

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Re: National Retail Association Limited, Union of Employers [2015] QIRC 075*

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

CASE NO: TH/2014/8

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

DELIVERED ON: 27 April 2015

HEARING DATE: 5 - 6 November 2014
2 March 2015
9 March 2015 (Applicant Submissions)
17 March 2015 (MGA/QRSTA Submissions)
16 March 2015 (SDA Submissions)

MEMBER: Deputy President Swan

ORDERS: **1. Application granted.**
2. Amended commencement time for trade on Sundays of 10.30 a.m.
3. This order is operative from Friday 29 May 2015.

CATCHWORDS: INDUSTRIAL LAW - TRADING HOURS ORDER
- Application to amend trading hours order - Inspections - local opposition to Application - some small business support for Application - a degree of consumer support for Application - decline in some local industries impacting upon the town - questions relating to some surveys - Application granted but amended to facilitate smaller independent shopkeepers.

CASES *Trading (Allowable Hours) Act 1990, s 21, s 26*

APPEARANCES: Mr J. Franken, for National Retail Association Limited, Union of Employers, the Applicant.
Mr C. Dorber, Employment Advocacy Solutions Pty Ltd for Master Grocers Australia Ltd and the Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers).

Mr D. Kerr, for Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees.

Mr N. Braid, for Local Government Association of Queensland Ltd.

Decision

- [1] This Application has been made by the National Retail Association Limited, Union of Employees (NRA) to introduce seven day trading to the Dalby area.
- [2] The Application proposes that the *Trading Hours - Non Exempt Shops Trading by Retail - State Order* be amended to allow non-exempt retailers located in Dalby to trade on Sundays between the hours of 9.00 a.m. and 6.00 p.m. and on certain public holidays between the hours of 8.30 a.m. and 5.30 p.m.
- [3] The Application was opposed by the Master Grocers Australia (MGA) and Queensland Retail Traders and Shopkeepers Association (QRTSA) (MGA/QRTSA).
- [4] The Western Downs Regional Council opposed the Application (the Regional Council). The Regional Council was represented by the Local Government Association, of Queensland Ltd (LGAQ).
- [5] The Shop, Distributive and Allied Employees Association (Queensland Branch) (SDA) has not adopted a position on the Application, save for ensuring that if the Application is successful, work for its members on the extended hours would be of a voluntary nature.
- [6] The Application seeks the amendment to the Order as follows:

1. In clause 3.2 of the Order by inserting the following new sub clause (35):

| (30) Dalby 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 | 10.30 a.m. | 6.00 p.m. |
| Public Holidays (as defined) (excluding Good Friday, 25 April, Labour Day, 25 December) | 8.30 a.m. | 5.30 p.m. |

2. In Schedule 1 (Definitions) of the Order by inserting the following new definition:

- (38) The Dalby Area - The area within the following boundaries:

Commencing from the point where the Warrego Highway intersects with Blaxland South Road; from that point in a straight line in a northerly direction until the intersection of Ashmore Street and the Bunya Highway; from the point in a straight line in a westerly

direction until the intersection of Dalby Kogan Road and the Warrego Highway; from that point in a straight line in a southerly direction until the intersection of Wilds Road and Andersons Road; and then in a straight line in an easterly direction to the point of commencement.

The Legislation

[7] 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) 8.00 am and 9.00 pm for Monday to Friday;
 - (b) 8.00 am and 5.00 pm 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."

[8] Pursuant to s 26 of the Act, when the industrial commission is making an order under s 21 of the Act, it 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."

Witnesses

[9] Witnesses for the NRA were:

- Mr Gerard Winzenberg (Queensland District Manager, Target Australia Pty Ltd (Target));
- Mr Gary Mortimer (Senior Lecturer, Queensland University of Technology);
- Mr David Stout (State Compliance Manager, Coles);
- Mr David Beak (Owner, Gembu Sushi);
- Mr Bill Li (Director, LDD top Pty Ltd trading LDD Top Chinese Massage Shop);
- Mr Barry Waters (Regional Manager, Big W Discount Stores);
- Mr Scott Wallace (State Support Manager, Queensland, Woolworths Limited (Woolworths));
- Mr James Li (Owner, Liux Jian Electronics trading as Fun Plus Electronics and Accessories);
- Mr Ken Laverty (Partner, Crowe Howath Dalby);
- Mr Ravi Chalasani (Director of ANZ Australia Pty Ltd trading as Subway Dalby);
- Ms Sandy Huynh (Ozzie Professional Nails);
- Mr Jonathon Russell (Centre Manager, Dalby Shopping World).

[10] Witnesses for MGA/QRSTA were:

- Mr Bernie Caffery (Agricultural Consultancy Business);
- Mr Brian Hedge (Owner, Hedge's Sport Store);
- Mr James Mason (Queensland Operations Manager, FoodWorks);
- Mr Chris Bertolotti (Owner, Dalby Newsagency, Office Choice Office Supplies and Toyworld);

- Ms Debra Pearce (Owner, Bright Eyes Sunglasses);
- Mr Glen Hay (Owner, Hays Leading Edge Jewellers);
- Mr Hamish Von Pein (Owner, Culberts Meats);
- Ms Julie Wallin (Home Maintenance);
- Ms Wendy Sutton (Owner Collins Booksellers);
- Ms Lorna Lavery (Owner, Anthony's Fabrics);
- Ms Lynette Hill (Owner, Lyn's Flower Studio);
- Mr Peter Brown (Manager, Dalby Chamber of Commerce and Industry);
- Mr Wayne Mason (Queensland State Operations Manager, Australian United Retailers trading as FoodWorks Pty. Ltd);
- Mr Maurice Fountain (Owner Computer Sales and Repairs);
- Mr Kerry Johnson (Co-Owner Southside Food Market);
- Mr Mark Murphy (Owner Brumby's Bakery);
- Ms Nicole Simpson (General Manager Western Downs Cooperative Trading Society);
- Lyn Harding (Owner Dalby Health Foods);
- Nichole Brown (Administrator Dalby Hospital);
- Ms Wendy Jiggins (Owner, Thrifty Fabrics).

[11] Witness for the LGAQ was:

- Mr Ray Brown (Mayor).

Preliminary issues relating to affidavits

[12] The parties had submitted a very long list of affidavits. The parties collectively determined to admit affidavits from the following persons by consent:

- Mr David Beak (NRA);
- Mr Ken Lavery (NRA);
- Mr Scott Wallace (NRA);
- Mr Gerard Winzenberg (NRA)
- Mr Ravi Chalasani (NRA);
- Mr Bill Li (NRA);
- Mr James Li (NRA);
- Ms Sandy Huynh (NRA);
- Ms Lyn Harding (MGA/QRTSA);
- Ms Lynette Hill (MGA/QRTSA);
- Mr Bernie Caffery (MGA/QRTSA);
- Ms Lorna Lavery (MGA/QRTSA);
- Ms Julie Wallin (MGA/QRTSA);
- Mr Brian Hedge (MGA/QRSTA);
- Mr Wayne Mason (MGA/QRTSA).

Evidence

s 26(a) - the locality, or part thereof, in which the non-exempt shop or class of non-exempt shop is situated

- [13] Dalby is located approximately 210 kilometres west of Brisbane in the Darling Downs region of Queensland. The closest town to Dalby which has seven day trade is Toowoomba and this is situated approximately 85 kilometres away.
- [14] Dalby is considered to be the regional shopping destination for the Western Downs Local Government Area (LGA).
- [15] NRA submits that recently, the Dalby Shoppingworld Complex has been completed providing more avenues for a variety of retail outlets.
- [16] Mr Russell's evidence was that, if the Application was granted, customers would come from a number of towns to shop. These towns included Miles (60-90 minutes away); Chinchilla (60 minutes away); Cecil Plains (30 minutes away); Goondiwindi (135 minutes away); Roma (150 minutes away) and Kingaroy (70 minutes away).
- [17] Mr Waters stated that Dalby was a hub with an enormous amount of traffic coming through the town. The following highways within the area are the Warrego Highway (Brisbane to Outback Queensland); Leichhardt Highway (Melbourne to Rockhampton); Australia's Adventure Way (Brisbane to Adelaide) and Rural Getaway (Warialda to Mundubbera).

Consideration

- [18] Because of its location, and relative size, Dalby is a hub for those towns situated around that area. It is also a town through which a considerable amount of traffic passes because of its proximity to various highways.
- [19] This is one of the factors which requires consideration, in conjunction with the other listed criteria in s 26 of the Act.

s 26(b) and (c) - the needs of the tourist industry or other industry in such locality or part; and - the needs of an expanding tourist industry

- [20] Mr Wallace referred to the *Western Downs Regional Regional Council 2014-2018 Tourism and Lifestyle Marketing Plan* (the Plan) which highlights that the region (including Dalby, Maronoo, Balonne and Goondiwindi) have recorded constant visitation growth over the last 3 years.
- [21] The Plan also made reference to a strong growth across all tourism market segments including holiday visitors, visiting friends and relatives as well as business travelers.
- [22] As a consequence of Dalby's location and the various highway crossroads in that area, the region is also popular for short term breaks by travelers. It is also on the "grey nomad" touring market.

- [23] Within this context, Mr Wallace stated that *"As a tourism destination, Dalby is the principal gateway to attractions such as Lake Broadwater Conservation Park and the Bunya Mountains reserve."*
- [24] Mr Waters' evidence was that *"It's on a hub and there's enormous amount of traffic flow through, so it's not only the existing people who live here; you've also got the transport, or the nomads, or the people travelling through Dalby to another area"* [T1-36]. Similar comments were made by Mr Russell.
- [25] Contrary to those submissions, Mr Brown, the Mayor of the Regional Council, stated that *"we have a small tourism industry but it's very limited"* [T2-67].
- [26] There has been no significant evidence put to the Commission that the *"needs"* of tourists are not catered for adequately in Dalby without seven day trade for non-exempt stores.
- [27] It is accepted that there is tourist traffic through Dalby because of its location. There has been nothing to suggest that these tourists are not being appropriately catered for by the existing retail infrastructure. It is also accepted that it is difficult to ascertain whether there is a *"need"* for seven day trade in Dalby for these tourists.
- [28] Nevertheless, the Legislation refers to the *"needs"* of tourists and this has not been established in the evidence.

Consideration

- [29] The available evidence more than suggests that, while the particular town of Dalby might not of itself be a tourist destination (i.e. in that tourists do not visit the town for that purpose), the town draws tourists either *en route* to other destinations, or, for the purpose of a stop-over, draws a reasonable number of tourists. While it is reasonable to say that its location is the reason for this, that should not detract from the fact that this occurs.

s 26(d) - the needs of an expanding population

- [30] Mr Stout's evidence was that *"In 10 years since 2001, Dalby has reversed the trend of rural population decline with population growth of 15% from 9,731 residents in 2001 to 11,408 residents in 2011 as per Census data from the Australian Bureau of Statistics"* [Exhibit 26 - Attachment A "Australian Bureau of Statistics 2011 - Population and Housing"].
- [31] Further, Mr Stout, relying upon the same Census data, stated that *"In line with the continued population growth experienced by the region, the Queensland Government medium series population projections released in 2011 indicate that the resident population of the Western Downs Local Government Area (which incorporates Dalby and the surrounding area) is projected to increase by 22.7% between 2011 and 2036, from 32,365 persons to 41,878 persons. Within that period, the population is projected to grow by 10.4% to 36,109 by 2021."*

- [32] MGA/QRTSA questioned the information given by Mr Stout. MGA/QRTSA stated that there had been a decline in the population of Dalby as a consequence of a reduction in the mining sector.
- [33] Mr Stout acknowledged that it was difficult to measure local population because of the number of transient workers in Dalby employed in the mining sector. However, Mr Stout was of the view that there was still an increase of people working in the town.
- [34] Mr Brown, local Mayor, stated that the population statistics change very quickly in a town like Dalby and this was dependent upon a number of factors, but one in particular which was raised was of a Company which had just dismissed a large number of people during the week of the hearing.
- [35] However, he stated that while those changes occur, Dalby was still in a growth mode [T2-69]. Mr Brown stated that, taking into consideration various 'spikes' in population, that "*I don't believe that we've had a higher population than we have now.*"

Consideration

- [36] There has been considerable evidence from local residents and witnesses who are opposed to the Application, and this local knowledge has been taken into account.
- [37] The difficulty in forming a view upon this criterion of the Act is that local knowledge must be vetted against statistical data which has been produced (*albeit* from a 2011 Census). Projections of population growth are made with the knowledge that situations can change in various townships and it is a matter of common knowledge, in my view, that in towns with a mining infrastructure in the region, that data can change regularly.
- [38] However, in considering this matter, I have taken into account the evidence given by the local Mayor, Mr Brown. It is reasonable to assume that the local Regional Council would be an organization which would be able to provide relevant and current information upon an issue concerning population growth.
- [39] The view I have taken from all of this evidence is that notwithstanding that the local mining industry may have declined, the population base in Dalby is higher than it has previously been.
- [40] While the NRA says that the population has been expanding, *albeit* currently at a low rate, whether this translates into a growing population which would require or benefit from extended trading hours remains questionable.

s 26(e) - the public interest, consumers' interest, and business interest (whether small, medium or large)

The public interest

- [41] As stated in *Re: National Retailers Association Limited, Union of Employers* [TH/2014/9] the Commission, as currently constituted, said:

"The public interest test is broad and encompasses the concept of considerations made for the good order and functioning of the community and depends on the particular circumstances in situations where each circumstance raises a range of considerations that often conflict. Within the context of the Act, the public interest test is largely served by taking into consideration the mandatory requirements under s.26 of the Act with the overarching criterion that the Commission must also have regard to "such other matters as the industrial commission considers relevant" [s 26(i)].

- [42] Under this criterion, Mr Wallace stated that it was against the interests of Dalby residents to have to travel to Toowoomba to shop on a Sunday.
- [43] Mr Wallace's evidence was that Woolworths conducted an "Every Day Reward" program. This program tracks where card holders are making purchases. The Dalby post-code of 4405 was used to establish that, in the three months from April to June 2014, of the 4,669 card holding members, 4.7% of those accessed other Woolworths' stores on a Sunday. This shows that the number of people seeking to shop in a Woolworths store from the Dalby post-code region on a Sunday is approximately 220 [Exhibit 70, paragraph 17].
- [44] Similarly, Mr Waters from Big W Discount Stores referred to Woolworth's Everyday Rewards program. The analysis of the relevant statistical data found that there were 4,189 Dalby consumers, of which 35% shopped in Toowoomba on a Sunday. This represents 1,466 people. Those sales generated an amount of \$110,551 in Toowoomba [Exhibit 15, paragraph 13].
- [45] Clarified and projected, those two statistics show that over a 12 month period, approximately 1667 people with a Dalby post-code sought to shop in either a Woolworths or a Big W Discount store on a Sunday [T1-38].
- [46] These are not insignificant statistics and must be considered within the context of consumer support or otherwise and shopping habits.
- [47] Other witnesses attested to being aware of Dalby residents shopping on a Sunday in Toowoomba (e.g. see the evidence of Mr Li, Ms Huynh, Mr Bertolotti, Mr Fountain, Ms Sutton, Ms Brown, Ms Pearce and Mr Hay).
- [48] NRA submitted that competition is *"an integral part of a dynamic and healthy retail sector and takes many different shapes and forms"* [NRA submissions - point 12.2].
- [49] Mr Waters pointed out that Dalby customers have to travel to Toowoomba or Kingaroy if they want to shop in a Big W on a Sunday. Because Dalby is 80 kilometres from Toowoomba and 90 kilometres from Kingaroy, Mr Waters queried why consumers were required to spend both time and money travelling to other locations to shop on a Sunday.
- [50] Mr Waters also referred to his observation that there is a higher incidence of family shopping which occurred on a Sunday. On Saturdays, families are often involved in sporting events and have less opportunity to shop as a family on a Sunday.

