

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Others (TH/2011/5)**

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

DEPUTY PRESIDENT SWAN  
DEPUTY PRESIDENT BLOOMFIELD  
COMMISSIONER BROWN

16 April 2012

DECISION

**BUNDABERG AREA**

- [1] This application is made by the National Retail Association Limited, Union of Employers (NRA).
- [2] NRA seeks an amendment to the *Trading Hours - Non Exempt Shops Trading by Retail - State Order* (the Order) pursuant to s. 21 of the *Trading (Allowable Hours) Act 1990* (the Act).
- [3] The amendment sought is as follows:

"1. In clause 3.2 of the Order by inserting a new subclause (24):

(24) Bundaberg Area:

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

2. In Schedule 1 (Definitions) of the Order by inserting a new definition:

(33) *Bundaberg Area (which includes Elliot Heads, Bundaberg and Bargara):*

Commencing at the point where the Burnett River meets the sea coast; then by a line in a south westerly direction to the intersection of Moorlands Road and Bundaberg-Gin Gin Road; then by a line in a southerly direction to the intersection of Bundaberg-Childers Road and Bundaberg Ring Road; then by a line in an easterly direction to the point where the Elliott River meets the sea coast; and then by the sea coast to the point of commencement."

**Parties**

- [4] Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees (SDA) adopted a neutral position to the application subject to the following qualifications. The qualification is that all work performed by employees in the extended trading hours (if granted) would be on a voluntary basis. Also, that employees would not be induced by way of duress or undue influence to volunteer to work extended hours and, that there would be no recourse against employees who chose not to work during these hours.
- [5] Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) (QRTSA) opposed the application.
- [6] Master Grocers Australia (MGA) also opposed the application.

## Relevant legislation

[7] Section 21 of the Act states:

### "21 Trading hours orders on non-exempt shops

- (1) A full bench of the industrial commission may decide trading hours for non-exempt shops.
- (1A) However, the full bench is not to decide trading hours that are less than the following hours on a stated day, other than a public holiday -
  - (a) 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."

[8] Section 26 of the 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."

## NRA witness evidence

[9] The following witnesses gave evidence for the NRA:

- Mr William Hill, Area Manager for Big W Discount Stores in Queensland - Exhibit 1;
- Mr Michael Wadley, State Retail Portfolio Manager for Mirvac Asset Management Queensland - Exhibit 2;
- Mr Leonard Hibble, Queensland Central North Regional Manager for Spotlight - Exhibit 3;
- Mr Gerard Winzenberg, Queensland District Manager for Target Australia Pty Ltd - Exhibit 4;
- Mr Scott Wallace, Regional Retail Support Manager for Queensland, Woolworths Limited - Exhibit 5;
- Mr John College, Area Manager for Officeworks - Exhibit 6;
- Mr David Stout, State Compliance Manager for Coles - Exhibit 7;
- Mr Paul Mollard, Regional Manager for Queensland, Best & Less Pty Ltd - Exhibit 8; and
- Mr Gregory Barnes, Councillor at Bundaberg Regional Council - Exhibit 16.

[10] Generally, the evidence given by the aforementioned witnesses can be summarised as follows:

- witnesses gave evidence as the degree to which their various organisations contribute to charitable causes within the region by way of donations etc;
- most gave evidence regarding trading patterns within their individual stores. Saturday trade, as a percentage of overall weekly sales, was reported to be as follows:
  - Target: 22%;
  - Woolworths Sugarland (Bundaberg) store: 18.1%;
  - Woolworths Bundaberg store: 17.1%;
  - Woolworths Bargara store: 21.1%;
  - Coles: 18.1%; and
  - Best & Less: 17.1%;
- overall, all stores about which this evidence was given shared a similar trading pattern for Saturdays of between 17% and 22%;
- witness evidence was that additional hours of work would be provided to employees if the application was granted, as follows: Big W - 180 additional hours; Target - 109 additional hours; Woolworths - 600 additional hours; Coles - 165 additional hours; Best & Less - extra employees; Officeworks - four casual employees and Spotlight - two additional employees;
- all witnesses stated that Sunday trade would provide a positive outcome for employment opportunities (particularly for young employees) within the area under consideration; and
- all witnesses stated that work on Sunday would be of a voluntary nature.

