

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/2010/6)**

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

DEPUTY PRESIDENT SWAN  
DEPUTY PRESIDENT BLOOMFIELD  
COMMISSIONER THOMPSON

13 May 2011

DECISION

**GLADSTONE**

- [1] An application was filed with the Industrial Registrar on 7 May 2010 by the National Retail Association Limited, Union of Employers (NRA) seeking to amend the Order - *Trading Hours - Non-Exempt Shops Trading by Retail - State* (the Order) in the following terms:

"1. In clause 3.2 of the Order by inserting the following new subclause (22):

(22) The Gladstone 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, and Labour Day)	8.30 a.m.	5.30 p.m.

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

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

Commencing from the point where the Calliope River meets the coast line; from that point along the Calliope River until it intersects with the Bruce Highway; from that point along the Bruce Highway in a south easterly direction until the intersection with Silica Road; from that point in a straight line along Silica Road and beyond the termination of Silica Road in a northerly direction until the coast line; and then following the coast line in a north westerly direction to the point of commencement."

- [2] The application sought to expand the Order to include the city of Gladstone (including Boyne Island and Tannum Sands), a rapidly growing area on the Central Queensland coast, located approximately 500 kilometres north of Brisbane.
- [3] The "Statement of Facts and Circumstances" attached to the application identified Gladstone as the hub of a booming industrial, mining and resources sector with significant inputs from engineering, construction and manufacturing sectors as well as the traditional agriculture and horticulture industries. The Gladstone region had over \$20 billion worth of projects currently under construction, pending or recently completed, including a \$4 billion coal terminal to double the capacity of coal exports out of Gladstone.
- [4] The Port of Gladstone was one of Australia's busiest ports accommodating over 1,200 vessels each year with coal accounting for 70% of total cargo exported each year. Other major exports included aluminium, chemicals and cement.
- [5] The Gladstone Airport was said to cater primarily for business and leisure travellers along with freight activities. There were approximately 50 flights per week between Gladstone and Brisbane as well as a daily service along the coast connecting to Rockhampton, Mackay, Townsville and Cairns.

- [6] The "Statement of Facts and Circumstances" indicated that the Gladstone regional population was expanding rapidly with average growth of 3.1% over the five years to 2006 and an estimated growth averaging 3.4% over the past three years. Population in the region was predicted to continue to grow strongly from the current estimated resident population of 59,644 to around 100,000 by 2031 at a rate almost 40% above the projected growth rate for Queensland.

### Other Appearances

- [7] The Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) (QRTSA), the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees (SDA) and The Australian Workers' Union of Employees, Queensland (AWU) sought, and were granted, leave to appear and be heard in this matter.

### Relevant 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) 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."

- [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."

### **Inspections**

- [10] A Full Bench of the Queensland Industrial Relations Commission (the Commission), accompanied by the parties, conducted inspections of the area defined in the application on the morning of 22 November 2010. These were undertaken by way of a bus and covered the areas of Gladstone, Tannum Sands and Boyne Island where the parties were able to observe a number of businesses including non-exempt retailers.

### **Evidence called by NRA**

- [11] *Ms Amanda Brooks* - the Centre Manager for Stockland Gladstone, gave evidence that Stockland operates 37 retail centres nationally including 11 in Queensland with only those located in Western Australia and some regional areas of Queensland unable to trade on Sundays.
- [12] Stockland Gladstone is the city's largest shopping centre tenanted by 45 specialty stores and services which includes a number of Australia's leading retailers, such as K-mart, Coles, Target Country, Big W, Woolworths and many more. Sales lost as a consequence of Sunday closure were said to be lost forever.
- [13] Stockland supported the application filed by the NRA and would open the centre on Sundays if the application was granted with trading being voluntary for all tenants. Ms Brooks was confident that the majority of retailers would choose to trade if allowed to do so.
- [14] Under cross-examination, Ms Brooks confirmed that her evidence was given on behalf of the Stockland organisation although evidence relating to lost sales were her personal beliefs. The witness accepted that she had not included any verifiable research or other discernable data to support the statement that tenants of the centre would avail themselves of Sunday trading.
- [15] *Mr William Hill* - Area Manager of Big W Discount Stores in Queensland, had been employed by the business in his current classification for 14 years, and currently supervised a total of 11 stores in Queensland. The mission of Big W is to provide its customers with the best quality merchandise at the best possible prices, marketed to the average Australian family. The scale and diversity of Big W stores was said to make an important contribution to the shopping infrastructure of regional towns and cities.
- [16] The trading performances of stores currently trading Sundays in regional Queensland and other parts of regional Australia were provided in "table" form which was said to confirm that a higher incidence of family shopping occurs on Sundays.
- [17] If Sunday trading was introduced, the benefits for Big W would be that the store could receive stocks from its Distribution Centre on Saturdays, in peak trading times, enabling the store to be restocked prior to opening on Sundays. It would also allow for the replenishment of stock on Sundays for the week ahead, generating increased efficiency in the handling and movement of inward stock.
- [18] Employment opportunities, if the application was granted, would be created for another possible five to ten employees, adding to the current staff numbers of 122 employees, to fill the additional 140 staff hours available on Sundays. All Sunday work would be voluntary and would remain so in to the future. Where Sunday trade exists, there had never been any difficulty in finding staff willing to work. Increased opportunities would also be available for Big W contractors.
- [19] Thanks to the generosity of its customers, Big W had raised millions of dollars that had gone to children's hospitals and foundations around Australia. Beneficiaries of the fund raising were identified as:
- Sydney Children's Hospital - \$3 million since 1994;
  - Royal Children's Hospital (Qld) - \$1 million (plus) since 2005;
  - Royal Children's Hospital (Vic) - \$500,000; and
  - Bone Growth Foundation - Adelaide Women's and Children's hospital - \$50,000 per year.

