

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**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) (TH/2011/8)**

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

DEPUTY PRESIDENT SWAN  
COMMISSIONER FISHER  
COMMISSIONER BROWN

3 September 2012

DECISION

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

"1. By inserting a new clause (25) in clause 3.2 as follows:

(17) The Ingham Area

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

2. By inserting a new clause (34) in Schedule 1 as follows:

(34) *The Ingham Area:*

Commencing at the intersection of the Bruce Highway and Hawkins Creek Road; then by a line in a south westerly direction to the intersection of Ingham-Abergowrie Road and Hamleigh Road; then by a line in a south easterly direction to the intersection of the Bruce Highway and Tokalon Road; then by a line in a north easterly direction to the intersection of Victoria Mill Road and Four Mile Road; then by a line in a north westerly direction to the point of commencement."

**The Legislation**

- [3] Section 21 of the Act states:

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

- (1) A full bench of the industrial commission may decide trading hours for non-exempt shops.
- (1A) However, the full bench is not to decide trading hours that are less than the following hours on a stated day, other than a public holiday -
- (a) 8a.m. and 9p.m. for Monday to Friday;
- (b) 8a.m. and 5p.m. for Saturday.

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

[4] Section 26 states:

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

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

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

*Inspections*

[5] Inspections of the local retail area of Ingham were conducted by the Full Bench with all representatives of the parties present.

*Parties*

[6] In support of the application

- NRA
- The Australian Workers' Union of Employees, Queensland (AWU)

[7] Opposed to the application

- Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) (QRTSA)

*Correspondence received by Registry of the Commission from various persons/organisations.*

- [8] Prior to the commencement of the hearing in Ingham, the Queensland Industrial Relations Commission (QIRC) received correspondence from a range of persons within the Ingham area opposed to the application.
- [9] These persons were not called to give evidence and, save for noting the correspondence, that material will not be considered by the Full Bench.

*Consideration of Evidence*

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

- [10] Ingham is located 110 km north of Townsville. Primarily, the Townsville region enjoys Sunday extended trade for non-exempt stores.
- [11] The sugar cane industry is a significant industry within the Ingham area. There are two sugar mills, Victoria Estate and Macknade.
- [12] Sugar is shipped from a bulk storage and handling jetty based at Lucinda.
- [13] The area also produces many substantial field crops (watermelon and pumpkins). Areas not under crops, attract a significant cattle industry.
- [14] The agricultural production value in 2005-2006 was \$145 million.
- [15] The 2006 Census established that 19% of the workforce in the area were engaged in agriculture, forestry and fishing industries and a further 15% were engaged in manufacturing within the sugar mills.
- [16] Within the area is the Caribbean Pine Plantations which mature and harvest forestry products.
- [17] Residents of the Cardwell area split their shopping between Ingham and Tully and Innisfail. The grazing community in the Upper Burdekin area also carry out some shopping in Ingham. (Exhibit 1 - Profile of the Ingham District - point 2)
- [18] In terms of the retail industry generally within the area under consideration, QRTSA states that the retail precinct in Ingham is not easily visible from the Bruce Highway and it would be unlikely that a traveller would be prompted to stop in the town to shop.

*Consideration*

- [19] All that can be taken from this material is that Ingham is situated north of Townsville and that some people from nearby townships shop in Ingham. A number of exempt stores, including a Supa IGA store, trade on a Sunday. It is also acknowledged that the central retail area of Ingham is not readily visible from the Bruce Highway.

(b) & (c) *the needs of the tourist industry or other industry in such locality or part; the needs of an expanding tourist industry;*

- [20] While NRA point to a number of tourist destinations within the general vicinity of Ingham (i.e. - Mt Spec, Wallaman Falls and the Australian Italian Festival event which occurs annually in May) QRTSA states that there is very little evidence adduced by the applicant to support a claim that Ingham is a tourist destination.
- [21] NRA points out that many tourists travel along the Bruce Highway *en route* to other tourist destinations and confusion is caused by different trading hours in different parts of the State.

*Consideration*

- [22] We accept that while there are tourist destinations within reasonably close proximity to Ingham, this factor, on the evidence and submissions before us, is generally not supportive of the applicant's claim.

(d) *the needs of an expanding population;*

- [23] There is no evidence of any real expansion in population within Ingham. While NRA submit that the "reasonable needs" of the population of Hinchinbrook Shire should be considered under this criterion, QRTSA states that the Queensland Government report entitled "Population projections to 2031" show that the population in the Hinchinbrook Shire has stagnated and is forecast to remain at its current levels over the next 20 years. (Exhibit 1) The Cummings Economic Survey shows the population projection of 12,271 persons in 2010 will grow to 13,231 persons by 2031. This shows an average annual growth rate of 0.3%.

*Consideration*

- [24] There is nothing within this criterion which supports the application.
- (e) *The public interest, consumers' interest and business interest (whether small, medium or large);*
- [25] Evidence was given by NRA witnesses for the non-exempt stores which would be positively affected by the granting of this application.
- [26] The non-exempt stores represented in this application included Target and Target Country, Coles and Woolworths. The witnesses generally gave similar evidence which can be summarised as follows:
- non-exempt stores are able to trade on Sunday in many other areas of Queensland;
  - customers appreciate the savings they make by being able to purchase food at supermarket prices on Sunday;
  - tourists' schedules do not recognise any difference between the days of the week and would benefit from non-exempt stores opening on a Sunday;
  - Sunday trade contributes to a reduction in trading peaks and generally eases congestion at registers which reduces the frustrations felt by customers and employees;
  - Sunday trade by non-exempt stores has grown in popularity and statistical data shows that Sunday has become one of the fastest growing trading days of the week;
  - refrigeration must be maintained when a non-exempt store is closed. The impact of this significant operation overhead is diminished if revenue is able to be generated over seven days; and
  - seven day supermarkets have no requirement to run perishable stock down or deplete stock on Saturday afternoons before closure.
- [27] Opposition to the claim was given by Mr Zaghini. Mr Zaghini is the owner of a Supa IGA store which is located approximately one block from Woolworths.
- [28] NRA expressed concern that Mr Zaghini would not reveal the percentage of his weekly takings which occurred on a Sunday.
- [29] Mr Zaghini's evidence was that his store offered Italian-style goods using local products. He said that this type of trade made his store very popular with tourists and locals.
- [30] Compass Research was commissioned by NRA to conduct a survey of Ingham consumer attitudes towards the proposed extended shopping hours. NRA submits that the key findings from that research are as follows:
- 40% of respondents said they had shopped in Townsville on Sunday;
  - 60% of respondents agreed that retailers in Ingham should be able to trade over seven days of the week;
  - 69% of respondents agreed that if people in Townsville were able to shop on Sundays, then residents of Ingham should also be able to do so; and
  - When asked the reason why there was a preference for Sunday trade by non-exempt stores, the following responses were given:
    - it would bring people into town from surrounding areas and this would be good for the economy;
    - it would give the town centre a lively community feel;
    - it would save some travel time and petrol costs if people did not have to go to Townsville to shop;
    - it would mean that one would be able to shop and spend more in one's local community; and
    - it would be more convenient to be able to shop on a Sunday as often work and family commitments made it difficult to shop on other days of the week.
- [31] There was considerable local opposition to the application. This opposition came from a number of areas - e.g. The Mayor of Hinchinbrook Shire, Mr G Giandomenico, Mr Bob Katter, Federal Parliamentary Member for the seat of Kennedy and Mr Peter Cripps, State Member of Parliament for the electorate of Hinchinbrook.
- [32] Mr Giandomenico's evidence was that the local Council opposed the application in that it believed that there would be an adverse effect upon smaller traders - i.e. the corner store, the local newsagent and the small convenience stores operating in the Shire. (Exhibit 5 - point 5) The Council had not sent any correspondence to the Commission identifying its opposition to the application. It appeared that its position had only been formalised close to the time of the hearing.
- [33] Mr Giandomenico, on behalf of the local Council, stated the following reasons for Council opposing the application:
- "(a) While it may stop some shoppers going to Townsville on a Sunday (as stated in the application) it is probably only very minimal leakage of expenditure as most people who go to Townsville to shop go for the larger range of shopping available and not to grocery shop. In Ingham we have a Woolworths, Coles,

Country Target and an IGA grocery store. IGA is open on Sunday so Ingham residents have that opportunity as well as a SPAR supermarket in nearby Forrest Beach and Halifax.

(b) Unless there is significant expenditure leakage to Townsville on the Sunday then all Sunday trading will do is spread the shopping over 7 days rather than 6, it will transfer trade from the independent retailers to the larger corporations and could jeopardize their validity and if they close then we will have job losses and empty shops. Small retail shops in Ingham are family businesses and they will not open as they cannot justify the additional costs.

(c) Staff will have to work Sunday which can pose problems with sporting events which often occur on a Sunday.". (Exhibit 5 - point 11)

[34] Mr Katter's evidence was that he had represented the interests of citizens of Ingham for many years and, as such, had an understanding of its economic, social and environmental needs and wants. In his view:

"The independent stores throughout these small towns support the local community with local produce and joining with the community in fighting against the injustices of government decisions for the survival of small business and regional towns."

[35] Further, Mr Katter added:

"An example of the way small independent stores support their communities was most recently demonstrated in the fight against the importation of Filipino bananas where local businesses joined local farmers in petitioning Government. Innisfail IGA was prominent in this campaign and to this date proudly provides notices advising shoppers of when local produce is available for sale.". (Exhibit 7 - point 7)

[36] Mr Katter's evidence also went to a consideration of the market share held by both Coles and Woolworths. In his view, local independent traders provided variety in the type of goods available to consumers. We have also noted Mr Katter's response to a question as to whether he could nominate the retailers in Ingham he had spoken to. While Mr Katter thought that question was "stupid", his general comments have been duly considered.

[37] Similar evidence in opposition to the application was made by Mr Cripps. More particularly, Mr Cripps stated that nine exempt retail outlets traded on Sundays across Hinchinbrook Shire. The trading hours varied, but by way of example, some stores opened 6 hours per day, others for 9.5 hours, 11 hours, 12 hours and 13 hours.

[38] Under cross-examination, Mr Cripps agreed that he had spoken to one constituent who had supported the application and one other who had opposed the application. (Transcript - page 66 - Line 40)

[39] There was an apprehension that if the application was granted, then smaller independent retailers would find it was financially unviable for them to trade on a Sunday. Alternatively, these traders would find that their outlets were financially unviable without the trade they record on Sundays in the absence of Woolworths and Coles, and be forced to close. (Exhibit 6 - point 8)

[40] After considering these diverse views, we make the following comments:

[41] The outcome of the Compass survey requires consideration against the very strong local views expressed directly before the Commission.

[42] QRTSA raised concerns as to the wording of some of the questions put to local residents by Compass Research. By way of example, the following question was put to consumers in Ingham:

"In Townsville all shops can open on Sundays if they want to, however in Ingham some shops can open and some shops are forced to close. Should retailers in Ingham be entitled to trade on all seven days if they want to?"

[43] The criticism levelled at this type of questioning included a lack of identification of the difference between exempt and non-exempt stores. This could mislead interviewees to believe that some exempt stores do not trade in Ingham because they are forced to close. As well, QRSTA stated that the question could lead one to believe that traders in Townsville have more freedom than traders in Ingham.

[44] The second question under review was:

"If people in Townsville are able to shop on Sundays, do you think it is reasonable for people in Ingham to be able to shop in Ingham on Sundays if they want to?"

- [45] QRTSA pointed out the flaws inherent in this type of question. For example, QRTSA said that any person in Ingham could already shop in Ingham on a Sunday. The difference lay in what type of shop they choose to shop in - e.g. an exempt store or non-exempt store.
- [46] In all, QRTSA believed that the survey was a "sham" with questions framed in such a way to elicit a certain response from an interviewee.
- [47] We have considered all of the submissions around this particular criterion. We appreciate the claims made by the non-exempt stores as to questions of flexibility of choice for consumers and the obvious economies of scale inherent in trading fluently over seven days.
- [48] However, while those interests are pertinent to the debate, there are also other interests to consider. It is obvious that there has been strong local opposition to the application.
- [49] Those giving evidence for the non-exempt stores are, by and large, the State of regional managers of those stores. We understand that this is unexceptional in the circumstances, but, to some degree, that evidence must be considered against the evidence of local storeowners and representatives of the residents of Ingham.
- [50] It has previously been accepted by the Commission that local representatives of citizens (e.g. Mayors of Councils, members of State and Federal Parliament) have a heightened appreciation of their constituent's views on a range of matters.
- [51] We have accepted that some of the questions posed in the Compass Survey have the likelihood of eliciting responses upon which complete reliance should not be had. The Full Bench is aware that to the average consumer, who may not be aware of the legislative distinction between exempt and non-exempt stores, the type of question posed in surveys has the potential to elicit a response favourable to those posing the question.
- [52] Within this context, the type of question which asks whether it is fair that a consumer can shop on Sundays in one city and not in another, in the absence of any further information, does little to add to the debate. Any answer to that question would surely raise other questions. For example, which type of store is being discussed?
- [53] That criticism does not relate to all of the questions posed by the Survey. The Full Bench accepts that, for many of the questions posed in the survey, reliance can be placed upon the responses for the purpose of gauging general support for the application.

#### *Consideration*

- [54] In considering the interests of consumers given the competing evidence around the survey results and the views from representatives of citizens in Ingham, we have formed the view that the more representative perspective is that being expressed by those elected persons within the Council and the Federal Parliament in Ingham. Mr Cripp's admission of only speaking to two constituents is particularly noted as well as his broader commentary around issues pertaining to the application generally.
- [55] Generally, the representatives are persons who have significant contact with their constituents on a broad range of issues. We believe that we should give due recognition to those views expressed in this matter and particularly so where the views are the same on the question of whether or not non-exempt stores in Ingham should be permitted to trade on Sundays.
- [56] In terms of "business interests (whether small, medium or large)", while NRA witnesses have strongly supported the application, but there has been no opposition from any recognised "small business". Supa IGA is not a small or medium sized business, but one which is comparable in size to that of Woolworths and Coles. It is an exempt store for the purposes of the Act and its opposition to the application is duly considered. There has been no opposition, by way of direct evidence before the Commission, from small exempt retailers.
- (f) *the alleviation of traffic congestion;*
- [57] There have been no submissions made with regard to this criterion.
- (g) *the likely impact of the order on employment;*
- [58] NRA submitted that "retail trade" employed 10.8% of persons living within the Hinchinbrook Shire. [2006 Census]. NRA believed that granting of the application would ensure more jobs for employees working the extended hours.

[59] Mr Stout gave the following evidence:

"Our Ingham store employs 63 employees of whom 22 are under 21. We make a significant contribution to youth employment in Ingham which provides young people with significant benefits in terms of increased wealth, valuable work experience and socialisation benefits. It also creates young consumers, savers and taxpayers who contribute to the economy in a very real way. Productive and motivated youth also benefit society by reducing the incidence and costs associated with social problems such as drug abuse and crime. Many of the volunteers for Sunday work in other areas are young workers who are keen to earn much higher rates of pay for Sunday work than any other day of the week. It also is often more suitable for those employees who have other commitments on Saturday, but still want to be able to earn money by working on the weekend.". [Exhibit 3 - point 17]

[60] Coles stated that they expected to add an additional 150 hours of employment if the application was successful. Target's estimation was for an extra 18 hours each week and Woolworths estimated an additional 180 hours per week.

[61] As is usually the case when this criterion is considered, the applicant can be reasonably specific about the extra hours of employment which would be created if the application was granted. This is not the case, however, for the respondents to a trading hours application. Exempt retailers can only speculate as to what impact a successful application might have on employment within their businesses.

*Consideration*

[62] The identified extra employment hours which would arise from a successful application is an issue which is more favourable, than not, to the applicant's case.

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

[63] NRA was critical of the evidence given by the Mayor of the Hinchinbrook Shire Council. In its view, the evidence was based upon a "long held bias against large companies and multi-nationals". (Submissions - NRA point 15(a)).

[64] In response to a question from the NRA, the Mayor indicated that he would not have had a problem with stores such as Rockmans or Target trading on a Sunday, but that the Council did have a problem with stores such as Woolworths and/or Coles trading on a Sunday.

[65] Notwithstanding any criticism mounted by NRA against the evidence given by the Mayor, it remained the position of the Local Government that it opposed the application.

*Consideration*

[66] This factor does not support the application.

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

[67] Other matters raised by the applicant went to:

(a) the support by the AWU (subject to the caveat that work performed on a Sunday be of a voluntary nature)

(b) Mr Wizenberg's evidence focussed upon what he viewed as "*the common misunderstanding that the extension of trading hours from six days to seven days operates to the detriment of employees.*". [NRA submissions - point 16 (b)].

[68] Mr Wizenberg stated that:

"The relevant facts are:

(i) "Only employees who want to work on Sundays do so.

(ii) Approximately 90% of the work performed on Sundays is performed by casual employees.

(iii) Typically these employees want to work on Sundays because it suits them to do so. For example:

a. Many of our Sunday casuals are students who are attracted to working a few hours on Sundays to generate an income.

b. Mothers with children at home also commonly complete casual hours in Target stores on Sundays. This is an opportunity for them to supplement the family income without any offsetting child care cost.

- c. Another category of employee who wants to work on Sundays is the employee whose partner works on week-ends and therefore prefers to arrange for time off to coincide with their partners' days off." (NRA submissions - point 16(b))".

*Conclusion*

- [69] In considering the criteria which must be addressed by the Commission in making a determination upon the application, we have, on balance, formed the view that the application will not be granted.
- [70] There is little by way of relevant evidence adduced around s. 26(a), (b), (c), (d), and (f) of the Act which supports the granting of the application. In saying that, however, we are conscious of the fact that in many trading hours' applications, some of the criteria which must be considered by the Commission under s. 26 of the Act are not activated. For example, often the question of traffic congestion (s. 26(f)) is not in contention.
- [71] Overall, the Commission is left to consider the evidence around s. 26(e), (g) and (h) of the Act.
- [72] In the case of s. 26(e) we have preferred the evidence given by local, elected representatives of the citizens of Ingham to that adduced through the Survey conducted by NRA for reasons previously cited.
- [73] The consideration of s. 26(g) of the Act is more favourable to the NRA application for reasons previously cited.
- [74] The consideration of s. 26(h) shows that the view of the relevant local government is that of opposition to the application.
- [75] On balance, we would dismiss the application.

D.A. SWAN, Deputy President.  
G.K. FISHER, Commissioner.  
D.K. BROWN, Commissioner.

*Hearing Details:*

2011 12 May (*For Mention*)  
2012 21 February (*Hearing*)

Released:

*Appearances:*

Mr G. Black for National Retail Association Limited, Union of Employers.  
Mr C. Donati for The Australian Workers' Union of employees, Queensland.  
Mr C. Mills for Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers).