was conducted by Mr Gardiner on behalf of the applicant. Mr Brett Peterson, President of the Mount Isa Chamber of Commerce, also conducted a survey on behalf of that organization.

- [33] Mr Hammersla's evidence was that Kmart conducted surveys in some of their regional NSW stores. The stores were located in Tamworth, Lismore and Armidale. The surveys were conducted on two consecutive Sundays in July 2009. Out of that survey entitled "Kmart Shopping Hours Survey", Mr Hammersla noted that the dominant reason put forward by female customers in the workforce was that it was convenient to shop on Sundays because of "work commitments". Further, Sunday as a trading day was utilised by working families and by those in the workforce who worked longer hours including Saturdays or part of Saturdays.

¹ *National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Another (TH/2009/3) - Decision <http://www.qirc.qld.gov.au>*

[34] Mr Gardiner's survey, "Mt Isa Sunday Shopping Survey", conducted in October 2009, contained the following material:

- The Survey was conducted at two retail locations over two days. The survey involved face-to-face intercepts of shoppers at the Kmart and Bunnings Centres;
- 288 shoppers were surveyed;
- More than 90% of those surveyed were Mt Isa residents and the remaining shoppers came from surrounding areas;
- The random sample gathered through intercepts produced a relatively proportionate sample of males and females and spanned ages from 18 years to 65 plus years;
- 77% of those surveyed expressed support for Sunday trade;
- The primary reason for the support related to time and convenience with 76% listing time related reasons for shopping;
- 76% of people who are in full time employment list work commitments as their motivation to shop on Sundays;
- Of those in favour of Sunday trade, 65% said that Sunday trading would have a positive impact on their household lifestyle;
- Of those not in favour of Sunday trade, 58% said that having Sunday trading would have no impact on their household;
- Of the 77% of those supporting Sunday trade, 90% of that group said that they would shop most or every Sunday if shops were open; and
- 83% of respondents were already shopping on Sundays at a retail outlet in Mt Isa.

[35] Evidence was also given by the local Federal Member of Parliament for Kennedy, The Honourable Robert Katter. Mr Katter was opposed to the application.

[36] A summary of Mr Katter's evidence is as follows:

- Mr Katter has represented the people and businesses of Mt Isa for around 35 years whilst representing residents both as a State and Federal member of Parliament;
- Mr Katter has lived in Cloncurry for most of his life;
- Mt Isa had been served by a range of retail outlets over many years. In addition to a number of small stores, Woolworths opened its store in the late 1960's and Coles in 1975. Walters Super IGA opened for business in January 2008;
- Sunday was the best trading day for all of the smaller stores and Walters IGA;
- Until Waltons Supa IGA store opened, "an estimated 95% of all Mount Isa food was sold by the two Corporates, Woolworths and Coles.". [Exhibit 6 - point 6]
- Were these two stores permitted to trade on a Sunday, a significant percentage of the business for the small traders would be lost;
- Currently, the Woolworths and Coles stores are situated in the CBD whilst all the other stores are scattered throughout the suburbs;
- There are no public bus services in Mt Isa. Consequently, the elderly and those with small children are reliant upon the small traders whose businesses are scattered throughout the township. If the application was granted and small traders were forced to close their businesses, these people would find it difficult to access the larger stores because of the geographical concentration of such stores;
- If Woolworths and Coles were permitted to trade on a Sunday, then the other stores may be forced to close, thereby ensuring that those who live in the suburbs would be without their local stores;
- Many of the smaller traders in Mt Isa contribute significantly into the local community infrastructure. An example was given of a Cloncurry trader who, during 2008, had donated \$62,000 to local charities and had also sponsored one of the local Rugby League teams;
- Walters IGA is also a major sponsor of the North Queensland Cowboys; and
- In Mr Katter's view, "the effect of this overwhelming concentration of market powers on Australian manufacturers, food processors, and farmers is to take away effectively all profit margin." [Exhibit 6 - point 13].

[37] Mr Moloney's evidence was that local sporting events, community events and family life could suffer with the introduction of seven day trade in Mt Isa. Many of the community events were held in Mt Isa on a Sunday. These sentiments are also included in the Resolution of the local Council in its opposition to the application.