- [20] Under cross-examination, Mr Hill indicated that there was no present intention to trade on Easter Sunday if the application was granted, but if permitted by a decision to trade on that day Big W would.
- [21] It was accepted that the primary focus of the business was to produce strong returns for shareholders but the focus also included the need to satisfy customers. On the trading performances of other stores currently trading on Sundays, Mr Hill expected Big W's Gladstone store to also trade well if NRA's application was granted.
- [22] On the claim that Sundays recorded higher incidences of family shopping, Mr Hill confirmed that this observation had been made from having the experience himself of working seven days of the week.
- [23] **Mr Scott Wallace** - the Regional Retail Support Manager in Queensland for Woolworths Limited, had worked for the business for 23 years holding a number of positions. His evidence about the structure and operational aspects of the business identified that Woolworths has:
- 745 supermarkets across Australia;
  - 107,000 employees Australia wide - 23,000 in Queensland;
  - 13 million customers transactions each week; and
  - 320,000 direct shareholders.
- [24] Evidence was given in respect of operating profit margins and of revolutionising stock and transport management systems, allowing for savings that have assisted in keeping prices low and improving the offer in stores. The business was committed to supporting the community through fundraising and charitable partnerships which in 2009 had a value of more than \$27 million (including cash donations) across all Woolworths' businesses, including more than \$12 million for Children's Hospitals across Australia.
- [25] In the Gladstone area Woolworths, through the Fresh Food Kids Community Grants program, had given donations in the past year to sporting groups, local schools, play groups and community organisations totalling \$14,422.00.
- [26] All fresh meat sold by Woolworths is sourced from Australian producers while 95% of its fresh fruit and vegetables are grown and farmed in Australia. At least 80% of these suppliers have been in partnership for more than ten years. In recognition of the contribution of the Australian rural communities, Woolworths is a long time supporter of Australian Agricultural Societies that see over three million people attend agricultural shows each year.
- [27] Mr Wallace, through his experience in stores that had converted to seven day trading, had witnessed the following operational benefits:
- store and car park congestion on Saturdays and other peak trading times is relieved to some extent;
  - more efficient utilisation of trolleys;
  - better efficiencies of energy use as refrigeration and air-conditioning systems currently run when the store is closed; and
  - smoothing out peaks in scheduled deliveries and the replenishment process.
- [28] The normal distribution of trade in the three Woolworths stores (Gladstone Valley, Kin Kora and Boyne Island) was presented in pie chart format which highlighted a heavy bias toward shopping in the latter part of the week. This is creating significant challenges for the business. The current restriction on hours was said to negatively affect the Gladstone and Boyne Island communities through unnecessary inconvenience and cost, lost employment opportunities and lost expenditure.
- [29] Woolworths currently employs almost 500 people in the three stores subject to the application and, based on operational requirements and experience in other stores that have moved to seven day trading, the additional hours of work per week (if the application was granted) required for the three stores would be:
- Gladstone Valley - 198 hours;
  - Kin Kora - 220 hours; and