[51] NRA submitted that there is a strong public interest in providing extended trading hours in Dalby.

Consumer Interest

[52] MGA/QRTSA submitted that there was no community interest supporting the Application to extend trading hours.

[53] Primarily it sought to rely upon the evidence of its witnesses, Messrs Caffery, Hedge and Ms Harding, Hill, Laverty and Wallin to support its proposition that there was significant opposition to this Application.

[54] The MGA/QRTSA submissions do not take the Commission to the relevant parts of those witnesses' statements to support its opposition to the claim.

[55] Mr Kerry Johnston owns, with his wife, the Southside Food Market. On 3 September he placed a petition at the front counter of his store which asked for signatures from those who had opposed the NRA Application.

[56] The petition was signed by approximately 235 people opposed to the Application [Exhibit 32].

[57] In considering the witness statement of Mr Caffery and the direct evidence given by him, it shows that he conducts an Agricultural Consultancy business, employing one employee. He is also involved in many community activities.

[58] He has resided in Dalby for 33 years and points to the following to explain his opposition to the Application:

- The Dalby community does not want extended trade on Sundays.
- Dalby is a stable, rural community town which has at its foundation a strong commercial diversity and independent businesses.
- These businesses sponsor community fundraising events.
- Dalby people are family and sport orientated and value their Sundays as a family day.
- Dalby is suffering from an economic downturn. Businesses are retrenching staff and hours. There is no boom in Dalby and there are 500 houses for rent in the town.
- Those Dalby residents who go outside of Dalby to shop often do so for a variety of reasons - to use city facilities, for social/sport activities, to access medical practitioners and to shop at specialty shops that are not available in Dalby.
- If there was a "need" for tourists to shop on a Sunday, then the local facilities were available for this. [Exhibit 9]

- [59] Mr Hedge is a local business owner - previously owning the Dalby Squash Courts, then Hedge's Sport Store. He employs 5 permanent and 2 casual employees.
- [60] Mr Hedge attended a Dalby Chamber of Commerce meeting on 9 September 2014 with approximately another 40 business owners.
- [61] A motion was put for the Chamber of Commerce to oppose the Application and "*not one person spoke in favour of that application*" [Exhibit 11 - point 5].
- [62] NRA was skeptical of that vote as the Chamber of Commerce had advertised the meeting as an "*information meeting*" and was intended to provide information regarding the Application lodged by the NRA. Exhibit 19 shows that perspective to be correct.
- [63] While various views have been expressed by witnesses (e.g. the meeting was unconstitutional; NRA was invited to attend but did not do so; that the NRA had never received an invitation to the meeting etc.), I have accepted the vote as indicative of those who had attended a meeting for the purpose of discussing the Application made by the NRA.
- [64] Mr Hedge submitted similar sentiments as to those of Mr Caffery regarding the community nature of the town.
- [65] Mr Hedge believed that if the Application was accepted, then it would have serious consequences for the community.
- [66] Ms Simpson owns and operates three independent Foodworks branded supermarkets. These stores employ 124 people. Fifty-one people work in Dalby, 43 in Tara and 25 in Millmerran. There are 573 cooperative members.
- [67] Members of the public (350) signed a petition against the granting of the extended trading hours.
- [68] Ms Simpson said that Sunday was the most successful trading day. Takings are 50% more than any other average day [Exhibit 38].
- [69] Ms Hill has owned a florist shop in Dalby, Lyn's Flower Studio, for 21 years. It is not necessary to repeat Ms Hill's evidence as it is similar in nature to that of the preceding two witnesses [Exhibit 12].
- [70] Ms Lavery is a business owner resident in Dalby. Ms Lavery's business is "Anthony's Fabrics". This business sells dresses, patchwork fabrics, sewing machines, cabinets and patterns and haberdashery.
- [71] Ms Lavery cited some stores which do open in Dalby on a Sunday - these included FoodWorks and Betros Brothers. She said these stores would lose their best trading days if the Application was successful.
- [72] Likewise for Ms Harding and Ms Wallin. Both operate businesses in Dalby and have done so for some time. Both oppose the Application and do so for similar reasons as those already put to the Commission [Exhibits 10 and 14].

