

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Re: National Retail Association Limited, Union of Employers* (No. 2) [2014] QIRC 165

PARTIES: **National Retail Association Limited, Union of Employers**
(Applicant)

CASE NO: TH/2012/8

PROCEEDING: Application to amend *Order - Trading Hours Non-Exempt Shops Trading by Retail - State* (Townsville Tourist Area)

DELIVERED ON: 20 October 2014

HEARING DATE: 7 March, 12 and 13 May 2014
27 May 2014 (AWUQ's submissions)
11 July 2014 (Applicant's submissions)
29 July 2014 (QRTSA/IGA stores' submissions)

MEMBERS: Industrial Commissioner Fisher
Industrial Commissioner Knight
Industrial Commissioner Neate

ORDER: **1. The application is granted in part.**
2. The *Trading Hours Order - Non Exempt Shops Trading by Retail - State* be amended for the Townsville Tourist Area to provide that non-exempt shops trade from 7.00 am to 9.00 pm on Monday to Friday and from 8.00 am to 6.00 pm on Saturday.
3. The amendment operate from 17 November 2014.

CATCHWORDS: INDUSTRIAL LAW - TRADING HOURS ORDER
- Application to amend - Application to summarily dismiss - Not pursued - Evidence - Opposition to application - Legislative criteria - Locality - Needs of the tourist industry or other industry in such locality or part - Needs of an expanding tourist industry - Needs of an expanding population - Public interest, consumers' interest, and business interest - Alleviation of traffic congestion - Likely impact of the order on employment - View of local government - Persuaded by evidence concerning locality, increasing population and views of consumers - Application granted in part.

CASES:

Trading (Allowable Hours) Act 1990, s 21, s 23, 27

National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Others (2007) 185 QGIG 287

Trading Hours - Non-Exempt Shops Trading by Retail - State (TH/2011/4) - Decision
<<http://www.qirc.qld.gov.au>>

Re: National Retail Association Limited, Union of Employers [2014] QIRC 150

Re: National Retail Association Limited, Union of Employers [2014] QIRC 157

Retailers' Association of Queensland Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organisation of Employers) and Others (Nos. B579/00 and B1301/00) (2000) 165 QGIG 174

APPEARANCES:

Ms A. Lamb for the National Retail Association Limited, Union of Employers, the Applicant.

Mr C. Dorber for the Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and IGA Supa, Garbett; IGA Supa Mt Louisa; IGA Supa, Riverside Gardens; IGA Supa, Rasmussen; IGA, Mundingburra; IGA Supa, Bamford Lane; IGA Supa, Sunland; IGA, Bushland Beach; and IGA, Magnetic Harbour.

Ms C. Woodhouse for The Australian Workers' Union of Employees, Queensland.

Decision

- [1] The National Retail Association Limited, Union of Employers (NRA), filed an application (as amended) seeking an amendment to the *Trading Hours Order - Non Exempt Shops Trading by Retail - State* (Trading Hours Order) as follows:

"In subclause 3.2(10) of the Order by replacing the current provision with the following new provision:

(10) *Townsville Tourist Area*

	<u>Opening Time</u>	<u>Closing Time</u>
Monday to Friday	7.00 am	9.00 pm
Saturday (including Easter Saturday)	7.00 am	6.00 pm
Sunday	7.00 am	6.00 pm
Public Holidays (as defined) (excluding Good Friday, 25 April, Labour Day, 25 December)."	8.30 am	5.30 pm

- [2] The Trading Hours Order already makes provision for the Townsville Tourist Area. This area was established in 2007 and subsumed into it the smaller geographic area of the Townsville CBD.¹ Two non-exempt stores are situated in the Townsville Tourist Area - Woolworths in the CBD and a Bi-Lo store in North Ward. The effect of the application is to bring forward the opening time for non-exempt stores on Monday to Saturday (currently 8.00 am) and Sunday (currently 9.00 am), and to establish a later finishing time for Saturday (currently 5.30 pm). In addition, the application seeks "to bring Easter Saturday hours in line with the proposed new standard Saturday hours." However, the issue of Easter Saturday hours was not addressed in the evidence or submissions of the NRA and is therefore not considered in this decision.
- [3] The Australian Workers' Union of Employees, Queensland (AWUQ) was granted leave to appear and be heard in the proceedings. Following undertakings given on the transcript by witnesses for Coles and Woolworths,² the AWUQ informed the Queensland Industrial Relations Commission (the Commission) of its consent to the application.
- [4] The Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) (QRTSA) and certain IGA stores, listed in the appearances, were granted leave to appear and be heard in the proceedings. Whether the IGA stores have standing to appear was not debated before us and leave was granted without objection.

Preliminary Issues

(i) Application to dismiss TH/2012/8

- [5] At the commencement of the substantive hearing, Mr Dorber, who appeared for the QRTSA and IGA stores, made a submission from the bar table pursuant to s 27 of the *Trading (Allowable Hours) Act 1990* (the Act) that the Commission summarily dismiss the application made by the NRA. On the basis that the NRA was taken by surprise by the request, the fact that witnesses had been brought to Brisbane in the expectation that the hearing would proceed and the costs that would be thrown away if the hearing was abandoned, the Commission decided not to make a decision on the matter at that time. Instead the Commission decided to hear the evidence and both the organisations represented by Mr Dorber and the NRA were invited to make written submissions on the summary dismissal argument, with it to be determined as a threshold point in our written decision.
- [6] In his written submissions, Mr Dorber informed the Commission that the point was not being pursued as the evidence had been heard. Despite this concession, we record that it was still open to the Commission to hear and determine the issue raised by the QRTSA and IGA stores even after the hearing of the oral evidence. It has been a course adopted in other trading hours applications where the issue has been belatedly raised.³ However, we are of the clear view that any person or organisation seeking to have an application

¹ *National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Other* (2007) 185 QGIG 287.

² See [41] - [42].

³ See, for example, *National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Others* (2007) 185 QGIG 287; *Trading Hours - Non-Exempt Shops Trading by Retail - State (TH/2011/4) - Decision* <<http://www.qirc.qld.gov.au>>

summarily dismissed should raise the matter sufficiently in advance of the hearing of the application in order for it to be appropriately heard and determined.

(ii) *What s 26 of the Act requires*

- [7] In respect of this issue, we adopt the reasoning and conclusion of the Full Bench in *Re: National Retail Association Limited, Union of Employers*⁴ (Ipswich Central Business District) and the decision of the current Full Bench in *Re: National Retail Association Limited, Union of Employers*⁵ (Toowong Retail Precinct).

(iii) *The proper construction of s 26*

- [8] In respect of this issue, we also adopt the reasoning and conclusion of the Full Bench in *Re: National Retail Association Limited, Union of Employers*⁶ (Ipswich Central Business District) and the decision of the current Full Bench in *Re: National Retail Association Limited, Union of Employers*⁷ (Toowong Retail Precinct).

NRA Evidence

- [9] The NRA called the following witnesses who gave evidence in support of the application:

- David Kippen, Chief Executive Officer, Townsville Enterprise;
- Geoff Bell, State Support Manager, Queensland, Woolworths Limited;
- David Stout, State Regulatory Affairs Manager, Queensland, Coles; and
- Annie Nguyen-Yip, Senior Data Analyst, MarketMetrics.

QRTSA and IGA Stores Evidence

- [10] The QRTSA and IGA stores called Dr Derek Lundberg, Director of Innovate Coaching Pty Ltd to give evidence in opposition to the application.
- [11] All of the evidence, exhibits and written submissions have been considered in reaching this decision.

Evidence and Submissions in relation to the s 26 Criteria

- [12] In this part of the decision we focus on the evidence and submissions which particularly informed our decision.

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

- [13] Evidence about the locality was given by both Mr Stout and Mr Kippen. Townsville Enterprise, of which Mr Kippen is the Chief Executive Officer, is the official North

⁴ *Re: National Retail Association Limited, Union of Employers* [2014] QIRC 150 [5]-[6].

⁵ *Re: National Retail Association Limited, Union of Employers* [2014] QIRC 157 [13]-[34].

⁶ *Re: National Retail Association Limited, Union of Employers* [2014] QIRC 150 [7]-[10].

⁷ *Re: National Retail Association Limited, Union of Employers* [2014] QIRC 157 [13]-[22].

Queensland Region's registered Economic Development Organisation and registered Regional Tourism Organisation and Convention Bureau.