- Boyne Island - 98 hours.
- [30] The total amount of additional hours over a full year would be 26,832 which represents significant extra employment opportunities for staff at penalty rates of pay. All Sunday work for existing staff would be voluntary with no adverse action taken against any employee who chose not to work the additional hours. Increased employment opportunities would also be generated in the contracted areas of cleaning and trolley collection.
- [31] Direct feedback he had received from managers in other stores that had recently opened Sundays included the following:
- customers appreciate the savings they made by being able to purchase food at supermarket prices on Sundays;
  - young people that traditionally play sport on Saturdays now have the opportunity to earn an income (on Sundays);
  - tourists or visitors whose schedule does not recognise any difference between the days of the week have benefited from shops opening on Sundays; and
  - Sunday trade has 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. Overcrowding and over trading of stores on Saturdays is a cause of customer dissatisfaction and frustration.
- [32] Under cross-examination, Mr Wallace confirmed that existing employees would undertake work on a Sunday as a voluntary option. However employees engaged into the future would be offered employment in a seven day a week working environment if the application was successful.
- [33] The evidence relating to operational benefits had been based on his own personal experience and he had also formed the personal view that despite differences between Rockhampton and Gladstone in overall population numbers, the demographics of each location were similar. Mr Wallace accepted that he had no evidence of consultation with the broader community on the proposal to introduce seven day trading to the Gladstone area.
- [34] The evidence in relation to employment increasing with the introduction of seven day trading had been made on estimates having considered what had occurred elsewhere.
- [35] **Mr David Stout** - State Compliance Manager for Coles, gave evidence that the company operated over 700 stores throughout Australia employing some 113,311 team members and conducting over 11 million customer transactions each week.
- [36] Coles supported the application and would trade all allowable hours for its two stores in the region if the application was granted. In Queensland, only 12% of Coles stores did not trade on Sundays.
- [37] Sunday trading was continuing to grow in popularity and was said to be the fastest growing trading day of the week, embraced enthusiastically in whatever socio-economic or geographic areas such trading had been introduced.
- [38] In recent times, Coles stores in Moranbah and Rockhampton had commenced trading on Sundays which resulted in Sunday trade as a percentage of weekly trading being at 14% and 13% respectively. In the past 12 months, the Gladstone store had experienced a 12% increase in customers, with the Tannum Sands store having a 4% growth which was said to support the need for seven day trading.
- [39] Some of the benefits emerging from a move to seven day trading were identified as:
- ease of congestion;
  - opportunity to shop in a more leisurely fashion;
  - opportunity to shop at times convenient to customers;
  - impulse buying; and
  - increased spend of the discretionary dollar.

- [40] It was more efficient for supermarkets to trade on all seven days of the week for the following reasons:
- refrigeration must be maintained when the store is closed. The impact of this significant operational overhead is diminished if revenue is able to be generated over seven days;
  - in seven day supermarkets there is no requirement to run perishable stock down or deplete stock on Saturday afternoons before closure. This is a very inefficient practice on one of the busiest trading days of the week; and
  - inefficiencies also arise from the "start up" of six day trading supermarkets on Mondays following the closed day on Sundays.
- [41] Based on the experience of other stores that had converted from six to seven day trading, it was expected that an additional 100 hours of employment per week would result in each of Coles' stores in Gladstone, providing an additional 10,400 hours per annum. Existing employees would only be required to work on Sundays on a voluntary basis.
- [42] Coles' total community investment for 2009 was \$19.7 million, going to a number of community and Indigenous organisations, as well as recently launching the Coles sports for schools program that had seen 11 schools within the Gladstone region register to receive benefits from the program.
- [43] Under cross-examination, Mr Stout acknowledged that whilst the trading percentages for Sundays was lower than some other days, it was also the case that Saturdays and Sundays traded fewer hours compared to other days.
- [44] Mr Stout accepted that he was not provided verifiable evidence relating to a number of claims including evidence that quantified the number of complaints said to have been made to Coles in respect of no Sunday trading in Gladstone.
- [45] On the benefit of store efficiencies, he was of a view that seven day trading allowed for a more consistent offer to be available to consumers.
- [46] **Mr Michael Richards** - Zone Manager for K-Mart Australia Ltd (K-Mart), gave evidence that that company's Gladstone store was one of 182 stores across Australia, including 36 in Queensland, of which currently 33 are able to trade seven days per week.
- [47] The average distribution of trade across seven days of the week had Sunday (14%) as the third most popular day, behind Thursday (23%) and Saturday (20%).
- [48] Through the prohibition of Sunday trading, K-Mart was denied the opportunity of servicing the market in Gladstone, requiring customers of the store to travel significant distances to shop on Sundays. K-Mart was said to be seriously disadvantaged by the current trading regime where competitors such as Harvey Norman, Bunnings, BCF, Pillow Talk, Chemist Warehouse and Super Cheap Auto (amongst others) were allowed to trade on Sundays selling similar lines of merchandise.
- [49] The Rockhampton K-Mart had been trading on Sundays since January 2010 and was currently recording Sunday trade at 12% of weekly trade. Through observation and informal feedback, Sunday as a trading day was appreciated most by working families.
- [50] K-Mart employs 78 people in its Gladstone store and all work by existing employees on Sundays and Public Holidays would be voluntary if the application was granted. It was expected that an additional 5,200 hours of employment per year (100 hours per week) would be generated.
- [51] Under cross-examination, Mr Richards gave evidence that K-Mart had not experienced difficulties attracting employees to work on Sundays with the ability to access higher penalty rates seen as part of the attraction. Mr Richards accepted that the data relied upon in his affidavit relating to customer support for seven day trading had origins of which he was unsure and that he had, in some cases, relied upon assertions rather than verifiable evidence.
- [52] The estimated increase in employment had been based upon what had occurred in Rockhampton following the granting of seven day trading in that location.

- [53] **Mr Gerard Winzenberg** - Queensland District Manager for Target Australia Pty Ltd (Target), in his current capacity has responsibility for the business performance of 14 stores throughout Queensland, described the business as a mid-market department store retailer offering customers a full range of products including:
- fashion apparel;
  - full range of toys, games and entertainment; and
  - homewares.
- [54] The aim of Target is to make stylish living affordable and available to all Australians. There were currently 167 Target stores operating in metropolitan and regional centres as well as 116 Target Country stores of which the vast majority trade on Sundays.
- [55] In the greater Brisbane area, where Sunday trading has been in force since August 2002, Sundays provide 11.2% of the overall weekly trade. The Rockhampton store that commenced trading in January 2010 currently is trading at 9% of the overall weekly trade.
- [56] In Gladstone, the Target Country store currently trades at six days per week with 68% of its trade being on three days of the week (Thursday, Friday and Saturday) which places considerable pressures on customer service and replenishment. The introduction of Sunday trading would alleviate some of the pressures by a redistribution of some sales to Sunday.
- [57] Target Country employs 23 people in Gladstone and the approval of the application would see an additional 1,300 hours per annum of employment which would be voluntary for existing employees. The Target experience to date suggests that 90% of Sunday work is undertaken by casuals, many of whom are students and mothers with children at home who take the opportunity to supplement their income without any offsetting child care costs.
- [58] Target proudly supports the Australian community by partnering with organisations to raise monies for those in need. Examples given included:
- SIDS and Kids (2009) - sold over \$290,000 worth of promotional merchandise;
  - Uniting Church (2009) - helping disadvantaged people at Christmas - collected \$65,000 worth of gifts and distributed \$80,000 worth of gift cards;
  - St Johns Ambulance Kids First Aid Program; and
  - Alannah and Madeline Foundation Buddy Bags program - \$1 million.
- [59] Under cross-examination, Mr Winzenberg confirmed that work on Sundays was voluntary for existing as well as new employees. He accepted that his support of Sunday trading was about increased sales.
- [60] The witness gave evidence that Stocklands had arranged for buses to travel from Gladstone to Rockhampton for those wishing to take advantage of Sunday trading, but did not have knowledge of the regularity of the service.
- [61] The St John's Kidsafe Program was about to get underway in Gladstone in the very near future, which Target would be supporting.
- [62] **Mr Paul Mollard** - the Regional Manager for Best and Less in Queensland, had responsibility for supervising 17 stores out of the 185 stores that trade nationally. Over 1,100 persons are employed throughout Queensland.
- [63] The business has a strong parent market, particularly with larger households on low incomes, and offers a large range of clothing for the entire family as well as a wide range of Manchester, all at affordable prices.
- [64] Best and Less' Brisbane stores, which have been trading on Sundays since August 2002, although having a shorter trading day in terms of hours, generate a sales activity level per hour which is commensurate with that of traditional trading days. If the application is granted, Best and Less believe it will gain additional sales on Sundays as well as seeing a small amount of its Thursday, Friday and Saturday sales moving to Sundays, based on past experiences in Queensland and other states.
- [65] Sunday trading allows Best and Less to maximise catalogue distribution and gives families the opportunity to shop together unlike other days of the week.

- [66] Employment on Sundays would be voluntary for employees, with between five and ten employees working on the day which would see increases in hours for current employees and the possible recruitment of new employees.
- [67] Under cross-examination, Mr Mollard accepted that the data provided in his affidavit showed Sundays as the lowest or second lowest day of the trading week. Further, Mr Mollard accepted that information relating to customer support had not been "quantified or measured in a discernable sense" and were often assertions on his behalf.