[11] Generally, the benefits flowing from a successful application would be:

- stock replenishment would be more easily controlled and stock could be received from distribution centres on Saturdays;
- greater efficiency in the operation of each business;
- customers would be provided with a larger range of products from which to choose;
- Sunday trade would enable the demand from consumers on a Thursday and Saturday to be levelled out across the extra day; and
- families would be able to shop together on a Sunday.

[12] Mr Michael Wadley, State Retail Portfolio Manager in Queensland for Mirvac Asset Management gave the following evidence:

- Mirvac owns and manages Hinkler Central in Bundaberg. The major tenants in the Centre are Kmart, Coles and Woolworths. There are three mini-major stores together with 76 speciality stores;
- Hinkler Central offers a range of services including a parents' room, wheelchair and disabled facilities, a 170 seat food court and over 1,000 car parks, which includes 770 underground spaces;
- reference was made to the popularity of Sunday trade in regional areas of other States and south-east Queensland where Mirvac holds business interests;
- as Bundaberg has a population of 90,000 (in the Regional Council area) and because it serves as a destination for agricultural and mining workers, Mr Wadley believed that the lack of Sunday trade for non-exempt stores in Bundaberg acted as a disincentive for consumers coming into Bundaberg.

- [13] Mr Gregory Barnes holds a number of public positions within the Bundaberg region. While he was not authorised to speak on behalf of any of those organisations, he submitted that his knowledge of local matters permits him to make credible comments upon the application.
- [14] The positions held by Mr Barnes include:
- Elected Councillor for Division 5 of the Bundaberg Regional Council;
  - Spokesperson for the Bundaberg Regional Council's Finance Portfolio;
  - President of the Coral Coast Chamber of Commerce and Tourism Incorporated; and
  - Chair of Bundaberg Region Limited (the parent body of Bundaberg North Burnett Tourism).
- [15] Mr Barnes provided, as an attachment to his Statement, a copy of correspondence from the Bundaberg Regional Council, dated 7 July 2011, which states *inter alia*:
- "Following consideration of this matter - as Resolved by Council at its Meeting of 5 July 2011, I have to advise that Council offers no objection to the application currently before the Commission - to amend trading hours for non exempt trading by retail in the Bundaberg area to permit 7 day trading. Signed by Peter Byrne, Chief Executive Officer."*
- [16] In May 2011, the Bundaberg Regional Council undertook a survey to gauge public opinion with regard to the application. The survey was advertised through the media and the Council's website. There were no forms or details sent out to the public. It appeared from the evidence given that respondents were asked whether they supported or opposed the application.
- [17] A copy of the survey form was attached to Mr Barnes' Statement. The content of the form, *inter alia*, is as follows:
- "Have your say about 7 day trading*
- The National Retail Association has lodged an application to vary Trading Hours in the area shown on the map, to allow non-exempt shops within this area to trade 7 days a week.*
- Bundaberg Regional Council would welcome your views, as we prepare our submissions for the Hearing, to be held in Bundaberg.*
- Do you support 7 day trade?      Yes      No."*
- [Note: the form showed a map of the proposed area under consideration. It also asked questions of the location in which the respondent was situated. Further questions included: whether the respondent owned a business; if so, did that business currently open across seven days; how many staff did the respondent employ and whether the respondent thought that seven day trade would increase business activity.]
- [18] The request for views attracted 1,188 responses. Of those, 742 were in favour of the application and 574 were opposed. Of those surveyed, 190 respondents owned their own businesses.
- [19] Mr Barnes was unaware of which areas the responses came from. However, he stated that the system used by the Council was such that responses could be checked to see if they had come through the one URL address. The purpose of the check was to ensure that there had been no loading of responses.
- [20] Canvassing of business interests relative to the application had been undertaken for the purpose of an earlier NRA application for extended trade for non-exempt stores in the Bargara area. Mr Barnes was unsure of what questions had been posed to respondents in that earlier survey.
- [21] When cross-examined by the advocate for QRTSA as to what had changed in the Bargara area since the last (unsuccessful) application in that area, Mr Barnes said he believed that there had been an increase in the population. Mr Barnes stated that his knowledge with regard to the changed needs of Bargara residents was the result of his frequent interactions with the community and observations he had made of consumers standing outside of Woolworths when it was not open on Sundays.
- [22] Mr Barnes agreed that there were vacancies in shopping areas within Bargara Central, perhaps due to high rentals within the centre. However he believed that if shops could open for the seventh day, then some of the costs associated with those rentals could be offset.

- [23] Within the attachments to Mr Barnes' Statement were copies of Minutes from Bundaberg Region Limited September meeting, supporting NRA's application.
- [24] Further attachments to Mr Barnes' Statement included documents entitled *Bundaberg Regional Snapshot* (dated December 2010), *Queensland Regional Profiles, Bundaberg Regional Council* (generated on 22 March 2011), *Regional Tourism Profiles - Bundaberg Regional Council* (March 2011) and *Regional Tourism Profiles 2009/2010*.
- [25] The *Bundaberg Regional Snapshot* showed:
- while there had been an increase in domestic visitation to the Bundaberg region during 2010, there had been a decline in international visitation to Bundaberg during this period; and
  - international visitor nights had extended during this period as a consequence, in part, to working holiday visitors staying longer - for up to 7-8 weeks.
- [26] The *Bundaberg Regional Snapshot* highlights state, *inter alia*, that:
- "Overall visitation to Bundaberg increased by 12% in the year ending December 2010, driven by domestic business market recovery. However, the commercial accommodation sector recorded a 22% decline in guest arrivals as the decline in the holiday market offset the increase in business visitation."*
- [27] The *Queensland Regional Profiles, Bundaberg Regional Council* states, *inter alia*:
- as at June 2009, the estimated resident population of Bundaberg Regional Council area was 95,132 persons, or 1% of the State's population. By 2031, the area's population is estimated to be around 140,000 persons;
  - the unemployment rate for the Bundaberg Regional Council area in September 2010 was 7.1%; and
  - retail trade was the largest industry for employment for Bundaberg Regional Council residents with the industry employing 13.4% of the area's labour force.
- [28] The *Regional Tourism Profiles 2009/2010* reports for the year 2009 to 2010 as follows:
- \$318 million was spent by visitors in the region - of which 55% was by way of domestic overnight visitors;
  - a total of 1.5 million visitors travelled to the region - of which 61% were domestic day visitors; and
  - tourists spent 2.6 million nights in the region - of which 75% were domestic overnight visitors.

#### **QRTSA witness evidence**

- [29] The following witnesses gave evidence for QRTSA:
- Mr Kelvin McIntyre, Owner/Manager of Rum City Foods - Exhibit 11;
  - Mr John Felesina, Owner of From Coins to Collectables - Exhibit 12;
  - Mr Kevin Cast, Owner of Supa IGA Bargara - Exhibit 13;
  - Mr Bruce Learmonth, Owner/Manager of the Southside Central Shopping Centre - Exhibit 14; and
  - Mr Joseph Dowling, Owner/Manager of Bundaberg Gourmet Lettuce and Herbs - Exhibit 15.
- [30] Generally, the evidence given by the aforementioned witnesses can be summarised as follows:
- many small businesses in Bundaberg are family owned;
  - within the major shopping centres, while small businesses may not be forced to open on a Sunday (if the application was granted), small businesses outside the major shopping centres would have no option but to open as it would be the only way they could ensure their market share;
  - Bundaberg is a sports oriented town and shopping is not of primary interest to local people. This is evidenced by visiting the town on a Saturday and seeing the limited number of people shopping;
  - employees in small businesses would lose their jobs if the application was granted;
  - small retailers would be forced to close their doors if the application was granted. Further, the prospect of selling a small business in the event the application was granted would be remote;

- it is evident that Bargara small businesses have suffered with the opening of a Woolworths store in that township;
- up to 50% of the turnover of small business would be lost if the application was granted;
- local sporting clubs and community and charity events within Bundaberg would suffer with the loss of support from small businesses which would be struggling to survive if the application was granted;
- the Southside Central Shopping Centre is owned by a local family and has operated on the same site since 1935. There is a supermarket within the Centre together with a medical centre, bakery, liquor outlet, café, video hire, chemist, TAB, newsagency, hairdresser and gift shop. Many of these shops trade on a Sunday as a means of competing with the larger national company owned centres;
- there is currently sufficient shopping opportunities for consumers within the Bundaberg region on a Sunday;
- the Bundaberg and Bargara area has much to offer on a Sunday for tourists and locals with many specialty shops catering for tourist needs; and
- Rum City Foods is a wholesale distributor of milk, soft drinks, orange juice and food service products within the Bundaberg region and would be required to operate on a Sunday if the application was granted.

### **MGA witness evidence**

[31] The following witnesses gave evidence for MGA:

- Mr John Learmonth, Owner/operator of Learmonth's FoodWorks (Exhibit 9); and
- Mr Jacob Houweling, Owner of Fresh Fields FoodWorks (Exhibit 10).

