

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/2007/7)

TRADING HOURS - NON-EXEMPT SHOPS TRADING BY RETAIL – STATE
(Mackay Area)

DEPUTY PRESIDENT SWAN
DEPUTY PRESIDENT BLOOMFIELD
COMMISSIONER FISHER

18 March 2010

Application to amend trading hours order - Heard and determined - Appealed - Remitted to Commission - Inspections - Legislation - Evidence - Business interest - Tourism - Consumer interest - Local government view - Employment - Locality - Tourist industry - Other industry - Expanding population - Public interest - Application granted.

DECISION

[1] The National Retail Association Limited, Union of Employers (NRA) has applied to amend the *Trading Hours - Non-Exempt Shops Trading by Retail - State Order* (the Trading Hours Order) pursuant to s. 21 of the *Trading (Allowable Hours) Act 1990* (the Trading Hours Act) as follows:

"1. By inserting the following new subclause in clause 3.2:

(16) Mackay Area:

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

2. By inserting the following new definition in Schedule 1 (Definitions):

(23) *The Mackay Area* - the area within the following boundaries:

Commencing at the intersection of the 21st parallel of south latitude with the 149th degree of east longitude; then by that meridian of east longitude due south to 21 degrees 40 minutes of south latitude; then by that parallel of latitude due east to the sea coast; then by the sea-coast northerly to the point of commencement."

History

[2] The application as sought was heard and determined by a Full Bench of the Queensland Industrial Relations Commission (QIRC/Commission). By a decision dated 18 September 2008 the Commission dismissed the application (NRA).¹ On 9 October 2008 the NRA filed an appeal to the Industrial Court. On 23 January 2009 the President of the Industrial Court allowed the appeal and ordered:

"(a) that the Decision of the Queensland Industrial Relations Commission be set aside and that the matter be remitted to the Commission to be heard and determined according to law; and

(b) that the Full Bench rehearing the matter be constituted and selected by members other than Vice President Linnane and Commissioners Asbury and Thompson." (*NRA v QRTSA and others*).²

Hearing this Application

¹ *National Retail Association Limited, Union of Employers* (2008) 189 QGIG 569.

² *National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Others* (2009) 190 QGIG 63).

- [3] Our decision of 10 July 2009 (*NRA v QRTSA and Others*)³ set out the basis for the hearing of this application. In essence the Full Bench determined that:
- inspections would be undertaken of the relevant areas included in the application by the Commission and the parties;
 - the witness statements/affidavits prepared for the original proceedings would be admitted into evidence;
 - the transcript of the evidence of the previous proceedings, edited to remove questions of witnesses from the original Full Bench and responses thereto, and as agreed between the parties, would be admitted as the evidence of the witnesses called in the original proceedings; and
 - additional evidence may be adduced from witnesses where circumstances might have changed since the original hearing.
- [4] This process reflected the agreed position of the parties. It was not the initial view of this Full Bench. As the matter progressed we have found it has not been the most effective process from the Commission's perspective. It has been a difficult and complex undertaking to read the witness statements/affidavits and the transcript in order to assess the merits of the case without having had the first hand opportunity to assess the witnesses' credibility or to ask questions of them. However, having read and assessed the evidence and with the benefit of the parties' written submissions, we have been able to understand the arguments and have reached a clear view on the application.

Inspections

- [5] At the request of the parties, inspections were undertaken by the Full Bench at the following locations. [Note: All inspections were undertaken by driving past the location, with the exception of the Mt Pleasant Shopping Centre where the Full Bench conducted a walk-through inspection].

Sarina Shopping Villages - IGA and Woolworths Centres;
 Vella's Express Foodstore, 99 Boundary Road;
 Walkerston Shopping Village;
 Spar Express, 7 Peaks Downs Highway;
 IGA Express, Corner Nebo and Bridge Roads;
 Northpoint Shopping Centre;
 Greenfields Shopping Centre;
 Mt Pleasant Shopping Centre;
 Mully's Mini Mart, 118 Malcomson Street;
 Big Bear Food Mart, Harbour Road;
 Caneland Central Shopping Centre
 De Campo's Store, 95 Milton Street
 South Mackay Supermarket, 51 Juliet Street;
 Hatfields Supa IGA, 17 Moore Street;
 Foodworks, 36 Goldsmith Street, East Mackay; and
 Sydney Street Markets.

Legislation

- [6] Section 21 of the Trading Hours 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 -

³ *National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Others* (2009) 191 QGIG 310.

- (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."

[7] Section 26 of the Trading Hours Act provides as follows:

"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."

Attitude of the parties

[8] The Australian Workers' Union of Employees, Queensland (AWU) advised that it had sought the views of its membership (and employees generally) at the time of the original hearing and had not received any legitimate concerns in relation to the application. On being satisfied by the NRA retailer witnesses that work would be voluntary were the application to be granted, the AWU was satisfied that its membership would not be adversely affected. On that basis the AWU consented to the application.

[9] The Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) (QRTSA) opposed the application in full. It contended that examination of the evidence in relation to the s. 26 factors did not support the amending of the Trading Hours Order and rejected the submission of the NRA that its evidence presented in the original proceedings and the weight of that evidence supported the granting of the application.

Evidence

[10] The witness evidence summarised below was largely given in the original proceedings and, because of the agreed position between the parties and adopted by the Full Bench, was admitted as evidence in these proceedings. Those witnesses who were called to give evidence in these proceedings either as new witnesses or to update evidence given in the original proceedings are specifically identified.

NRA Witnesses

Business interests

Shopping Centre Owners/Managers

Robert Raymond Allan, Centre Manager of the Mt Pleasant Greenfields Shopping Centre, Mackay

- [11] Mr Allan's evidence consists of a Witness Statement submitted in the original proceedings and a further Witness Statement submitted in these proceedings together with the cross-examination from both proceedings.
- [12] The Centre is owned by Colonial First State Property Management Pty Ltd. It seeks to maximise opportunity for growth over the medium to long term by ensuring the properties it manages on behalf of owners are maintained and developed to their full value and potential. Accordingly, the NRA's application is supported.
- [13] Of the 34 shopping centres owned by Colonial First State Property Management across Australia only three do not operate on Sundays and two of these are located in Queensland.
- [14] The Mt Pleasant Greenfields Shopping Centre is located in the northern suburb of Mt Pleasant, Mackay, which is approximately eight km from the airport and five km from the city centre. The Centre has both a traditional enclosed facility and a homemaker type facility which is located on the other side of the Centre access road. The enclosed part of the Centre is anchored by Kmart, Woolworths, Coles (which open from 8 a.m. to 9 p.m. Monday to Friday and 8 a.m. to 5 p.m. on Saturdays) and Best & Less while Bunnings is the anchor tenant in the homemaker section. Some other retailers are located on adjacent land including The Warehouse, Toys 'R' Us, Autobarn, Clark Rubber, Spotlight, Amcal Pharmacy and the Mackay Pet Superstore.
- [15] Mr Allan said that Colonial First State Property Management does not believe that it can develop the Centre to its full value and potential if only part of it is able to trade over seven days of the week. He said it was a particular concern that, over time, it will become more difficult for the Centre to attract prominent brands or national chains if it does not convert to seven day trading. Reference was made to the number of retailers, both large and small, which already trade on Sundays in Mackay. Some of these are located within the Mt Pleasant precinct. Mr Allan said that consumers become confused and frustrated because some retailers are allowed to trade on Sundays while others are not. He said Sunday trading for the Greenfields Homemaker Centre is very strong, with ongoing traffic problems and congestion being experienced on Sundays. Store managers at that Centre have advised him that Sundays are a good trading day, after Saturdays.
- [16] Mr Allan noted that Mackay is the main point of interchange for "fly-in/fly-out" employees working in central Queensland mining sites. Weekend visitation is high. These factors were said to lend support to the introduction of seven day trading.
- [17] In his supplementary Statement Mr Allan addressed the operation of the Troppo Treasure Markets by the North Mackay Rotary Club in the Mt Pleasant Shopping Centre car park since March 2009. The markets are held on the second Sunday of each month from 7 a.m. to 12 noon. Mr Allan informed the Commission of the success of the markets with approximately 140 stall holders and 100 potential stall holders on a waiting list. The markets attract between 7,000 and 8,000 people on each Sunday they trade. It was estimated that turnover through the markets is approximately \$200,000 each month. Mr Allan said this data showed the substantial consumer support for retail activity in Mackay on Sundays and he noted the large family presence at the markets.
- [18] Mr Allan said that if the NRA's application was successful it was the Centre's intention to integrate the markets into the mainstream Sunday trading offer with the markets trading before the main part of the Centre opened. In cross-examination he said that at present 240 of the 1400 car parks are used by the markets. Under the conditions of their licence the markets would have half an hour to pack up and would need to leave before the major retailers were open for trade. If this was not successful then the markets would be removed from the Centre. The licence provides that it can be terminated on 14 days notice.
- [19] Mr Allan also said that the Mackay Regional Council had recently approved the building of a large homemaker centre north of the Mt Pleasant Shopping Centre, the tenants of which are expected to trade on Sundays. Mr Allan believed this would provide further competition for the major enclosed centres in Mackay.
- [20] In cross-examination Mr Allan said that three of the 15 independent retailers had raised concerns with him about the prospect of opening on Sundays. These concerns were over whether Sunday trading would be voluntary and the cost of labour. Other independent retailers were concerned about the impact on their trade on other days if they did not open on Sunday but generally were adopting a wait and see attitude. In later cross-examination Mr Allan said he had spoken to every independent retailer in the Centre and approximately 50-60% were interested in trading on Sundays if the costs were viable.

Melanie Green, Regional Manager NSW/Victoria, Lend Lease Retail

- [21] Ms Green stated that Caneland Central Shopping Centre is located a short walking distance from the Mackay CBD and comprises 120 speciality stores.
- [22] The Centre services the needs of a rapidly expanding population with an increase of 4.2% (3,800 persons) in 2006, well in excess of the state average, placing Mackay in the top 10 largest growth local government areas in

Queensland. According to data prepared prior to local government amalgamations, population projections reveal that by 2026 Mackay will be Queensland's second largest regional city (129,033).

- [23] Ms Green on behalf of Lend Lease believes that Caneland Central Shopping Centre should be able to trade on Sundays for reasons which are summarised below:
- allow for more efficient use of capital in an environment of rising costs;
 - allow the Centre to compete on an even playing field in the leisure and entertainment market and with other retail outlets already trading on Sundays;
 - make the Centre more competitive in the face of the emergence of "big box" retailers and new retail formats such as homemaker centres and direct factory outlets. Due to the tenant mix of these formats some retailers prefer to take advantage of the seven day trading available rather than be part of the traditional enclosed centre; and
 - it is unfair and inequitable for consumers in the Mackay region to be deprived access to the Centre on all seven days of the week when the majority of consumers in other parts of Queensland and Australia are not denied access to shopping centres.
- [24] The research showed that the major issue facing Australian retail customers today is the scarcity of time and that balancing work and family commitments in dual income households is now a major challenge for families.
- [25] Lend Lease believes that six day trading for the retail sector in Mackay results in lost and escape expenditure for the tenants in the Centre and other retailers and that to compete effectively in the market all tenants in Caneland Central should be able to trade on all seven days of the week.
- [26] Ms Green said Lend Lease had been evaluating the benefits of the introduction of seven day trading for some time and had commissioned a report into the subject. The report entitled "Mackay Whitsunday Regional Economic Report June 2007" was prepared by the AECgroup and was attached to Ms Green's witness statement. (The author of the report was not separately called as a witness). The report disclosed positive results for the total retail sector wherever Sunday trading had been introduced in the particular state or region. Extended shopping hours have stimulated retail activity by increasing the availability of retail stores and consequently the capital invested in such stores has been more effectively utilised.
- [27] Further Ms Green said the report revealed that positive effects were demonstrated in Victoria following the deregulation of trading hours in late 1996. Employment in the retail sector had increased by 10% and there had been average annual sales growth of 4.9% compared to an increase of 2.2% for the rest of Australia. In respect to south-east Queensland the report found that since Sunday trading was introduced in 2002, retail sales growth has been significantly higher in Queensland at 7.7%, compared with 4.5% for the three years prior to deregulation. In comparison, the overall increase in retail sales per head across Australia has been basically stable over the five year period ranging from 5.3% for the period 1999-2002 and 5.6% from 2002-2004.
- [28] The report concludes there is a clear distinction between the retail sales growth in Queensland before and after the introduction of Sunday trading in south-east Queensland in August 2002, and also with that of the other States over the same period. The report also pointed out the positive effects following the introduction of seven day trading in Cairns in 1995, with business register data showing for the period between 1996 to 1998 there was an increase of 1.8% in the number of retail businesses while the number of non-retail businesses in Cairns fell by 8.4%. The number of small retail businesses in Cairns (i.e. the number employing between 1 and 9 persons) remained constant at 967 and the number of non-retail small businesses fell by 10%. The specific information for the city of Cairns showed the retail sector generally fared much better between 1996 and 1998 than all other industries in the Cairns region.
- [29] In cross-examination Ms Green said the Caneland Central Shopping Centre comprises 72% national retailers, 15% independent smaller retailers and 13% services. She said that although a formal survey of tenants had not been undertaken, as a result of discussions held between Centre management and retailers she was confident that the majority of the retailer tenants would seek to open on Sunday. Ms Green was unaware of any tenants seeking that the Centre be open on a Sunday, without the non-exempt shops being open, however, any independent or exempt retailers who made the request would have to be prepared to pay the costs of opening the Centre for trade.

Anjuna Singh, Retail Asset Manager, Macquarie Asset Services Ltd

- [30] Ms Singh said that Macquarie Asset Services Ltd is engaged by Macquarie CountryWide Trust (Macquarie) as Manager of the Sydney Street Markets retail precinct in Mackay. Macquarie's charter is to maximise the return on its investment by providing a thriving retail environment for retailers and an attractive destination for shoppers. Macquarie's portfolio covers more than 40 shopping centres and 30 free standing centres in various locations across Australia, the great majority of which trade over seven days. The various co-owners of the

properties include superannuation funds investing on behalf of ordinary Australians, institutions and individuals who elect to invest in retail property. Macquarie supports the application.

- [31] The Sydney Street Markets was the first project undertaken by the Mackay City Council in its CBD revitalisation program. The project comprises a \$26M art-deco inspired shopping centre located on the former Mater Hospital site. The Centre includes a 3,200 square metre new-format Coles supermarket, 21 speciality stores and 132 carparks. The Centre was fully leased within three months of completion.
- [32] Macquarie is aware that the great majority of Australians are able to shop and trade on Sundays. In Queensland it is estimated that 80% of the population resides in areas which enjoy convenient access to Sunday and public holiday trading.
- [33] Ms Singh said that sales lost as a consequence of the closure of centres on Sunday are often sales postponed until Monday. A significant proportion are lost forever if consumers (travellers) pass through the city to other destinations or (if residents) dispose of their discretionary dollar on other activities which are accessible on Sundays and not subject to the same trading hours restrictions. Ms Singh also said that shopping now extends beyond a needs-driven experience and provides important social interaction and family activity.
- [34] Ms Singh, while acknowledging the voluntary basis of Sunday trading, was confident that the majority of tenants would trade if the Mackay property is given the opportunity to trade on Sundays. In cross-examination Ms Singh said that the whole of the Centre is open on Sundays and of the 10-12 retailers which could open on Sundays there are only three retailers currently trading. Other retailers do not trade because they do not find it beneficial to open when the Coles Supermarket is closed. All retailers which are permitted to open are welcome to open and some have in the past. However, they have not found it beneficial because Coles was not open and the costs involved. Those costs, such as cleaning and security, have to be split amongst the tenants which are open.
- [35] Also in cross-examination Ms Singh said that no formal survey of the tenants had been undertaken to ascertain whether retailers in the Sydney Street Markets would trade if the NRA's application was granted. The Centre Manager had spoken to all retailers and had informed Ms Singh that the majority would trade if the Coles supermarket was open. Ms Singh was unable to provide statistics of those in favour and those against Sunday trading.
- [36] When cross-examined on the impact on rent if Sunday trading was granted Ms Singh said that in her experience across a number of companies the issue of whether or not tenants traded on Sundays had no impact on their rent whatsoever. Ms Singh said it was not her place (because she worked for a listed property trust) to give an assurance that rents would not go up as a result of Sunday trading but in her experience she had not seen this happen. Ms Singh refuted the QRTSA's proposition that Sunday trading was a cash grab from shopping centres, indicating that there was no point in putting up rents simply because tenants could trade on Sundays. Tenants would not stay or come to centres in those circumstances.
- [37] Ms Singh said that when tenants sign a lease a market rent is set and there are set rent reviews that are either fixed or indexed to CPI. Rent could be set on the basis of percentage of turnover however a threshold would have to be met before the business starts paying a percentage of their turnover as additional rent. The business would have to be doing exceptionally well for that to occur.

Large Business

David Stout, State Compliance Manager, Coles

- [38] Mr Stout was authorised to represent Coles and Kmart Australia Limited in this matter. He advised that both Coles and Kmart support the application and Coles will trade all allowable hours if the application is granted.
- [39] Coles and Bi-Lo operate more than 741 stores across Australia, of which 85% trade on Sundays and public holidays. Coles has two stores in Mackay (Sydney Street Markets and Mt Pleasant Shopping Centre). Kmart operates 171 stores across Australia of which 86% trade on Sundays. In Queensland 32 out of 37 Kmart stores open on Sundays. Kmart has one store in the Mt Pleasant Shopping Centre which will trade on seven days if permitted.
- [40] Mr Stout said that Sunday trading remains the fastest growing trading day of the week and Coles' experience is that it has been embraced "positively and enthusiastically" wherever it has been introduced regardless of socio-economic or geographic factors.
- [41] Mr Stout provided data to show that the introduction of Sunday trading in Coles, Annandale, Townsville, reduced congestion on Saturday afternoons and Monday evenings.