**Evidence called by the ORTSA**

- [68] **Mr Peter O'Connor** - Manager of MOC (Queensland) Pty Ltd - O'Connor Family Trust trading as Daly's Quality Meats, opposed the application, giving evidence of the disadvantages seven day trading would have on family, small businesses and the broader community.
- [69] Mr O'Connor opined that if the application was granted, small businesses would face the loss of profits from competition with large chain stores that do not purchase their goods locally which often leads to the closure of many country wholesalers. Small businesses employ many local people and the wages earned by these workers keep towns from "dying".
- [70] Mr O'Connor was critical of the establishment of "malls" where the "giant trading companies" operate from and of the location attracting "undesirable elements such as gangs of young people".
- [71] Deregulation of trading hours, according to the witness, leads to the aborting of existing laws and deregulation in areas such as the dairy industry which had led to the destruction of that industry.
- [72] The butchery business operated by Mr O'Connor opens five and a-half days per week, for 12 hours per day with the exception of Saturdays. Eight people are employed in the business and they are always eager to depart at 12 noon on Saturdays.
- [73] If the application was granted, he would be "forced" to open his business on Sundays to allay damage to his profits that the extra competition would bring and the requirement to pay overtime rates may eventually lead to the closing down of his business.
- [74] Mr O'Connor did not accept that seven day trading would lead to "cheaper prices" stating that the only advantage (to consumers) would be convenience.
- [75] Under cross-examination, Mr O'Connor identified other butcher shops, Coles and Woolworths as his competitors, although he did not see family owned small IGAs as being competition.
- [76] On the other hand, large IGAs that opened seven days a week had "grabbed a piece of his market share".
- [77] In re-examination, in relation to a question on the impact of seven day trading on smaller convenience stores, Mr O'Connor made the following comment [Transcript p. 2-55]:
- "I don't think there's a need for it either because - because of the structure of what Gladstone is. It's a industrial city with a number of - so many of the population that work shift work and they - with the extent of four days on, four days off, we find that being open on a Sunday is irrelevant to them because they'll be - they - they either work over the weekend, and so they're at work when the Sunday shops would be open, and if - if they're not working at least two of those days would be either side of a weekend, so if they want to go to the shops they can, but they - they - they can go on a Friday or - or a Monday."
- [78] **Mr Bruce Spear** - the Proprietor of a Night Owl store in Gladstone, trades from 6.00 a.m. to midnight, seven days a week from a centre that houses 14 other small businesses. As an owner/operator of the business for the past 16 years, he could foresee (if the application was granted) a drop in customer sales of between 10% and 15% per week which would threaten the viability of the business.
- [79] The business currently employees 13 staff (1 full-time, 12 part-time) and he believed that with Gladstone not being a tourist destination, there is no demand for the extended hours sought in the application.
- [80] Under cross-examination, Mr Spear stated his business was in the "top-up market" side of things and his competitors were within the small business trade. In the current circumstances, he did not see larger supermarkets as direct competitors but that would change if Sunday trading was approved.

- [81] His business was part of a franchise group of 60 stores, some of which had already been through the Sunday trading process where they had lost significant trade. Sunday is the strongest day of the week for the business.
- [82] *Mr Denis Connolly* - the Owner/manager of Feed Barn Gladstone, which is a business that operates five and a-half days per week. Whilst the product lines carried by the business differ from those carried by the businesses supporting the application, he could face potential reduction in income if Sunday trading was approved.
- [83] Gladstone, in his opinion, is a "heavy industry town" where workers are predominately shift workers who currently have access to retail facilities provided by small retailers which were said to be adequate. Tourism was said to play a reasonably small part in the overall economic base of the town.
- [84] Under cross-examination, Mr Connolly described his competitors as other pet shops, two of which trade on Sundays. Some years ago he had entered into discussions with those businesses that opened on Sundays and had given them a commitment to them that he would not trade on Sundays.

### **Submissions**

#### **NRA**

- [85] The NRA submission was limited to criteria under the Trading Act that was required to be satisfied for the application to be granted.
- [86] It was submitted that Gladstone had a history of considerable seven day trading in areas outside of the retail environment and is recognised as an industrial city.
- [87] There was evidence to the effect that a significant portion of the workforce operates on shift arrangements with Sunday work part of the regular environment.
- [88] The retailers in Gladstone which trade on Sunday include Harvey Norman, Bunnings, Retravisio, Super Cheap Auto and a number of IGA stores.
- [89] Another relevant factor in terms of locality is that Boyne Island and Tannum Sands are incorporated in the application with those communities being some 20 kilometres from Gladstone city and with a limited alternate supply on offer for grocery shopping on a Sunday.
- [90] There was no evidence before the Commission on tourism. However to the effect it does exist, Tannum Sands was said to be the likely destination.
- [91] The industrial environment, which is of a seven day nature, is a factor in favour of granting the application.
- [92] There was evidence before the Commission of Gladstone being recognised as a high growth area and of increased consumer numbers in the retail sector. In the last 12 months, there had been a 3.2% population growth with significant increases over the previous five years. There were a number of major projects either underway or close to commencement and, with shift work arrangements, the amenity of seven day trading would provide convenience and may assist in the attraction and retention of workers to the area.
- [93] The public interest is served in Queensland by expanding the current trading hours' regime to the remaining areas of the State that do not have the benefit of seven day trading. At present, 85% to 90% of Queenslanders were within seven day trading areas and with Gladstone being in close proximity to Rockhampton, the expansion of hours is warranted. In areas where seven day trading had been introduced, it had been universally taken up by consumers with retailers benefiting from increased sales.
- [94] In terms of business interest, six large retailers had given evidence in the proceedings in favour of the application, all indicating that there would be substantial benefit if the application was granted.
- [95] The application was opposed by only three businesses, all said to be in the category of small businesses. Of those three businesses, only Mr O'Connor had given direct evidence that the major supermarkets were amongst his competitors, with the Night Owl store having a different market to a "full blown" supermarket. Mr Connolly, who essentially operated a pet store, had no intention to trade on Sundays regardless of the outcome of the application as a result of arrangements he had entered into previously with two of his competitors in Gladstone.
- [96] The balance of business interests were said to favour the granting of the application.
- [97] The impact on employment was that there would be a substantial increase in available hours for current employees as well as the opportunity for increased employment.