[32] The evidence of both witnesses was as follows:

- Mr Learmonth's business had been operated by his family since 1935. When supermarkets in the city had been able to trade on nominated Sundays, Learmonth's store lost approximately 30% of trade;
- the flow-on effect of this loss of trade would result in the loss of jobs for his employees. Mr Learmonth did not accept that there would be an increase in employment within the non-exempt stores if the application was granted because he believed that those stores would simply roster existing staff to work the extra hours;
- Learmonth's was an anchor tenant in a local neighbourhood centre and other tenants benefitted from the customers attracted to Learmonth's store on a Sunday;
- concern was also expressed by Mr Learmonth as to the impact on business evaluation within the small business community in the event that turnover for exempt stores was reduced by 25%;
- Mr Learmonth believed that the community was well served on a Sunday by a wide range of shops offering the type of goods which were available in the non-exempt stores;
- Mr Houweling's evidence was that his store is a mini-supermarket deli/fast food and convenience store which employed 30 employees;
- Mr Houweling gave evidence around the degree of support given by his store to the local community and particularly so during the period of the January 2011 floods in the area;
- as well, Mr Houweling said that his store purchased 85% of their fruit and vegetables locally and 100% of fast food was brought from local bakers, butchers and goods suppliers; and
- Mr Houweling reiterated the evidence given by Mr Learmonth regarding the estimated loss of trade on a Sunday if the non-exempt stores were permitted to open.

### **Further issues for determination**

[33] At the conclusion of the hearing the parties were directed to provide written submissions. In its submissions, QRTSA raised a number of matters which required consideration and determination by the Full Bench. Upon

the issues raised in QRTSA's final submissions, all parties were advised that they could make responses on any or all of the issues.

- [34] The submissions made by QRTSA need to be considered against the following background.
- [35] Bargara and Elliott Heads are townships situated on the coastal area near to Bundaberg. Within the existing Order they are identified as "*Tourist and/or Seaside Resorts*". However, the same townships are incorporated with the "Bundaberg Area" in NRA's application which reflects the new Bundaberg Regional Council boundaries.
- [36] The following is a summary of the issues raised by QRTSA:
- (a) that pursuant to s. 27 of the Act, "*Summary dismissal of application*", the Commission should dismiss the application as a similar application had previously been heard and dismissed by the Commission relating to Bargara and Elliott Heads (Matter No. TH/2008/4). QRTSA believed that there had been no evidence given during the hearing to show that circumstances had changed in Bargara and Elliott Heads sufficient for the Commission to reconsider its earlier decision to dismiss the claim.
  - (b) that the Commission did not have the power to grant the application because of an inconsistency that would result between the proposed amendment in the NRA application and the existing provision dealing with "*Tourist and/or Seaside Resorts*" under the existing Order.
  - (c) that the use of the word "*locality, or part thereof*" as contained within s. 26(a) of the Act should be read to mean "*district*" or "*site of a thing*" or "*thing's position*" as stated in the Oxford Dictionary.

The essence of QRTSA's submission on this point is as follows:

"The QRTSA submits that the area which the NRA seeks to insert into the Schedule of the Trading Hours Order appears on its face to be an arbitrary assortment of local townships that does not refer to the situation of non-exempt retailers, but rather seeks to be so broad and expansive as to catch several localities." (see QRTSA submissions - point 25).

- [37] We consider these submissions in turn.

**(a) Summary dismissal of the application**

- [38] Section 27 of the Act states:

**"27 Summary dismissal of application**

If a full bench of the industrial commission is of opinion that -

- (a) a decision has previously been made upon an application similar to that before it, and there is insufficient reason to warrant reconsideration of the matter; and
- (b) having regard to the interests of the industrial organisations, other persons, or other organisations immediately concerned, and of the community as a whole, further proceedings are not necessary or desirable;

the industrial commission may dismiss, or refrain from further hearing or determining, an application made for an order under section 21 of 22(1)."