- [42] Mr Stout said that work by employees of Coles, Bi-Lo and Kmart on Sundays would be voluntary. It was expected that an additional 157 hours of employment would be generated if the application was successful. The wages paid to staff for these additional hours would have beneficial effects for the local economy. Kmart expects that approximately 8000 hours of additional employment per year will be generated if the application was granted.
- [43] In respect to Kmart, Mr Stout said that Kmart felt very strongly that it was being unreasonably disadvantaged and the trade of the Mackay store was not being optimised by the present trading hours regime. Kmart was of the view that the competitive disadvantage has the potential to negatively influence future investment decisions in the store. Factors highlighted by Kmart were:
- Kmart's principal competitors (e.g. Bunnings, Harvey Norman, Super A Mart, Super Cheap Auto, Crazy Clarks, The Warehouse, Toys 'R' Us, BCF, the Good Guys and Amart Allsports) currently trade on Sundays and Kmart understands that Sunday is the best or second best trading day of the week for many of Kmart's product categories;
 - Kmart Mackay performs very strongly in categories or product lines which are sold by competitors which currently trade on Sundays;
 - data from other Kmart stores which trade over seven days of the week show that Sunday is a strong trading day particularly given the shorter trading hours on that day; and
 - experience from Sunday trading stores across Australia is that Kmart's customers want to shop with Kmart on Sundays.
- [44] Kmart stores in Brisbane have been trading on Sundays since August 2002. All of these stores trade well on Sundays, with that day representing 10.2% of the average weekly sales. Relying on data from selected stores which indicated that Sunday trading comprises between 9.5% and 11.6% of total weekly trading, Kmart considered there is customer support for Sunday trading in regional areas of Australia. Based on this data Mr Stout said Kmart believed its Mackay store will trade very well on Sundays.
- [45] In addition Kmart's Townsville store commenced Sunday trading in September 2007 and has been trading very well on Sundays despite the late opening time of 11.00 a.m. Mr Stout said, when the Townsville store is opened on Sundays, approximately 60-80 customers are normally waiting outside.
- [46] In cross-examination Mr Stout said the experience with the introduction of Sunday trading is that there is both a shift in the pattern of consumer shopping as well as an incremental boost in sales. Based on Annandale's figures it was expected that approximately 11.5% of weekly trade would be transacted on Sundays for Coles' stores in Mackay.

Barry Colin Waters, Regional Manager, Big W Discount Stores

- [47] Mr Waters said Big W operates one store in the Caneland Central Shopping Centre and he believed major retailers like Big W make an important contribution to the shopping infrastructure of regional towns by their scale and diversity which helps revitalise local shopping precincts and limits escape expenditure.
- [48] Big W currently has 16 stores located in non-tourist areas which trade on Sundays. Stores located in the greater Brisbane area have been trading on Sundays since August 2002 with consistent trading performance. Mr Waters indicated the Mackay store is one of the top three stores in Queensland in terms of sales volume and he believed this store will perform well if seven day trading is introduced in Mackay.
- [49] Mr Waters provided extensive material to highlight the trading hours of Big W on a Sunday across Australia.
- [50] In general observation Mr Waters confirmed that within these stores there was a higher incidence of family shopping occurring on a Sunday.
- [51] If the application was granted Big W would anticipate an additional 245 hours of work being generated within the Mackay store each week.
- [52] Under cross-examination in relation to the impact on family owned businesses, Mr Waters said that while there would be an overall increase to weekly trade if Sunday trading was allowed, approximately 75% of trade on Sundays would come from reductions in trade on Saturdays or Mondays. This was revealed from sales figures in Yeppoon. It was also the opinion of Mr Waters that sales may increase on Sundays because people who come in on a Sunday to purchase one article may buy two or three other articles.

Bill Lysaght, Regional Manager Queensland, Best & Less Pty Ltd

- [53] There are 163 Best & Less discount stores throughout Australia with 42 stores located in Queensland. Two stores are located within the geographical boundaries of the application, one is in the Caneland Central Shopping Centre in the Mackay CBD and the other store is in the Mt Pleasant Shopping Centre.
- [54] Based on past experiences in Queensland and other States, Mr Lysaght anticipated the Mackay stores will record between 7 to 10% of weekly sales on Sundays.
- [55] Like Mr Waters, Mr Lysaght's evidence was that Sunday is a preferred shopping time for families.
- [56] Mr Lysaght expected an additional 120 hours' employment per week will be generated in the Mackay stores if the application was successful. This will be achieved by increasing current employee hours and recruiting additional employees.

Gerard Winzenberg, District Manager, Target Australia Pty Ltd in Queensland

- [57] Mr Winzenberg has responsibility for the business performance of 14 stores throughout Queensland. Target has one store in Mackay situated in the Caneland Central Shopping Centre. Mr Winzenberg advised that this store will trade Sundays and public holidays if the NRA application was granted by the Commission.
- [58] Mr Winzenberg's evidence detailed the trading hours and daily distribution of trade for Target stores located in regional centres in other States and the Australian Capital Territory. He said that the trade by the stores in such centres lent weight to the view that Sunday and public holiday trading in Mackay would be supported by consumers. In cross-examination Mr Winzenberg said that Target anticipated that approximately 11% of the weekly trade would be transacted on Sundays and that across the week approximately an 8% to 9% increase in trade would be expected. Some of this would come from other areas e.g. Moranbah, which at the time of the original hearing were not permitted to trade on Sundays. He did not anticipate that Sunday would be a quiet trading day as it tends to be a family shopping day.
- [59] Mr Winzenberg noted that many other retailers who sell similar products to Target trade over seven days.
- [60] He said the primary catchment area for metropolitan stores falls within a 15 km radius from the store. In Mackay the catchment area for the store is much larger and some consumers travel long distances, from 50 km to 200 km, to shop in Mackay. He believed that seven day trading would be particularly beneficial for these customers. Mr Winzenberg highlighted the situation in Townsville where lay-by and credit card data showed that Sunday is a popular shopping day for consumers who live outside Townsville.
- [61] In cross-examination Mr Winzenberg outlined the charitable donations made by Target to the local community and to national causes.

Scott Wallace, Regional Retail Support Manager Queensland, Woolworths Limited

- [62] Mr Wallace said that Woolworths operates over 700 stores Australia wide and of these five are located in the area captured by the application: Caneland Central, Mt Pleasant, Walkerston, Sarina and Andergrove. He said that Woolworths supports the application and will trade all allowable hours if the application was granted.
- [63] Mr Wallace pointed to a number of operational efficiencies that would be delivered if seven day trading were permitted:
- Congestion at registers and in the car parks would be relieved on Saturdays - traditionally the busiest trading day of the week. More efficient utilisation of trolleys would be experienced and a generally improved service environment would result.
 - More efficient production flows within the meat and bakery departments with the elimination of peaks and troughs caused by Saturday afternoon shutdowns and Monday start ups. A wider, fresher range of products will be available over all trading hours.
 - Better efficiencies of energy usage as refrigeration and air-conditioning systems continue to run even when a store is closed.
 - Smoothing of peaks in scheduled deliveries and store replenishment processes which will provide a more efficient work environment for staff and a better shopping environment for customers.
 - Reduced costs resulting from operating stores over seven rather than six days. The total dump and clearance rates in the Mackay stores for deli products is nearly twice that of the seven day trading stores in Townsville.
- [64] In cross-examination Mr Wallace said that these reduced costs for the seven day trading stores increases Woolworths' gross profit but with the additional operating costs experienced on Sundays there has not been significant growth in the bottom line profit. This is not a factor taken into account by Woolworths in deciding

whether to support applications for extended trading. Those decisions are based on customer support, improving efficiencies and improving business operations.

- [65] Mr Wallace provided data comparing the proportion of trade completed on a Saturday in six day trading stores with the proportion of trade completed on a Saturday in the same store after the introduction of seven day trading. The data show that in all cases the trade on Saturdays (and Mondays) has declined and Sundays range from 9% to 14% of weekly trade. In cross-examination Mr Wallace said he anticipated Sunday trading, if granted in Mackay, would be comparable to trading in south-east Queensland and Townsville and about three percentage points of turnover below a Saturday.
- [66] Mr Wallace confirmed that work by employees on Sundays and public holidays would be voluntary. Approximately 37,000 additional hours per annum would be generated by the granting of the application. He said that 200 hours per week had been added on the introduction of seven day trading in Hervey Bay, 133 additional hours in Nambour and 151 additional hours in Beerwah.
- [67] In cross-examination Mr Wallace said that the five stores in Mackay had donated \$40,000 to the local community and Woolworths nationally made a range of other charitable donations.

Don McBryde, National Lease Administration Manager, Colorado Group

- [68] Colorado Group operates 437 stores throughout Australia under the divisions of Colorado, Mathers, Williams the Shoemen, Jag, Diana Ferrari and Pairs. Of these, 123 stores are located in Queensland with four stores in the Mackay area: Mathers in the Mt Pleasant Shopping Centre; and Williams the Shoemen, Mathers and Colorado in the Caneland Central Shopping Centre.
- [69] Mr McBryde stated that other seven day trading stores in Queensland and interstate are recording top line sales growth on Sundays and this indicated growing customer support for Sunday trading.
- [70] If the application was granted, work by employees on Sundays and public holidays will be on a voluntary basis.

Medium Business

James Dever, Regional Manager City Beach, Queensland

- [71] Mr Dever supports the application for its Mackay store in Caneland Central Shopping Centre to trade on Sundays.
- [72] Following the introduction of Sunday trading in Brisbane, City Beach stores have increased weekly sales by an average of 8.6%.
- [73] The busiest trading occurs towards the end of the week on Thursdays (with late night shopping) and Saturdays and Mr Dever believes Sunday trading will be an extension of this trend and provide sales proportions similar to those generated in south-east Queensland.
- [74] Sunday trading in Townsville has been positive and Sunday has now become the fourth best trading day of the week generating between 9%-12% of weekly sales.
- [75] Mr Dever stated that Sunday trading has contributed to increased employment and he estimated an additional 48 hours of employment would be generated each Sunday or public holiday in the Mackay store if it is allowed to trade on these days. From his experience City Beach will staff the store on Sundays and public holidays with university students or others who prefer to work on those days for particular personal reasons. Work by current employees on Sundays and public holidays will be voluntary if the application was granted.
- [76] City Beach staff provided feedback from customers indicating support for the relaxed atmosphere and strong family feel on a Sunday.

Greg Chapman, Corporate Legal Counsel, SSI Group and WOW Sight and Sound, West End

- [77] Mr Chapman said WOW Sight and Sound (WOW) supported the application. WOW operates 12 electronic and entertainment superstores in Australia with 9 in Queensland. Sunday is one of the peak trading days for his business and is the preferred shopping day for many customers with 23% of sales transacted on Sundays.
- [78] Mr Chapman indicated the majority of sales are made by couples undertaking a joint shopping experience, many of which can only be made on weekends. As the average sale is approximately \$2,000 it is the company's experience that Sunday provides a more leisurely opportunity for shopping with less pressure on shoppers

enabling them to browse, investigate new products, watch a movie in a projection room, or listen to the latest in sound.

- [79] Customer demographics are also quite diverse ranging from the youth market with computers and game software up to and including top range European appliances for the premium end of the market. The new home market and building renovation sector are also a major focus of the business with respect to appliances etc.
- [80] Mr Chapman stated employees working on Sundays and public holidays will be employed on a voluntary basis if the application was granted.

Kath Podnar, National Sales Director, Jeanswest

- [81] There are 191 Jeanswest stores throughout Australia. One store is located at Caneland Central Shopping Centre. Jeanswest supports the application because Sunday is a successful trading day and forms an important part of their sales calendar.

Melanie Hourigan, State Manager Queensland, Angus and Robertson

- [82] Ms Hourigan said the Angus and Robertson brand comprises 41 company or franchised stores in Queensland and over 160 stores nationally. Angus and Robertson operates two stores in Mackay - one located in the Mt Pleasant Shopping Centre and the other in Caneland Central Shopping Centre. Even though the stores are exempt from trading hours regulations, they are precluded from trading on Sundays in shopping centres located in parts of Queensland where seven day trading is prohibited for major retailers. Ms Hourigan indicated that wherever possible their stores trade on Sundays and do so very successfully. Since seven day trading was extended to Townsville and Thuringowa all three stores in that area have reported a substantial increase in their weekly figures overall as a result of being allowed to trade on Sundays and customer feedback has been positive.
- [83] Under cross-examination Ms Hourigan was asked whether she was aware that the shopping centres where Angus and Robertson stores are located could open their doors on Sundays. Ms Hourigan said that in order for Angus and Robertson to participate in that trade, the entire shopping Centre or at least the majority of the tenants, would need to be trading. Ms Hourigan said she believed that Angus and Robertson had opened stores in Mackay knowing that Sunday trading was not allowed for exempt retailers. She also said that the stores in Mackay are trading successfully.

Anna Cristaldi, National Human Resources Manager, Lorna Jane

- [84] In her evidence Ms Cristaldi said that Lorna Jane owns and operates 40 stores across Australia including a store at Caneland Central Shopping Centre. Lorna Jane supports the application by the NRA.
- [85] The majority of Lorna Jane stores across the country trade on Sunday wherever this is possible and trade on that day is generally strong. Lorna Jane has a store in Townsville and since Sunday trading commenced trade on that day has been successful. If this application was granted, Lorna Jane is confident their Mackay store would also trade successfully on Sundays and certain public holidays.
- [86] Under cross-examination from the QRTSA, Ms Cristaldi said that all stores are considered to be independent, as the company has around thirty employees in Queensland and normally have only one person on the floor in each store at any one time. Ms Cristaldi said that Lorna Jane had operated the store in Mackay for some time, but she did not know whether the prospect of Sunday trading for the major retailers in Mackay played any part in the commercial decision to set up a shop in Mackay. The store would continue to be viable if the NRA's application was not approved however it would assist with its commercial viability if the application was granted.
- [87] Ms Cristaldi stated that Sunday trade for Lorna Jane stores is between 9% and 20% of total weekly trade with an average across stores of 13% and this can vary depending on sales, the time of year, season and new products coming in. The average for Saturday trade is around 15%.

Sonia Moura, Human Resources Manager, Specialty Fashion Group

- [88] In her evidence Ms Moura said that the Specialty Fashion Group (SFG) comprises the Katies brand, Miller's Fashion Club, Crossroads, Autograph, Queenspark and City Chic, with approximately 785 stores across Australia. The majority of SFG stores trade on Sundays because they are located in areas where Sunday trading is permitted. SFG supports the application because Sunday trading is generally a successful day, comprising 10% of weekly trade. Since Sunday trading commenced in Townsville SFG stores located there have been trading successfully on Sundays. SFG has two stores in Mackay, one located at the Mt Pleasant Shopping Centre and the other at the Caneland Central Shopping Centre. Ms Moura stated SFG is confident that these

stores will trade well if the shopping centres in which they are located are allowed to trade on Sundays and certain public holidays.

Stephen Harris, General Manager, Universal Store

- [89] In his evidence in chief Mr Harris said that Universal owns and operates 11 stores in Queensland, and of those stores Mackay is the only one that does not trade on Sundays. Universal supports the application by the NRA. While Universal stores are deemed to be independent and therefore exempt from the trading hours restrictions applicable to non-exempt stores, the company is still precluded from trading on Sundays in Mackay because its Mackay store is located at the Caneland Central Shopping Centre which does not open on that day. Other stores operated by Universal in Queensland trade successfully on Sundays with approximately 12% of weekly trade occurring on that day. Mr Harris is confident that Universal's store in Mackay will also trade well if the shopping centre in which it is located is allowed to open on Sundays and certain public holidays.
- [90] In response to cross-examination by the AWU about staffing on a Sunday should the application be granted, Mr Harris stated that work on a Sunday would be on a voluntary basis for existing staff. Mr Harris, in responding to a question from the QRTSA, said that he believed there would be no difficulty in staffing the store on Sundays as existing staff were looking for increased hours.
- [91] Under cross-examination by the QRTSA, Mr Harris said that if Caneland Central Shopping Centre was open on Sundays in the present circumstances it would not resolve the issue of Sunday trading because the major retailers in the Centre would not be permitted to open. In the opinion of Mr Harris for Sunday trading to be successful the bulk of the Centre needed to be open. Regardless of whether all independent stores opened on Sundays there may not be adequate numbers to attract customers to the Centre in the absence of the major national retailers opening. Mr Harris said he would expect trade to increase if Sunday trading was permitted, but was unsure whether additional trade would come from competitors. From Mr Harris' experience when Sunday trading was introduced in Brisbane there was an initial sort of kick because of the novelty of Sunday trading and then it settled down and became a reasonably strong trading day.

Vanessa Miles, National Human Resources Manager, Diva

- [92] Ms Miles stated the Diva brand comprises 153 company owned stores across Australia and New Zealand. Diva supports the application and the majority of its stores across Australia trade on Sundays wherever possible. Diva has two stores located in Townsville and since Sunday trading commenced the stores have been successful. Diva operates a store at Caneland Central Shopping Centre in Mackay and is confident that this store will also trade very well if the Centre is allowed to open on Sundays. In cross-examination from the QRTSA, Ms Miles was not aware that the Centre would be allowed to open on Sundays even if the present application was not granted. Ms Miles said that she had not undertaken specific research into possible Sunday trading figures in Mackay, but had compared figures for their Townsville store since Sunday trading commenced in Townsville. In re-examination, Ms Miles said that it had been concluded on the basis of Townsville figures, that Sunday trading in Mackay would be similar to the levels of trade on Mondays.

Small business

Holly McDonald, Owner and Operator, Donut King franchise, Caneland Central Shopping Centre

- [93] Ms McDonald commenced operating Donut King in Caneland Central Shopping Centre in November 2007. She is unable to open on Sundays as the Centre is closed on Sundays. Ms McDonald would like to trade on Sundays as she considers this would be profitable for her business. Ms McDonald sometimes comes into her store on Sundays when the Centre is closed and has witnessed people at the shopping Centre doors trying to enter the shops.

Bob Hamilton, Owner, Mt Pleasant Day and Night Pharmacy, Mt Pleasant Shopping Centre

- [94] Mr Hamilton as owner of Mt Pleasant Day and Night Pharmacy and a tenant of the Mt Pleasant Shopping Centre supports the application. If granted Mr Hamilton believes the additional trading hours will produce significant benefits for his business. Mr Hamilton currently trades from 8.00 a.m. to 8.00 p.m. on Sundays however customer traffic is limited because the remainder of the Centre does not trade and his business performs at a less than optimum level despite paying a premium rent to the Centre. The rent covers seven days and because the remainder of the Centre only trades on six days his store significantly underperforms on the seventh day.

Jared Symons, Owner/Operator Healthy Habits franchise, Caneland Central Shopping Centre

- [95] Mr Symons commenced operating his business shortly before the hearing of the original application in Mackay. He supports the application as he believes it would be beneficial for increased trade. He has witnessed people at

the shopping Centre doors on a Sunday attempting to get in and not realising the Centre is closed. In his opinion this demonstrates the number of people expecting the shops to be open on a Sunday.

- [96] Under cross-examination Mr Symons agreed that when he bought his business in Caneland Central Shopping Centre he was aware that the Centre was not open on Sundays. He was not aware that Caneland Central could open on Sundays if Centre Management chose to do so.