[98] The NRA had undertaken consultations with the Gladstone Regional Council in respect of the application and was advised that Council was not proposing to express a view, leaving the matter for the Commission to determine.

#### **AWU**

[99] The AWU submitted that its position to the application was determined on two main factors:

- the views of membership; and
- how non-exempt stores plan to manage their employees should the application be granted.

[100] The only concerns raised by AWU's members had been the voluntary nature of the work and the commitments given by witnesses on behalf of the non-exempt stores that existing employees would not be required to work the extended hours, except on a voluntary basis, was sufficient for the AWU to consent to the application.

#### **SDA**

[101] The SDA had participated in the proceedings to ensure that its members would only be required to work the extended hours (if the application was granted) on a voluntary basis.

[102] Based upon the evidence presented, the SDA was satisfied with the assurances given by the major retailers and generally did not oppose the application.

[103] The SDA requested that the Commission exclude trade on Easter Sunday if the application is granted, so as to have consistency with the South-East Queensland area.

#### **QRTSA**

[104] The QRTSA opposed the application and submitted that an examination of the evidence before the Commission in relation to the factors specified at s. 26 of the Act did not support the amendment being granted.

[105] The NRA had failed to adduce any compelling evidence that the locality supports the granting of the application. The characteristics of Gladstone as an industrial city utilising a significant shift worker population had not demonstrated the need for the extension of trading hours.

[106] The reference by the NRA to the incorporation of the "slightly" removed Boyne Island and Tannum Sands within the current locality had not been supported by evidence from local consumers that the current available retail infrastructure was insufficient or lacking in those areas.

[107] On the balance of the evidence, it was submitted that the locality did not support the granting of the application.

[108] There was no evidence advanced in the proceedings that supported the granting of the application on tourism grounds with witnesses on behalf of QRTSA giving evidence that tourism only played a minor role in the overall Gladstone economy and, in effect, Gladstone was not a tourist destination.

[109] On the needs of an expanding population, the NRA had failed to demonstrate that Gladstone was a high growth area, relying upon submissions only to support its claim and had failed to prosecute an argument that the ongoing population needs were dependent upon the application being granted.

[110] The QRTSA submission stated that there was a significant amount of evidence before the Commission to support the contention that the public interest would not be advanced with the granting of the application. The evidence of Mr O'Connor was that he considered that the introduction of seven day trading to Gladstone would be disadvantageous not only to small business but also to families and the broader community. There was also evidence from Mr Connolly that extended hours would impact negatively on sporting and community functions.

[111] The NRA had not produced any evidence that it was in the public interest to grant the application and the contention that the proximity of Gladstone to Rockhampton was supportive of the argument had not been satisfied.

[112] The NRA had also failed, in any meaningful sense, to justify that the interests of consumers would benefit from the granting of the application. The NRA, in submissions, had conceded that "limited evidence was adduced" in relation to consumer interest. The figures on trade levels on Sundays in other locations had demonstrated that it was either the lowest or second lowest day of the week in terms of percentage of sales.

- [113] The evidence of Mr Connolly was that the existing retail infrastructure in Gladstone adequately catered for the needs of the Gladstone populace.
- [114] There had been significant evidence adduced by the QRTSA concerning the adverse impact on businesses within Gladstone if the application was granted. Mr O'Connor had foreshadowed damage to business profits and negative incidental employment costs associated with opening on Sundays.
- [115] Similar evidence was given by both Mr O'Connor and Mr Connolly to the effect that the extension of the current trading hours would not be of value to small and ancillary businesses in the region. Mr Spear had also forecast a substantial decline in profits if Sunday trading was granted in Gladstone.
- [116] Under cross-examination, witnesses for the NRA conceded a number of points that did not favourably granting of the application. These include (and are not limited to):
- data from a selection of regional stores relied upon confirmed that Sunday trade was at the lower end as a percentage of weekly figures;
  - no evidence of operational benefits/efficiency associated with Sunday trade;
  - no evidence of customer support for the application;
  - no evidence that consumers travelled from Gladstone to Rockhampton to shop on Sundays; and
  - the variations in population size and demographics would have an effect on the performance and demographics of Sunday trade in a particular region.
- [117] On the evidence of Ms Brookes, she had been unable to substantiate most of her claims with any verifiable evidence and did not appear as a representative of any stores within the Stockland Centre.
- [118] The evidence, on balance, did not favour the granting of the application as small businesses within Gladstone would be negatively impacted through an extension of the current trading hours.
- [119] The NRA had failed to adduce any discernable evidence concerning the alleviation of traffic congestion as a result of extended trading hours.
- [120] Witnesses for the QRTSA had all given evidence before the proceedings of the negative impact of the application on employment with positions to be lost if the application succeeded. Any increased employment associated with the application involved mere estimates and the application of evidence to the criteria did not provide support for the application due to the negative impacts on employment that will likely be occasioned as a result of its granting.
- [121] The Gladstone Regional Council had not expressed a position concerning the application and, in the absence of positive support, the NRA could not rely on this factor as support for the application.
- [122] There were no other matters that the Commission would find as supporting the application and, as such, the Commission should dismiss the application.