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

[38] The evidence around this point shows there is a clear difference in consumer views regarding the application. The surveys conducted by the NRA and Kmart show significant support for the concept of seven day trading. Those opposed to the application (i.e. Mr Katter and the Mt Isa Council) claimed community support as well.

- [39] We accept that the views expressed by Mr Katter carry weight to the degree that it is his job, within this town and region, to represent his constituents' attitudes. As well, to the extent that Mr Katter has been a long-term resident of the region and has represented the community for a considerable period of time, due consideration must be given to his views. However, they are views which in no way outweigh the evidence produced by others opposed to the application or those who support it. They are, put simply, views which, amongst many others, will be taken into account in reaching a decision in this matter.
- [40] All of the evidence around this section of the legislation will be considered in conjunction with a deliberation upon all of the sub-sections in s. 26 of the Trading Act.

"Small business interests"

- [41] The interests of small business were addressed by a number of witnesses.
- [42] Ms Judith Collings, who is the proprietor of Collings Foodworks, Mt Isa, gave evidence that if the application was successful she would have to consider raising the price of her products to compensate for the loss of profit as a result of reduced turnover. This store, which commenced trading in 1989, trades from 6 a.m. until 9 p.m. over seven days of the week. Nine casual employees work at the store and shifts are rotated over the seven days. Sunday trading accounts for approximately 15% of the total week's trade. Ms Collings said that when Waltons Supa IGA opened in January 2008, her store suffered a reduction in Sunday trade of approximately 9%.
- [43] Mr Molony believed that if the application was successful, many of the small retail businesses within the town would struggle to maintain viability. Mr Molony also said that if the anchor tenant in the larger shopping centres was permitted to trade on Sunday, then the smaller retailers within those centres would have little option but to trade as well.
- [44] Mr Patterson said the Mount Isa Chamber of Commerce had outsourced to a local public relations company its request to conduct a random gallop poll with 40 local businesses to gauge support or otherwise for extended trade. The industry sector of poll participants was 53% retail, 31% trades, automotive and professional services, and 15.55% tourism, accommodation, cafes and restaurants. The outcome of that survey showed 49% of businesses against the introduction of Sunday trading and 44% in support of 7 day trade. Mr Patterson stressed that one should note that of the 44% of businesses that supported extended trade, a majority of those businesses were in a field which would be unaffected by the extension of allowable retail hours.
- [45] A survey conducted by the Mt Isa Chamber of Commerce of its financial members showed that 83% were against the introduction of such trade. Mr Patterson stated that the common complaint of those opposed to the application was the "increased operational costs of opening for the extra trading day, the difficulty in providing additional staffing and the negative impact on the extra trading hours impeding on family and religion time". [Exhibit 10 - point 7]
- [46] The Mt Isa Chamber of Commerce had made a decision to adhere to the results of its surveys and record its opposition to the application.

"Medium business interests"

- [47] Mr Walters was opposed to the application. He said that he had operated supermarkets for some 35 years. He believed that his store would lose 50% of its Sunday trade if the application was granted.. Mr Walters employed 20 full-time staff, seven part-time staff and 79 casual staff. His Supa IGA store provided a full range of products to his customers.
- [48] Mr Walters also stated that he and his wife had invested heavily into the local communities where he had stores donating in excess of \$300,000 per annum. In the current year, the Mt Isa region would receive approximately \$40,000 from his business.

"Large business interests"

- [49] Within this category, evidence was adduced from witnesses from Woolworths, Kmart Australia, Coles, Best & Less, and the representative from the University of Southern Queensland - Faculty of Business, Springfield Campus who had conducted a survey on behalf of the NRA.
- [50] The thrust of the evidence from Mr Scott Wallace (Regional Retail Support Manager in Queensland for Woolworths Limited (Woolworths) was as follows:
- Woolworths have two stores affected by this application;

- Woolworths engage more than 3000 large and small suppliers with a focus on local producers. Woolworths is the second largest employer in Australia with more than 107,000 employees across the country;
- Of the 196 Woolworths supermarkets in Queensland, 150 (approximately 75%) trade on Sunday;
- Statistical data was supplied highlighting the percentage of trade conducted on a Sunday by Woolworths stores. A typical distribution of trade across Woolworths Brisbane stores shows that Sunday attracts 12.7% of the weekly trade;
- Sunday trading continues to be a very popular shopping day in those stores able to trade on that day;
- Trade on a Sunday relieves congestion at the registers on Saturdays;
- Inefficiencies result from the shut down of major stores on a Sunday in departments such as meat, bakery and delicatessen;
- A more efficient use of energy results from seven day trading as refrigeration and air-conditioning systems continue to run when the store is closed;
- Seven day trading also helps Woolworths in its peaks in scheduled deliveries and the stores' replenishment processes;
- Work by employees on a Sunday, if the application is successful, is of a voluntary nature;
- The average increase in employment hours from the introduction of seven day trade has been approximately 273 additional hours per week. Because of the two stores involved in Mt Isa this would equal an extra 546 hours per week;
- Woolworths is a major employer of young workers in Mt Isa. The granting of the application would see new employment opportunities for these young employees;
- Savings can be made by consumers being able to purchase goods on a Sunday; and
- Tourists or visitors have the opportunity to shop in these stores on a Sunday.

[51] Similar sentiments to those as stated by Woolworths were expressed by Mr Hammersla. However, Mr Hammersla stated that Kmart does not have a comparable retailer in the area under consideration.

[52] Mr Mollard (Regional Manager for Queensland for Best & Less Pty Ltd) stated that his store in Mt Isa offered a large range of clothing for the entire family together with a wide range of manchester. Particular goods offered included ladieswear, menswear, childrenswear and sleepwear. Best & Less was proud to offer customers low priced goods with a high standard of quality. Mr Mollard said that more families shop on a Sunday. Particularly, Mr Mollard stated:

"In order to purchase children's clothing, most parents like to take their children along to make sure that the garments are the right size, this is limited during the week, as late nights are not particularly family friendly and Saturdays are generally taken up by sport, music and dance lessons, and work commitments.". [Exhibit 9 - point 17]

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

[53] In common with many applications of this type, small and medium sized businesses oppose the introduction of Sunday trading while larger businesses support it. However, this application is also opposed by the local Chamber of Commerce together with the Local Council and the local Federal Member of Parliament.

[54] The opposition to the application incorporates a range of concerns. They go primarily, but not exhaustively, to:

- concerns about any potential financial disadvantage which might be suffered by small retailers;
- the location of many of the smaller retailers and accessibility of customers to these stores;
- the fact that tourists are primarily drawn to Mt Isa for outdoor type activities;
- the role that many of the small traders play in supporting community activities; and
- the belief that Mt Isa citizens are adequately catered for by the existing shopping regime in Mt Isa.

[55] The Full Bench accepts these perspectives as relevant and not supportive of the application.

[56] In contrast to this, there are the surveys which have been conducted by Kmart and Mr Gardiner. The Kmart survey was conducted in the towns of Lismore NSW, Armidale NSW and Tamworth NSW. The views expressed by those surveyed may well be similar to those which could have been given by consumers in Mt Isa, but that is as much as can be said about the relevancy of those surveys. Mt Isa is a much more geographically isolated area than any of those New South Wales towns.

[57] The survey conducted by Mr Gardiner is a relevant survey for consideration in this matter. Certainly, a majority of those surveyed expressed a desire for the application to succeed. The Full Bench has duly considered the outcome of that survey and the reasons (previously mentioned) proffered by those contributing to the survey as to why they believed that seven day trade should be granted.

[58] In consideration of all of these factors, the weight of evidence under this discrete section of the Legislation (s. 26 (e)), on balance, falls in favour of those opposed to the application. This finding will be considered in conjunction with considerations and/or findings made on all other relevant elements of s. 26 of the Trading Act.

(f) the alleviation of traffic congestion

[59] There was little evidence around this point. The only mention of congestion related to congestion which might occur at the registers in the non-exempt stores on a Saturday in the absence of Sunday trade. Were Sunday trading to be granted, then this type of congestion might be alleviated.

Consideration and/or finding re: (f)

[60] We acknowledge that there might be congestion at the registers in these non-exempt stores on a Saturday and that trade on a Sunday could assist in alleviating this situation. This factor will be considered with all other relevant factors.

(g) the likely impact of the order on employment

[61] In terms of the likely impact on employment if the application were to be granted, non-exempt stores are easily able to estimate with reasonable accuracy the number of extra hours which would be available to employees working on a Sunday. This exercise, however, is not so easy for the small traders.

[62] We note from the evidence of small traders (and particularly from Walters Supa IGA) that there are a significant number of employees engaged in these stores. Small traders can only guess as to the impact on them and their employees of Sunday trade if non-exempt stores are able to open.

Consideration and/or finding re: (g)

[63] On balance, the Full Bench accepts that the impact on employment is a factor more favourable to the granting of the application. The creation of more hours for employees is a certainty with the granting of the application and the possible loss of jobs, regrettable as that might be, is more of an unknown.

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

[64] In this matter, the Mt Isa Council has expressed a view. The Council opposes the application and resolved:

"That the Mount Isa Council oppose the application by the National Retailers' Association to further deregulate Sunday trading hours in the Mont Isa Region due to the negative impacts it will have on local sporting and community events, family life and small retail business in the Mount Isa region."

[65] Mr Moloney confirmed that the view of the Council was reached unanimously.

[66] Under cross-examination from the representative for the NRA that the Council appeared not to have availed itself of the opportunity to gain evidence from other bodies and councils or via surveys of its constituents, Mr Moloney stated that:

"To get elected to council you've got to have first-hand knowledge of your community; you've got to have been accepted by your community; you've got to have captured the hearts and minds and the interests of those who elect you. If you don't do that, if you don't travel close to the people all the time you become extinct, and we are close to our community." [Transcript - 5-57]

Consideration and/or finding re: (h)

[67] The Full Bench has before it the unanimous view of the Mt Isa Council. That view will be considered together with the criteria required for consideration under s. 26 of the Trading Act.

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

[68] There were no further matters for consideration.

Consideration and/or finding re: (i)

[69] No consideration and/or finding is relevant to this section.

CONCLUSION

[70] The Full Bench has determined to dismiss the application in toto. For reasons outlined more fully under the various sub-headings of s. 26, the application fails primarily because:

- 26(a) - The location of Mt Isa makes it an isolated city. There is no public transport system within the town. This creates a greater dependability upon small suburban stores for a number of consumers. There are many shopping outlets for consumers already available within the boundaries of the application.
- 26(b) - The Full Bench has accepted that many tourists are drawn to the city because of its outdoor type activities with less reliance upon leisure shopping. The nexus between retail shopping and tourism is not evident in this application. The Full Bench accepts that tourists coming to Mt Isa are adequately catered for with the array of shops already in existence.
- 26(c) - There was little evidence of significance around this point.
- 26(d) - There was little evidence of significance around this point.
- 26(e) - The Full Bench has determined that the evidence produced by those in opposition to the application outweighed that adduced by witnesses for the applicant.
- 26(f) - The Full Bench accepts that there may be some alleviation of congestion at the registers of the non-exempt stores on a Saturday if Sunday trading was introduced.
- 26(g) - The Full Bench accepts that there would be more employment opportunities obtained by the granting of the application, but in saying so, does not discount that there may be disadvantages suffered by small traders and their employees if businesses suffered as a result of granting the application.
- 26(h) - The view of the Local Council is clear. The Council was unanimous in its opposition to the application.

[71] In weighing all of these factors, we conclude that the application must be dismissed.

Order accordingly.

D.A. SWAN, Deputy President.

A.L. BLOOMFIELD, Deputy President.

J.M. THOMPSON, Commissioner.

Hearing Details:

2009 17 June
 1 July
 15 October
 9, 14, 15 December
 2010 27 January

Released: 29 March 2010

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, Mr P. Eldon and Mr G. Hay, of The Australian Workers' Union of Employees, Queensland.
 Mr D. Gaffy, of Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees.
 Mr M. Pratap and Ms P. Stevens, of Mount Isa City Council.