Merryn Ward, Owner/Operator, Gloria Jeans franchise, Mt Pleasant Shopping Centre

- [97] Ms Ward owns and operates a Gloria Jeans franchise at Mt Pleasant Shopping Centre. Ms Ward would like to trade on Sundays as she considers it would be beneficial for her business. She is currently unable to open her shop on Sundays as the Centre is closed. Ms Ward said she often received feedback from customers stating that they would like her to open. A few years ago Ms Ward polled every customer on a particular day about whether they would support Sunday trade and 90% said they were in favour.
- [98] In addition Ms Ward considered her employees would benefit by additional hours for those who volunteer to work and she may also employ additional staff to cover the extra day's trade. Ms Ward is often in her store on Sundays to prepare for the next week's trade and she sees people at the doors of the Centre who do not realise it is closed. Mr Ward has seen cars lined up to get into the car park at Bunnings at North Mackay on a Sunday and in her opinion if her shop was open some of these customers would frequent her business.
- [99] In cross-examination Ms Ward agreed that if her business was not in a shopping centre that is closed on Sundays she would be able to open. Ms Ward said that if permitted by Centre Management she would open on Sundays even if major retailers did not, but would prefer that all retailers were open to create a bigger drawcard.

Narelle Cooper, Owner/Operator, Walkerston Newsagency, Walkerston Shopping Village

- [100] Ms Cooper currently trades on Sundays from 6.00 a.m. to 11.00 a.m. The anchor tenant at Walkerston Shopping Village where Ms Cooper's newsagency is located is Woolworths and Ms Cooper expects if Sunday trading was introduced then the trade at the newsagency would increase. In her opinion this is because the large supermarkets attract shoppers to a centre in the first place. Ms Cooper believes the existing trading hours arrangements discourage customers from coming to her shop as hers is the only shop that is currently open and in her opinion people will not drive to her shop to purchase a newspaper only.
- [101] If Sunday trade was introduced Ms Cooper would be likely to extend her trading hours until after lunch, however if this day was half as busy as Saturday, she would most likely open for the entire day and employ a casual employee to work that day.

Perry Kilsby, Owner/Operator, Book City, Sydney Street Markets

- [102] Mr Kilsby is the Owner/Operator of Book City which is located at the Sydney Street Markets where Coles supermarket is the major retailer. Mr Kilsby supports the application. Previously Mr Kilsby would trade on Sundays but ceased as it was not profitable firstly due to the smaller volume of people coming through the Centre in comparison to week days and Saturdays and in his opinion because Coles was not open. Secondly it was more expensive for him to trade because the Centre's operating costs are split between the tenants who operate on any one particular day based on the floor space the tenant occupies.
- [103] It is the view of Mr Kilsby that people are attracted to the major retailers to do their grocery shopping and his business benefits from this consumer traffic flow. Sunday trading would also mean that Coles as the largest retailer in the Centre would bear most of the Centre's operating costs. As a result Mr Kilsby considers Sunday trading in the Centre where all retailers were permitted to trade would be profitable for his business.

Peter Marr, Owner/Operator, Boost Juice franchise, Caneland Central Shopping Centre

- [104] Mr Marr is the Owner/Operator of Boost Juice franchise and has resided in Mackay for approximately 18 months. He commenced operating his business in December 2006 and is unable to open the store on Sundays as the Caneland Central Shopping Centre is closed. If the application was successful Mr Marr would trade on Sundays as he considers it would be beneficial for his business. Previously he lived in Brisbane and found Sunday trade to be a positive experience and he regularly shopped on a Sunday. He often goes to the store on a Sunday to clean or prepare for the following week's trade and on a number of occasions he has seen people come to the entrance of the shopping Centre closest to his store and attempt to enter because they think the Centre is open.
- [105] In cross-examination Mr Marr agreed that he had knowingly chosen to operate in an environment where there was no Sunday trading. He said that he considered it inevitable that there would eventually be Sunday trading in

Mackay. Mr Marr was not aware that the Caneland Central Shopping Centre could legally open on Sundays. In re-examination Mr Marr said that if the Caneland Centre could open its doors and only a few of its tenants were trading then people would either not come to the Centre or come in fewer numbers than if all tenants were trading.

Ron Reseck, Operator of three MacDonaldis franchises - Caneland Central Shopping Centre, North Mackay and Mackay CBD

- [106] Mr Reseck supports the application for extended trading hours as he understands that if the application is granted the anchor tenants of Caneland Central Shopping Centre and other major retailers will be able to trade on Sundays and certain public holidays. At present Mr Reseck's franchise in the Caneland Central Shopping Centre is unable to trade on Sundays and public holidays because the Centre is closed. Mr Reseck understands that the Centre is closed because the major retailers and national chains are prevented from trading on Sundays and public holidays. All of Mr Reseck's outlets, with the exception of Caneland Central, trade over seven days. The closure of Caneland Central on Sundays and public holidays is detrimental to his business and affects his net profitability and return on investment.
- [107] As a tenant of Caneland Central Shopping Centre Mr Reseck's principal costs of operation are costs of goods sold, labour and rent. Rent remains the same regardless of whether the Centre trades over six or seven days and outgoings are not expected to increase thereby making Sunday trading attractive. Another relevant factor is that shopping centre rents are high and the proceeds from Sunday trading will make a significant contribution to Mr Reseck's weekly rental cost.
- [108] According to Mr Reseck the economy in Mackay is in a boom phase and its population is rapidly expanding. All of Mr Reseck's franchise outlets are trading strongly and showing good year on year growth. It is the opinion of Mr Reseck that the people of Mackay will support Sunday trading. An increasing part of Mackay's population has migrated from seven day trading centres and people now expect seven day trading. Many retailers in Mackay already trade on Sundays and in Mr Reseck's opinion the volume of cars going to Bunnings, Harvey Norman and other similar retailers on Sundays demonstrates that the majority of people want to shop every day. In Mr Reseck's view Mackay should cater for the needs of the travelling public and tourists on Sundays, and offer the same retail services as are now provided in Townsville and Cairns.

Business research

Professor John Mangan, Associate Dean Research, Faculty of Business, Economics and Law, University of Queensland

- [109] Professor Mangan only gave evidence in the second proceedings. However, the Statement provided by Professor Mangan was in the same terms as that provided to the Full Bench in the Rockhampton Trading Hours Case (*NRA v QRTSA and Another*).⁴ It attached a Briefing Paper prepared for the NRA entitled "The Economic and Social Impacts of Changes to Retail Shopping Hours". The Full Bench respectfully adopts the summary of this briefing paper as set out in paragraph [59] of that decision:

"[59] That paper addressed the following issues in its 'Executive Summary':

- 'To examine and analyse the extensive research that has been undertaken into the socio-economic impacts of the deregulation of retail shopping hours, both in Australia and overseas. It does this against the backdrop of pending decisions to extend trading hours in regional and provincial cities within Queensland.' [Attachment B, Exhibit 2, p. 4].
- 'A large number of national and international studies have examined the micro-economic and macroeconomic impacts of shopping hours deregulation especially where this involves Sunday trading. This paper is unaware of any study that reports a decline in aggregate retail sales or total numbers of retail employees as a result of the deregulation of shopping hours.' [Attachment B, Exhibit 2, p. 5].
- Professor Mangan was unaware of any study which would show a decline in aggregate retail sales or total numbers of retail employees as a result of the deregulation of shopping hours.
- Longer shopping hours (especially when consumers had more leisure time such as weekends) allowed more time to compare prices, search for bargains and make more efficient shopping decisions.
- Longer shopping hours usually led to more positive employment impacts.

⁴ *National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Another (TH/2009/3) - Decision* <http://www.qirc.qld.gov.au>.

- Consumer attitudes towards shopping have changed to incorporate concepts of entertainment and leisure as part of the shopping experience.
- Independent grocers, post 2000, have seen a growth in profit levels while the market position of the major chains has not grown.
- Many of these independent grocers have taken advantage of location, flexibility and convenience to engage in extensive non-price competition with the major chains.
- There had been noted consumer preference for multi-purpose shopping and some single purpose outlets, e.g. butchers and bakeries, have seen their total sales decline. Professor Mangan says that these trends will continue with or without increases in shopping hours."

- [110] Professor Mangan was cross-examined by the QRTSA specifically in relation to the situation of trading hours in Mackay and the Full Bench thinks it is useful to refer to salient points made therein.
- [111] In cross-examination Professor Mangan said that he had reviewed the retail industry in Mackay. Having examined data from the Queensland Statistician's Office Professor Mangan said that the retail workforce is slightly underdeveloped in Mackay when compared to the rest of Queensland. Approximately 18% of the workforce in Mackay is found in retail whereas the retail workforce for Queensland stands at 22%. He said this underdevelopment had been recognised by the Mackay Regional Council in the report commissioned from an economic consulting firm, Macro Plan entitled "Retail Commercial Strategy, Mackay, February 2009". This plan argued for an expansion of retail space and outlets.
- [112] Professor Mangan indicated that the unemployment rate in Mackay as at February 2009 was approximately 5.8% which is close to full employment.
- [113] Professor Mangan said his briefing paper attached to his Statement as Attachment B drew together empirical evidence and a number of economic reviews. Based on this material he concluded that although some groups in the community are affected by deregulated trading hours, specifically Sunday trading, in the longer term the aggregate level of spending in retail is increased by a significant degree. In addition, retail employment increases. In his view, on average, the welfare effects of deregulated trading are positive.
- [114] Professor Mangan acknowledged that the aggregate sales of Coles and Woolworths were increasing but their market share was decreasing with the effect that they are employing fewer people. He said deregulated trading hours leaves opportunities for other business to grow. Employment expansion has come from those businesses which have adapted well to change conditions rather than the major chains.

Tourism

David Phillips, General Manager, Mackay Tourism Limited

- [115] Mr Phillips gave evidence in both proceedings.
- [116] Mackay Tourism Limited is the peak tourism body for the Mackay region covering the city of Mackay and the surrounding areas including Mirani, Nebo and Sarina. It has approximately 250 members and is governed by a Board of Directors which comprises elected representatives of members, a statutory position for the Mackay Regional Council and two seats for major sponsors.
- [117] Mr Phillips' Statements of Evidence largely addressed the economic development occurring in the Mackay regional economy including the effect of coal mining in the Bowen basin on agribusiness, tourism and the marine sector. In his second Statement Mr Phillips identified the tourism and related projects currently under construction or completed since the first Statement was made. Reference was made to the completion of the Mackay Convention and Entertainment Precinct, the Bluewater Lagoon Regional Aquatic Centre, two blocks of apartments and the commencement of operations by Reefstar Cruises to service the Great Barrier Reef and certain Whitsunday islands from Mackay. Mr Phillips also said that Greyhound Buses have decided to make a significant investment in Mackay and will make it a passenger transport hub with both drivers and coaches stationed in Mackay.
- [118] Mr Phillips said that it is accepted across the tourism sector that:
- There is a co-dependency between the tourism and retail industries with visitor surveys consistently showing that shopping is ranked a priority amongst all categories of tourists.
 - Seven day trading facilitates the ease with which tourists can meet their needs and directly contributes to increased tourism spending.
 - Seven day trading assists in lessening confusion for tourists about shopping hours and consistent trading hours across Queensland will help unite Queensland's tourist industry rather than providing competitive advantages between regions.

- Tourism creates many job opportunities especially for young people who are then encouraged to stay in local communities.
- Tourism provides opportunities to establish new and expanded infrastructure, products, facilities and services and expand existing business which may not be sustainable based on the resident population alone, however, the resident population also benefits from these developments.

- [119] In the second proceedings Mr Phillips also gave evidence about the growth in tourism in the Mackay region, saying that it had experienced the highest percentage growth by any Queensland region in the number of hotels, motels and serviced room nights occupied and the second highest after Brisbane in percentage growth in occupancy.
- [120] Data about domestic and international visitation for the year ending 2007 were also provided. This information was updated further in cross-examination. Mr Phillips advised that visitor nights had increased by 12% over the last 12 months despite a downturn in visitor numbers. The domestic traveller stays for approximately 3.8 nights and the international traveller for 4.3 nights. Domestic travellers comprised 88% of visitors with the remainder being international travellers. Although leisure tourism has declined over recent years business travel has increased to the detriment of the leisure tourist who has found difficulty in securing accommodation.
- [121] Mr Phillips also gave evidence that Mackay is serviced by frequent Virgin Blue, Tiger, Jetstar and QantasLink flights direct from Sydney, Melbourne and Brisbane as well as other coastal cities. He commented that the increased growth in the region is being driven by business visitation, particularly relating to the mining and engineering sector.
- [122] In cross-examination Mr Phillips said his organisation respected the position of the Mackay Regional Council on behalf of the wider community, opposing Sunday trading. However, his organisation found it difficult to reconcile Council's position with its strategic plan which promotes the growth of tourism and other facilities that operate over seven days. The Council's decision inhibits other businesses that service the users of those facilities from trading.
- [123] Mr Phillips referred to the "huge hinterland population" who, with the expansion of sporting and convention facilities, will travel to Mackay but will be unable to take advantage of Sunday trading if the Council's position is accepted. A similar position was envisaged for those attending conventions and their accompanying persons.
- [124] In the second proceedings Mr Phillips said that Sarina had tourism potential but less so for Walkerston. He acknowledged he had changed his earlier view having considered Council's tourism plans.
- [125] Although Mr Phillips acknowledged that Mackay had full employment he said that jobs were still emerging and did not accept Council's assertion that there was a labour shortage to detrimentally affect Sunday trading.

Consumers

Joan Barrett, Recording Studio Operator/Consumer, Mackay

- [126] Ms Barrett supports the application as it would be more convenient for her in her role as a business operator and full-time carer. The flexibility would also provide the opportunity for her family to spend quality shopping time together on a Sunday.

Lesley Sivyer, Owner/Operator farming cane and cattle business, Mackay

- [127] The application is supported by Ms Sivyer as she believes the extended hours will improve her quality of life and reduce the stress associated with finding the time to shop.

Mark Johnson, TAFE teacher

- [128] Mr Johnson supports the application in a similar way to Lesley Sivyer.

Penny McMahon, Consumer

- [129] Ms McMahon has resided in Mackay for 12 years and is retired. Ms McMahon performs voluntary work for approximately 10 hours per week for Blue Care. Ms McMahon supports the application to extend trading hours in Mackay on Sundays but does not support trade for non-exempt shops on certain public holidays. When she lived in Canberra Ms McMahon found the Sunday trading very convenient and she states that Sunday trading would improve her quality of life because it would make it easier to shop. Ms McMahon finds shopping during the week and on Saturdays a hassle as parking is difficult to find both within the shopping centres and in the Mackay CBD. In her opinion the rapid increase in Mackay's population is one of the reasons for the congestion

in the supermarkets during the week. Ms McMahon considers it unfair that shops such as Bunnings are currently able to open on a Sunday however supermarkets such as Coles and Woolworths are not.

Susan Spratt, Consumer

[130] Ms Spratt lives with her husband and has lived in Mackay all her life. Ms Spratt supports the NRA's application because it would mean greater flexibility when it comes to shopping which she needs with her busy lifestyle. Ms Spratt works full-time between 41 and 50 hours per week, billing for a company associated with the mines and at least once per month works overtime on weekends. Ms Spratt's husband generally works seven days per week in two jobs. He works on a full-time basis in the mines doing shifts of four days on and four days off. On his days off he returns to Mackay where he has a part-time job as a pilot, flying small planes. Ms Spratt's husband is also undertaking training to obtain his commercial pilot's licence. Ms Spratt usually does her grocery shopping on a Monday night and tries to avoid shopping on a Saturday because of the congestion experienced with the high number of people who shop on that day. Ms Spratt considers that Sunday trading would improve her quality of life by allowing the flexibility of choosing which day to shop without being restricted to shopping during the busy Saturdays. With other activities outside of work including studying Ms Spratt finds it difficult to fit everything into a normal day let alone grocery shopping.

[131] Under cross-examination, Ms Spratt said if Saturdays and Sundays were equally congested with shoppers it would not make any real difference to her because she would be able to choose which day she would shop. This would be particularly useful when she sometimes works on Saturdays. Ms Spratt further agreed that if Saturdays and Sundays were equally congested she would avoid congestion. In re-examination, Ms Spratt said that due to work commitments she might go shopping on Sundays for non-grocery items such as clothing, however no shops are open on a Sunday.

Consumer research

Warwick Powell, Managing Director, Transpac Consulting Pty Ltd (Brisbane and Townsville)

[132] Mr Powell indicated Transpac Consulting Pty Ltd (Transpac) was commissioned by the NRA to conduct research into community experiences and attitudes towards Sunday trading in Mackay. A copy of this research is attached to Mr Powell's witness statement. This involved a telephone survey of a sample of adults with principal responsibility for a household's shopping. The survey was conducted during the period 1 to 6 November 2007 and 264 respondents participated from the Mackay, Sarina and Mirani local government areas. The report shows that the maximum margin of sampling error at 95% confidence is +/-6.0%.

[133] In the "Synopsis of key findings" the following is stated:

- Over 30% of all survey respondents work more than 40 hours per week. About 18% work Mondays through to at least some Saturdays while more than 20% work weekdays and periodically during the year on both days of the weekend.
- Almost 20% of respondents had responsibilities associated with children's activities before and after school and 13% had such responsibilities on weekends.
- High levels of support for extended trading hours are found amongst families with dependent children and couples generally (either those without children at all or those who no longer have children living at home).
- More than 80% of all residents have shopped on Sundays at least once during the past 12 months at retail centres in Mackay such as Northpoint and Greenfields.
- Over 75% of residents had shopped on a Sunday at least once a month during the past year, of which 38% had shopped at least once a fortnight.
- Over 59% of residents in the Mackay region supported the introduction of Sunday trading for supermarkets and major centres, of which 47% were strongly in favour.
- 25.5% of residents surveyed opposed the introduction of Sunday trading for supermarkets and major centres in Mackay, of which 19.8% were strongly opposed.

[134] Support for the introduction of Sunday trading was underpinned by beliefs that it would:

- provide more employment opportunities for children (part-time work for school students);
- provide more flexibility as to when people can shop;
- provide a second job to supplement the family income; and
- assist families where both adults work during the week.

[135] The majority of respondents did not agree with the main arguments often advanced in support of the *status quo* (or against the introduction of Sunday trading). The survey showed:

- 50% disagreed that "shops should not open on Sundays because this will intrude upon the opportunities for families to spend time together", compared to 30% who agreed;
- 48.9% disagreed that "shopping centres and supermarkets should close on Sundays because of concerns about increased competition";
- 57% of people disagreed that "Sunday trading will adversely impact on people's participation in religious activities", whilst 20% agreed; and
- 50% disagreed that "Sunday trading will have an adverse impact on people's participation in sporting and community activities", whilst 28% agreed.

[136] The Transpac Report concludes that Sunday retailing at supermarkets and major shopping centres remains a controversial issue for local residents and policy-makers, however, there is a clear majority of opinion that supports its introduction in Mackay. This support is principally found among younger residents and working families, with opposition highest amongst older residents. Active shopping on Sundays is more the norm than the exception especially for those aged 50 or less. Newer residents with previous experience of Sunday shopping have expectations and needs that have been conditioned on the availability of Sunday shopping. This shifting attitude is particularly significant in Mackay, given the pace of population growth in recent years and the fact that 75% of this growth has come from net migration.

[137] In cross-examination Mr Powell said that when potential survey participants were contacted by Ask Australia, (the call centre and data collection agency administering the survey), they were not told the survey was being conducted on behalf of the NRA. This information would be provided if asked. Interviewees would not be told at the outset who the commissioning client was because of the potential to bias the responses. At the conclusion of the survey participants were asked whether they would be willing to be contacted again so that their views could be explored further. Such further qualitative research was undertaken with about 30 to 40 people to flesh out their understanding of attitudes and to brief the commissioning organisation, the NRA. Mr Powell had no specific knowledge that some of those persons would be witnesses supporting the NRA's application.

[138] In response to a question about the proportions of participants who participated in the qualitative research and were in favour of or opposed to Sunday trading, Mr Powell said that the issue was not about proportions but was about being able to speak to people who were willing to candidly discuss their points of view. Participants in the second round of interviews were people who represented particular characteristics and it was useful to explore their views in a qualitative way. He said the idea of proportions or quantitative measures for qualitative research were not consistent with sound research methods. Mr Powell also said that people who were adverse to Sunday trading were not keen to participate in the further qualitative research. Mr Powell clarified that the researchers bring a body of professional experience and knowledge to the interpretation of data and that is relied on together with the data collected to express the value statements found in the report.

[139] In further cross-examination Mr Powell said that the research highlighted the changing face of Mackay due to the high preponderance of shift workers, rapid population growth and significant demographic change. As a result new work/life challenges are emerging. Mr Powell believed it was simplistic to consider that the three mayoral candidates who publicly opposed Sunday trading would alter community attitudes.

[140] When asked to comment on an ABC radio poll taken in May 2008 in which 66% of respondents voted against Sunday trading, Mr Powell said that self selection would be a problem with the survey and it would have no statistical relevance whatsoever.

[141] Transpac was also commissioned to complete a survey of shoppers in the Stockland and Willows Shopping Centres following the introduction of Sunday trading in Townsville and Thuringowa. Shoppers were intercepted at both centres to assess their opinions on the social impact of the introduction of extended Sunday trading in Townsville to gain insights on the potential social needs and impact in relation to the proposed extension of trading hours in Mackay. The survey involved 332 respondents. The findings of this survey conducted on Sunday 4 November 2007 revealed:

- The majority of Sunday shoppers were families with children still living at home and the single largest group of people shopping on Sundays were couples with some or all children living at home which represented 46% of intercepted shoppers.
- Sunday shoppers are mainly shopping for groceries (24.6%) and clothing and footwear (22.2%). Household goods represented 10% and miscellaneous items were 13.5%.
- The factors why people shopped on Sundays related to convenience and "time-poor" issues. Over 26% of respondents indicated they were shopping because it was "more convenient" while 20.6% indicated that their working hours made it difficult to shop on other days. A further 10.9% of respondents stated they were shopping on a Sunday because they had to shop with another member of the family, typically with a child.

- In summary the results revealed that 58% of responses nominated a reason where a resident shopped on a Sunday was because of necessity, be it a lack of time or the need to be accompanied by another member of the family.
- The respondents' main reasons for shopping on a Sunday differed slightly across family status. The single most important factor for working families (both couples and singles with children at home) was the existence of too many non-work commitments on Mondays through to Saturdays. In contrast, singles and couples without children did not rate this concern as significantly as general convenience, constraints on time as a result of working hours and leisure/entertainment.

Dr Jane Summers, Associate Professor in Marketing and Associate Dean of Learning and Teaching, University of Southern Queensland's Faculty of Business

[142] Dr Summers was commissioned by the NRA to undertake intercept surveys on the issue of Sunday trading in Mackay. The surveys were undertaken on the one day at the Troppo Treasure Markets (81 interviews), Bunnings Homemaker Centre (48 interviews) and the Northpoint Homemaker Centre (51 interviews) from 10.30 a.m. until 3 p.m. An outline of the questions to be asked was provided by the NRA.

[143] The results of the survey of consumers are collated in a report, "Mackay Sunday Shopping Survey September 2009" referred to hereafter as the University of Southern Queensland (USQ) survey. The report states that "[T]he purpose of this research is to gather insight into why consumers currently support those retail traders in Mackay who are allowed to operate on Sunday and what necessitates or motivates Sunday shopping behaviours."

[144] The survey involved face-to-face mall intercept surveys with respondents answering a questionnaire comprised of 10 questions of which two were open-ended. USQ were asked to write some qualitative insights based on discussion held with respondents during the day.

[145] Some of the results of the survey are:

- Of the 180 respondents 84% were from Mackay with the remaining shoppers coming from other parts of Queensland, interstate or overseas.
- 66% of respondents work full-time.
- 37% of respondents live in households with children under 18 years and a further 37% live in households of two adults.
- 47% of respondents were male and 53% female.
- Those aged between 25 and 44 years comprised 58% of the total sample with those aged between 45 and 54 comprising a further 20%.
- 44% of respondents shop every or most Sundays with a further 21% shopping on Sundays about once a month. 23% rarely shop on a Sunday.
- The most common responses for shopping on a Sunday related to time and convenience (65%).
- 82% of those who list "work commitments" as their motivation for shopping on Sundays are in full-time employment.
- 73% said they would like other retail centres to be open on Sunday.
- Of those who said Sunday trading was not necessary 43% are not in paid employment and 19% were in part-time employment.
- The majority of respondents who indicated that Sunday trading would be more convenient for them said it would allow them to spread their household chores and shopping needs over the weekend rather than get it all done on a Saturday.
- From the "Observed evidence", which was drawn from the discussions had with respondents, it was reported that:
 - Women with small children would prefer to shop on a Sunday and leave their children with their partner.
 - Many respondents referred to the congestion on Thursday nights and Saturday mornings and believed Sunday trading would even out the rush.
 - Tourists came from centres where seven day trading was the norm and found it irritating Mackay did not offer this option.
 - The respondents at the markets were mainly families with small children (under 10 years) and they saw the markets as a family outing.
 - The report concluded that 73% of shoppers indicated that Sunday trading in major retail centres such as Caneland Central and Mt Pleasant would be more convenient than the current trading hours regime.

[146] In cross-examination Dr Summers said the questions were not biased and simply asked shoppers whether they wanted Sunday trading or not. People were given the option of being interviewed or not. Some went out of their

way to be interviewed. Dr Summers rejected the contentions that the sample and survey instruments were biased and said that the response represented a "fairly good" representation of views.

QRTSA witnesses

Local government

George Robert Christensen, Councillor, Mackay Regional Council

- [147] Councillor Christensen was a Councillor for the former Mackay City Council from April 2004 to March 2008. He is an elected Councillor for the Mackay Regional Council. Councillor Christensen provided an Affidavit for the original proceedings. In that he stated that he did not make the Affidavit on behalf of the Mackay Regional Council but that the views expressed had been formed in undertaking his role as a Councillor with reference to s. 229(1)(a) of the *Local Government Act 1993* which provides that a Councillor must represent "the overall public interest of the local government's area".
- [148] Councillor Christensen said that the Councillors of the Mackay City Council had voted 7:3 to oppose the further deregulation of Sunday trading hours in Mackay at the Council's ordinary meeting held on Wednesday 21 November 2007. At the time of swearing his Affidavit the Mackay Regional Council had not conducted a vote on the NRA's application.
- [149] Councillor Christensen opposed the application due to the negative impact it would have on a number of things as identified below:

Small, local and family-run retail businesses

He said Sundays are normally the best trading day for these businesses and they do not have to worry about the anti-competitive duopoly of Woolworths and Coles and alleged predatory pricing habits major retailers are often accused of undertaking.

Councillor Christensen referred to research he had found on the internet which had been undertaken by the Master Grocers Association in Victoria in 1997 after the deregulation of trading hours. He said that research showed independent retailers had lost up to 70% of their trade. In Tasmania it was found that the sales losses after deregulation in 2002 ranged between 30% and 85% on Sundays. Research undertaken by the QRTSA showed that deregulation in some Queensland towns resulted in many independent retailers losing up to 50% of their Sunday trade with overall sales losses of up to 60%.

Councillor Christensen also said that the same research and discussions with various retailers had led him to believe that many small retailers may need to lay off staff in order to recoup their losses inherent with Sunday trading.

Workers

In this regard Councillor Christensen identified the following concerns:

- (a) on those workers who would rather have Sundays off;
- (b) about young people coming under pressure by requesting a major retailer to have Sunday off; and
- (c) the prospect of the non-payment of penalty rates by major retailers to casuals while small retailers pay such rates.

Family and social life for Mackay

On this matter Councillor Christensen said that Sundays are traditionally days where locals take time out to attend various events such as sporting events (particularly junior sporting events), markets, community fundraisers or family outings to recreational areas including beaches, swimming pools and tourist attractions. He said a major concern of his was the impact on these activities.

- [150] Councillor Christensen rejected the proposition that Sunday trading was required because of the number of shift workers associated with mining and other industries. He said that argument had no credence because the nature of the shift rosters (four days on/four days off) provides flexibility and more opportunity for workers to shop during normal retail trading hours.
- [151] Councillor Christensen was cross-examined at some length by the NRA about the background to the resolutions passed by the Mackay City Council and the Mackay Regional Council. He said the resolution made by the Mackay City Council on 21 November 2007 had been as a result of Councillor Johnson putting forward a motion

in General Business. The motion was seconded by Councillor Christensen. When the vote was taken no application had been made by the NRA for Sunday trading although there had been some media reports about a forthcoming application. Councillor Christensen said that no information or paperwork was before the Council at the time the decision was taken. Two Councillors who had voted against the motion argued Sunday trading was inevitable and that Council should wait until it was asked (by the NRA or the QIRC) to put forward a view before it did so.

- [152] Councillor Christensen acknowledged that in November 2007 he had contacted Mr Driscoll of the QRTSA to see whether that organisation knew about the application by the NRA and whether it was doing anything about it. Councillor Christensen said he had not contacted the NRA because he knew the position of that organisation on the question of Sunday trading. Councillor Christensen and Mr Driscoll had a couple of telephone calls and exchanged emails about the issue. Councillor Christensen said he had not discussed with the QRTSA the desirability of "whipping in under the radar getting a motion put through council" as the motion of 21 November 2007 did not originate from him. He said he was not certain whether Council was going to make a decision and he had planned to write a letter. At that time he thought that a minority of Councillors were opposed to the application. However, Councillor Johnson pulled a vote on a controversial issue.
- [153] The matter was not discussed again by the Mackay Regional Council until 14 May 2008, about a week before the QIRC arrived in Mackay for the (original) hearing of the application. At that time Councillor Christensen moved a motion opposing the NRA's application. The motion, passed by nine votes in favour with one vote against, is as follows:
- "Mackay Regional Council opposes the application by the National Retailers Association to further deregulate Sunday trading hours in the Mackay region due to the negative impacts it will have on local sporting and community events, family life and small retail businesses in the Mackay region."
- [154] He said discussion about the resolution had taken fifteen minutes, however at a regular Councillors' forum, a discussion of about 40 minutes to an hour had occurred allowing the issues associated with Sunday trading to be ventilated. At that time only one person had spoken in favour of Sunday trading. Councillor Christensen said that Council had not seen the NRA's application or the material filed in support of it before passing its resolution. However, he was certain that Councillors would have seen the market research conducted by Transpac before the meeting of 14 May 2008 but it was not raised at that meeting.
- [155] He had personally seen a copy of the Transpac report relied on by the NRA in this application and had forwarded a copy of that report to other Councillors. Councillor Christensen also believed that some Councillors may also have received a copy of the Transpac report from the previous Mayor, Ms Boyd, who had received a copy from the NRA.
- [156] Councillor Christensen said that a sub-committee of the Mackay Regional Council called the City Centre Revitalisation Committee had been approached by the NRA to seek its views. This committee, now known as Shaping Mackay, had recommended to the Council that the NRA's application be supported. Councillor Christensen said he and other Councillors expressed concern at the May 2008 meeting over the NRA's approach to a committee of Council to get its approval when the Mackay City Council had passed a resolution the previous year. This was seen as an attempt to undermine the Council's position.
- [157] Councillor Christensen said several Councillors on the Mackay Regional Council have small business connections. Responding to the NRA's proposition that those Councillors should have indicated a conflict of interest and excluded themselves from voting on Sunday trading, Councillor Christensen was not conclusive about what any Councillor should do who felt they could not do their duty under s. 229(1) of the *Local Government Act 1993* to represent the overall public interest. The conflict of interest provisions went to material personal interest.
- [158] In the council elections in March 2008, each of the three Mayoral candidates in a debate opposed the introduction of Sunday trading in Mackay. Councillor Christensen said that he could not comment on the motives of candidates in expressing such a view. Approximately 37 candidates contested the election. Voters could have questioned every single one to find out their views. He said people had known where he stood on the issue and he was elected with the third highest vote.
- [159] He said it was irrelevant whether the Council was aware or not that its view on the matter was important because the matter was called on and Councillors voted on it. When that occurs Councillors have to take positions, based on their views and their role as Councillors, for the betterment of the area.
- [160] Councillor Christensen said he supports local retailers in this application and small business generally but not in the face of overall public interest. He said he was one of the few Councillors who supported the development application involving a new Woolworths supermarket to be built in the Northern Beaches. That decision did not

support small business. He considered the overall public interest and the merits of each item of business that comes before Council. In response to a question about whether the determination of the overall public interest would require consideration of the market research or consumer research, Councillor Christensen said this depended on what questions were asked when the market research was undertaken. He said he believed the majority of people in Mackay really could not care whether the shops are open on Sunday or not but that there are people with strong and passionate views on both sides of the argument. He was unable to comment on the veracity of the Transpac research which showed that nearly 50% of respondents strongly supported Sunday trading and 20% opposed it.

- [161] Councillor Christensen conceded that the argument that it is convenient to shop on Sunday given that the typical family is time poor is valid however it is outweighed by all other relevant factors. His view was "convenience, but at what cost?". Families have one late trading night and Saturdays to undertake family shopping. He believed the world was not falling apart without Sunday trading.
- [162] In response to questioning by the AWU on the issue of employment, Councillor Christensen said there was no guarantee that any workers who lost their jobs as a result of the introduction of Sunday trading would be re-employed in other industries where there were labour shortages. It would depend on skill levels and larger retailers may also not be recruiting additional staff but offering more hours to existing employees.
- [163] Councillor Christensen was unaware of the workplace arrangements negotiated between the AWU and retailers which protected employees from being forced to work on Sundays. He said he was reflecting concerns that had been raised by young people with him. He also acknowledged that some young people would also prefer to work on Sundays. Councillor Christensen also conceded he was unaware of the penalty rate regime applying to retail employers, especially major retailers.

Peter Hamilton Franks, Chief Executive Officer, Mackay Regional Council on behalf of Mackay Regional Council

- [164] Mr Franks only gave evidence in the second proceedings.
- [165] Mr Franks informed the Commission that he had been requested by the Mayor, Councillor Meng, to act on behalf of Council in this matter and as such was giving evidence from Council's perspective. He had forwarded a copy of his Amended Witness Statement to all Councillors and asked for their comment. Mr Franks joined the Mackay Regional Council in June 2008.
- [166] Mr Franks advised that the Council had not made a fresh resolution in relation to the current proceedings and maintained its position of opposition.
- [167] Mr Franks advised that the comments made in paragraphs 3, 4 and 5 of his Amended Witness Statement which addressed small retail business, community and tourism were comments made during the debate on the resolution and again when the matter was informally discussed by councillors in a workshop. Given that Mr Franks was not present for the debate around the resolution and it largely restates the evidence of Councillor Christensen we do not find it necessary to summarise the evidence given in his Amended Witness Statement.
- [168] Under cross-examination Mr Franks said that Council accepts the Troppo Markets are a form of retail activity and Council sanctions that activity. Council has also recently approved the development of a new Homemaker Centre comprising 38,000 square metres, however, Council's view is that the majority of retailers will not trade on Sundays. Mr Franks said that the only retailer that was definite was Harvey Norman and Council was aware that they could trade over seven days. In later evidence Mr Franks said that Council approved the development in the full knowledge that certain retailers will trade seven days.
- [169] One of the factors positively influencing the decision was the total employment that would be created.
- [170] Mr Franks could not say whether Council was aware that typically Homemaker centres do about 50% of their trade on weekends. When asked how Council reconciled the approval of a new homemaker facility with the decision to oppose Sunday trading for enclosed shopping centres Mr Franks said that retailers in those enclosed centres have the option of opening if they wish to do so. Traditionally, what has happened in the larger shopping centres is that smaller retailers which do not want to trade are forced to trade. This view was based on anecdotal evidence gained from his personal discussions with certain retailers. He was unaware whether Councillors knew that no retailers in the enclosed centres would be forced to trade or whether they were aware of the increased costs to individual retailers if they traded without the majors being open.
- [171] Mr Franks indicated that Councillor Perkins, who was a Councillor for the former Mackay City Council and is now a Councillor with the Mackay Regional Council, advised the latter body of the support by Mackay city traders for the application. Further, Council was aware of the support by the Chamber of Commerce in Mackay and Mackay Tourism. Council acknowledged that shopping is recognised as a tourist pursuit.

- [172] Council was also aware that in the earlier proceedings more small businesses gave evidence in support of the application than in opposition and that only four or five small businesses opposed the application.
- [173] He said Councillors have had wide ranging discussion with a large number of retailers both small and large and have garnered their opinions. Following discussions with a range of small business Councillors concluded that Sunday trading would have a major impact on the viability of small retail businesses. This was a consideration by Council in making the resolution.
- [174] Council agrees that many people in the Mackay community are employed in the mining, agricultural and tourism industries, all of which operate on a seven day a week basis. Mr Franks said that Council had not taken any steps to prevent those industries from operating over seven days because Council has no means to get itself involved in those areas. Further, Council was aware that the hospitality industry operates over seven days. Council had not commissioned any research into the impact of seven day trading on sporting and community events, family life or active outdoor living but had consultations with the community and discussions with a range of groups had been held.
- [175] In re-examination Mr Franks said that Council had held a number of workshops in June/July 2008 where the issue of trading hours was discussed because it was quite a contentious issue. The issue had again been discussed in a workshop when the trading hours application came before this Full Bench of the Commission.