### **The Criteria under the Trading Act**

- [123] The criteria which the Commission must consider when determining an application to amend trading hours is set out in s. 26 of the Trading Act. We consider each criterion in turn.

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

- [124] Gladstone is a city located on the Central Queensland Coast, some 500 kilometres north of Brisbane. The application sought to amend the Order for Gladstone city as well as including the areas of Boyne Island and Tannum Sands, which are situated some 20 kilometres south of the city centre.
- [125] The Gladstone region currently has an estimated population of 59,644 with growth estimated into the future at a rate almost 40% above proposed growth levels for Queensland.
- [126] The Port of Gladstone is one of Australia's busiest ports, said to accommodate in excess of 1,200 vessels per year. In addition there is significant industry in the region that employs a multitude of employees, many of whom are shift workers.

- [127] The current shopping precincts in Gladstone itself include two major shopping centres as well as a CBD area which houses a range of retailers and other businesses. Boyne Island and Tannum Sands have shopping areas that service an expanding population, but with limited alternate grocery offers.
- [128] Whilst there are a number of IGAs within the boundaries of the proposed application, some of which operate on a seven day trading basis with a range of major projects on line or about to commence, there is every likelihood that the current retail trading hours will not be sufficient to meet growing consumer needs.
- [129] We have formed the view that the locality criterion of the Trading Act has been satisfied to the extent that it is supportive of the application.

***(b) Needs of the tourist and other industries***

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

- [130] The only evidence before the proceedings on the tourist aspect of the criteria was from witnesses on behalf of the QRTSA who gave evidence that tourism played only a minor role in the Gladstone economy and that Gladstone itself was not a tourist destination. The NRA acknowledged, in submissions, that tourism was not of assistance to its application.
- [131] In terms of the needs of other industries, there was evidence before the Commission that Gladstone was an industrial city where large numbers of employees worked shift work arrangements that often were four days on and four days off.
- [132] Clearly, in respect of tourism, there was no evidence before the Commission that seven day trading was necessary to service that market nor was there evidence that in the immediate future tourism would feature prominently in Gladstone. On the other hand, there are other industries in Gladstone for which seven day trading would be of benefit.
- [133] In the overall consideration of criteria (b) and (c), the tourism aspect has not been enlivened, however the existing industrial structure is likely to benefit from access to seven day trading.

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

- [134] The "Statement of Facts and Circumstances" attached to the application indicated that the Gladstone regional population was expanding rapidly, with a 40% increase in population over the next 20 years. The QRTSA had, in submissions, argued that there was a lack of evidence advanced on behalf of the NRA to support the claim, yet did not challenge the material before the Commission by way of the "Statement of Facts and Circumstances" attached to the application.
- [135] On the material before the Commission, it has been established that the Gladstone region is experiencing population growth beyond that of Queensland in general and is likely to do so into the mid to long-term future. There was evidence from Mr Stout that Coles had experienced a 12% increase in customer numbers in the past 12 months in the Gladstone store, with a 4% increase in the Tannum Sands store over the same period.
- [136] In addressing this criterion, it is necessary to assess the needs of an expanding population on the existing circumstances, more so than the predicted growth of a region in oncoming years. The Commission is satisfied that the expanding population of the Gladstone region is of a level at present that allows this criterion to be viewed as a positive in determination of the application.

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

***Public***

- [137] The public interest was said, by the NRA, to be met on the basis that between 85% and 90% of Queensland residents had access to seven day trading and the close proximity of Gladstone (110 kilometres) to Rockhampton which has had seven day trading since January 2010, warranted positive consideration.
- [138] The QRTSA claimed that the NRA had failed to adduce evidence around this criterion and that the proximity argument of Gladstone being close to Rockhampton was without merit.

***Consumers***

- [139] The Commission did not have the benefit of surveys of the general public commissioned by the NRA or the other parties indicating support or otherwise for the application.

- [140] NRA witnesses had given evidence of the convenience of being able to access seven day trading and this assumed a higher level of importance when it was considered in the light of Gladstone having a significant number of shift workers due to the industrial nature of the city.
- [141] NRA witnesses had given evidence that where seven day trading had been introduced it had been universally taken up and, when considered in the context of the shorter trading day, was a significant trading day when compared to other days of the week.
- [142] According to the QRTSA, the NRA had failed in any meaningful way to justify that the interests of the consumer would be advanced by the granting of the application and that the Sunday trading figures in other locations demonstrated that they were amongst the lowest for the week.

