

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Another (TH/2010/8)**

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

DEPUTY PRESIDENT SWAN  
DEPUTY PRESIDENT BLOOMFIELD  
COMMISSIONER THOMPSON

10 March 2011

DECISION

**EMERALD AREA**

[1] The National Retail Association Limited, Union of Employers (NRA) has made an application to the Queensland Industrial Relations Commission (the Commission) to amend the *Trading Hours - Non-Exempt Shops Trading by Retail - State* Order (the Order) to include the Emerald Area.

[2] The amendment sought is as follows:

"1. By inserting a new clause (22) in clause 3.2 as follows:

(22) The Emerald Area:

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

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

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

Commencing from the point where Holzwart Road intersects with the Capricorn Highway; from that point in a straight line in a northerly direction to the intersection of Donahue Road and Little Farm Road; from that point along Garradunga Road until it becomes Jubilee Road; from that point in a straight line in a north westerly direction to the intersection of Emerald Downs Road and the Gregory Highway; from that point in a straight line in a southerly direction to the intersection of Tyson Road and the Capricorn Highway; from that point in a straight line in a south easterly direction to the intersection of Rifle Range Road and Pilot Farm Road; from that point along Pilot Farm Road in an easterly direction to the intersection with the Gregory Highway; from that point in a straight line in a north easterly direction to the point of commencement."

**Relevant legislation**

[3] Section 21 of the *Trading (Allowable Hours) Act 1990* (the Trading Act) states:

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

(1) A full bench of the industrial commission may decide trading hours for non-exempt shops.

(1A) However, the full bench is not to decide trading hours that are less than the following hours on a stated day, other than a public holiday -

(a) 8a.m. and 9p.m. for Monday to Friday;

(b) 8a.m. and 5p.m. for Saturday.

- (2) The full bench may make any order it considers necessary or convenient to give effect to a decision made under subsection (1), including, for example, an order specifying -
- (a) the earliest time when non-exempt shops may open on any day and the latest time when non-exempt shops must close on any day; or
  - (b) hours for trading wholesale different from the hours fixed for trading retail; or
  - (c) different trading hours by reference to -
    - (i) classes of non-exempt shops; or
    - (ii) localities, or parts of localities, where non-exempt shops are situated.
- (3) In subsection (1A) -
- public holiday** means -
- (a) a public holiday under the *Holidays Act 1983*; or
  - (b) a day that would have been a public holiday had there not been a substitution under the *Holidays Act 1983*, section 2(2) or (3) or 3."

[4] Section 26 of the Trading Act states:

**"26 Matters relevant to s 21 order**

In relation to making an order under section 21 the industrial commission must have regard to -

- (a) the locality, or part thereof, in which the non-exempt shop or class of non-exempt shop is situated;
- (b) the needs of the tourist industry or other industry in such locality or part;
- (c) the needs of an expanding tourist industry;
- (d) the needs of an expanding population;
- (e) the public interest, consumers' interest, and business interest (whether small, medium or large);
- (f) the alleviation of traffic congestion;
- (g) the likely impact of the order on employment;
- (h) the view of any local government in whose area the order is likely to have an impact;
- (i) such other matters as the industrial commission considers relevant."

**Participants in the proceedings**

- [5] In addition to NRA as the Applicant, The Australian Workers' Union of Employees, Queensland (AWU) and Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) (QRTSA) each sought leave, and was granted, a right to participate in the proceedings as an interested party.
- [6] NRA's application was supported by AWU but opposed by QRTSA.

**Witnesses called by NRA in support of its application**

- [7] **Professor John Rolfe** - of the Faculty of Arts, Business, Informatics and Education of the Central Queensland University at Rockhampton and Director of the Centre for Environmental Management at the same University.
- [8] Professor Rolfe indicated he had a number of research interests but specialised in non-market valuation, regional development, environmental, resource and agricultural economic issues as well as economic impact assessments in regional areas. He has had extensive experience in the Bowen Basin region, having undertaken many economic and social research projects in the area.