Small business interests

John Watson Cummings, President, Western Australian Independent Grocers Association Inc. (WAIGA) and Chairman of the National Association of Retail Grocers of Australia (NARGA)

- [176] Mr Cummings only gave evidence in the proceedings before the current Full Bench.
- [177] The Statement provided by Mr Cummings was in the same terms as that provided to the Full Bench in the *Rockhampton Trading Hours Case*.⁵ We do not intend to summarise the Statement again and will adopt the summary as provided in that decision (with references omitted) at paragraphs [140] to [142] as follows:
- "[140] Mr Cummings stated that Western Australia has similar trading hours regime to that of Rockhampton. In Western Australia, small to medium-sized retailers can trade extended hours by way of gaining a permit.
- [141] Various reports were mentioned by Mr Cummings (e.g. 'the Moss Report and research conducted in New South Wales and Victoria. These reports were not provided to the Full Bench).
- [142] Notwithstanding the lack of supporting material (which may or may not have been of relevance to this case), Mr Cummings went on to state that:
- Some major retailers in Australia chose to close their doors at 5.30 p.m. even though they are entitled to trade longer hours. They do this because there are simply no customers at that time. However, stores such as Coles and Woolworths and liquor stores stay open.
 - Tourists in Western Australia are catered for in the main by owner operated small business which operate in the area of souvenirs, clothing, surf shops, coffee shops and food outlets.
 - Major outlets such as Bunnings have been granted extra trading hours while small hardware stores have had to try to compete with Bunnings' lower prices. Many of these stores have since closed because of an inability to compete reasonably with the larger stores."

- [178] Under cross-examination Mr Cummings said that the trading hours regime in Western Australia allows retailers in tourist precincts to trade 24 hours per day seven days per week. Surveys undertaken by the organisation he represents show that those who have tried Sunday trading have found little or no demand for it and have not continued. The demand seems to be with smaller businesses in specific areas. Their research has also shown that when small businesses are asked whether they would like to open or should open on Sunday, 80% have said "no".
- [179] Mr Cummings said that in every jurisdiction where there had been a relaxing of trading hours market share had shifted from the independent business to Coles and Woolworths. In Victoria this had been in the order of 3% or 4%. On that basis he was not surprised that it was independent grocery businesses which were opposing the application. However, he was not aware that more small businesses are giving evidence in favour of this application than are opposed to it.
- [180] Mr Cummings said he did not have any appreciation of the retail infrastructure in Mackay.

⁵ *National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Another (TH/2009/3) - Decision* <http://www.qirc.qld.gov.au>.

Kenneth Michael Henrick, Chief Executive Officer, National Association of Retail Grocers of Australia

[181] Mr Henrick only gave evidence in the proceedings before this Full Bench.

[182] The Statement provided by Mr Henrick was in the same terms as that provided to the Full Bench in the *Rockhampton Trading Hours Case, ibid.* We do not intend to summarise the Statement again and will adopt the summary as provided in that decision (with references omitted) at paragraphs [137] to [139] as follows:

"[137] National Association of Retail Grocers of Australia (NARGA) represents approximately 4,500 independently owned and operated small businesses in the grocery retailing sector in all states and territories.

[138] The primary points raised by Mr Henrick were as follows:

- Deregulation of trading hours in Australia has led to a shift of market share of the 2 major supermarket chains, Woolworths and Coles. Woolworths and Coles had a joint market share of about 34% in 1974. They now have a joint market share of close to 80% due in part to deregulation of trading hours.
- From research conducted in New South Wales, it showed that Coles and Woolworths stayed open longer in the larger shopping centres, but in others closed at 5.00 p.m. as did other businesses. In Mr Henrick's view, the independent grocery operators did not have the financial resources to open for longer hours than at present.
- From an employment perspective, Woolworths and Coles employed approximately 43% of full-time equivalents in the Australian retail grocery sector and the independent grocery retailers, with 20% of the market, employ 57% of the full-time equivalent employees.
- Mr Henrick referred to American research which showed that local and small business invest a far greater percentage of their profits into the local community, than do the supermarket chains.
- The market dominance of both Coles and Woolworths in Australia has led to the introduction in their stores of private label products which often replace Australian grown, processed and manufactured products.
- Both Coles and Woolworths offer illusory 'benefits' to their customers - e.g. petrol discount shopper dockets which are 'clearly cross-subsidised by their other businesses, meaning that higher prices in markets where competitive pressures are low cross-subsidise the shopper docket discounts.'
- Woolworths has recently entered into a partnership with Qantas to offer frequent flyer points for purchases of \$30 or more in supermarkets and other Woolworths businesses using a Woolworths card. The cost of doing this is borne by the consumer paying through higher retail prices. Coles has entered into similar programs.
- Reports from *The Australian Financial Review* dated 8 August 2009 said that price inflation in Australia was running at 4.7%, which exceeds the overall inflation rate of 1.5%. Mr Henrick says that 'this is a further indication that consumers are not well served by the market dominance of Woolworths and Coles, which, because of their combined market share at close to 80% of the total market, are the price setters for the grocery supply chain in Australia.'
- Mr Henrick tendered a report from PricewaterhouseCoopers 'National Association of Retail Grocers of Australia - The economic contribution of small to medium-sized grocery retailers to the Australian economy, with a particular focus on Western Australia', June 2007.
- While there is material within that report which relates to an Australian-wide perspective, much of the information relates to the Western Australian economy. The Australian perspective was given in direct evidence by Mr Henrick.
- A further report tendered to the Commission 'Economic Impact Analysis: A Case Study, Local Merchants vs. Chain Retailers, Complete Report, Prepared for Liveablecity by Civic Economics', December 2002 concerns 'Introduction - Civic Economics is pleased to present Liveable City with this Economic Impact Analysis assessing the economic impact of local merchants relative to a chain merchant carrying comparable lines of goods. Sixth and Lamar, specifically BookPeople, Waterloo Records, and Borders Books & Music, provide a case study.'
- Other reports tendered include:
 - 'The Andersonville Study of Retail Economics', October 2004, Chicago, Illinois.
 - 'Assessment of the Direct, Indirect, and Induced Economic Effects of Chain Stores on the Regional Economy of Cape Cod', prepared for Smart Planning & Growth Coalition, prepared by FXM Associates, Mattapoisett, Massachusetts.
 - 'The Economic Impact of Locally Owned Businesses vs. Chains - A Case Study in Midcoast Maine', Institute for Self-Reliance, September 2003.

- An article from The Financial Review (dated August 8-9, 2009) entitled 'The Great Shopping Mystery'.

[139] Evidence was given around the applicability of these articles by Mr Henrick through questions posed in cross-examination."

[183] Under cross-examination Mr Henrick said that he had some awareness of the retail infrastructure in Mackay having last visited there in 2000 but was unaware of any developments since then such as the homemaker centres.

[184] Mr Henrick acknowledged that the independent supermarket sector in Australia had gained market share over the last several years, in the order of 11% to 19%, and this had occurred in a deregulated trading hours environment. He also acknowledged that in recent years the independent sector had experienced growth at a rate exceeding the major supermarkets. In particular he agreed that the IGA Distribution 2009 Annual Report indicated a growth of 8.3% compared with an overall market growth of 7.4%. He also accepted that an independent supermarket revival was underway nationally but this had to be seen in the context of the significant market share (now 80%) gained by Woolworths and Coles over the last 35 years. In his view the gains made by the independents in recent years is a slight reversal of that long term trend which he said could be overturned by what appears to be the beginning of another significant round of creeping acquisitions.

[185] Mr Henrick said that based on the Moss Report from South Australia he believed extended trading hours would lead to a transfer of jobs and market share from the independent sector to major chains. He did not accept the view that additional employment would be created in the longer term if trading hours were deregulated.

Phillip Ashley Chapman, Director, Advantage Retail Management Pty Ltd trading as Lease 1, 33 Huessler Terrace, Milton

[186] Mr Chapman is a Certified Shopping Centre Manager and has recognized careers from 1980 to 1997 in senior management in retailing and shopping centre management as well as State Manager Retail Leasing. His business was originally established in 1997 to represent independent retailers with the inequities in retail leasing between lessees and lessors. Mr Chapman acknowledged that much of his evidence was anecdotal due to the privacy of his clients' (retailers) lease arrangements.

[187] Mr Chapman's evidence commented on the short and long term adverse effects of extended trading hours. He said in the short term smaller retailers who open on Sundays are immediately faced with increased occupancy costs through the applied operating expenses of the shopping centre and these costs can be highly disproportionate as they are apportioned only to those which open.

[188] The long term effects concern the end of lease negotiations where the retailer's performance is assessed and the quantum of rental considered. Where a retailer asks a lessor how to increase sales to maintain profits, lessors and their representatives are careful not to insist that a lessee trade on Sunday but the suggestion is made to trade on Sundays. Similarly, potential lessees who express an interest in trading on Sunday are viewed more favourably by lessors than those who do not commit to do so or indicate they will assess the market.

[189] Under cross-examination Mr Chapman acknowledged that the *Retail Shop Leases Act 1994* prohibits lessors from forcing lessees to trade on Sundays and that of those who received the benefit at the time, there are restrictions on passing of additional costs associated with opening outside core hours other than in proportion to the lettable area occupied by the lessee. Mr Chapman also acknowledged that some retailers in enclosed centres would wish to trade on Sundays.

Small business

Andrew Archie McMurtrie, Working Partner, Terry White Chemists

[190] Mr McMurtrie is a working partner at Terry White Chemists Mackay and also Caneland Medical Centre. Both of these stores currently trade over six days of the week. Mr McMurtrie is opposed to the NRA's application because he believes the negative impacts on small business and the community far outweigh any potential benefit. It is Mr McMurtrie's opinion that current hours of opening are more than sufficient to service the general needs of the community. There are already five other pharmacies offering seven day trading in the Mackay district which is more than adequate to service the requirements of a community this size.

[191] It is the opinion of Mr McMurtrie that the Mackay community has been experiencing a period of substantial economic growth due mainly to the expansion of the mining industry. This growth has created many issues for the community one of which is a very low unemployment rate. As a result many small businesses struggle to fill vacant staff positions and this has been documented in the local newspaper. If seven day trading were to be

introduced Mr McMurtrie said finding new staff will be difficult and therefore he will have to adjust the rosters of existing staff. From experience he said that staff who had left his employment stated during their exit interviews the main reason they left was because they did not wish to work on Sundays. In cross-examination by the NRA Mr McMurtrie said that when he advertised a position of cosmetic counter manager approximately two months before the original proceedings he had received 20 applications.

- [192] The shopping centre in which Mr McMurtrie's businesses are located currently trades on the two Sundays prior to Christmas. When the hourly taking for trading on those days is compared against other days of the week they are substantially reduced. The period leading into Christmas is the peak trading time in retail, and if Sunday trading were to be successful, this would show in the figures from those Sundays and this has not been the case.
- [193] Under cross-examination by the NRA, Mr McMurtrie stated that trading on the two Sundays preceding Christmas was less than any other day of the week prior to Christmas. Mr McMurtrie had worked in that pharmacy since 1991 and every year the Sunday trade prior to Christmas was slow. One of the pharmacies closed early due to the low levels of trade. Mr McMurtrie said there was no data available to support this contention. The NRA put to Mr McMurtrie that it was a phenomenon in regional centres which do not trade on a Sunday, that trading on the first of the two Sundays prior to Christmas when trading was allowed, it was slow. Mr McMurtrie said that this would not surprise him, and agreed that on the second Sunday prior to Christmas when trading was allowed, his stores had traded well.

Jenelle Schembri, Director/Owner, Sassrow Pty Ltd t/a Danoz Directions Mt Pleasant

- [194] Ms Schembri said that she and another owner operate the store assisted by three casual staff. The store is an independent store located in the Mt Pleasant Shopping Centre. The store stocks a range of homewares, giftwares, electronic and "as seen on TV" products.
- [195] Concerns expressed about Sunday trading included the effect on family life for those who have to work on Sundays and public holidays; the inability of the family as a unit to participate in social and sporting events on Sundays and public holidays; increased prices; cessation of sponsorships and donations due to the increased costs of being open; and the emotional cost to the family unit while the father works seven days a week.
- [196] Ms Schembri also expressed concern about the finite amounts of money that consumers have to spend; the two Sundays prior to Christmas are only average trading days compared to the rest of the week; freight costs will have to be passed on; consumers are catered for by existing grocery stores and tourists do not come to Mackay to shop but to enjoy natural attractions. Ms Schembri also considered shift workers have enough time to shop because of the nature of their rosters; consumers do not avail themselves of all of the trading hours presently available and seven day trading is not viable for all businesses especially those in the City heart.

Justin Francis Englert, Manager, FoodWorks East Mackay

- [197] Mr Englert said that FoodWorks East Mackay is a family business which operates seven days a week and relies heavily on its Saturday and Sunday trade to justify its wages and stock turns. If Sunday trading were to be introduced the percentage market share of the store would be reduced and have the following effects:
- Reduction in staff.
 - Higher wholesale prices resulting in higher prices or reduced gross profit which in turn would lead to staff losses or reduction/change in the number of grocery lines offered. Mr Englert contended that this would further assist the major supermarkets increase their market share.
 - Reduced market share and buying power would negatively impact on future investment in the store thereby reducing its ability to become more competitive.
- [198] In cross-examination by the AWU, Mr Englert said that based on Christmas and Easter periods which have deregulated trading periods the business expected to lose between \$208,000 and \$260,000 in the first year of extended trading. The store's wages bill for a year was \$260,000. Depending on the percentage of market share lost Mr Englert anticipated that out of the six staff employed on a Sunday two staff would lose work. He also considered that one to two day staff would also lose work due to the loss of trade during the week. Mr Englert noted that the average retailer spends 8% of its gross profit on employment however his store spends 12%, reflecting its customer focus.
- [199] Mr Englert believed that employees he would have to dismiss as a result of deregulated trading hours would have difficulty finding a job with a major retailer because his store pays above the award rate and more than the major retailers. He was unaware that major retailers pay above award rates. In addition he believed that other retail jobs would not be found for his displaced staff because major retailers employ less staff per square metre and have introduced self-service checkouts meaning that staff losses could also be expected from major retailers.

- [200] In cross-examination by the NRA, Mr Englert said that his major competitor, Hatfields, is located 200 metres from his store. It is the largest independent supermarket in Queensland and presently does not trade on Sundays. If Hatfields was to open on Sunday then so too would FoodWorks. The next major competitors for Foodworks East Mackay are the large shopping centres. Mr Englert noted that his store is in a good location, on a major intersection, with its customer base being commuters to and from work. The average basket count for customers of Foodworks East Mackay is seven items. In response to a question of whether this convenience factor would alter if the IGA store was open on Sunday, Mr Englert said that this already happened when trading hours were deregulated at Christmas. At these times, trade on Sundays at Foodworks East Mackay has been reduced by up to 50%. He said Christmas Day followed by Boxing Day are the store's two biggest trading days of the year.
- [201] Mr Englert said that regulated trading hours for major retailers provided protection for small businesses like his store. He believed this protection has been put in place to ensure fairness and allow him to build his business and increase profits so that he can reinvest in and grow the businesses to a point where he can compete directly with the major retailers. He said that when his business reaches the size of a major retailer then he will abide by the same rules as Woolworths and Coles. Until that happens he will live under the protection of trading hours regulation.
- [202] When Mr Englert was asked about "the special privilege" applying to his store when similar stores in other parts of Queensland and interstate operate where Sunday trading exists, he said his concern was the current protection that exists for his business which he wants to retain so that he can grow the business and compete against the major retailers. He said it was in his financial self-interest within the realms of survival for the current trading hours regime to remain.
- [203] Mr Englert said that in recent years his store has been experiencing 20% growth each eighteen months. When asked about the proportion of sales on each day of the week, Mr Englert could only respond with any degree of accuracy in respect of the weekend days. He said that between 25% and 30% of total trade occurred on a Sunday and 20% on a Saturday. He was able to provide more accurate figures for customer counts. He advised the customer counts on each day are Monday 520; Tuesday 530; Wednesday over 500; Thursday above 500 (but less trade between 7.00 p.m. and 9.00 p.m.); Friday 600; Saturday 800 and Sunday between 1100 and 1200. Mr Englert said that customers are not so much doing a top up shop on weekends but the trend is for a half shop. As a result the average basket on a weekend is ten items with more "junk food" and consumables being purchased on those days.
- [204] Mr Englert said that only casual staff are employed on Sundays and permanent staff are rostered off.
- [205] The NRA asked Mr Englert for his response to the view that there was no reason why Sunday trade would not be similar to Saturday trade if major retailers were permitted to trade on Sundays. He responded that his business would lose trade and anticipated that it would be less than a Saturday. He believed that even Hatfields would be negatively impacted because consumers would be drawn to enclosed shopping centres to do all their shopping in the one place.
- [206] The NRA raised with Mr Englert his evidence that higher wholesale prices would result because of the diminution of its buying power. It was put that this was unlikely given the buying power of stores under the Foodworks banner and the negligible effect on that buying power in the event seven day trading was permitted. Mr Englert contended that their buying power with major wholesalers was already diminished as they were presently unable to purchase at the same price as major retailers. If market share was to be lost then less market power would result. He anticipated that in six to 12 months after the introduction of Sunday trading his buying power would be affected, however, he was unable to produce any evidence to support his assertions.
- [207] Mr Englert anticipated that the independent sector would lose 3% of market share if Sunday trading was introduced in Mackay. At the time of his evidence he said that Mackay was experiencing a boom and his store's basket size and turnover had increased. Mr Englert was not prepared to acknowledge that many of his customers like the convenience of Sunday shopping with the result that their buying habits would not change with Sunday trading.
- [208] In respect of prices Mr Englert said that on some items his prices were higher while others were lower than the major supermarkets. Mr Englert was shown receipts for purchases of a selection of 10 items from his store and the same 10 items from the Coles' Sydney Street store. Those receipts showed that the cost of the items was in the area of \$40 from Mr Englert's store and \$30 from the Coles store. Mr Englert said that margin was not common across all of his product range.

Donna Abbott, Manager, De Campo Mini Market

- [209] The De Campo Mini Market is owned by Ms Abbott's uncle, Frank De Campo. Ms Abbott is assisted in running the business by her husband and three staff.

- [210] Ms De Campo believed that Sunday trading is unnecessary in Mackay as the shopping centres are already open six days per week. If Sunday trading was introduced then their staff numbers would need to be reduced by one person as they would not be able to maintain current business levels with increasing competition from larger retail stores.
- [211] In cross-examination by the AWU, Ms Abbott said that she worked on Sundays so that the reduction in staff would be of a person who worked during the week. However, on occasion a staff member would work on a Sunday although her staff preferred not to work on that day.
- [212] In cross-examination by the NRA it was revealed that the three staff are casual employees, one of whom is Ms Abbott's nephew. The three staff work a combined total of 18 hours per week. Any reduction would be of those hours. The store is not showing any great growth year on year in turnover.