- [39] It should be noted that at no stage before the commencement of the hearing, in pre-hearing mentions or in the actual hearing, did the QRTSA or any other party make any comment upon the concerns now raised. These concerns were only raised during QRTSA's final submissions made some period of time after the finalisation of the hearing.
- [40] In terms of dismissing the application, the "prior decision" to which QRTSA referred (Matter No. TH/2008/4) had been filed with the Registry of the Commission in July 2008. That application had sought extended trading hours for non-exempt stores in the Bargara and Elliott Heads area. There had been a delay in the hearing of that matter as a consequence of a decision made by the President of the Industrial Court in Matters C/2008/40, C/2008/43 and C/2008/44. Those decisions were issued in early 2009. Matter No. TH/2008/4<sup>1</sup> did not commence until late 2009 and a decision of the Commission was released in July 2010.

<sup>1</sup> TRADING HOURS - NON-EXEMPT SHOPS TRADING BY RETAIL - STATE (TH/2008/4) - Decision <http://www.qirc.qld.gov.au>.

- [41] The application currently before the Commission (Matter No. TH/2011/5 relating to the "Bundaberg Area") was filed by NRA on 28 March 2011, "*almost three years after the previous application was lodged.*" (see NRA Submissions in Reply - January 2012 at point 7).
- [42] QRTSA claims that it is appropriate to pursue an application pursuant to s. 27 of the Act at the finalisation of the hearing. It may only be at that time that the full extent of the case mounted by NRA would be evident.
- [43] While we do not necessarily reject that submission, we are of the view that NRA's application was unambiguous as to the proposed boundaries contemplated. Inspections, which included visiting Bargara and Elliott Heads, were undertaken by the parties. Witness evidence and documentary evidence had been exchanged and a witness from the Bargara area called by the QRTSA to give evidence had also provided his views on the application.
- [44] Had the objection been raised prior to the commencement of the hearing the Full Bench would not have been dissuaded from hearing the matter. The original Bargara application (Matter No. TH/2008/4) dealt only with the discrete area around Bargara and Elliott Heads. The current application deals with the locality contained within the Bundaberg Regional Council boundary which includes the city of Bundaberg, the areas of Bargara and Elliott Heads and other areas. This is a different application to the one considered in Matter No. TH/2008/4.
- [45] After hearing all of the evidence as outlined in the substantive decision, the Full Bench has determined that this component of the QRTSA's challenge is dismissed.

**(b) The inconsistency challenge**

- [46] The challenge made by QRTSA on this point, in our view, could have been addressed very promptly after the application had been made or at least in the early mention stages of the matter.
- [47] We say this because it was clear from the beginning that if the application was to be granted the repercussions now complained of by QRTSA would have been evident.
- [48] As it currently stands, the "*Tourist and/or Seaside Resorts*" category within the Order includes as follows:

**"SCHEDULE 1**

**Definitions**

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

- [49] The primary objection raised by QRTSA centres upon whether the Bargara and Elliott Heads areas should have been included within this application without being firstly extracted from the "*Tourist and/or Seaside Resorts*" category within the Order.
- [50] We have considered this point and note that many if not all of the successful applications made for the purpose of extending trading hours require an adjustment to the boundaries within the Order. If this application is successful, then the new definition would be incorporated into the Order and the towns previously contained within the "*Tourist and/or Seaside Resorts*" which fall within the new boundary would be deleted from that definition.
- [51] We are of the view that there was no question of confusion on the part of any party or the Full Bench as to the true nature of the application.
- [52] We reject that component of QRTSA's challenge.

**(c) "Locality or part of a Locality"**

- [53] QRTSA's submission is that the Act at s. 26(a) says "*the locality, or part thereof, in which the non-exempt shop or class of non-exempt shop is situated*" and that this confines the application to the actual site where a non-exempt store is situated.
- [54] QRTSA further states that "*the area which the NRA seeks to insert into the Schedule of the Trading Hours Order appears on its face to be an arbitrary assortment of local townships that does not refer to the situation of non-exempt retailers, but rather seeks to be so broad and expansive as to catch several localities.*" (see QRTSA submissions - point 28).



- [55] We have not accepted this component of QRTSA's challenge. It is reasonable in an application for extended trading hours for non-exempt stores that an application encompasses a broad area within which non-exempt, exempt and independent retailers operate their businesses.
- [56] Even if QRTSA's submission was adopted, it would not affect the actual outcome of a successful application. The non-exempt stores within an area could open during extended hours and the other stores within the area could continue trading the hours which suited them. All that would happen, under that scenario, is that there would have to be a proliferation of applications within a particular area and the possibility of numerous boundaries having to be drawn within a particular area or location.
- [57] This component of the QRTSA's challenge is also rejected.

## **Conclusion**

### *The locality, or part thereof, in which the non-exempt shop or class of non-exempt shop is situated*

- [58] The locality under consideration sits within the Bundaberg Regional Council boundary. Previously, an unsuccessful application had been made by NRA for extended trade on a Sunday for the Tourist and Seaside area of Bargara and Elliott Heads (which is now included within the new Council boundary).
- [59] For reasons set out under the heading "Further issues for determination", the Full Bench has found no impediment in the application by its inclusion of a tourist area which has been defined as such within the Order.
- [60] Bundaberg is the major regional city within the Bundaberg Regional Council Area. The area is located some 385 kilometres north of Brisbane.
- [61] The town of Bundaberg is known as the "Southern Gateway to the Great Barrier Reef". There are a range of popular beaches within the area.
- [62] The Full Bench and the parties undertook inspections of the area under consideration. Through these inspections, the Full Bench was in a position to appreciate the range of retail outlets available in the area. The locations visited included the following locations and retail outlets:
- Sugarland Shopping Centre;
  - Rum City Foods;
  - Fresh Fields Foodworks;
  - Home Sweet Home;
  - Learmonth's Foodworks;
  - Hinkler Central;
  - Coins and Collectables; and
  - Bargara Central.

- [63] In reviewing the location within which the application is made, it is evident that there are many retail facilities available to consumers within the area.
- [64] Further, the Full Bench accepts that the region under consideration has within it significant tourist destinations. Included within the area are not only Bargara and Elliott Heads, but also Lady Elliott and Lady Musgrave Islands, Mons Repos turtle rookery, National Parks (eg Cania Gorge, Deepwater, Eurimbula and Kinkura) and Mystery Craters at South Koban.
- [65] These factors will be considered together with the other criteria under s. 26 of the Act.

### *The needs of the tourist industry or other industry in such locality or part and The needs of an expanding tourist industry*

- [66] Documentary evidence regarding tourism within the area was given by Mr Barnes. Mr Barnes holds a significant number of positions within organisations within the local community which have been previously referenced. Mr Barnes was not giving his evidence in any official capacity for any of these organisations. However, that does not detract from the veracity of his evidence when supported by accepted documentary material, appropriately referenced, which is germane to the matter in question.

- [67] As at the time of hearing this application, Mr Barnes advised that the Bundaberg Regional Council had not formed a view with regard to this application. However, in May 2011, the Bundaberg Regional Council had conducted a survey to gauge public opinion with regard to extended trading hours for non-exempt stores.
- [68] That survey attracted 1188 responses with 60.8% supporting the proposed extension of hours (see Exhibit 16, Attachment 2).
- [69] Reference was made to Matter No. TH/2008/4 where the Bundaberg Regional Council approved the NRA's application for an extension of non-exempt trade in the Bargara/Elliott Heads area on a Sunday (Exhibit 16, point 11).
- [70] The most recent statistical evidence regarding tourism showed that there had been a 12% increase in overnight visitation to the region, and this was primarily the result of a 19% increase in business visitation (Exhibit 16, Attachment 4). Further, day trip visitation to the region had increased by 44% for the year ended December 2010 (see *December 2010 Tourism Queensland's Bundaberg Regional Snapshot*).
- [71] Mr Barnes referred to the statistics which showed as follows:
- in the year 2009/2010 there were 1.5 million visitors to the Bundaberg region. This visitation injected \$318 million into the local economy;
  - \$74 million of the domestic visitors' expenditure at this time was directly attributable to shopping and a further \$83 million was spent on food and drink;
  - \$16 million of the total \$21 million was spent by international visitors in the area and this was attributable to accommodation/food and beverages; and
  - the Bundaberg region supported 408 tourism businesses in 2006/07;
- (Exhibit 16, Attachment 5, *Regional Tourism Profiles 2009-2010 - Bundaberg Region*).
- [72] MGA states that it "*does not dispute the numbers produced by Mr Barnes regarding the increasing number of tourists to the Bundaberg region.*" (MGA submissions - point 19). Having said that, MGA queried Mr Barnes' assertion that tourists were largely drawn to retail shopping when visiting the area.
- [73] The statistical evidence (Exhibit 16, Attachment 5) before the Full Bench more than suggests that retail shopping by visitors/tourists to the region is a significant factor to be considered under this criterion.
- [74] Mr Barnes, as Chair of Bundaberg Region Limited (which is the parent body of the regional tourism organisation Bundaberg North Burnett Tourism) advised as follows:
- "That the Board of Bundaberg North Burnett Tourism strongly supports the application by the National Retailers Association for 7 day trading in the Bundaberg and coastal areas identified in the application to the Queensland Industrial Commission."* (NRA Submissions - point 9).
- [75] This motion was passed on 30 June 2011.
- [76] Also, as President of the Coral Coast Chamber of Commerce and Tourism Inc., Mr Barnes advised as follows:
- "That the Chamber supports the National Retail Association for 7 day trading in the Bundaberg and Coastal Region."*
- [77] This motion was passed on 26 June 2011.
- [78] In our view, consideration must be given to the fact that this region is a tourist destination attracting significant numbers of tourists. The statistical evidence also shows that there has been an increase in overall visitation to the Bundaberg Region for the year ended 2010. This represented a 12% increase. It is not definitive that the increase relates solely to tourism, but tourism must be considered within the day trip market figures.
- [79] In considering this criterion, reference is made to the following decision of the Industrial Court of Queensland in Matter Nos C/2008/40; C/2008/43 and C/2008/44<sup>2</sup> where President Hall stated:
- "It is an object of the Act 'to facilitate trading in tourist areas', s. 3(c). The object was added by the Trading (Allowable Hours) Amendment Act 1994. Of the addition of the object the Explanatory Note observes: 'A