***Business***

- [143] The NRA relied heavily on evidence from witnesses Messrs Hill, Wallace, Stout, Richards, Winzenberg and Mollard, all of whom represented national retailers who had participated at length in Sunday trading at a State and National level. Their evidence was that experience showed there were operational benefits and efficiencies to be derived from having the ability to trade the extra day of the week and that sales levels attained on the Sunday reflected well on overall weekly trading returns.
- [144] All of the witnesses appearing for the QRTSA opposed the introduction of Sunday trading based upon concerns that small businesses would be negatively impacted by having to compete with the major retailers on Sunday. Of the three witnesses, only Mr O'Connor of Daly Quality Meats identified Coles and Woolworths as his direct competition. Mr Spear of the Night Owl, a "top up" convenience store, foreshadowed a decline in net operating profit.
- [145] The business interests in matters of this nature are clearly divided in their support or opposition to the application, with each identifying legitimate reasons for the positions they have adopted. The Commission, in determining whether the application has a benefit or otherwise for business, is inclined to see the criterion of business interest being that of neutral.
- [146] On the consideration of the three combined factors that make up this criterion (public, consumer and business interests), it is the view of the Commission that this criterion is marginally in favour of granting the application.

***(f) Alleviation of traffic congestion***

- [147] This criterion was not enlivened in the course of proceedings.

***(g) Likely impact of the Order on employment***

- [148] The evidence before the proceedings from the NRA witnesses representing the major retailers all identified increases in employment opportunities for existing staff and potentially the engagement of additional employees to take up positions on Sundays and public holidays where existing staff may decline to undertake the extended hours on a voluntary basis.
- [149] The increased hours and employment were identified as:
- Woolworths
    - Gladstone Valley - 198 hours per week
    - Kin Kora - 220 hours per week
    - Boyne Island - 98 hours per week;
  - Coles - 100 hours per week in each of the two stores;
  - K-Mart - 5,200 hours annually;
  - Target - 1,300 hours annually; and
  - Best and Less - 5 to 10 employees required to work on Sundays.
- [150] The QRTSA, through the evidence of Mr O'Connor, foreshadowed possible job losses, however there was no other evidence of note that was before the Commission for consideration.

[151] There is clearly, in the view of the Commission, significant employment opportunities through the extension of hours to be offered to existing staff and along with the potential for the engagement of new employees. As such, this criterion has been well and truly satisfied and is supportive of the granting of the application.

***(h) View of Local Government***

[152] On 20 May 2010, the NRA was ordered to serve this application by 28 May 2010 upon a range of organisations including the Gladstone Regional Council (the Council).

[153] In the course of the proceedings, the Council did not seek to appear in the proceeding or submit written correspondence indicating support for, or opposition to, the application.

[154] Therefore, the view of the Council is not one for consideration and this criterion is not enlivened.

***(i) Such other matters as the Industrial Commission considers relevant***

[155] There was nothing of note in the course of inspections, evidence, or submissions that caused this criterion to be enlivened.

**Conclusion**

[156] The consideration of the criteria under s. 26 of the Trading Act delivers the following outcome:

- *locality* - assessed as favouring the granting of the application;
- *needs of the tourist and other industries* - assessed as the tourist industry not favouring the granting of the application, however the other industries assessed as favouring the granting of the application;
- *needs of expanding tourist industry* - assessed as not favouring the granting of the application;
- *needs of an expanding population* - assessed as favouring the granting of the application;
- *public, consumers and business interest* - assessed (overall) as marginally favouring the granting of the application;
- *alleviation of traffic congestion* - assessed as not being enlivened;
- *likely impact on employment* - assessed as favouring the granting of the application;
- *view of Local Government* - assessed as not being enlivened; and
- *other matters the Commission considers relevant* - assessed as not being enlivened.

[157] The above assessment found that five of the criteria under s. 26 of the Trading Act which the Commission is required to consider were in favour of the granting of the application and, whilst the legislation does not place differing weight upon each of the criteria for consideration, it is of note that the criteria found to be in favour of granting the application are not without substance and include:

- needs of other industries;
- needs of expanding population;
- public, consumer and business interest; and
- likely impact on employment.

[158] Two criteria relating to the tourism component of legislation were found not to be in favour of the granting of the application while three other matters were not enlivened.

[159] After consideration of all the matters pursuant to s. 26 of the Trading Act, the Commission has determined that the NRA application be granted. In reaching this decision, the Commission has considered all of the evidence, material and submissions before it. For reasons of ensuring consistency with comparable locations the Commission is not prepared to accede to the request by the SDA that Easter Sunday be excluded from the Order.

[160] The operative date for the amendment to the Order is Sunday 19 June 2011.

[161] We determine and order accordingly.

D.A. SWAN, Deputy President.

A.L. BLOOMFIELD, Deputy President.

J.M. THOMPSON, Commissioner.

*Hearing Details:*

2010 4 June  
22 and 24 November  
22 December (QRTSA Submissions)

*Appearances:*

Mr J. Moore of National Retail Association Limited, Union of Employers.  
Ms L. Hogg of Sciacas Lawyers and Consultants for Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees.  
Mr C. Donati of The Australian Workers' Union of Employees, Queensland.  
Ms A. Ruben of Neumann and Turnour for the Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers).

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