- [9] He said the mining industry is the largest employer in the Central Highlands region accounting directly for 22.3% of employment in the area. The Central Highlands region itself was home to just over 30,400 people as at 30 June 2009 with a five year average growth rate of 2.5%. Approximately 13,100 persons resided in Emerald, making it the most populated centre in the region.
- [10] Professor Rolfe said there is limited data regarding tourism visitation to Emerald. Data released by Tourism Research Australia, in approximately March 2008, recorded that overnight visitation to the Emerald Shire was roughly 141,000 persons per annum, contributing \$34 million per annum to the local economy and supporting 390 tourism businesses. A sizeable component of this visitation was business related.
- [11] Other data for the Capricorn region, of which Emerald was a part, released by Tourism Queensland showed over one million overnight visits to the Capricorn region in the year ended 31 March 2010. This was a massive increase of 28% on the previous year, strongly driven by an increase in business travel (31%). Domestic day trip visitors to the Capricorn region accounted for a further 1.3 million visitors.
- [12] Finally, Professor Rolfe indicated his support for the application for the following reasons:
- there is a large proportion of the workforce in Emerald on block shift arrangements, so having access to shopping for seven days a week is more convenient for them;
  - it is important to make Emerald an attractive place for new residents and increasing the level of service through seven day trading will help to attract new workers to the region; and
  - there are large spending leakages out of many smaller and mid-size communities, such as Emerald, to larger centres. Increasing shopping services will help to increase local spending proportions.
- [13] Under cross-examination Professor Rolfe agreed he had not undertaken any research which would support the assertions made in the immediately preceding paragraph. The views expressed were based upon his personal knowledge and past surveys in mining communities where participants had been asked to identify those factors that attracted them to, or retained them, in such communities.
- [14] In response to a question from a Member of the Full Bench, Professor Rolfe opined that any relaxation of shopping hours in Emerald would witness an increase in shopping in Emerald by residents of nearby communities, such as Blackwater and Springsure. Importantly, any leakage out of those communities would still be retained within the Central Highlands region.
- [15] **Mr Gary Stingl** - Area Manager for Big W Discount Stores. Mr Stingl informed the Commission that Big W would be opening a store in Emerald in 2011 and would trade on Sundays and permissible public holidays if NRA's application was granted.
- [16] Mr Stingl opined that major retailers like Big W made an important contribution to the shopping infrastructure of regional towns and cities. The scale and diversity of the stores helped revitalise local shopping precincts and limit escape expenditure.
- [17] The new Emerald store was likely to employ around 100 employees, with approximately 100 additional hours being generated each week if the store was allowed to trade on Sundays and certain public holidays. All of the Sunday work would be voluntary.
- [18] Mr Stingl said Sunday trading would improve efficiency in that it would enable the store to receive loads on a Sunday, thus enabling the store to be replenished with goods prior to the Monday morning opening.
- [19] Under cross-examination Mr Stingl was challenged about a number of statements made by him in the course of his witness statement on the basis that such statements were not supported by any evidence.
- [20] Comments by Mr Stingl which were "criticised" included: his comment that the scale and diversity of Big W stores helped revitalise local shopping precincts and limit escape expenditure; his belief that the Big W store in Emerald would trade just as strongly as 16 other stores identified in paragraph 9 of his Statement if the store was allowed to trade on Sundays; his observation that a greater incidence of family shopping occurred on Sundays in Big W stores and that it was also day favoured for "big ticket" purchases to be made as it allowed the decision to be made with all members of the family present; and, his belief that increased employment opportunities would also be generated by contractors to Big W if seven day trading was introduced.
- [21] **Ms Benita Osborn** - Centre Manager for Centro Emerald Market and Centro Emerald Village. Ms Osborn said the Emerald area comprised approximately 32,000 persons, which included local residents, the farming community and a transient mining population. The town was served by two Centro shopping centres:

- Centro Emerald Village, opened in 1980, which is a single level neighbourhood shopping centre situated in the town's main retail district. It is anchored by a Woolworths supermarket, with 24 speciality retailers and a KFC store on the same site.
- Central Emerald Market, opened in 1997 and located at the southern end of the Emerald retail precinct, which is anchored by a Coles supermarket and Target Country store, with 23 specialty shops.

- [22] Centro Properties Group knew, from the experience of centres it owned that had moved from six day to seven day trading, that Sunday trading delivered increases in total sales, not merely a distribution of sales - although there was an element of that. Ms Osborn said that tenants who chose to trade on Sunday, if NRA's application was granted, would not be charged additional rent. The only increase in their costs would be for outgoings such as electricity, cleaning and security proportionate to the shop size of those stores who chose to trade. While reiterating that any decision to trade on a Sunday would be totally at the discretion of individual retailers, Ms Osborn expressed confidence that a majority of retailers in each centre would chose to trade.
- [23] Like the previous witness, Ms Osborn was also challenged about a number of statements in her Witness Statement and the absence of supporting data to underpin particular statements.
- [24] In particular she was challenged about her statement that Sunday trading delivered an increase in total sales, not merely a redistribution of sales. She was also challenged about her statement that sales lost as a consequence of the closure of shops on Sundays were not, in many cases, postponed until stores reopened on a Monday, and that they were lost forever as consumers disposed of their discretionary dollars in another way.
- [25] **Mr David Stout** - State Compliance Manger for Coles. Mr Stout informed the Full Bench that the Coles store in Emerald, located in the Central Emerald Market, had experienced very significant growth in both sales and customer numbers in the past 12 months which had led to a 5.81% increase in employment hours between March and June 2010. In the company's view, this growth supported the need for seven day trading in Emerald.
- [26] Mr Stout said that Sunday trading, across the Coles group of stores, continued to grow in popularity and remained the fastest growing trading day of the week. It was the company's experience that consumers had positively and enthusiastically embraced Sunday trading wherever it had been introduced and that socio-economic and geographic differences were not relevant to a determination of where the amenity of seven day trading should be made available. He also said a common misconception of Sunday trading was that it led to a re-distribution of sales across the week but did not result in incremental sales growth. Coles had found that proposition to have no basis in truth because of a number of factors:
- less congestion in stores;
  - an opportunity to shop in a more leisurely fashion;
  - an opportunity to shop at times convenient to customers;
  - impulse buying; and
  - increased spend of discretionary dollars.
- [27] Mr Stout also said that it was more efficient for supermarkets to trade on all seven days of the week for the following reasons:
- refrigeration must be maintained when the store is closed. The impact of this significant operational overhead was diminished if revenue was able to be generated over seven days rather than six;
  - in seven day supermarkets there is no requirement to run perishable stock down or to deplete stock on Saturday afternoons before closure. This is a very inefficient practice on one of the busiest trading days of the week; and
  - inefficiencies also arise from the "start up" of six day trading supermarkets on Mondays following the closed day on Sundays.
- [28] If NRA's application was granted Coles expected that an additional 100 hours of employment would be available each week in its Emerald store. Work on this day for existing employees would be voluntary.
- [29] Under cross-examination Mr Stout was challenged about his statement that Sunday trading continues to grow in popularity and remains the faster growing trading day of the week. It was suggested that he had failed to provide data to support this statement.
- [30] It was also put to him that the sales growth and increased customer numbers in the Emerald store in the previous 12 months did not demonstrate a need for Sunday trading but, rather, simply demonstrated that the current infrastructure was welcomed by the people of Emerald.

- [31] In a similar vein, it was put to him that the alleged efficiencies arising from six day trading were simply assertions and not supported by "*any verifiable evidence or empirical research*".
- [32] In response to a question from a Member of the Full Bench Mr Stout said that while there were other independent retailers in Emerald they were not regarded as being in competition with Coles - only the Woolworths store was seen to be a competitor.
- [33] **Mr Mark Chambers** - Senior Operations Manager for Westfarmers Curragh Coal Mine Pty Ltd (Curragh).
- [34] Mr Chambers purported to support NRA's application on behalf of the 486 permanent employees and 1330 contractors employed by Curragh.
- [35] He said that while Curragh provides residential accommodation for its permanent workforce in Blackwater (86 km east of Emerald) a large proportion of Curragh employees and the majority of contractors worked various rotating day/night shift rosters. He opined that these workers, like others employed in operating coal mines in the region, were not able to access retail outlets like Coles and Woolworths during normal opening hours and would appreciate the opportunity to shop on Sundays.
- [36] He also claimed that Sunday trading in Emerald would be likely to be attractive to a large number of Blackwater residents who were unable to access a grocery store on a Sunday in the local region.
- [37] Mr Chambers also suggested that Curragh's employees, who all received a minimum of \$1,000 of Westfarmers Ltd shares annually, were "*frustrated at being unable to further support the Westfarmers brand by undertaking their regular grocery shopping at a Coles supermarket because of trading hours that did not fit in with their work commitments*".
- [38] Under cross-examination Mr Chambers conceded he had not undertaken a survey to gauge the attitude of Curragh's employees and contractors to NRA's application. He also conceded that his view that Sunday trading in Emerald was likely to attract a large number of Blackwater residents was a personal view based on his observation that many Blackwater-based people travelled to Fairbairn Dam quite regularly on weekends as well as his belief that it would be attractive to link such visits with a shopping trip to Emerald.
- [39] **Mr Scott Wallace** - Regional Retail Support Manager in Queensland for Woolworths Limited (Woolworths). Mr Wallace said Woolworths had one store in Emerald, in the Centro Emerald Village, which would be affected by the application. This store would trade the full allowable hours if NRA's application was granted by the Commission.
- [40] Mr Wallace said that Woolworths believed the introduction of Sunday trading in Emerald would bring the following operational benefits:
- less congestion at the registers on Saturdays by effecting some distribution of demand from Saturdays to Sundays;
  - a reduction in in-store and car park congestion on Saturdays;
  - more efficient utilisation of trolleys and a generally improved service environment on Saturdays;
  - more efficient use of energy in that the refrigeration and air-conditioning systems must continue to run when the store is closed on Sundays; and
  - smoothing out of peaks in scheduled deliveries and the store replenishment process as a result of a more even spread of trade across the week.
- [41] Mr Wallace said Woolworths currently employed 216 employees in Emerald and that Sunday trading, which would be voluntary for existing staff members, would generate approximately 220 hours additional work per week. This would represent significant extra income for the staff concerned because it would be payable at penalty rates.
- [42] When questioned in cross-examination about the claimed operational benefits which would result from the introduction of seven day trading, Mr Wallace referred to paragraph 16 of his Statement which showed the distribution of sales in Woolworths Rockhampton stores prior to and post introduction of Sunday trading. He said the information in that chart, which he expected to be replicated in Emerald, supported his arguments that there was improved efficiency arising from a greater spread in demand when the stores moved from six day to seven day trading.
- [43] Mr Wallace also rejected the proposition put to him that his mention of 220 hours of additional work was a "*mere estimate*". He said his "*estimate*" was based upon his experience of introducing seven day trading into a number of other stores across Queensland. In this respect, a *minimum* of 190 hours of staffing level was required to physically operate a supermarket the size of Emerald.

- [44] **Mr Gerard Winzenberg** - Queensland District Manager for Target Australia Pty Ltd (Target). Mr Winzenberg has responsibility for the business performance of 14 stores throughout Queensland, including a Target Country store in Emerald.
- [45] Mr Winzenberg said the current (average) distribution of trade in Target's Emerald store results in 60% of weekly sales occurring between Thursday and Saturday, which placed considerable pressures on Target in terms of both customer service and stock replenishment. The introduction of Sunday trading would alleviate some of these pressures by redistributing some of the sales to Sunday, as well as providing incremental sales growth.
- [46] Mr Winzenberg said the Target Country store in Emerald currently employed 31 persons. Participation by those employees in Sunday work, if NRA's application was granted, would be voluntary. He estimated that Sunday work would create an additional 30 hours of employment each week.
- [47] In response to a question under cross-examination about the alleged pressures placed on Target in terms of its customer service and stock replenishment because of the high volume of trade later in the week, Mr Winzenberg responded that Emerald was Target Country's "biggest trader" in Australia and was actually trading at capacity. The store had trouble servicing its customers across the back end of the week and was not delivering service at an optimum level. An additional trading day would alleviate pressure on both stock and logistic suppliers as well as existing staff members. It would also enable the company to smooth out the workload across the week.
- [48] In response to the proposition put to him that the estimated additional hours of employment if Sunday trading was permitted was "*just an estimate*", Mr Winzenberg responded by stating that it was a pretty accurate estimate based on the history in other stores which had moved to seven day trading.
- [49] In response to questions from the Full Bench Mr Winzenberg said that there were a number of smaller stores in Emerald that carried similar lines to Target - albeit on a smaller scale. However, Target would be competing with a much larger competitor when the Big W store opened in 2011.