<sup>2</sup> *National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) (C2008/40); National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Shop, Distributive and Allied Employers Association (Queensland Branch) Union of Employees (C/2008/43) and National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and The Australia Workers' Union of Employees, Queensland (C/2008/44) (2009) 190 QGIG 63.*

specific object to facilitate trading in tourist areas gives expression to the intent to assist the growth and development of tourism.'

In articulating the matters to which the Commission must have regard in making an order under s. 21 of the Act, s. 26 twice refers to the tourist industry. Section 26(b) refers to the 'needs of the tourist industry' in the locality or part thereof to which the application relates and s. 26(c) refers to the 'needs of an expanding tourist industry.' Like s. 3(c), s. 26(b) and (c) were also added by the Trading (Allowable Hours) Amendment Act 1994. Reference to the Explanatory Note reveals the observation:

"The intent of this change is to place a particular emphasis on the needs of the tourist industry ...' ".

- [80] The Full Bench has accepted that the area is a significant tourist destination. Tourism statistics can vary dependent upon economic circumstances both nationally and internationally and this may have an affect upon the criterion of an "expanding tourist industry", but it does not detract from the tourism status which the area continues to attract.
- [81] The fact that organisations such as the Coral Coast Chamber of Commerce and Tourism and Bundaberg North Burnett Tourism support the application indicates that those bodies, whose focus is on tourism, believe that a successful application will enhance the attraction of tourism to the region.
- [82] It has been generally viewed by the Commission in trading hours matters that there has been a nexus between tourism and retail shopping. That this nexus may differ in significance depends upon the area under consideration.
- [83] In this matter, the Full Bench has accepted that the needs of the tourism industry would generally benefit from an expansion of trading hours for non-exempt stores in the region. We accept that we need to place "particular emphasis on the needs of the tourist industry" as in the circumstances of this case, given the nature of the area under consideration, is a relevant factor.

*The needs of an expanding population*

- [84] The population for the Bundaberg area was estimated to be 98,533 as at June 2011. NRA states that the average population growth was 2.7% over the period 2004 to 2009 which was ahead of the Queensland average. The prediction for growth was that it would continue at a similar pace to the average for Queensland over the next 20 years. By 2031, the population was estimated to be 140,000 persons.
- [85] While statistical data has been supplied by NRA, QRTSA says that NRA has failed to provide evidence that current retailers would be unable to service a growing population.
- [86] QRTSA says that the Commission should consider the current retail shopping infrastructure to see if it meets current needs and the needs of an expanded population.
- [87] In our view, if the population continues to grow as indicated it is not unreasonable to expect that there would be a greater demand for retail shopping.
- [88] In all, the Full Bench considers that the rate of population growth which has already occurred coupled with predictions for further population generally suggest that retail shopping outlets would also increase.