- [14] Mr Stout said that Townsville is Queensland's largest urban area outside of south-east Queensland and Australia's largest tropical city.
- [15] Mr Kippen and Mr Stout both focussed on the planned revitalisation of the Townsville CBD which the Townsville City Council (the Council) hopes will lead to it becoming the premier business district of northern Queensland. Mr Stout attached to his Statement the "Townsville City Economic Development Plan 2013-2017" prepared by the Council. The CBD was defined to include many of the sites located in the Townsville Tourist Area as defined by the Trading Hours Order. Key initiatives proposed by the Council include renewed CBD master planning, investment, activation and promotion to develop the CBD as the hub of the second capital of Queensland and attract private development (including commercial, retail and residential investment attraction).
- [16] Attached to Mr Kippen's Statement is a document entitled "Townsville's CBD" which was prepared by Townsville Enterprise, Townsville Chamber of Commerce and the City of Townsville. Mr Kippen informed the Commission that a number of projects mentioned in the document are located in the CBD and have been completed. These include the Jezzine Barracks, with another stage under construction; Verde and 420 on Flinders Street, both of which are commercial office buildings and, Central, a mixed use residential, retail and commercial development.
- [17] Dr Lundberg said in his Affidavit that the Townsville Tourist Area has a total area of 6.6 km². He said that according to the Real Estate Institute of Queensland, North Ward, which falls within the Townsville Tourist Area:

"is one of Townsville's most desirable areas. It is leafy and well-established and is located close to the water, CBD and The Strand. North Ward has experienced huge change over recent years. The vast majority of housing in the area is units and townhouses, ensuring the area remains very popular with couples; however there are also traditional and renovated Queenslanders and Colonials. A premier suburb of Townsville, a number of prestige developments are available. Surrounded by the suburbs of Townsville City and Belgian Gardens, the area is a popular tourist spot and is often used for special events. There are primary and secondary schools in the area with a shopping centre, parks and waterways also available. The nearby Strand offers a plethora of entertainment options including restaurants and walkways."

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

- [18] Mr Kippen cited the Tropical Drive Survey, 2007 as the source of the statement, "[t]he CBD is the primary point of call for visitors to Townsville with approximately 81% of those who visit the Townsville region visiting the CBD."
- [19] The "Townsville City Economic Development Plan 2013-2017" (the Plan) includes a section, "Tourism Precincts Development Strategy", which outlines key initiatives for tourism including CBD revitalisation; incorporating tourism opportunities and priorities in the CBD Master Plan; and the development of a new CBD entertainment, convention and

stadium precinct. In addition, the "Action Agenda" includes creating new shopping opportunities with a particular focus on the CBD. Although changes to trading hours were not mentioned in the Plan, Mr Stout said in cross-examination that he was of the view that they needed to be considered if residential, recreational, tourism and food services were to be further expanded.

- [20] Tourism visitation statistics were attached to Mr Stout's Statement. These were in the form of the "Townsville Regional Snapshot, March 2013" prepared by Tourism and Events Queensland. These figures show that for the year ended March 2012, the number of domestic overnight visitors to Townsville declined by seven per cent. Although holiday visitors increased by 13 per cent, the categories of visiting friends and relatives (VFR) and business visitation both declined markedly. The document states:

"After recent strong growth across the state, the decline in VFR may be a result of normalising. The changes in the resource sector from construction to production also impacted on VFR and holiday visitors from Mackay."

(d) the needs of an expanding population

- [21] Mr Stout's evidence included ABS 2011 Census Data which showed that over the last 10 years Townsville's population has grown, increasing at an average 2.2 per cent per annum from 2001 to 2011. The Queensland Treasury and Trade "Regional Profiles Summary - Townsville City Local Government Area" also shows that Townsville's population has experienced growth for each of the years 2007 to 2012 and has increased at a rate higher than the Queensland average. The same document shows that Townsville's population is expected to continue to increase, again at rates exceeding the Queensland average. From an estimated resident population of 184,526 in 2012, the population is expected to increase to 216,524 in 2016.

- [22] The "Townsville CBD" report states:

"Townsville's CBD will be the significant driver of future economic and population growth for Townsville. Council's vision for the area is to see it develop as the premier central business district of northern Australia, and a home for a working and residential population of more than 30,000 people by 2030."

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

Public Interest

- [23] We adopt the views of the Full Bench in *Retailers' Association of Queensland Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organisation of Employers) and Others*⁸ where the following comments were made:

⁸ *Retailers' Association of Queensland Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organisation of Employers) and Others* (Nos. B579/00 and B1301/00) (2000) 165 QGIG 174, 177.

"Public interest matters encompass a variety of considerations, amongst which is a requirement to weigh and balance relevant issues."

Consumers' Interest

- [24] Included in Mr Stout's Statement were statistics from the ABS 2011 Census showing that 47 per cent of people employed in the Townsville Local Government Area work more than 40 hours per week. That is higher than for the Australian population in general and when compared with other major regional towns such as Newcastle and Geelong. Mr Stout said Townsville consumers are at a disadvantage because the high proportion of the population work long hours yet have less opportunity to purchase goods at supermarket prices.
- [25] Other data from the ABS 2011 Census shows that Townsville also has the highest percentage of working families compared with other regional centres and Australia in general.
- [26] The NRA engaged MarketMetrics, a company specialising in data collection including fieldwork logistics and data analysis services, to conduct a survey of the views of Coles (Bi-Lo) and Woolworths' customers regarding the application. The survey was conducted outside each of the two stores between the hours of 8.00 am and 7.00 pm from Thursday 19 September to Tuesday 24 September 2013. Three hundred respondents participated in the survey; 150 customers from each of Woolworths and Coles.
- [27] Of the 85 per cent of the respondents who lived locally, 87 per cent were supportive of the proposed extension to trading hours. Of those who did not live locally, 82 per cent were supportive of the proposed extended hours.
- [28] Other pertinent results are:
- 56 per cent of respondents agreed that it would be more convenient to shop from 7.00 am Monday to Saturday rather than from 8.00 am.
 - 65 per cent of respondents agreed that it would be more convenient to shop until 6.00 pm on Saturdays.
 - The 258 respondents supportive of the proposed extended trading hours indicated that they would be most likely to use the extended hours as follows:

(Note: the table numbers below reflect those in Ms Nguyen-Yip's Statement.)

Table 2.

Proposed Extended Hours	Respondents Most Likely to Use
Weekdays between 7 am and 8 am	57% (148)
Saturdays between 5.30 pm and 6 pm	55% (141)
Sundays between 7 am and 9 am	40% (104)
Saturdays between 7 am and 8 am	28% (71)

- The results for Bi-Lo customers supportive of the extended hours in relation to their proposed use of the extended hours are as follows:

Table 3.

Proposed Extended Hours	Respondents Most Likely to Use
Weekdays between 7 am and 8 am	55% (78)
Saturdays between 5.30 pm and 6 pm	56% (80)
Sundays between 7 am and 9 am	38% (55)
Saturdays between 7 am and 8 am	31% (45)

- The results for Woolworths customers supportive of the extended hours in relation to their proposed use of the extended trading hours are as follows:

Table 4.

Proposed Extended Hours	Respondents Most Likely to Use
Weekdays between 7 am and 8 am	61% (70)
Saturdays between 5.30 pm and 6 pm	53% (61)
Sundays between 7 am and 9 am	43% (49)
Saturdays between 7 am and 8 am	23% (26)

- [29] Mr Bell gave evidence of the customer transactions for Saturdays and Sundays for the month of July 2013 for the Woolworths' store in the Cairns Tourist Area. Although this store does not have a 7.00 am opening on Monday to Saturday, it trades to 9.00 pm on Monday to Sunday. The data show the highest number of transactions between 5.00 and 6.00 pm on both Saturdays and Sundays, with the number of transactions tapering off to the hour between 8.00 and 9.00 pm.
- [30] Mr Bell also provided the average number of customer transactions for the month of July 2013 for the Oasis store Broadbeach and the Surfers Paradise store, both of which are located in the Gold Coast Coastal Tourist Area and are permitted to open at 7.00 am. The number of transactions between the hours of 7.00 and 8.00 am Monday and Friday are reasonably consistent in each store but are lower on Saturdays. The Commission does not have the benefit of statistics for the next hour of trade on those days. These stores also show high volumes of trade between 5.30 pm and 7.00 pm on Saturdays.
- [31] Both Mr Bell and Mr Stout provided data in relation to the trading patterns for their respective stores in the Brisbane CBD. These show the stores are well patronised between 7.00 and 8.00 am Monday to Friday and demand is strong in the last hours of trade on Saturdays and Sundays. Both Mr Bell and Mr Stout believe that the earlier trading in CBD stores Monday to Saturday was supported and this would translate to their stores located in the Townsville Tourist Area were the application to be granted.

Business Interest

- [32] The issue that generates most argument in trading hours proceedings is business interest. In this hearing, evidence was given by Mr Bell and Mr Stout on behalf of the major retailers.
- [33] Mr Stout said this application was one in a series to expand trading hours for CBD locations.
- [34] He said Coles showed confidence in the Townsville CBD area by its plan to expand, refurbish and re-badge the Bi-Lo store at North Ward. This re-development would provide opportunities to other retailers. However, as at the time of the hearing, the redevelopment had not commenced.
- [35] The evidence of Mr Bell and Mr Stout could best be summarised as seeking an increase in trading hours to improve the offering to customers and consequently increase the return to their respective companies.
- [36] The QRTSA and IGA stores did not call any direct evidence from business owners affected by the application. Instead, they relied on the evidence of Dr Lundberg, who now works with IGA storeowners in New South Wales and Queensland as part of his consulting business. He formerly worked for Metcash Trading for the 10 year period prior to August 2012. During that period, Dr Lundberg held positions of State General Manager for IGA Distribution in both New South Wales and Queensland, with the Queensland position held from 2 November 2007 to 16 May 2010.
- [37] Dr Lundberg claims that the granting of this application will likely have an adverse effect on independent supermarkets in the Townsville Area, with this being attributable to a range of factors but primarily increased market power and dominance of Coles and Woolworths, oversized chain stores and saturation of local markets by Coles and Woolworths. Further, sales of independent supermarkets may decline by as much as 25 per cent and gross profits may decline as the retailer attempts to recover.
- [38] In answer to a question from the NRA, Dr Lundberg was unable to nominate any independent supermarkets in the Townsville Tourist Area. Nonetheless, he was of the view that those located outside of the area would still suffer as a result of the application being granted because, plausibly, shoppers might stop at stores in the CBD on their way to and from work. Dr Lundberg agreed that the IGA stores in Townsville were large format, full line supermarkets in the IGA model and he was of the view that the application would affect stores like the Supa IGA store at Garbutt, which opens from 5.00 am to 10.00 pm Monday to Sunday.
- [39] Dr Lundberg said the IGA store in Castletown was "forced to close due to the economic circumstances in Townsville" and the Rasmussen store had "no other option but attempt to sell to Woolworths". Other independent stores in Townsville have also suffered a decline in sales growth. When it was suggested that this was unrelated to the current trading hours application, Dr Lundberg replied:

"It has a lot to do - it has a lot to do though with the continual march of Coles and Woolworths, which, as I keep referring back to, deregulation to trading hours is just

another - another area which redistributes wealth to the chains from somewhere. It doesn't create value. We are not creating marketplaces by deregulating these markets, are we? We are not creating new markets. We are taking markets - we are taking market share. We are taking dollars and cents from one area and passing it over to, guess who, again, Coles and Woolworths. We are not creating new here by doing this. We are just redistributing wealth so that we can have just a little bit more market share, in this case in Townsville, and so a little bit - inflict a little bit more pain, formerly on Walters, but now I'm going to attempt to flick it on Cornetts."

(e) *the alleviation of traffic congestion*

[40] No evidence was provided in relation to this criterion.

(f) *the likely impact of the order on employment*

[41] Both Mr Bell and Mr Stout said that were the application to be granted they anticipated that the extra hours would create additional employment opportunities for their employees. The additional hours would be offered to employees on a voluntary basis. Both gave an undertaking that their respective businesses would abide by the relevant provisions of the certified agreements in relation to offering additional hours of employment to existing employees.

[42] Mr Bell also confirmed on the transcript that the voluntary nature of the work applies to both Sundays and public holidays and this was an ongoing commitment. He also confirmed that employees would not suffer any adverse consequences if they chose not to work those additional hours.

[43] The AWUQ informed the Commission that none of its members had raised concerns about the application as amended. In light of this and the undertakings given by Mr Bell and Mr Stout, the AWUQ advised it was satisfied that its membership would not be adversely affected were the application to be granted. For those reasons, the AWUQ consented to the amended application.

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

[44] This application has had a long and chequered history. The last correspondence received by the Commission from the Council was an email from Tony Bligh, Solicitor for the Council dated 11 February 2014 advising that the Council neither supported nor opposed the application. This correspondence was shared with all organisations appearing in the proceedings.

[45] Mr Stout's Statement included a comment that he understood the Council was supporting the application. In its submissions, the NRA said that when it filed its material it believed the Council was supporting the application. To support this contention, the NRA attached to its submission the Council's resolution to that effect made at its meeting of 13 March 2013.

[46] Mr Dorber took issue with the NRA attaching the public minutes of the Council's meeting (which appear on the Council's website) to its submission, arguing that it was too late for

them to be submitted and provided no opportunity for his clients to "seek to examine the evidence leading up to this minute and the background to it."

- [47] The Commission has decided to rely on the advice communicated to it by email from Mr Bligh. To do otherwise at this late stage would be prejudicial to the QRTSA and IGA stores.

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

- [48] The NRA submitted that given the more competitive, globalised trading environment, it was imperative for non-exempt retailers to respond to changing consumer tastes and preferences.

Conclusion

- [49] We consider that the evidence presented in this matter supports the conclusion that some change in trading hours in the Townsville Tourist Area is warranted. In particular, the evidence about the locality affected shows the increasing housing density, the recent provision of major infrastructure and the continued development of other major infrastructure. In addition, key agencies are proposing the continued revitalisation of the CBD.
- [50] Several agencies in Townsville have developed various tourism initiatives and opportunities in an endeavour to promote Townsville's tourism potential. A number of major projects have been completed. Evidence before the Commission is that 81 per cent of tourists visiting the Townsville region visit the CBD. We acknowledge that extended trading hours for non-exempt shops may be of benefit to tourists.
- [51] We are satisfied that, with the continued revitalisation of the CBD and the tourism projects that have been undertaken or are being developed, the needs of the tourist industry and those other industries that are situated in the Townsville Tourist Area would benefit by additional trading hours.
- [52] Tourist numbers have recently declined, although Tourism and Events Queensland consider that the VFR category may be stabilising. We are not convinced that the criterion of the needs of an expanding tourist industry has been satisfied on the evidence.
- [53] The evidence also shows that the population of Townsville will continue to grow. Although the data provided was for the Townsville Local Government Area, the increased housing density in North Ward and the CBD, shows that the population in the Townsville Tourist Area will also grow. This criterion has been satisfied.
- [54] The QRTSA and IGA stores were quite critical of the methodology of the consumer survey and hence questioned the value of the results. However, as we noted in the Toowong Retail Precinct case,⁹ it is the only evidence before the Commission of local consumer attitudes.

⁹ *National Retail Association Limited, Union of Employers* [2014] QIRC 157.

- [55] Criticism can always be made of consumer surveys, but despite the deficiencies of the survey instrument, the results are the best evidence of consumer interest that is before the Commission. The survey results show that although 56 per cent agree that it would be more convenient to shop from 7.00 am Monday to Saturday rather than from 8.00 am, only about 30 per cent of the respondents would most likely use the earlier hour of trading on Saturday. Approximately 40 per cent said they would most likely use the hours between 7.00 and 9.00 am on Sunday. However, the proposed earlier opening on Monday to Friday and the later close on Saturday has majority consumer support. The consumer attitudes as reflected in the survey result have assisted in informing our decision.
- [56] In relation to the criterion of business interest, we note the absence of direct evidence from retailers either within the Townsville Tourist Area or those whom Dr Lundberg claims would nonetheless be negatively impacted by the grant of the application. Further, the retailers to whom Dr Lundberg referred operate the large format, full line supermarkets in the IGA model, which, according to the Full Bench in *National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Others*,¹⁰ have "next to no difference" with non-exempt stores such as Coles and Woolworths. In the circumstances, the Commission is unable to be satisfied about any particular negative impact that the granting of this application may have on those whom Mr Dorber represents.
- [57] The alleviation of traffic congestion is not a factor to be taken into account in deciding this application.
- [58] We accept that the additional hours of work that would be made available were the application to be granted would be offered primarily to existing employees.
- [59] The Council has a neutral attitude to the application.
- [60] Having regard to the criteria listed in s 26 of the Act, and in light of the evidence concerning the locality, the increasing population and the views of consumers, we are persuaded that the hours should be altered. We have decided such that non-exempt shops in the Townsville Tourist Area are to be permitted to open from 7.00 am Monday to Friday and to 6.00 pm on Saturdays. We are not persuaded on the evidence, particularly the evidence from consumers, that the earlier opening time on Saturday and Sundays has been justified.
- [61] The amendment to the Trading Hours Order for the Townsville Tourist Area will take effect from 17 November 2014.
- [62] We direct the NRA to prepare a draft Order to reflect the terms of this decision and to lodge in the Industrial Registry within seven days of the date of this decision.

¹⁰ *National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Others* [2007] 185 QGIG 287, 306.