#### **Witnesses called by QRTSA in opposition to the application**

- [50] **Mr Ricky Smith** - Sole Director of Chureto Pty Ltd t/as Emerald Foodworks, an independent retail grocery supermarket trading seven days per week from 6.30 a.m. until 9.00 p.m.
- [51] Mr Smith said the trading pattern in his store, which employed approximately 50 persons, saw approximately 52% of weekly sales occurring between Monday and Friday (or an average of 10.4% per day), 16% of weekly sales occurring on a Saturday with approximately 32% of the total weekly sales occurring on a Sunday. He also said that based upon historical sales figures for the two weeks prior to Christmas, when Coles and Woolworths were allowed to trade on a Sunday, he would stand to lose approximately 38% of his weekly turnover if NRA's application was successful.
- [52] If his business suffered this sort of reduction in weekly turnover he would be forced to reduce costs to try to remain viable. While the cost of doing business would not decline by the same percentage as the reduction in his takings, he would need to substantially reduce staffing levels, resulting a loss of approximately 45 hours of Sunday work currently being performed by approximately nine school-aged casual staff as well as a minimum of a further five full-time positions. The business would also have to reduce its level of donations to local community groups, schools and sporting clubs.
- [53] Mr Smith opined that the businesses which would be most affected by extended trading hours in the chain stores would be locally owned family businesses, the owners of which would lose time with their families on a Sunday. He also opined that Emerald has one of the lowest unemployment rates in Queensland and he expected there to be a massive shortage of available workers for the retail sector in the local region given the proposed addition of another Woolworths store, Big W, Harvey Norman and Bunnings. This was all before the proposed extension in trading hours, which would further increase the demand for workers.
- [54] In response to a question from a Member of the Full Bench, Mr Smith said that his store currently picked up the bulk of trade on a Sunday and he would lose that pre-eminent position if the major supermarkets were allowed to open. He also estimated that his turnover on a Sunday was triple the weekly turnover of Hooper's Self Service Store (see below), a convenience store which was located nearby.
- [55] **Mr James Rolfe** - Owner/Director of Kisthaven Pty Ltd t/as Emerald Electrical and Furniture (but more commonly referred to as Retravision Emerald).
- [56] Mr Rolfe said the Retravision store traded between 8.30 a.m. and 5.30 p.m. Monday to Friday and between 8.30 a.m. and 2.00 p.m. on Saturdays. He opined that although he would not be forced to open on Sundays if

NRA's application was granted he would still be pressured to open by the community in order to conform with other businesses and maintain his market share.

- [57] Having to open on a Sunday would have a major impact on the viability and profitability of his store in that it was essential he had fully trained staff during all opening hours. The store would be unable to use junior casual staff, like most major retailers, because they would not have the requisite speciality training. It would also be very costly to employ and then train any new full-time staff to cover the extended hours.
- [58] Mr Rolfe also opined that Sunday trading would impact on the capacity of his employees, as well as employees of other businesses, to participate in local sporting and community events, as well as live their normal family lives.
- [59] Under cross-examination Mr Rolfe said the proposed Harvey Norman store would be a competitor to his business when it opened. He also acknowledged that that store would trade across seven days of the week, irrespective of the outcome of NRA's application.
- [60] **Mr Peter Murphy** - Co-owner of Newsxpress Emerald, Village Shopping Centre, which is an independent newsagency trading six days a week.
- [61] Mr Murphy opined that as a small retail business operating within a shopping centre he would be forced by shopping centre management to open seven days each week. He also expressed the view that while it might be argued there was no obligation on smaller businesses outside of shopping centres to open if Sunday trading was approved, the reality was they would "almost certainly" be bound to open to ensure they maintained their market share.
- [62] He also opined that unrestricted Sunday trading would have a significant effect on family life, community events and sporting events within the Emerald community. Sunday trading would restrict the capacity of parents to drive their children to sporting events, as they would be working, and teenagers with existing after school part-time jobs may also not be able to participate in sporting activities as they would be required to work on Sundays as well.
- [63] Further, small business owners would be forced to reduce staff numbers to offset sales lost to the big multi-nationals and the owners would be forced to work on Sundays to negate expensive penalty rates involved with employing staff on that day.
- [64] **Ms Amber Lane** - Owner of Stiletoes, Shop 32, Centro Market Plaza. Ms Lane said her store opened between 9.00 a.m. and 5.30 p.m. on most weekdays, the exception being on Thursdays when she traded until 7.00 p.m. On Saturdays, the store was open between 9.00 a.m. and 3.00 p.m. The store had an online (internet) facility which enabled customers to shop 24 hours a day, seven days a week.
- [65] Ms Lane opined that seven day trading would be detrimental to her business for a number of reasons. Her existing staff members were already "stretched" to work their scheduled hours and none of them was prepared to work on Sundays. Working on Sundays herself was also not a realistic option. She had a three year old boy and her husband worked three weekends a month. Hiring new staff willing to work on Sundays was near impossible. If a casual had to be employed there would be limited, if any, profit achieved on a Sunday because of the penalty rates involved.
- [66] Ms Lane said that while she had been told by the centre management she would not be required to trade on Sundays if NRA's application was granted, she believed she would have to open because she might not be offered a new lease if she did not.
- [67] Finally, Ms Lane opined that Sunday trading would serve to simply increase the market dominance of the big corporate retailers. She claimed that over 80% of the retail market in large centres was dominated by the "retail giants", but had no evidence to substantiate her belief.
- [68] **Mr Peter Hooper** - Manager of Hooper's Self Service Store, Egerton Street, Emerald. This store, opened in 1963, is primarily a convenience store and trades seven days a week, 365 days of the year. Trading hours are 6.00 a.m. to 9.00 p.m. weekdays and 7.00 a.m. to 9.00 p.m. on weekends. Trading hours on public holidays are normally 8.00 a.m. to 8.00 p.m.
- [69] Mr Hooper said the store currently employed 13 staff members and Sunday sales generally witnessed a 55% to 65% increase on the other six days. Sunday sales represented approximately 22.5% of the weekly gross profit because of the higher margins available on the products sold on that day. In effect, Mr Hooper said, Sunday trading subsidised the viability of trading for the remainder of the week.

- [70] Mr Hooper said that the introduction of unrestricted Sunday trading to the Emerald area was likely to cut his sales on that day by between 40% and 45%. The impact on his weekly profit would be considerable because he would be primarily selling low margin, convenience goods, such as milk, bread, newspapers and cigarettes.
- [71] The initial impact of the major supermarkets opening on Sundays would cause him to have to assess the viability of his store. He believed that the reduction in gross profit levels would leave the store trading just above a break-even situation. A few part-time jobs would need to be shed immediately and the affordability of other positions assessed.
- [72] Mr Hooper also spoke passionately about the important community service businesses such as his performed. They provided training opportunities for many generations of young people and performed an important social role by offering warm, friendly, personal service. He said that while some people might turn up their noses and consider independent operators such as his to be *"the swamp dwellers of the retail eco-system"* the reality was that in such an environment *"even a seemingly insignificant variation (hours) can easily lead to a catastrophic loss of diversity. This loss will herald the dawn of economic blandness and the loss of critical entrepreneurial breeding grounds. Our tidal day is Sunday. It is not like any other day ..."*.
- [73] Under cross-examination Mr Hooper said he found it very difficult to compete with Coles and Woolworths. This was for a variety of reasons including lost sales caused when customers purchased a few convenience items in a service station to get an extra few cents per litre off their fuel and the fact that a number of his wholesale suppliers could not even match the retail price of some "specials" being sold by Woolworths or Coles.
- [74] In answer to questions from Members of the Full Bench Mr Hooper reiterated that he was fearful for the future viability of his business if his sales reduced by the proportion he expected them to if the major supermarkets were allowed to open on Sundays. If that happened he would have to seriously consider closing his store because to continue would be just *"a slow miserable death"*.

#### **Position of the AWU**

- [75] The AWU informed the Commission that the position of the Union in respect of applications under the Trading Act is determined on two main factors, viz:
- the view of its membership in the area affected by the application; and
  - how the non-exempt stores plan to manage their employees should the application be granted.
- [76] On the first point, the AWU had received no concerns from any of its members regarding the proposed extension in trading hours. On the second issue, each of the witnesses who provided evidence on behalf of the major retailers advised that work on Sundays and additional public holidays would be voluntary for all existing employees should the application be granted.
- [77] On the basis of this information, the AWU was satisfied that its membership would not be adversely affected should the application be granted. Accordingly, the AWU consented to the application as sought by NRA.

#### **Other material**

- [78] On 20 October 2010 the Local Government Association of Queensland Ltd (LGAQ), sought leave to submit a letter from the Central Highlands Regional Council (the Council) to the effect that the Council opposed NRA's application.
- [79] The letter from the Council was in the following terms:
- "Re: Seven (7) Day Trading Application***
- At its meeting on the 20 September 2010, (Council) resolved:*
- "That due to the potential of adversity affecting the small retailers who trade on Sundays, and due to no credible available data on areas with particular circumstances to Emerald, Council has decided to oppose the seven (7) day trading application for the Central Highlands Regional Council area."*
- [80] LGAQ informed the Commission that neither a representative of that organisation nor the Council would be making an appearance in the formal proceedings. LGAQ simply sought to submit the view of the Council in order that it might be considered, as part of its deliberations, by the Full Bench.
- [81] The application by LGAQ to submit the letter from the Council was opposed by Mr Moore on behalf of NRA. After considering Mr Moore's submissions, the Full Bench ruled that the letter be admitted. In doing so the Full

Bench indicated that the weight to be attached to the correspondence by the Council, which had not provided a witness, was a matter for the Full Bench to determine in the course of its overall deliberations on NRA's application.

### **Consideration of the evidence in accordance with the provisions of the Trading Act**

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

- [82] Emerald is situated approximately 270 km to the West of Rockhampton, at the junction of the Capricorn Highway and the Gregory Highway. Emerald is the regional centre for the Central Highlands and houses the Council as well as educational and health facilities servicing the broader region. The Central Highlands covers a significant section of the Bowen Basin, the largest coal reserve in Australia. The region is also a strong producer of cattle, cotton, grain, citrus and grapes and also has the largest sapphire producing fields in the Southern Hemisphere.
- [83] The Central Highlands region had an estimated population of 30,403 as at June 2009. The resident population in Emerald itself is approximately 13,000 persons. Close to \$9 million has recently been expended in upgrading the Emerald Town Centre with an additional \$7 million (approximately) having been spent on upgrading the Emerald airport. Several flights each day travel between Emerald and Brisbane, with the Emerald airport now being regarded as a major regional airport.
- [84] Nearby towns include Clermont (110 kms North), Capella (51 kms North), Anakie and Sapphire (approximately 45 kms West), Springsure (66 kms South), Blackwater (73 kms East) and Dingo (120 kms East).
- [85] In addition to the two Centro shopping centres described by Ms Osborn there is another shopping precinct in the centre of Emerald. This precinct houses a number of businesses including: banks, credit societies, retail shops, takeaway outlets, hotels, motels, government and private offices. A new shopping centre is also planned on the southern side of the town, towards the airport.
- [86] Mr Murphy acknowledged that the average income in Emerald was higher than the Queensland average. He also agreed that a number of retail outlets, and other businesses in the service sector, already traded across seven days.

#### **(b) The needs of the tourist industry or other industry**

##### **(c) The needs of an expanding tourist industry**

##### *Tourist industry*

- [87] Professor Rolfe provided some evidence about the nature and extent of tourist activity in the Central Highlands region. In relation to the Emerald region, he identified a number of particular places of interest to tourists including the Botanic Gardens, Mosaic Pathway, the Historical Village and Emerald's historic railway station, built in 1900.
- [88] He also said the Carnarvon Gorge National Park is nearby, as are the Sapphire gem fields and the townships of Rubyvale and Sapphire. Rubyvale is also the home to two underground tourist sapphire mines. The nearby Fairbairn Dam is a tourist attraction in its own right and is regularly visited by people from nearby towns and properties.
- [89] However, apart from the broad figures for the Central Highlands region identified in his Witness Statement, Professor Rolfe was not able to produce any particular data concerning actual tourist numbers for Emerald, including the break-up between business visitors and actual tourists. This was because of a lack of available data, not lack of effort.
- [90] Consequently, although Professor Rolfe's evidence identified significant levels of visitation to the Central Highlands region, we are unable to draw any firm conclusions about the impact extended trading hours in Emerald would have on the needs of the tourist industry. For the same reason, we are unable to draw any firm conclusion about the need for alterations to shopping hours to accommodate an expanding tourist industry.