*The public interest, consumers' interest and business interest (whether small, medium or large)*

- [89] NRA says that the public interest is served by consumers and visitors having some certainty with regard to non-exempt trading hours. As many other comparable areas within Queensland have standard trading hours for non-exempt stores over seven days of the week, confusion on the part of consumers would be lessened.
- [90] Community support for the application had been gauged by the Bundaberg Regional Council when it conducted its survey showing that 60% of those surveyed supported the NRA application.
- [91] "Large business" supported the application and cited reasons as to the advantages for consumers and retailers in having extended trade. This evidence has already been detailed under the heading of NRA witnesses.
- [92] In opposition to the application, Mr Learmonth of Learmonth's FoodWorks said that his store would lose a significant part of his weekly income if the non-exempt stores were to open on a Sunday. Evidence similar to this was given by all parties opposed to the application, the evidence of which has already been cited.

- [93] The evidence given by Mr Cast from the Supa IGA store at Bargara was that Sunday trade represented about 25% of his weekly turnover. Mr Cast's store, however, employed 70 people and NRA did not view this store as falling under the category of a 'small business'. The Commission has previously made comment upon stores which are as large as Woolworths and Coles stores with comparable pricing of goods enjoying a monopoly of trade on a Sunday when the non-exempt stores are unable to trade. There is no suggestion that these stores are operating outside of the Legislation, but it has to be noted that the opposition of those stores must be viewed within context. These are not instances of the small corner, convenience store competing against the larger Coles and Woolworths stores.
- [94] This criterion covers a wide range of issues. We have accepted there is majority community support for the application, there would be lessened confusion for visitors/tourists if the non-exempt stores could open on a Sunday and there would be a wider range of goods available for consumers generally.
- [95] Other than for the evidence of Mr John Learmonth where he could quantify his loss of trade on a particular Sunday on which non-exempt stores were permitted to open, there was no verifiable evidence, from those opposed to the application, to demonstrate that there would be a significant loss of their trade on a Sunday if the application was to be granted. While those in opposition state that Sunday represents 25% of their weekly trade, for example, there is nothing to show that all of that percentage advantage would be lost if non-exempt stores were permitted to trade. It is reasonable to acknowledge that some of that trade may be lessened if the application was to be granted, but given the convenience and local nature of some of the small traders, it is also reasonable to accept that their local customer base would continue.

*The alleviation of traffic congestion*

- [96] There were no submissions made regarding this criterion.

*The likely impact on the order of employment*

- [97] Evidence was given by Mr Barnes that retail trade was the largest industry of employment in the Bundaberg Region (Exhibit 16 -18). Unemployment in the region (7.1%) was higher than the Queensland average (5.6%). From those statistics, NRA stated that seven day trade would create greater employment prospects in the region.
- [98] NRA witnesses attested to an extra 23,000 hours of employment on Sundays per annum if the application was to be granted.
- [99] Against these statistics, those opposed to the application said that jobs would be lost if there was a significant loss of trade on a Sunday as a consequence of a successful application.
- [100] In our view, evidence presented by NRA witnesses showed a degree of certainty in terms of job creation, where evidence in opposition to the claim was primarily speculative in nature.

*The view of any local government in whose area the application is likely to have an impact*

- [101] The following is an extract from the Bundaberg Regional Council addressed to the Commission dated 13 July 2011:

*"Following consideration of this matter - as Resolved by Council at its Meeting of 5 July 2011. I have to advise that Council offers no objection to the application currently before the Commission - to amend trading hours for non exempt trading by retail in the Bundaberg area - to permit 7 day trading."*

*Such other matters as the industrial commission considers relevant*

- [102] There are no other matters to be considered.

**Finding**

- [103] Having considered all of the relevant criteria to be considered under s. 21 of the Act, we determine to grant the application. The reasons for this Decision have been discussed under each of the relevant criterion.
- [104] The decision is operative from 8 May 2012.

[105] The Commission determines and orders accordingly.

D.A. SWAN, Deputy President.

A.L. BLOOMFIELD, Deputy President.

D.K. BROWN, Commissioner.

*Hearing Details:*

2011 2 August (*Inspections & Hearing*)  
3 August (*Hearing*)  
22 August (*SDA written submissions*)  
2 September (*NRA written submissions*)  
19 September (*QRTSA & MGA written submissions*)  
2012 16 January (*QRTSA further submissions*)  
25 January (*MGA further submissions*)  
27 January (*NRA further submission*)  
31 January (*QRTSA further reply submissions*)

*Appearances:*

Mr J. Moore for National Retail Association Limited, Union of Employers.  
Mr J. Huang of Neumann Turnour Lawyers for Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers).  
Mr T. Martin for Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees.  
Ms M. King for Master Grocers Australia.

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