[73] MGA/QRTSA queried the evidence given by Mr Bertolotti and Mr Fountain. Notwithstanding the fact that residents choose to go to Toowoomba to shop, this showed little by way of support for the Application but rather showed that consumers could exercise their choice of shopping.

[74] While the fact of the Regional Council's position on the Application will be recorded under s 26(h), it should be noted here that there was opposition from the Local Council to the Application based on the businesses it surveyed.

[75] MGA/QRTSA was also critical of NRA's submission that the majority of Queenslanders and Australians now enjoy convenient access to seven day trade, and that the granting of the Application would better service the requirements of workers in the agricultural and mining industries. MGA/QRTSA states that there is no evidence of this before the Commission.

[76] NRA submitted that Mr Wallace's evidence outlined the benefits of seven day trade. These included:

- Reduced congestion at the registers.
- Better efficiencies of energy usage would result from the extension of trade as refrigeration and air conditioning systems currently must continue to run when the store is closed.
- There would be greater smoothing out of peaks in scheduled deliveries and store replenishment processes [Exhibit 40].
- Mr Stout's evidence in Exhibit 16 reflected the same perspectives.
- Mr Waters' evidence was that having Big W at Dalby Shoppingworld complex is a major draw-card for customers.
- NRA has previously mentioned that there were 6 small business owners with businesses in the Dalby Shoppingworld complex who supported the Application.
- Primarily, the view was that it was not worth those businesses trading on a Sunday without the major store opening as well. If the Application was to be granted, then those stores would also open.

[77] NRA requested that the Queensland University of Technology conduct research into the views of shoppers or visitors to Dalby Shoppingworld complex and Coles Dalby. Evidence to this effect was given by Dr Mortimer, Senior Lecturer - International Business in the Business School at the Queensland University of Technology.

[78] In his Executive Summary, Dr Mortimer noted:

- Questionnaires were conducted between 29 August to 31 August at Coles Dalby and Dalby Shoppingtown. 150 respondents participated in the survey.

[79] The main findings were:

- 96.8% of the respondents surveyed reported to be local, permanent residents of Dalby.
- These residents visited shopping centres and stores on an average of 2.8 times per week. This frequency is proportionately higher than the average Australian shopping behaviour at 2.5 times per week (Roy Morgan Supermarket Monitor).
- It was determined that weekday evenings (after 5.00 p.m.) were the busiest times for shopping with Saturday the next most popular day to shop.
- 68% of respondents support the proposal of the extended trading hours at supermarkets, department stores and the shopping centre in Dalby, 26% oppose and 6% are unsure.
- 90% of the respondents agreed that residents of Dalby should be allowed the same choice as other regional towns and cities in supporting/opposing changes to trading hours. The remaining 10% expressed a disagreement.
- A larger percentage of males supported the proposal for Sunday and limited holiday trading. Of all the males surveyed, 80% were in support, 15% were opposed and 5% unsure, and 60% of female respondents support the proposal, while 33% oppose it and 5% were unsure.
- The highest percentage of support exists in fulltime workers with 90% of those respondents supporting the proposal.
- In contrast, the lowest percentage of support was found in the non-working (retired/unemployed) respondents, where 67% opposed the Application.
- It was noted that 71% of respondents employed casually also indicated opposition against proposed changes. Further questioning identified an underlying concern from casually employed persons that Sunday trade would force them onto Sunday work rosters.
- 92% of shared households expressed support for Sunday and limited public holiday trading, while 83% of both couples with children and single parent with children at home also supported the Application.
- 72% of the respondents often find it necessary to do some grocery shopping in Dalby on a Sunday. 76% of shoppers who indicated they already undertook some shopping on Sunday, stated that they would continue to shop and support smaller retailers.
- Of the respondents surveyed, 44% have travelled outside of Dalby on a Sunday to shop. This indicates that such residents find it necessary to

undertake some shopping on a Sunday and in order to do so, drive an hour to Toowoomba in order to access a range of retailers.

- The most cited reasons for supporting Sunday and limited public holiday trade were; "More choice about when I shop and that is convenient" (69%), "Sunday trade will create job opportunities" (71%), "Sunday trade will be helpful when preparing school lunches and getting ready for the working week" (62%), and "Sunday trade will reduce shopping congestion during peak shopping periods" (62%).
- The most cited reasons for opposing the proposed changes are that "Sunday trade may increase competition for small retailers who already trade on Sunday" (42%), "Shops are already open 6 days a week which is enough" (31%), and "Sunday is a day of rest or a religious day and shopping should not be allowed" (23%).
- 97% of respondents indicated they would not change their sporting or social commitment if changes to trading hours were implemented.

Summary of the QUT Research

[80] Of those surveyed:

- 96.8% were local residents;
- 90% agreed that Dalby residents should have the same choice as other regional towns;
- 68% supported the extended hours Application;
- 26% were opposed to the extended hours Application;
- 6% were unsure about the extended hours Application

[81] Evidence put to the Commission by MGA/QRTSA witnesses was to the effect that consumers could purchase almost everything in Dalby on a Sunday without having to resort to going to Toowoomba, for example.

[82] However, witnesses for NRA stated that consumers could not purchase clothing and shoes on a Sunday in Dalby (see Mr Bertolotti's, Ms Brown's, Mr Fountain's, Ms Sutton's, Ms Jiggins', Ms Pearce's evidence).

[83] In summary, NRA submitted that all of the criteria contained within s 26(e) identifies a demand in Dalby for Sunday trade to such an extent that Dalby residents do travel approximately 85 kilometres to shop in Toowoomba (including on Sundays) to do shopping where Sunday trade is permitted. The evidence of both Mr Wallace and Mr Waters confirms this.

Consideration

- [84] There has been a considerable campaign mounted by those in favour of and those opposed to this Application. This is significantly more so than in many other extended hours trading Applications.
- [85] The interests of those operating small to medium sized business have been well put to the Commission. Primarily the objections go to the fact that Sunday trade represents an important part of their weekly income. Sunday trade also ensures that those businesses can continue to employ their current staff.
- [86] Also of major concern, was a desire on the part of those witnesses to maintain Dalby as a town that regarded Sunday as a family and religious day.
- [87] The fact that the Regional Council's survey of businesses recorded opposition to the Application must also be considered together with that of the Chamber of Commerce public meeting.
- [88] Taken into consideration as well are the local surveys of customers conducted at the stores of Mr Johnson and Ms Sullivan.
- [89] All those concerns have been considered.
- [90] In terms of the NRA witnesses, it is clear that those small businesses which operate within a larger shopping centre (which has a non-exempt store as its anchor) would welcome seven day trade. Those stores would open their doors on a Sunday because of the volume of customers. To open their stores on a Sunday currently (which the exempt stores are entitled to do) would be a futile exercise if the anchor store was not open.
- [91] NRA, through QUT, has also canvassed the opinion of shoppers at the Coles Dalby and the Dalby Shoppingworld complex and their views must also be taken into account - primarily those canvassed supported the Application.
- [92] This criteria must be fairly weighed against all of the other criteria applicable in this Application. In effect, those opposed to the Application and those supportive of the Application have both presented strong cases.
- [93] Also considered was the evidence of Woolworths and Big W with regard to statistical data showing customers from the Dalby postcode seeking Sunday shopping elsewhere including Toowoomba. These figures are very significant.
- [94] The more generalized and relatively large survey conducted by QUT on behalf of NRA has widely canvassed areas of support and opposition for the Application and represents a more balanced analysis of the responses made, which were favourable to the Application.
- [95] While the remaining surveys have been considered, there are reasonable concerns raised by NRA as to the breadth of the representation of views - e.g. the Regional

Council survey of '*businesses only*' and, to a lesser degree, the results of the Chamber of Commerce meeting.

- [96] With the Chamber of Commerce meeting, it is clear that those who attended were opposed to the Application and that factor has been considered, but the detail surrounding how the meeting was called etc. was not clear from the witness evidence. However, that has not detracted from the outcome of that meeting.
- [97] However, in giving due consideration to all factors under this criterion, my view is that the evidence produced by the NRA outweighs that of those opposed to the Application.

s 26(f) - the alleviation of traffic congestion

- [98] This criterion is not enlivened in this Application.

s 26(g) - the likely impact of the order on employment

- [99] Extended hours of trade ensure that either existing or new employees gain more hours and/or employment in those non-exempt stores permitted to trade if the Application was successful.
- [100] Similarly, for those smaller stores whose trade may be adversely affected by a successful Application, there is always the possibility of a cut-back of hours and/or the loss of a job.
- [101] These competing factors must also be weighed fairly.
- [102] Woolworths believed that a successful Application would create an extra 110 hours; Coles would require an additional 100 hours of employment and Big W would also have an 100 additional hours each week with somewhere between 5-10 new staff being employed.
- [103] SDA was assured that extra work on extended hours for its members would be voluntary.

s 26(h) - the view of any local government in whose are the order is likely to have an impact

- [104] In analyzing the survey conducted by the Western Downs Regional Council, NRA cited the question which was posed to recipients of the Survey: "*Do you support Sunday trading?*"
- [105] Two hundred and thirty businesses were surveyed in Dalby. Seventy-seven (33%) responses were received and of those 55% voted against Sunday trading. Mr Brown stated that the Survey had only been sent to businesses and not to ratepayers.
- [106] Mr Brown stated that the basis for the decision being made by the Council to oppose the Application.

Consideration

[107] The results of the Survey have been taken into account, but with the added knowledge that it was a vote only of businesses and not of the ratepayers generally of Dalby.

s 26(i) - *such other matters as the industrial commission considers relevant*

[108] There is nothing further that the Commission needs to consider.

Conclusion

[109] In considering all of the evidence before the Commission, I have determined to grant the Application with one amendment.

[110] The considerations applicable to all relevant criteria have been cited through this decision and do not need repeating.

[111] In granting this Application I am conscious of the fact generally that for many small businesses within the town, Sunday, and often Sunday morning, is a significant trading period for them. I am also conscious of the fact that there is considerable opposition within Dalby to the Application.

[112] I have taken into account the vicissitudes of life in a town which has for some time benefitted from the mining industry within the region, but for which that decline is now well documented.

[113] Primarily the evidence for granting the Application is, on balance, more compelling than the evidence given in opposition to the Application.

[114] I propose to grant the Application, but with an amended commencement time for trade on Sundays only. All remaining aspects of the claim are granted in line with the Application.

[115] The commencing time for trade on Sundays will be 10.30 a.m.

[116] This should permit small businesses in Dalby to at least have some opportunity to trade on Sunday morning unencumbered.

[117] This order is operative from Friday 29 May 2015.

[118] Order accordingly.