##### *Other industry*

- [91] Professor Rolfe gave uncontested evidence that over 22% of the employed workforce in the Central Highlands region was engaged in the mining industry. He also indicated that a large proportion of this workforce was on shift arrangements which gave 24/7 coverage across the industry. He expressed a view that the granting of NRA's application would be beneficial to the mining industry by way of improved shopping convenience for workers in the industry. Further, he also opined, from research and consultancy work he had undertaken for

other clients, that improved convenience in the retail industry may assist in the attraction and retention of workers and their families to the area.

- [92] This evidence was generally confirmed by Mr Chambers, albeit that most of it was his personal view based upon his extensive experience in the coal mining industry.

**(d) The needs of an expanding population**

- [93] Professor Rolfe provided uncontested evidence in relation to the population demographics of the Central Highlands region. He said there was a 3.6% increase in the financial year ended June 2009, with a five year average growth of 2.5% per annum, taking the estimated resident population to 30,403. The estimated resident population in Emerald itself was 13,118, making it the most populated centre in the region.
- [94] Professor Rolfe also said that the population growth for the region was projected to grow at a rate of 2.0% over the 25 year period from 2006 to 2031, 0.3% above the projected Queensland growth over the same period.
- [95] While conceding that the Central Highlands region experienced a "spike" of 3.6% in its population in 2008-09, QRTSA submitted that growth over the next 25 years would only be marginally higher than the Queensland average. Significantly, according to QRTSA, NRA had failed to demonstrate that the needs of an expanding population could not be met by the existing retail infrastructure and trading hours.

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

*Public Interest*

- [96] The NRA argued that different shopping hours in different areas was a cause of unnecessary confusion for travellers and visitors when moving through regional areas of Queensland. As such, the introduction of uniform trading hours throughout the area was highly desirable. Not only did it minimise confusion and inconvenience for visitors but also contributed to a more equitable and sensible set of arrangements for residents of Queensland.
- [97] The QRTSA referred to the evidence of a number of its witnesses to the effect that community and sporting events and normal family activities would be adversely impacted if NRA's application was granted. However, much of this evidence was provided from a personal perspective and some of it, such as that given by Mr Murphy, was highly speculative.
- [98] The QRTSA also said that NRA had made its application without any reference to the views of the local community. Rather, its application seemed to have been based on the perceived preferences of the larger retailers, such as Coles and Woolworths, who believed they knew what was best for the Emerald community.

*Consumers' Interest*

- [99] There was no direct evidence in relation to the impact that granting this application might have on consumers. While each of Professor Rolfe and Mr Chambers expressed a personal view that the granting of the application would have positive benefits for shift workers in the mining industry, there was no "hard evidence" to support those views.
- [100] Nonetheless, the evidence of Messers Stout, Wallace and Winzenberg did suggest that consumers were being subjected to some degree of congestion and inconvenience because of the number of customers attempting to access the Coles, Woolworths and Target Country stores, respectively, at particular times of the week. This was especially so in the case of the Target Country store, which Mr Winzenberg said was trading at capacity. Similarly, Mr Stout said that the number of customers in the Coles store had increased by 12% in the previous 12 months, with a 20% increase in sales. This had led to employment hours being increased by just less than 6% in the three month period between March and June 2010.
- [101] Data contained in Mr Wallace's Witness Statement (see paragraphs 16 and 21 of Exhibit 6) disclosed the following pattern of trade in Woolworths Emerald store compared to the company's three Rockhampton stores prior to the introduction of Sunday trading into Rockhampton.

<b>Pattern of trade across the week (% per day)</b>							
<b>Pre Sunday Trade</b>	<b>Mon</b>	<b>Tues</b>	<b>Wed</b>	<b>Thurs</b>	<b>Fri</b>	<b>Sat</b>	<b>Sun</b>
Northside Plaza - Rockhampton	17.74	14.56	15.53	16.91	17.82	17.44	0
Stockland - Rockhampton	16.84	13.74	15.10	20.09	17.65	16.58	0
Allentown - Rockhampton	17.54	14.77	15.70	16.91	18.28	16.80	0
Emerald	16.52	14.13	15.25	17.23	18.31	18.56	0
<b>Post Sunday Trade</b>							

Pattern of trade across the week (% per day)							
Pre Sunday Trade	Mon	Tues	Wed	Thurs	Fri	Sat	Sun
Northside Plaza	13.43	13.34	14.67	15.68	16.98	15.49	10.41
Stockland	12.67	12.11	14.15	18.98	16.94	15.98	9.17
Allenstown	13.85	13.07	14.88	15.92	17.10	14.73	10.45

[102] This data suggests significant consumer demand on Saturdays in the Emerald store and serves to reinforce Mr Wallace's observation about the degree of in-store and carpark congestion on Saturdays, amongst other issues.

*Business interest*

[103] Like the majority of trading hours applications, evidence in support of NRA's application came from a number of large businesses, all non-exempt retailers, while the application was opposed by those representing small business.

[104] Without going to the specifics of their evidence, those who supported the application proffered the following arguments to support the extension of seven day trading into Emerald:

- a large percentage of the stores operated elsewhere in Australia by the non-exempt retailers already traded across seven days per week, with most stores performing quite well on Sundays;
- Sunday shopping is favoured for "big ticket" items as it allows decisions to be made with all members of the family present. Further, Sunday customers tend to spend more time in the store browsing and appear to take more time to select their purchases;
- there is less congestion in stores, especially on a Saturday;
- an extra day creates an opportunity for customers to shop at times convenient to them;
- wherever it has been introduced Sunday trading has been well supported and has not been reversed;
- Sunday trading remains the fastest growing trading day of the week (at least within the Coles Group);
- Sunday trading leads to an incremental growth in sales, rather than a redistribution of sales across the week;
- non-exempt supermarkets would gain operational efficiencies if seven day trading was introduced. This would be in the areas of energy usage, improved use of trolleys, reduced wastage caused because of the need to rundown perishable stock on Saturday afternoons and removal of the inefficient practice of having to "start up" supermarkets on Mondays following a forced closure on Sundays;
- customer service and stock replenishment would improve as a result of a more even spread of trade across the week;
- there would be a better working environment for staff and a better shopping environment for customers if there was a better spread of trade across the seven days of the week; and
- based upon their experience in the retail industry, each of the witnesses expected their Emerald store to trade successfully if they were permitted to open on Sundays.

[105] As noted earlier, the Target Country store is experiencing particular issues, such as store congestion, difficulty in replenishing stock and pressure on staff members, as a result of the significant volume of sales occurring over Thursday, Friday and Saturday of each week. It was Mr Winzenberg's view that these pressures would be eased if this store was allowed to trade on Sundays.

[106] Mr Wallace also highlighted the degree of congestion in the Woolworths store and carpark on Saturdays and argued that Sunday trading would help relieve that congestion.

[107] The witnesses who gave evidence in opposition to NRA's application advanced a variety of reasons why they had adopted that position. Messers Smith and Hooper primarily objected to the application because of the expected impact it would have on their takings on a Sunday. Mr Smith estimated that his weekly sales would reduce by approximately 38% while Mr Hooper believed that his would reduce by something between 40% and 45%.

[108] Mr Smith based his estimate on the historical sales figures, over a ten year period, in the two weeks prior to Christmas. However, NRA submitted that this was an overestimate and the more likely scenario would be that his Sunday trade "would moderate to a similar level to Saturday.". We are inclined to agree with this estimation. It would be somewhat odd if the Foodworks store's weekly turnover dropped by a figure which equalled all of its Sunday turnover and virtually half of its Saturday turnover.

[109] Mr Hooper said that he would have to assess the viability of his business if Sunday trading was introduced because his trade on that day, when he sold a larger variety of products with an increased profit margin, subsidised his business across the other days of the week.

- [110] Mr Rolfe, whose store opened for three hours less on a Saturday than it did for the other days of the week, believed that he would be "forced" to open on Sundays if NRA's application was granted because of community pressure. However, his evidence did not suggest he was considering extending his trading hours in order to maintain his market share, or to meet customer expectations, when a new Harvey Norman store opened in Emerald sometime during 2011.
- [111] Ms Lane, whose store closed at 2.00 p.m. on Saturdays, opined that she might have to open her store on Sundays because she might not be offered a new lease if she did not. Further, despite closing early on Saturdays, she claimed she would stand to lose trade to "the major chains" if she did not open on Sundays. Notwithstanding the above, Ms Lane also made it clear that she would not be opening her store on a Sunday if NRA's application was granted because of personal commitments, the commitments of her staff, and the costs of doing business on that day of the week.
- [112] Mr Murphy had a number of objections to the introduction of seven day trading. First amongst these was his very strong belief that he would be forced by the shopping centre management to open seven days each week. He also believed that unrestricted Sunday trading would impact family life, community events and sporting events within Emerald. He further indicated that he opposed Sunday trading because it was the only day he and his wife were able to get away from work.

**(f) The alleviation of traffic congestion**

- [113] NRA submitted that "*no evidence was adduced regarding this criterion.*". This submission was supported by the QRTSA. However, on our reading of the evidence, at least two of NRA's witnesses gave evidence about this subject matter.
- [114] Mr Wallace (see paragraph [40] above) said the introduction of Sunday trading would lead to less congestion at the cash registers on Saturdays and lead to a reduction in in-store and carpark congestion on the same day.
- [115] Mr Winzenberg (see paragraph [47] above) said the Target Country store was having trouble servicing its customers across the last three trading days of each week (Thursday, Friday and Saturday) because the store was trading at capacity.
- [116] In each case, the witnesses said the introduction of seven day trading would help overcome these problems by evening out the trade across other days of the week, most particularly to Sundays.

**(g) The likely impact of the Order on employment**

- [117] There was a significant amount of evidence about the likely impact on employment if NRA's application was granted. Each of the retailer witnesses called by NRA provided an estimate of the additional hours which would be made available to existing employees or new recruits, if the application was granted. This evidence was based upon each witness's previous experience with other stores which had moved from a six day to a seven day trading environment. The evidence they gave about the additional hours of employment was as follows:
- Mr Stingl, of K-Mart - 100 additional hours per week;
  - Mr Stout, of Coles - 100 additional hours per week;
  - Mr Wallace, of Woolworths - 220 additional hours per week; and
  - Mr Winzenberg, of Target Country - 30 additional hours per week.
- [118] Each of these estimates was "criticised" by the QRTSA on the basis it was not supported by documentary or other evidence. However, we are satisfied that whilst the above figures *are* estimates they have been prepared by persons with extensive experience in the retail sector who have drawn on their experiences from introducing seven day trading into other centres where seven day trading has been granted. To that end, we record that we accept the estimates as being highly reliable, but not guaranteed.
- [119] Each of the witnesses from the non-exempt retailers also confirmed that if the application was granted work on Sundays would be voluntary for existing employees. In response to questions from the AWU they each assured that Union, and the Full Bench, that no employee would be adversely affected should they decline to work on a Sunday.
- [120] Mr Smith said that if the application was granted he would be required to immediately review his staffing levels and that this would, most likely, lead to the loss of five full-time positions and 45 hours of casual work performed on a Sunday by school-aged casual employees.
- [121] Mr Hooper also said that he would need to review his staffing levels as well as the viability of his store if the application was granted, but did not provide an estimate of the immediate impact on his employment levels.