Rebecca Formosa, Owner/Manager, Billy Baxter's Café, Mt Pleasant Shopping Centre

- [213] Ms Formosa owns the Billy Baxter's Café in Mt Pleasant Shopping Centre in partnership with her parents and has done so since October 2005. Ms Formosa strongly opposes the application by the NRA and believes that extended trading hours will result in higher operating costs for her business with not a lot more money being spent by consumers. It will result in lower profits and longer working hours.
- [214] Over Christmas the Centre opened on two Sundays to cater for shoppers and Ms Formosa said that sales for her business for those two weeks were up marginally, if at all, proving that consumers only have a certain amount of money to spend. Under cross-examination by the NRA, Ms Formosa agreed that in some cases it would be common for cafes to trade seven days of the week. Ms Formosa also agreed that other small business operators in the Mt Pleasant Shopping Centre do not share her views and would like to trade on Sundays. It was acknowledged by Ms Formosa that rent and wages were her highest operating costs. Ms Formosa said there was a general expectation from centre management that retailers would open on the Sundays prior to Christmas.
- [215] It was agreed by Ms Formosa that she had shopped at Northpoint and Greenfields on Sundays and found it convenient to do so. She also agreed it is not uncommon for people to work on six days of the week. In re-examination by the QRTSA Ms Formosa agreed she did not know that shopping centres are currently allowed to open if they choose.

Gabriele Giannangelo, Director, GASMC Pty Ltd t/a Battery World Mackay

- [216] Ms Giannangelo said Battery World Mackay operates Monday to Friday from 8.00 a.m. until 5.00 p.m. and Saturday morning from 8.30 a.m. to 12.30 p.m. With extra hours of work Battery World would require extra staff and as the business is a speciality shop experienced staff are required. These are hard to find in Mackay due to the mines absorbing a great number of workers.

Medium business

Graeme William Cassady, Financial Controller, Cornett Group Supermarkets

- [217] Mr Cassady only gave evidence in the proceedings before the current Full Bench.
- [218] Mr Cassady said that the Cornett group administers the trading matters for 40 supermarkets throughout Queensland which includes the Cornett's Supa IGA in Mackay. That store currently trades the same hours as the Woolworths and Coles shops trade in the city of Mackay. The Cornett's Supa IGA is approximately 2,400 square metres and offers the range of a full line supermarket, including a bakery, full supermarket meat offer, full line deli and fresh fish section.
- [219] Cornett's oppose the application for the following reasons:
- [157] the additional work load and stress it will cause the senior staff who only have one day off;
 - [158] it will lead to a decrease in profits due to higher employment costs associated with the rates to be paid on Sundays. Mr Cassady said that Cornett's do not see any significant advantage to seven day trading as the benefit of additional trade will be offset by additional wage costs; and
 - [159] it will place additional stress on daily suppliers of bread, milk and fresh produce who will be required to deliver on Sundays.
- [220] Mr Cassady said that Sunday trading will make it harder to attract qualified staff e.g. butchers, bakers and fish mongers. He said these tradespeople are already in high demand and Sunday work will make it more difficult to attract them. The situation is made more difficult in Mackay where supermarkets are already unable to match the wages and conditions found in the mining industry.

- [221] Under cross-examination Mr Cassady said it was difficult to find any staff in Mackay let alone those who may be interested in volunteering to work on Sundays. He said that the Mackay store employs 75 staff of whom 35 would be full-time. Of those 35 about 15 to 20 were managers or supervisors who work five days a week and every second Saturday.
- [222] Despite opposing the application Mr Cassady said the Supa IGA would be obliged to be open if Sunday trading was granted in order to match their rivals, Woolworths and Coles.
- [223] Under cross-examination Mr Cassady said although the Cornett Group had not undertaken any form of consumer research he believed that he had a fairly good knowledge of what consumers wanted in respect of range, product and trading hours. He said that in south-east Queensland where seven day trading is permitted the Cornett Group of stores did 9.54% of their trade on a Sunday. These figures were derived from the four weeks of trade preceding the hearing. In the Mackay Supa IGA most of the trade occurs on Wednesdays, Thursdays and Fridays and not on Saturdays which indicated to him that consumers prefer week day shopping rather than weekend shopping.
- [224] Mr Cassady acknowledged that trading over 24 hours per day seven days a week would best serve the needs of consumers but that was an impossibility. In his view the present trading hours in Mackay delivered the lowest possible price in a cost-effective service manner.
- [225] Mr Cassady said that the IGA store in Mackay had experienced approximately 3% per annum growth since the Cornett Group took over the store from Action in April 2006 and that the financial year 2008/09 had been the best year for sales growth.

Consumers

Cherry Lynne Feeney, Consumer

- [226] Ms Feeney is a resident of Mackay, and while currently a business person, has had stores in both shopping centres in Mackay over a ten year period. It is Ms Feeney's opinion that with supermarkets currently opening until 9 p.m. on weeknights and 5.00 p.m. on Saturdays that consumers are able to shop within those times. It is also the opinion of Ms Feeney that there are already a number of retail outlets trading on Sundays, such as those selling furniture, sporting goods and information technology, all of which provide some avenues for people who like to wander in shops. Ms Feeney states that small businesses that already open on Sundays need the advantage of the shopping centres not being open. Further, small businesses within shopping centres are forced to run at a loss as the majority of people wander around looking and enjoying the air-conditioning.
- [227] It is the opinion of Ms Feeney that Mackay does not have the population to warrant Sunday trading. In her experience, having owned stores in local shopping centres, there is an increase in shoplifting as a result of extended trading, and further that trade outside Christmas and Easter times is a struggle and usually family members work to cover the additional time and to save costs. After many years of extended trading most shopping centres still do not have the substantial traffic flow until the last days before Christmas.
- [228] Ms Feeney is of the view there is no evidence that tourists need larger shopping centres to be open. As a regional area Mackay is not a major shopping destination, but rather a destination where people want to go to the beach or the Mountains.
- [229] Under cross-examination by the NRA, Ms Feeney accepted that there are some people who have a different view to her about whether retailers in Mackay should be able to trade on Sundays. Ms Feeney said that she had engaged in a lot of vibrant discussions on the subject and acknowledges that others have a different view than that expressed by her. Ms Feeney also said that she had shopped in some of the homemaker centres such as Bunnings and the Good Guys and she did not have a difficulty with retailers such as hardware stores being able to trade on Sundays when other large retailers could not.

Consideration of s. 26 Trading Hours Act factors

(a) Locality

- [230] The application seeks to introduce trading on Sundays and certain public holidays for non-exempt shops in the "Mackay area" as defined and encompasses Walkerston and Sarina.
- [231] In making submissions on locality, the NRA relied on the inspections which showed the retail infrastructure in Mackay, Sarina and Walkerston as well as the following evidence:

- Mr Phillips: Mackay is the regional hub of Queensland's highest export region. The growth in the Mackay region is fuelled by the boom in the mining sector and its strong economic multiplier effect. The strong resources sector has also been supported by the resurgence in agribusiness, the growth in tourism and the emerging marine sector. Mr Phillips also gave evidence about the significant amount of development including the completion of the Mackay Entertainment and Convention Centre and the Bluewater Lagoon Regional Aquatic Centre together with the construction of a range of accommodation to support the business traveller. Mr Phillips also said that Council had approved the expansion of the Northern Beaches Central Shopping Centre.
- Ms Green: Attached to her Witness Statement was the Mackay Whitsunday Regional Economic report for the year ended June 2007 which showed the substantial investment in industrial land development in the Mackay region and the growth in dwelling approvals.
- Professor Mangan: Referred to the report commissioned by the Mackay Regional Council to review retail and commercial development which found there was a need for an expansion of retail space and outlets. Professor Mangan also gave evidence that retail is underdeveloped in Mackay with only 18% of the workforce engaged in retailing compared to 22% of the Queensland workforce.
- Mr Franks: Evidence that the Council had recently approved the development of a new 38,000 square metre homemaker centre.
- Mr Allan: As Mackay is the main point of interchange for "fly-in/fly-out" workers employed in central Queensland mines the weekend visitation is high. Evidence was also given about the significant number of retailers which trade over seven days per week.
- Mr Englert: Evidence that his business was experiencing increasing turnover of over 20% every 18 months for the last few years.

[232] The NRA submitted that given the role that Mackay plays in servicing the needs of the Bowen Basin and surrounding communities, the changed community expectations, the development of retail infrastructure and the unchanged trading hours regime since 1992 (except for hardware stores), Mackay is an appropriate and suitable location to relax the trading hours.

[233] The QRTSA submitted that there was nothing unique in the current locality to support the granting of the application.

Consideration

[234] In our view the Legislature does not impose any test of "uniqueness" in relation to the factor of locality, either expressly or by reference to the extrinsic material. The factors contained in s. 26 are matters to which the Commission must have regard when determining applications made pursuant to s. 21 of the Trading Hours Act. In our view a non-exhaustive list of the types of matters to be considered includes the geographic location of the town or area; the retail infrastructure; other relevant infrastructure and other relevant features of the town or area concerned.

[235] We are satisfied that there has been significant economic development and growth occurring in the Mackay region largely due to the resources boom. We are concerned that the data with which we have been provided relate to a period prior to the recent economic difficulties. We are aware that this region has suffered in the downturn, however, the difficulties experienced seem to have been of relatively short duration.

[236] This view is reinforced by the evidence of Professor Mangan about the 2009 Macro Plan report which argued for an expansion of retail space and outlets. In addition the evidence of Mr Phillips and Ms Green shows the investment in retail and other infrastructure in recent years. Mr Phillips' evidence also indicates that although some developments have been put on hold because of the economic climate, construction of a range of infrastructure is in train.

[237] The residents of Mackay have access to a range of shopping outlets including enclosed shopping centres, homemaker centres, convenience stores and the Troppo Markets. We are aware that a number of retailers which are situated in homemaker centres trade over seven days and directly compete with some of the non-exempt retailers for which evidence has been given e.g. Big W, Target and Kmart. We consider that the range of seven day trading operations presently available together with Council's recent approval for the construction of a new homemaker centre show that the location can support seven day trading.

[238] For the above reasons we believe that this factor weighs in favour of the grant of the application.

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

[239] In determining the needs of the tourist industry the NRA relied on the evidence of Mr Phillips as summarised above. Whilst acknowledging that shopping is not the main reason for visiting Mackay the NRA submitted that the granting of the application would improve the offer of the Mackay region for visitors. The NRA also relied

on the evidence of Mr Phillips that more than \$300M per annum contribution was made by the tourism industry to the Mackay regional economy.

- [240] Reference was also made to the evidence of Mr Phillips and Ms Green that Sunday trading would reduce confusion amongst tourists visiting from other parts of Australia where seven day trading operates. Mr Phillips' evidence was that Mackay Tourism believes the granting of the application would increase visitor expenditure in the region and improve the competitiveness of the Mackay region as a destination and gateway.
- [241] The NRA also submitted that s. 26(b) allowed consideration of the needs of the retail industry both in terms of investment (see the evidence of Ms Green, Mr Allen and Ms Singh) and operational efficiencies (see the evidence of Messrs Stout, Wallace, and Waters).
- [242] Although the NRA noted no direct evidence had been called from the mining and agricultural industries evidence was given by a number of witnesses that these sectors would benefit from Sunday trading based on the limited opportunities for workers in these sectors to come to Mackay and the reference to Mackay as a service hub to the larger geographical area.
- [243] The QRTSA submitted that its witnesses, Ms Feeney and Ms Schembri, had given clear evidence that Mackay is not a destination for shopping but rather attracts tourists due to its natural and outdoor attractions. The QRTSA contended that the NRA had not produced verifiable evidence to support its contention that "shopping is a common leisure or entertainment activity for visitors regardless of the purpose of their visit". Instead, the NRA had relied on anecdotal evidence given by Mr Phillips who conceded that his evidence about the needs and desires of leisure travellers was broad and generalised. Similarly, Ms Singh and Ms Green did not produce verifiable data.
- [244] The QRTSA argued that the NRA had failed to demonstrate how the current retail infrastructure and environment fails to meet the needs of the tourist industry in any verifiable sense. Further, the NRA's own evidence was to the effect that despite the current trading hours regime, growth in leisure and business tourism as well as international visitation had increased. This was said to be contradictory to the NRA's contention that the current trading hours regime was insufficient to meet the needs of the tourist industry. Accordingly, this factor did not weigh in favour of the grant of the application.

Consideration

- [245] We acknowledge, as does the NRA, that the evidence does not support a conclusion that Mackay is necessarily a destination for shopping *per se*, rather it is incidental to other activities undertaken by visitors to the city. Whilst acknowledging that Mr Phillips did not produce any data to verify his assertion that there is a co-dependency between the tourism and retail industries with visitor surveys consistently showing that shopping is ranked a priority amongst all categories of tourists, we accept that he has considerable experience in the area and is qualified to express such a view. Further, we accept as a matter of logic his evidence that seven day trading facilitates the ease with which tourists can meet their needs and directly contributes to increased tourism spending. We also think it likely that tourists who are spending in the order of four nights in the city may wish to avail themselves of shopping at enclosed centres if they are in Mackay on a Sunday. We note too the evidence of Mr Franks that the Council was aware that shopping was a recognised tourist pursuit.
- [246] It also seems reasonable to infer that visitors attending a conference at the convention centre or who travel from outlying areas to attend a football match may wish to take advantage of shopping at non-exempt stores such as Target, Big W and Kmart whilst in Mackay.
- [247] We note the USQ survey reports that tourists who came from centres where seven day trading is the norm found it irritating Mackay did not offer this option.
- [248] For the reasons given we consider that this factor militates in favour of the grant of the application.
- [249] We have some difficulty accepting that the matters raised by the NRA concerning investment and operational efficiencies relate to the needs of the retail industry. In our view they relate more to matters concerning business interest and will be considered in relation to s. 26(d).

(c) the needs of an expanding tourist industry

- [250] The NRA relied on evidence from Mr Phillips, Ms Green, Mr Allen and Ms Singh to show that the needs of the expanding tourist population would be assisted by the granting of the application as follows:
- Mr Phillips' evidence concerning the growth in the number of room nights occupied, occupancy rates and average takings per room as well as the increase in passenger movements through Mackay airport

increasing 66% from 2004 to 2007 with an 11.8% increase in the year to June 2007.

- The evidence of Ms Green, Mr Allen and Ms Singh regarding tourists' confusion over shopping hours and the loss of retail sales may be sales lost forever.
- Mr Allen's evidence about weekend visitation to Mackay being high with Mackay being the main point of interchange for "fly-in/fly-out" mine workers.

[251] The QRTSA submitted that the NRA had failed to adduce evidence in any satisfactory fashion that the needs of an expanding tourist population within the Mackay region will be facilitated by the granting of the application. In particular, the QRTSA argued that the NRA had failed to adduce any substantial evidence to substantiate how the current retail environment is insufficient to meet the needs of tourists either now or into the future and how this application will achieve that result. The QRTSA also noted that the tourism figures relied on show that there has been a decrease in tourism within the region.

[252] The QRTSA also contended that the NRA had failed to produce any verifiable data to support its argument that the lack of Sunday and public holiday trading inconveniences, confuses or frustrates tourists.

[253] For these reasons the QRTSA submitted that the NRA had failed to provide any persuasive evidence that the needs of an expanding tourist population favoured the grant of the application and the Commission should conclude that the current trading hours regime continues to suitably serve the ongoing needs of tourists within the region.

Consideration

[254] We are concerned that some of the data with which we have been provided is dated. The more recent information provided by Mr Phillips shows a decrease in visitor numbers but an increase in visitor nights. It is difficult to conclude from this that the Mackay region is presently enjoying an increasing number of tourists. We accept from the earlier data provided that there had been growth in the number of business tourists compared to the leisure tourist and that because of this, leisure tourists had found difficulty in finding accommodation.

[255] The evidence of Mr Phillips attests to the expansion of facilities, services and accommodation to meet the needs of the business and leisure tourist. We also accept the evidence that there is an expectation that seven day trading will exist by tourists who come from areas where seven day trading operates.

[256] However, because of our concern about the currency of the data, but recognising the growth that had occurred prior to the economic downturn, our view is that this factor should be considered to be neutral.

(d) the needs of an expanding population

[257] The NRA advised that the estimated population for the Mackay Regional Council as at 30 June 2008 was 112,607 with projections of growth between 140,000 and 150,000 by 2016 and 160,000 to 190,000 by 2031. Population growth is expected to continue to trend above the Queensland average making Mackay one of the fastest growing regions in Australia.

[258] The NRA relied on the evidence given by Ms Green and Mr Powell to support its submissions on this factor. Ms Green provided data which showed that Mackay City's population has increased by 4.2% in 2006 and population projections were that it would become the second largest regional city in Queensland by 2026. Data contained in the Transpac survey, attached to Mr Powell's Statement, showed that over the preceding five years Mackay had experienced rapid population growth, with 75% of that growth coming from net migration.

[259] The NRA concluded that Mackay is a rapidly expanding region, with significant amounts of net migration, high levels of employment, strong wages growth and a growing need and expectation for seven day trading. These factors weighed in favour of the application.

[260] The QRSTA submitted that the evidence relating to population growth only related to Mackay and not the other areas encompassed by the application. The QRTSA was critical of the NRA for not linking the growth projections with the need for Sunday trading and for not substantiating by way of direct evidence how the current retail trading infrastructure fails or will fail to meet the needs of any expanding population and how the granting of the application will meet any discernible needs of an expanding population, beyond anecdotal assertions. For these reasons the QRTSA submitted that this factor was not considered to be supportive of the application.

Consideration

[261] We are satisfied that the Mackay region is experiencing an expanding population. We also accept the evidence of Mr Powell that population growth, especially migration from other areas, brings with it changes to social

needs and expectations including seven day trading.

[262] We note that Council has approved a new homemaker centre which will be able to trade on Sundays and that the report prepared by Macro Plan for the Council argued for an expansion of retail space and outlets. Although we are unaware of Council's response to the report, in our view there appears to be a case that the existing retail needs of the population are not being met through the existing retail infrastructure.

[263] For these reasons we consider that this factor weighs in favour of the grant of the application.

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

Public interest

[264] In submitting that the public interest supported the granting of the application the NRA relied on the following evidence:

- those major retailers such as Woolworths, Target and Big W which make charitable donations to the local Mackay region and the broader community;
- Councillor Christensen who said that the Mackay Chamber of Commerce and the Shaping Mackay committee of the Mackay Regional Council supported the application;
- Mr Phillips' evidence that tourism provides opportunities to establish new and expanded infrastructure, products, facilities and services and expand existing business which would not be sustainable based on the resident population alone but that the resident population also benefits from these developments;
- Ms Singh's evidence that 80% of Queenslanders reside in areas that enjoy access to Sunday and public holiday trading; and
- other industries and significant portions of the retail industry can currently trade on Sundays in Mackay. Non-exempt retailers and tenants of enclosed shopping centres are "unfairly restricted and disadvantaged" by not being allowed to trade on Sundays.

[265] The NRA also submitted that seven day trading exists in New South Wales, Victoria, Tasmania, South Australia, the ACT, Northern Territory and some areas of Western Australia. Having regard to the prevalence of seven day trading throughout Australia the NRA contended that consistency of trading hours in Queensland and Australia is in the public interest.

[266] The QRTSA submitted that there is a significant amount of evidence before the Commission suggesting that the public interest will not be advanced by granting the application. In support of this contention the QRTSA relied on the following evidence:

- Mr McMurtrie's evidence that he believed the negative effects would outweigh any beneficial effects to the community;
- the evidence of Ms Feeney, Ms Schembri and Ms Formosa concerning the negative impacts on family and leisure time;
- Councillor Christensen's evidence also concerning the negative impacts on family and leisure time and the fact that many sporting and social events held on Sundays would be threatened by Sunday trading; and
- Mr Phillips' concession in evidence that the Council's decision was made "through the eyes of ratepayers" and was concerned with the protection of family values and opportunities.

Consideration

[267] In respect of the NRA's submission that the public interest would be served by having consistency of trading hours in Queensland and Australia we would note that even if this argument were to be accepted and the application granted there would still be fragmented shopping hours in Queensland. In addition the mere granting of the application would not lead to consistency in trading hours across Australia. There may be Sunday trading but the hours of opening vary across the country and parts of Western Australia do not trade.

[268] However, there is a more significant reason why this contention of the NRA cannot be accepted. Taken to its logical conclusion it would mean that applications to vary the Trading Hours Order would be granted as a matter of course. The situation as it exists in Queensland is that the Legislature has determined that trading hours in Queensland are to be determined by this Commission in accordance with the Trading Hours Act. As the Full Bench in *Rockhampton Trading Hours Case*⁶ noted at paragraph [220] trading hours in other States have been deregulated as a consequence of Government decision and action.

⁶ *National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Another (TH/2009/3) - Decision* <http://www.qirc.qld.gov.au>.

- [269] All of the provisions of s. 26 must be considered by the Commission in deciding an application made pursuant to s. 21 of the Act. One of the factors listed in s. 26 concerns the locality or part thereof in which the non-exempt shop or class of non-exempt shop is situated. Although perhaps not impossible we consider that the inclusion of this factor militates against applications for disparate, diverse and geographically separate locations. The differing outcomes in such areas as Gympie (*NRA v QRTSA and Another*)⁷ and Moranbah (*NRA v AWU and Another*),⁸ to cite two recent examples, reflect the application of the s. 26 criteria relevant to those localities.
- [270] We would note for the present that there are competing views about the matters which have been identified as public interest considerations. We adopt the view expressed by the Full Bench in the *Rockhampton Trading Hours Case, ibid*, that
- a. "[174] Primarily, the 'public interest' test in these circumstances is incorporated within the specific requirements which the Commission must consider within s. 26 of the Trading Act. A mandatory consideration by the Commission of factors (a) to (i), broad as these sections are, ensures that an appropriate 'public interest' consideration has been met."
- [271] In relation to the NRA submissions concerning the contributions made by retailers to the community we note the evidence of major retailers about their donations to local and national charitable causes and believe that smaller retailers also support local community and sporting events.

Consumers' interest

- [272] The NRA referred to the evidence of five consumers (Joan Barrett, Lesley Sivyver, Mark Johnson, Penny McMahon and Susan Spratt) who all attested to the convenience and amenity that Sunday trading would bring to their lifestyles. The NRA submitted that the evidence of Ms Feeney, who gave evidence in support of the position of the QRTSA, was not as that of a consumer but of previous experience as a retailer. The NRA noted that in cross-examination she said "Several people who have moved here from the south have said to me that they can't wait for Sunday trading ...".
- [273] The NRA also relied on the consumer research undertaken by Transpac and USQ, the results of which have been outlined above. The NRA concluded that these surveys showed support from the majority of people for the introduction of Sunday trading.
- [274] Reliance was also placed on the evidence of Ms Green which highlighted demographic changes such as the increasing numbers of both parents working resulting in less opportunity to shop as a family.
- [275] The NRA referred to the prevalence of Sunday trading elsewhere in Queensland and Australia and concluded that if consumers did not want to shop on Sunday and/or if retailers concluded that trading was not viable on Sundays then Sunday trading would have collapsed years ago.
- [276] In submitting that there is significant weight before the Commission to suggest that the interests of consumers would not benefit or be reflected in the granting of the application, the QRTSA said that there had been an absence of requests from consumers for Sunday trading. In support of that proposition the QRTSA relied on Ms Green's evidence that there had not been an overwhelming level of requests from consumers in her Centre. The QRTSA also relied on Mr Phillips' admission in cross-examination that the existing retail infrastructure in Mackay serviced the community of Mackay to support the proposition that consumer interest is more than adequately served by the existing trading hours.
- [277] The QRTSA submitted that the Transpac and other survey data could not be considered to be independent or reliable given it had been sourced from a commercial arrangement.
- [278] The QRTSA also submitted that evidence was given by witnesses that Sunday trading would be detrimental to consumers' interests. In this regard the QRTSA highlighted the evidence of Mr McMurtrie that service provision would be detrimentally affected by the inability to attract new staff and that existing staff resources would be stretched. Further the QRTSA referred to Ms Schembri's evidence of price increases due to increased costs.
- [279] Accordingly, the QRTSA submitted that the NRA had failed to provide sufficient evidence that the interests of consumers will benefit by granting the application. Rather, that the reduction on service provision and increased prices will be to consumers' detriment.

⁷ *Trading Hours - Non-Exempt Shops Trading by Retail - State (TH/2009/2) - Decision* <<http://www.qirc.qld.gov.au>>.

⁸ *National Retail Association Limited, Union of Employers AND The Australian Workers' Union of Employees, Queensland and Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers)* (2009) - 191 QGIG 336.

Consideration

- [280] Any survey undertaken can be the subject of criticism about the survey methodology, sample size, the extent of involvement by the commissioning agent in the survey instrument or other such matters and accordingly has limitations. In each case the Commission has to determine the weight to be placed on the survey results. Here, the surveys were undertaken by a professional market research company (Transpac) and academics working in the field of marketing (USQ).
- [281] Regardless of any criticisms that have been levelled with respect to the two surveys undertaken in Mackay we are satisfied that they show consumer support for trading hours on Sunday and public holidays in the Mackay area. In this regard we note that the Transpac survey found that over 59% of Mackay region residents support the introduction of Sunday trading for supermarkets and major centres in Mackay of which 47% are strongly in support. Although the USQ survey commented that those respondents supporting Sunday shopping were shopping on a Sunday when the survey was administered, the survey nonetheless found that 73% of respondents were in favour of other retail centres opening on Sunday. We consider that when these two surveys are taken together they show that consumers in the Mackay area supported non-exempt shops being open on Sunday.
- [282] The Transpac survey showed that over 89% of couples with dependent children had shopped at the various homemaker centres on a Sunday in the last 12 months and 81% of single parent households had done likewise. Further, almost all residents surveyed between the ages of 18 and 49 years have shopped at these centres on a Sunday. The USQ survey showed that more time and convenience were the reasons that Sunday shopping was supported. Added to this was the experience of many consumers with seven day trading in other parts of Queensland and Australia as shown in both the Transpac and USQ surveys as well as the evidence of Ms Green and Ms Schembri. Given the demographic change that has occurred in Mackay; the non-work related commitments particularly children's extra curricula activities; the time pressures on two income families and experience with seven day trading elsewhere, the support for Sunday trading is perhaps hardly surprising.
- [283] The research is supported by evidence from Ms McDonald, Mr Marr and Mr Symons who have witnessed people trying to enter the Caneland Central Shopping Centre on a Sunday. In addition Ms Ward gave evidence of a poll she conducted in her store where 90% were in favour of Sunday trading.
- [284] Other evidence which lends weight to the view that consumers support Sunday trading was given by Mr Stout who said in respect of Coles that Sunday trading has been a success where it has been introduced elsewhere and in respect of Kmart that Sunday is a strong trading day and customers wish to shop on Sundays. These sentiments were supported by the evidence of witnesses from non-exempt stores and a number of independent stores. Given the consumer research also supporting Sunday trading we are inclined to agree with the position of the NRA that in light of the experience of Sunday trading introduced elsewhere in Queensland, there is reason to believe that if it was introduced into Mackay similar levels of consumer support would be found.
- [285] Evidence was also given by individual consumers about the convenience and lifestyle considerations that Sunday trading would afford. Against that is the evidence given by Ms Feeney, who while giving evidence as a consumer, is a small business person. Although she did not support Sunday trading for the reasons outlined in her evidence she acknowledged that others have a contrary opinion. Ms Feeney also acknowledged having shopped in homemaker centres that are open on Sundays.
- [286] One of the findings reported in the evidence of Professor Mangan, which was based on his examination and analysis of research undertaken into the socio-economic impacts of the deregulation of retail shopping hours both in Australia and overseas, was that consumer attitudes towards shopping change, from being essentially functional to incorporating concepts of entertainment and leisure as part of the shopping experience. We consider this research lends weight to the evidence given by witnesses such as Ms Green and Mr Phillips about the reasons people wish to shop on Sundays.
- [287] We have considered the rather limited evidence given by the QRTSA witnesses on matters affecting consumers. Although acknowledging their particular concerns we note that both witnesses have stores located in enclosed shopping centres and were this application to be granted would not be forced to trade on Sundays.
- [288] Considering all of the evidence relevant to this criterion we believe that the majority of consumers support the introduction of Sunday trading and, given the availability of Sunday shopping at such places as homemaker centres and Bunnings, that consumers are "voting with their feet" and showing that Sunday trading is a matter of preference. The appearance of consumers trying to enter shopping centres also shows there is unmet demand. In our view the evidence supports a conclusion that consumers' interests favour the grant of the application.

Business interest

[289] The NRA argued that when the competing interests of small business are taken into account with those of medium and large businesses, including shopping centre owners, a finding that business interests favour the grant of the application is relatively clear cut.

[290] The NRA relied on the retailers' witnesses it called, which ranged across the small, medium and large business categories, as well as the shopping centre owners/managers. Reference was also made to the evidence of Professor Mangan found in the Executive Summary of his briefing paper as recited in paragraph [108] above.

[291] The NRA referred to the "limited" evidence adduced by the QRTSA on behalf of small and medium businesses, that is, from two current seven day trading convenience stores, a café, a pharmacy, a homeware/gift store and a battery store. In respect of that evidence the NRA submitted:

- The detrimental impact on Ms Abbott's business was that there may be some reduction in the 18 hours of casual employment currently provided.
- Mr Englert said under cross-examination that in recent years his store has been experiencing 20% growth every 18 months. The NRA, using information provided by Mr Englert in cross-examination as to the difference between his Saturday and Sunday trade of \$2,000, said that based on a profit margin of 3% to 5% Mr Englert's actual loss would be between \$3,120 and \$5,200 per annum.
- Although Mr McMurtrie said he expected to encounter difficulty in finding new staff if Sunday trading were to be introduced, he conceded in cross-examination that 20 applicants had responded to an advertisement placed in or about March 2008. The NRA also submitted that Mr McMurtrie's opposition was based on his wish not to trade on Sundays.
- Ms Schembri's and Ms Formosa's evidence was to the effect that they did not wish to work seven days and thus other retailers in enclosed centres should not be able to exercise choice as to Sunday trading.
- Mr Cassady's evidence that Sunday trading would lead to decreased profit due to higher employment costs was not supported by evidence and was contradicted by Super IGA's competitors, Woolworths (Mr Wallace) and Coles (Mr Stout) that Sunday was a profitable day. Reference was also made to Mr Cassady's evidence that the 2009 financial year was the Cornett Group's best year for sales growth.

[292] The NRA submitted that the evidence of Mr Cummings that most retailers do not trade past 5.30/6.00 p.m. during the week despite being legally able to trade has no bearing on the present application as Sunday trading has been demonstrated to be a desirable shopping time for consumers. Further, Mr Cummings had never visited Mackay nor had any knowledge of its retail infrastructure.

[293] The NRA submitted that Mr Henrick's evidence, which had focussed on the market share of Coles and Woolworths, had to be discounted by the evidence given by him in cross-examination that:

- around 90% of Australians have access to seven day trading;
- since 1998 the independent grocery sector has increased its market share from 11% to 19% with the majority of this occurring in recent years under a deregulated trading hours regime; and
- the 2009 Annual Report for IGA Distribution (Metcash) showed 8.3% growth compared to the overall market growth of 7.4%.

[294] The QRTSA submitted that the impact on small business interests within the region cannot be underestimated and to highlight this relied on the evidence of:

- Mr McMurtrie: that he believed the negative effects would outweigh any beneficial effects to small business;
- Ms Feeney: that small businesses need the advantage of major retailers not being open on Sundays;
- Ms Abbott: that her store would be unable to maintain current business levels with increasing competition;
- Mr Cassady: that decreased profit would result;
- Ms Schembri: that small grocers currently trading seven days would be forced to close if the application was successful. Were her own business to transition to seven day trading decreased profit margins, increased wages and shopping centre outgoings and electricity costs would also increase. In her view, only major retailers would be able to absorb the increased costs;
- Mr Englert: that his store relied heavily on Saturday and Sunday trade and were the major retailers to open then his business would experience reduced market share resulting in reduction in staff, increased prices, reduced gross profit, a reduction in staff or grocery lines. These effects would negatively impact on his ability to invest in the store; and
- Ms Formosa: that extended trading hours would result in lower profits, longer working hours and reduced trade.

[295] The QRTSA also relied on the evidence of Councillor Christensen which highlighted the detrimental effects on small, local and family run retail businesses particularly given that Sundays are their best trading days.

Consideration

[296] Section 26(d) requires the Commission to have regard to business interest, whether small, medium or large.

[297] The interests of large business were demonstrated by the witnesses from non-exempt stores and shopping centre owners/managers. Although the evidence from these witnesses has been amply summarised earlier it is useful to consider the themes that emerged. In relation to the major supermarkets a number of operational efficiencies resulting from stores being open all days of the week were identified. The evidence of Mr Wallace outlined these as more efficient energy usage; more efficient production flows in the meat and bakery departments; smoothing of peaks in deliveries and store replenishment; more efficient utilisation of trolleys and the reduction in the wastage of fresh food products. The evidence of Mr Stout touched on similar operational efficiencies.

[298] For the other than supermarket large businesses (e.g. Kmart, Big W, Target, Best & Less, Colorado) which also seek to trade on Sundays the consistent themes found in the evidence include:

- The restriction on the ability to compete with those stores which sell the same or similar product lines or categories and which are allowed to trade on Sundays such as Bunnings, Harvey Norman and others identified in paragraph [43] of Mr Stout's evidence in respect of Kmart.
- The inability to compete potentially negatively affects future investment decisions.

[299] Both the supermarkets and non-supermarket large businesses noted that Sunday trading brings with it an incremental boost in sales across the week.

[300] Shopping centre owners and managers also identified the following interests in supporting seven day trading. These interests are largely drawn from Ms Green's evidence but they were generally consistent across all relevant witnesses:

- provide a better return on investment for owners including superannuation funds of whom ordinary Australians are members;
- allow for more efficient use of capital in an environment of rising costs;
- allow the centre to compete on an even playing field in the leisure and entertainment market and with other retail outlets already trading on Sundays;
- make the centre more competitive in the face of the emergence of "big box" retailers and new retail formats such as homemaker centres and direct factory outlets. Due to the tenant mix of these formats some retailers prefer to take advantage of the seven day trading available rather than be part of the traditional enclosed centre.

[301] The evidence as it relates to medium business for the NRA was largely drawn from the national chains - Jeanswest, Angus & Robertson, WOW Sight and Sound, Universal Store, City Beach, SFG and Diva. In essence the business interests identified from the evidence concerns the profitability of Sunday trade in stores located elsewhere in Queensland and Australia and the expectation that this would be replicated in Mackay. In addition customer satisfaction and loyalty is likely to be engendered by having more time to leisurely shop on Sundays or as part of a family activity.

[302] Mr Cassidy gave evidence that the interests of the Cornett group would be negatively affected if it was forced to trade and compete with the major supermarkets on Sundays and public holidays. Mr Cassidy identified a number of areas where those interests would be affected including the loss of profits, stress on full-time staff and suppliers and difficulty in attracting and retaining trades staff.

[303] It is difficult, if not impossible, to consider in the same context the interests of non-supermarket national chains with those of a supermarket. As Mr Cassidy identified that the major competitors of the Supa IGA in Mackay were Coles and Woolworths, we think the major supermarkets provide a more useful comparator.

[304] The interests of small business were represented by witnesses called from small business owner/managers from both the NRA and the QRTSA. In addition, evidence was given by Messrs Henrick, Cummings and Chapman.

[305] The witnesses for small business called by the NRA had stores located within enclosed shopping centres. All witnesses expected their trade to improve should the non-exempt anchor tenants be permitted to trade on Sundays. According to Mr Kilsby, operating costs for opening on Sundays will be split across those who open making Sunday trading a profitable prospect. Mr Reseck, the operator of MacDonalds franchises, identified his business interests as being the contribution Sunday trade will make to covering the cost of rent which is high at

Caneland Central while outgoings remain relatively static. He believed that the inability to trade on Sundays and public holidays is detrimental to his business and affects his net profitability and return on investment.