[122] Nonetheless, we are satisfied on our consideration of the evidence that if the application is granted there will be some loss of employment opportunities in the Foodworks store operated by Mr Smith as well as in the convenience store operated by Mr Hooper. However, it is also apparent such loss in employment would be totally offset by the increase in employment levels of the four major retailers mentioned in paragraph [117].

**(h) The view of any local government**

[123] As recorded above (see paragraphs [78] to [81]) the local Council wrote to the Full Bench, through the medium of the LGAQ, to record its opposition to NRA's application.

[124] It would have been of considerable assistance to the Commission had the Council provided a witness who could speak to the resolution. This didn't occur and the Commission, as previously stated in paragraph [81] (above), will attribute the appropriate weight to this resolution.

[125] In such circumstances we can only note the resolution and take it into consideration in determining our overall attitude to NRA's application. In that regard, while the view of any local government in whose area the Order is likely to have an impact is important, it is but one of nine factors the Commission is required to take into consideration in making its determination.

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

[126] NRA submitted that 85% to 90% of Queenslanders now enjoy the amenity of seven day trading that Emerald, as a sizable community with a large pool of high income earners with high levels of discretionary spending capacity, was likely to support over all seven days of the week.

[127] In response, the QRTSA submitted that it was important that the individual needs and requirements of communities was assessed in any determination concerning the provision of seven day trading, rather than applying a broad brush approach to such issues. The QRTSA also criticised NRA's submission about the alleged high level of discretionary spending capacity of Emerald residents saying that this submission had not been underpinned by any evidence.

**Conclusions**

[128] After considering all of the matters we are required to have regard to pursuant to s. 26 of the Trading Act, we have decided, on balance, to grant NRA's application. In making this decision the Full Bench has taken into consideration all of the evidence and submissions made during the hearing of the application as well as the submissions made in *Trading Hours - Non-Exempt Shops Trading by Retail - State (Natural Disasters)*<sup>1</sup>.

[129] Where we have not mentioned, or do not mention (below), a specific element of any witnesses' evidence or a particular submission of one of the participants in the proceedings, that does not signify that such material has not been considered by us. It has. It has simply not been possible, nor feasible, to record everything that was placed before us for consideration.

[130] Our reasons for arriving at the decision to grant the application are, generally, as follows:

- Emerald is strategically located at the junction of the Capricorn Highway and the Gregory Highway. It is the largest town in the Central Highlands and is regarded as a regional hub, housing a major hospital, a number of educational facilities and a sizeable airport which was recently been upgraded.
- the township has two shopping centres, with a third proposed to be built in 2011, as well as another retail precinct. No shopping centre would become "dominant" if the application is granted. They each house non-exempt retailers who will continue to compete with each other for customers if they are permitted to trade across seven days;
- while actual tourism levels cannot be positively identified the data provided by Professor Rolfe suggests relatively high levels of tourist and business visitation to the region. These visitors would be assisted by any relaxation in trading hours, in that visitors to Emerald on a Sunday will have access to retail facilities which would otherwise be closed;
- the relatively high number of persons employed in shift work in the mining industry will have improved access to shopping facilities if retail stores are permitted to open on Sundays;

<sup>1</sup> *Trading Hours - Non-Exempt Shops Trading by Retail - State (B/2010/27 and Others) - Decision* <<http://www.qirc.qld.gov.au>>.

- the population of Emerald and the Central Highlands region has grown at a faster rate than the Queensland average over the last five years with above average growth anticipated over the next 25 years;
- congestion in the Woolworths and Target Country stores (in particular) will be eased if Sunday trading is permitted. Seven day trading will also reduce the pressure currently being experienced by employees in these stores;
- the likely loss of employment in the stores operated by Mr Smith and Mr Hooper, respectively, will more than be offset by the increased employment opportunities made available by the non-exempt stores who gave evidence. While any loss of employment is a matter of deep concern to the Full Bench, and is to be regretted, the fact that comparable employment opportunities will immediately be available will help to soften the blow for those persons who might be affected by this decision;
- those existing employees who do not wish to work on Sundays will not be required to and will not be disadvantaged in their employment if they make such a decision. All work to be undertaken on a Sunday will be voluntary; and
- similarly, no business which does not wish to trade on a Sunday may be forced to do so by Centro Properties Group, which has provided an assurance to this effect to the Full Bench. As such, any retailer who chooses not to open on a Sunday may make that decision. Equally, any retailer who chooses to open their store on a Sunday may do so at a time, and for a duration, of their choosing.

[131] In arriving at our decision to approve NRA's application, we have also taken into consideration the view expressed by the Council. However, while the Council opposed the application it provided limited reasons why it had adopted such position. At the end of the day, the Council's opposition to the application was far outweighed by those other factors which tended to support granting of the application.

[132] The operative date for the amendment to the Trading Hours Order is Sunday 8 May 2011. The NRA is to draft the necessary amendment and file it in the Registry within 14 days of the date of release of this decision.

[133] The Commission determines and orders accordingly.

D.A. SWAN, Deputy President.

A.L. BLOOMFIELD, Deputy President.

J.M. THOMPSON, Commissioner.

*Hearing Details:*

2010 18 and 22 June  
26 October (*Inspections and Hearing*)  
7 December (*QRTSA's written submissions*)

*Appearances:*

Mr J. Moore for National Retail Association Limited, Union of Employers.  
Mr J. Huang of Neumann Turnour Lawyers for Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers).  
Ms R. Broanda for The Australian Workers' Union of Employees, Queensland.

Released: 10 March 2011