- [306] The owner/managers of small business called by the QRTSA consisted of two grocery stores located outside enclosed shopping centres, a battery shop and from other types of stores situated in enclosed centres.
- [307] The evidence of the grocery store owner/managers relating to small business interest concerned losses of market share, buying power and profit. Particular concern was expressed by Mr Englert about the detrimental impact of these losses on his ability to invest in his store and to compete with the major supermarkets.
- [308] The small business interests identified by the other QRTSA witnesses concerned increased occupancy costs; that trading is expected to be slow; the need to pass on freight costs and the difficulty in being able to have experienced staff on the floor.
- [309] The evidence of Mr Chapman addressed the additional costs encountered when a small business opens on a Sunday in an enclosed centre and the prospect of small businesses situated in enclosed centres being forced to trade on Sundays when their leases came up for renewal. The evidence of Mr Henrick addressed the significant share of the grocery market held by Coles and Woolworths with the resultant effect being said to be higher prices. However, against this was his concession about the growth in market share by the independent sector - a view supported by the research of Professor Mangan.
- [310] Clearly, competing views exist between small retailer owner/managers about the impact of seven day trading. While some believe it will be beneficial and profitable for their businesses others possess a contrary view. We note that protection is afforded to those retailers located in enclosed centres by s. 53 of the *Retail Shop Leases Act 1994*.
- [311] In respect of the smaller grocery stores we accept as genuine their concerns about the potential impact of Sunday trading. However, any such negative impacts are speculative at present. We note that Councillor Christensen referred to research conducted by the QRTSA on the effect on small business where seven day trading has been introduced, however, that research has not been tendered in evidence in these proceedings. Had that been provided the Commission may have been able to more accurately assess the impact on these stores.
- [312] The evidence given by Mr Englert, and supported by Ms Feeney, about the intent of the Trading Hours Act to afford protection to small business is not accepted. The Trading Hours Act provides a scheme for the regulation of trading hours taking into account, amongst other things, the interests of large, medium and small businesses. While it ensures that the interests of medium and small business are protected until such time as an application to amend trading hours has been heard and determined by the Commission it does not and cannot provide protection in perpetuity. The interests of medium and small business in the trading hours debate are important and relevant but ultimately are only one factor in the overall consideration of the matter which is required to be undertaken by the Commission in pursuance of its obligations under s. 26.
- [313] In weighing the interests of all sized businesses we are of the view, based on a consideration of all of the evidence presented in these proceedings, that overall the weight of evidence supports the view that business interests are more likely to be advanced were the application to be granted. We have reached this conclusion for a number of reasons including:
- the operational efficiencies that will accrue to major supermarkets;
 - the competition which has developed as a result of the spread of homemaker centres allowing stores which sell the same or similar goods to non-exempt shops to open while the opportunity for non-exempt shops to trade on Sundays and public holidays is denied;
 - the growth in the independent supermarket sector such that Metcash is now the third force in the grocery market. This continued growth makes the case against Sunday trading for those supermarkets under the various banner groups more problematic;
 - the level of support for the application by medium and small business in enclosed centres; and
 - small businesses situated in enclosed centres cannot be required to trade on Sundays, allowing those who wish to remain closed to do so.

(f) the alleviation of traffic congestion

- [314] The NRA noted that it had not adduced evidence about this factor, however, evidence was given that both Caneland Central and Mt Pleasant Shopping Centres trade strongly on Saturday and the addition of Sunday trading would alleviate traffic congestion at those centres.
- [315] The QRTSA submitted that as the NRA had failed to adduce any discernible evidence in relation to this factor that the Commission should not consider this provision warrants the grant of the application.

Consideration

- [316] We accept that the NRA has not relied on this factor to support its application. In addition to the evidence referred to above we note that the survey report prepared by USQ indicates that many respondents referred to the congestion on Thursday nights and Saturday mornings and believed Sunday trading would alleviate the rush. Ms Spratt, a consumer, also referred to the congestion experienced with shopping on a Saturday.
- [317] Although quantitative data was not produced we acknowledge that some traffic congestion in enclosed centres is being experienced. This is not a factor to which we attach any great significance in determining the application.

(g) the likely impact of the order on employment

- [318] The NRA submitted that the granting of the application would have a positive impact on employment and in this regard referred to the uncontroverted evidence given by large retailers as to the increase in employment that would be generated by the granting of the application. The NRA said that the combined increase for the non-exempt retailers would exceed 2,500 hours per week were Sunday trade to be introduced and submitted that further hours would be generated as a result of public holiday trading.
- [319] The NRA also relied on the evidence of Professor Mangan which was that extended trading leads to increased retail employment. Comment was made that it was unlikely that low unemployment due to the resources boom would cause difficulty for retailers to find staff and generally most additional hours are taken up by volunteers from existing employees. The NRA submitted that evidence from the QRTSA witnesses about the impact on employment was extremely limited and only the convenience stores claimed they may need to reduce some employment.
- [320] The AWU made submissions on this factor, noting that of most interest to it was how retailers planned to staff their stores if the application was granted. The AWU acknowledged that it had enterprise agreements with many of the retailers who gave evidence in support of the application. While these enterprise agreements include provisions regarding the voluntary nature of work, the AWU was concerned about the view of retailers who did not have such agreements. The AWU noted that all of those retailers, under cross-examination, indicated that they planned to staff their stores by either employing new staff or offering extra hours to existing staff. In relation to existing staff, the AWU noted that all retailers attested that no existing staff members would be forced to work on Sundays and that all hours generated as a result of the granting of the application would be voluntary.
- [321] The AWU submitted that many of the national chains and large national retailers gave evidence that granting of the application would result in increased employment. In contrast the two retailer witnesses for the QRTSA could only speculate on the employment effects were the application to be granted. Although the AWU expressed concern over the potential for any job losses it submitted that it seemed logical that those employees who lost hours or jobs could reasonably expect to gain positions with those retailers permitted to trade. The AWU also remarked that those employees may find themselves more lucrative positions as a result of the higher wages and penalties paid by large retailers.
- [322] The QRTSA relied on the evidence of Mr Englert and Ms Abbott that job losses would result from the introduction of Sunday trading. Reference was also made to the evidence of Mr McMurtrie who said he expected difficulty in finding suitable new staff and anticipated the effect on existing staff would be to force experienced staff to leave because they did not wish to work on Sundays. The evidence of Ms Giannangelo was also to the effect that increased trading hours meant that more experienced staff are required and noted the difficulty in finding such staff. Ms Formosa indicated that many of her staff have children and find it hard to work on weekends. The QRTSA contended this evidence refuted the submission of the NRA that low unemployment as a result of the resources boom would not create any problems for retailers in finding staff were the application to be granted.
- [323] Further the QRTSA submitted that whilst the NRA seeks to rely on increased employment from the successful outcome to its application such employment should be measured against the need for employment in the Mackay region along with the negative impact on small retailers. The QRTSA accepted that the Mackay region has low rates of unemployment and high rates of employment. In this light the QRTSA submitted that there could be no sensible argument by the NRA that its application is needed to bring about positive change in an already healthy employment situation. In contrast small retailers are likely to be negatively impacted. Accordingly, this factor did not support the granting of the application.

Consideration

- [324] The evidence from the non-exempt retail store witnesses is that a significant number of additional hours would be generated were the application to be granted. In addition the evidence from medium sized businesses for the

NRA attested to extra hours being required. Against this is the anticipated loss of hours or positions from the independent grocery stores, however, neither Ms Abbott nor Mr Englert were able to reliably estimate the effect on employee hours. We agree with the AWU that any loss of hours or positions is undesirable.

- [325] We are aware that many non-exempt retailers offer the additional hours to existing staff first before offering new employment. This may be necessary here because of the high rates of employment experienced in Mackay and if acted upon would alleviate the concerns expressed by a number of witnesses about the recruitment of staff to fill the increase in available hours. We note that retailers such as Target, have not experienced difficulty in having those increased hours worked by existing staff. We would also expect some new positions to be created were the application to be granted. The evidence of Mr Lysaght supports this view. Accordingly, like the AWU, we believe that any staff who suffer reductions in hours may be able to gain employment with the non-exempt stores in particular. The higher rates paid by non-exempt retailers would also be of benefit to staff who were previously employed by independent grocery stores.
- [326] We accept the evidence given by Mr Stout that the wages paid as a result of the additional hours generated have local beneficial economic effects.
- [327] We note the evidence given by QRTSA witnesses of the difficulty women with children find with working on weekends. This evidence contrasts with that of Mr Winzenberg that women with children commonly work in Target stores on Sundays as it is an opportunity for them to supplement family income without any offsetting child care cost.
- [328] Concern was also expressed about students who work on a Sunday not being able to participate in family and sporting activities. In contrast is the evidence of Mr Winzenberg that students prefer to work on Sundays because of the higher penalty rates available.
- [329] We note the undertakings given by those employers who may trade on Sunday as a result of this application being granted as to the voluntary nature of Sunday work.
- [330] In consideration of the evidence on this factor we determine that the increase in additional hours generated by the granting of the application will outweigh any negative effects on small grocery stores. We also consider that although there was evidence about the difficulty in recruiting staff Mr McMurtrie had 20 applicants for one position, suggesting that retail staff are available for employment. We consider that the likely impact of the order on employment overall is likely to be positive and thus is a factor in favour of the application.

(h) local government view

- [331] The NRA submitted that nothing exists in the expression of s. 26(h) or in any extrinsic material to support a view that as a starting point, the view of local government is to be given more weight than any other criterion. Further, it would be a clear abrogation of the Commission's duty were it to in effect hand the determination of the trading hours applications to local governments. The NRA submitted that the processes adopted by the Commission in assessing an application allows for objectivity and transparency and are based on the assessment of relevant, competing material.
- [332] The NRA was critical of the evidence given by Mr Franks as he was not the Chief Executive of the Council at the time the decision of the Mackay Regional Council was made and was therefore not privy to the Council's deliberations. In addition Mr Franks had not been delegated by the Council to appear in these proceedings but had been tasked by the Mayor. For these reasons Mr Franks was limited in the extent to which he could answer questions and alternated between what was said to be a Council view and his personal opinion.
- [333] The NRA also noted that Councillor Christensen was not delegated by Council to represent it at the proceedings. He appeared in his capacity as Councillor.
- [334] In terms of the resolution of the Mackay Regional Council the NRA made detailed submissions rejecting the propositions that Sunday trading will generate negative impacts for local sporting and community events, family life and small retail business in the Mackay region. The submissions advanced by the NRA against the resolution of the Mackay Regional Council included that there had been no structured consultation with the community or stakeholders. Against that, of the areas about which the Council was concerned the Transpac research found that the majority of respondents disagreed (except for the effect on small retail business where 49% disagreed). In addition, the Council ignored the changed demographics regarding dual income families and the convenience seven day trading provides to the time poor.
- [335] The NRA also contrasted the view of the Mackay Regional Council with that of Mackay Tourism and referred to evidence given by Mr Phillips which highlighted the inconsistencies with the Council's resolution particularly:

- the presence of Councillor Perkins on the Board of Mackay Tourism and his support for seven day trading; and
- Council's strategic plan for tourism including the building of the convention centre, supporting the building of a football stadium and playing a leadership role in the new showgrounds or event precinct.

- [336] The NRA also took issue with almost every view expressed by Councillor Christensen arguing that much of what he had said was not based on fact (e.g. in relation to employment, the payment of wages on Sunday and tenant participation in Sunday trading); was uninformed (because he had not seen the statements filed by small business witnesses called by the NRA and was unaware of the trading hours regime in Victoria and Tasmania and the hours sought by the application) or was not independent (as it had been gleaned through discussions with the QRTSA).
- [337] Finally, the NRA submitted that although the local government view is a criterion under the Trading Hours Act, it is but one of a number to be considered and it should not be the case that it should override the view of consumers. Further, the view of local government should be tested in the same way that other views are tested.
- [338] The QRTSA submitted that the local government view as expressed by resolution of the Mackay Regional Council is one of clear opposition to the introduction of Sunday trading in Mackay, Sarina and Walkerston. The QRTSA strongly rejected the NRA's contention that the Council's view is contradictory to the views of consumers, tourism, business, employment and the needs of an expanding population. The QRTSA considered that the Council's view is supported by the weight of evidence before the Commission opposing the application and the failure of the NRA to lead evidence or demonstrate how the application to extend trading hours is preferable.
- [339] The Council was said to have decided to oppose the application having considered the views of constituents. That is consistent with Councillor Christensen's evidence that in acting in his representative capacity he looks to the overall public interest and the merits of each item that comes before Council rather than having an entrenched view. The QRTSA rejected the submission advanced by the NRA that Councillor Christensen was biased towards small business pointing out that he had also supported a development application from Woolworths on the Northern Beaches, a position which was not welcomed by small business in that area.
- [340] The QRTSA also took issue with the NRA's submission that the Council resolution was passed without community consultation, saying that in cross-examination Mr Franks had said that in the Mackay Regional Council Community Survey 2008 the Council had scored fairly highly on community consultation.
- [341] As the elected representative body for the region the Council has resolved to oppose the application and the Commission should therefore give full weight to this expressed view. In the submissions of the QRTSA consideration of this factor favoured the refusal of the application.

Consideration

- [342] We accept the submissions of the NRA that nothing in the Trading Hours Act or extrinsic material supports the proposition that as a starting point the view of local government is to be given more weight than any other criterion listed in s. 26. However, we do not accept the submissions of the NRA that the Commission should reject the Mackay Regional Council's resolution because of some alleged deficiencies in the decision-making processes. Councils make decisions for various reasons and are required to balance competing views. Ultimately, a Council and Councillors are accountable for their decisions to their constituents.
- [343] We are also mindful that the evidence given by Councillor Christensen was given as an individual and that Mr Franks was not present when the Council decision was made, although he was present when other Council discussions on the subject have occurred. In that light we consider that the view of local government is expressed in its resolution and it is that which we are required to consider. It is clear that the Mackay Regional Council voted nine to one against Sunday trading.
- [344] We also acknowledge that each of the three mayoral candidates ran on a platform opposing Sunday trading, however, we do not consider that that position allows us to conclude with certainty that the community opposes Sunday trading. In reality those constituents who are in favour of Sunday trading did not have the choice of a mayoral candidate who supported that view standing for election.
- [345] Although the decision of Council was said to reflect community attitudes, this Commission is also charged with the responsibility of having regard to such attitudes particularly as required by, but not limited to, s. 26(d) of the Trading Hours Act. It may be that after assessment the Commission forms a different conclusion to that of the local government in question.
- [346] The evidence of Councillor Christensen and Mr Franks was that in making its decision Council was concerned

about the negative impact of deregulated shopping hours on family, leisure and social time. These possible negative impacts were put to participants in the Transpac survey. As noted earlier the majority of participants did not agree with the main arguments often advanced against Sunday trading with 59% disagreeing with the proposition that Sunday trading will intrude on family time. Fifty per cent disagreed with the proposition that Sunday trading will adversely impact on people's participation in sporting and community activities and 28% agreed.

[347] The various criteria listed in s. 26 also enable the Commission to examine demographic and other social changes which are submitted as part of the evidence. These matters have been considered in respect of the criterion concerning the needs of an expanding population. The Commission is also able to consider objectively the local government's plans for the region including for commercial and retail development and other facilities and services in the context of the requirements of s. 26 and to weigh those matters against the other evidence presented such as business and tourism interests. In view of the material before us we have reached the conclusion that the needs of the tourist industry would be served if the application was to be granted and that business and consumer interests also weigh in favour of the application.

[348] As previously noted the resolution of the Mackay Regional Council is a matter to which the Commission is obliged to have regard. We accept that the decision was made in the spirit of reflecting community attitudes and concerns about the social and economic fabric of the Mackay region. As foreshadowed, our assessment of these matters has led us to a different conclusion to that reached by the Mackay Regional Council. However, when reaching our decision on the application as a whole the decision will be taken into account along with all of the other criteria.

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

[349] The NRA raised a number of other matters for consideration, viz.:

- (a) There has been no change in the trading hours regime in Mackay since 1992 (except for the introduction of seven day trading for hardware retailers in 2002).
- (b) Substantial changes have occurred since 1992 in terms of:
 - changes to trading hours in most other parts of Australia, including metropolitan and regional Queensland;
 - consumer preferences - influenced by interstate and intrastate migration from areas where seven day trading is the norm;
 - working patterns - significant increases in female participation and seven day shift rosters in the mining sector resulting in limited opportunities for families with children to shop together;
 - emergence of new retail formats such as homemaker centres, franchise arrangements and the emergence of mass merchants which do not recognise traditional retail demarcations in product categories; and
 - consolidation of the independent grocery sector which has allowed this sector to more effectively compete. Metcash is now the "third force" in the grocery market. In addition the consolidation of banner groups means that retailers in this sector become familiar with trading environments in other States and other parts of Queensland.

[350] The NRA concluded that the convenience stores or independent supermarkets have known for years that seven day trading is a matter of "when" not "if." After providing information on the trading hours regimes in other States the NRA submitted that trading hours operating elsewhere strongly suggests that seven day trading for Mackay is warranted.

[351] The QRSTA submitted that none of the matters raised by the NRA provide sufficient basis or support for the application such that there was nothing compelling which supported the grant of the application.

Consideration

[352] We have addressed the matters raised by the NRA when considering other criteria and do not intend to repeat those views.

Finding

[353] Of the s. 26 criteria we consider that the following weigh in favour of the grant of the application:

- the locality;
- the needs of the tourist industry;
- the needs of an expanding population;

- business and consumer interest; and
- the likely impact of the order on employment.

[354] A neutral factor is the alleviation of traffic congestion. We would also consider that the needs of an expanding tourist industry is also neutral given the recent economic climate, however, we accept that tourism seems to be on the rise once again.

[355] Weighing against the application is the view of the Mackay Regional Council. It is an important consideration given the Council represents community attitudes. However, we do not consider that the view of the local government should weigh so heavily that considerations under the other criteria are disregarded or given lesser weight. In this case these other considerations, particularly when taken in combination, lead to the conclusion that the weight of evidence, for the reasons explained, is in favour of the application being granted.

[356] We note that no evidence has been given opposing the introduction of Sunday and public holiday trading into Walkerston and Sarina. Although the evidence from the NRA for these areas was not especially fulsome we are not minded to exclude these areas. Accordingly, the application as made is granted.

[357] In attempting to accommodate the concerns expressed by the small business witnesses called by the QRTSA as well as those of Mr Cassady, and bearing in mind the number of public holidays about to arise on which trading is not permitted, we have decided to have a longer than usual lead time for the commencement of Sunday and public holiday trading in Mackay. The operative date for the amendment to the Trading Hours Order is 16 May 2010.

[358] The NRA is directed to prepare the amendment to the Trading Hours Order and to submit it to the Registry within 22 days of the date of release of this decision.

[359] Order accordingly.

D.A. SWAN, Deputy President.

A.L. BLOOMFIELD, Deputy President.

G.K. FISHER, Commissioner.

Hearing Details:

2009 1 and 23 July;
15, 20, 27, 28 and 30 October

Submissions received:

2009 11 December - NRA
18 December - AWU
2010 8 January - QRTSA

Released: 18 March 2010

Appearances:

Mr J. Moore and Ms C. Dowling, National Retail Association Limited, Union of Employers.
Ms S. Schinnerl, The Australian Workers' Union of Employees, Queensland.
Mr K. Murphy, Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and later Ms C. Schiller, Neumann & Turnour Lawyers.
Mr D. Gaffy, Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees.