

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**National Retail Association Limited, Union of Employers AND Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) and Another (TH/2010/9)**

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

DEPUTY PRESIDENT SWAN  
DEPUTY PRESIDENT BLOOMFIELD  
COMMISSIONER THOMPSON

1 April 2011

DECISION

**KINGARROY**

- [1] An application was filed with the Industrial Registrar on 8 June 2010 by the National Retail Association Limited, Union of Employers (NRA) seeking to amend the Order - *Trading Hours - Non-Exempt Shops Trading by Retail - State* (the Order) in the following terms:

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

(22) The Kingarroy Area:

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

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

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

Commencing from the point where Homely Road intersects with the Daguilar Highway; from that point in a straight line in a northerly direction to the intersection of Curtis Road and Shellbachs Road; from that point in a straight line in a westerly direction to the intersection of Weens Road and Lyons Road; from that point in a straight line in a southerly direction to the intersection of Luck Road and Hoopers Road; from that point in a straight line in an easterly direction to the point of commencement."

- [2] The application sought to expand the Order to include Kingarroy which is situated some 210 kilometres to the north-west of Brisbane, at the junction of the D'Aguilar and Bunya Highways.
- [3] The "Statement of Facts and Circumstances" attached to the application recorded that Kingarroy had a population of 8,606 persons as at 30 June 2009 and was expected to grow at approximately 1% per annum through until 2026. The South Burnett region, of which Kingarroy is the main population centre, had a population of 32,495 persons at the same date.
- [4] Kingarroy was said to be at the centre of the Australian peanut and navy bean industries with around 40,000 tonnes of peanuts being processed in the region annually and a Peanut Festival being staged on a bi-annual basis.
- [5] Other industries within the region were said to include:
- power generation (three Power Stations);
  - mining (seven million tonnes of coal supplied to Power Stations each year);
  - agriculture;
  - retail; and
  - tourism (348 tourism businesses operating in the region).

## Other Appearances

- [6] The Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers) (QRTSA) and the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees (SDA) sought, and were granted, leave to appear and be heard in this matter.

## Relevant Legislation

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

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

- (1) A full bench of the industrial commission may decide trading hours for non-exempt shops.
- (1A) However, the full bench is not to decide trading hours that are less than the following hours on a stated day, other than a public holiday -
- (a) 8 a.m. and 9 p.m. for Monday to Friday;
- (b) 8 a.m. and 5 p.m. for Saturday.
- (2) The full bench may make any order it considers necessary or convenient to give effect to a decision made under subsection (1), including, for example, an order specifying -
- (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] Section 26 of the Trading Act states:

### "26 Matters relevant to s 21 order

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

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

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

### **Inspections**

- [9] A Full Bench of the Queensland Industrial Relations Commission (the Commission), accompanied by the parties, conducted inspections of the area defined in the application on the morning of 30 November 2010. These were undertaken by way of a bus and included a "walk through" of Kingaroy Shoppingworld, which houses a number of non-exempt retailers - including a Woolworths store, a Best and Less store and a Big W. Other businesses observed on the inspections included a Supa IGA store and a Target Country store.

### **Evidence called by NRA**

- [10] **Mr Bill Lysaght** - the Regional Manager for Best and Less Pty Ltd in Queensland, has the responsibility for supervising 20 stores including the Kingaroy store. He said that the business, a family-oriented discount store, operated 185 stores nationally and employed 4,700 persons. Some 26 of these stores were located in Queensland, with 10 of them being located in regional areas of Queensland. The employment numbers for Queensland were around 1,100 employees.
- [11] Best and Less' "offer" was that of value driven clothing and manchester products aimed at the "parent market", particular larger households at the lower end of the income scale. Sales figures for Sunday trading in locations in and outside of Queensland included in his witness statement indicated that Sunday trading was a significant portion of weekly business and overall weekly sales had increased in stores where it had been introduced. Sunday trading presented an opportunity for families to shop together.
- [12] Best and Less were supportive of the application which would see between five and ten employees undertake work on Sundays. This work, according to Mr Lysaght, would be voluntary in nature. A likely consequence of Sunday trading would be an increase in hours for current casual and part-time staff in addition to the possible recruitment of new employees.
- [13] Under cross-examination, Mr Lysaght accepted that the sales figures provided in his witness statement demonstrated that Sunday sales represented either the lowest or second lowest day of the week.
- [14] In relation to his claim that Sunday was a day where customers shop as a family, he acknowledged that he could not provide any verifiable evidence to support his statement apart from his 20 years experience in the retail sectors.
- [15] In re-examination, Mr Lysaght said that Sunday trade was some three hours less than other days of the week, which accounted for the reduced sales figures that day.
- [16] **Mr Charles Watson** - an Area Manager for Big W Discount Stores, has the responsibility for controlling 10 stores, one of which is located in the Kingaroy Shoppingworld Centre. He said Big W supported the application before the Commission and confirmed that the store would trade on Sundays and "allowed" public holidays if the application was granted.
- [17] Mr Watson said the products and services offered by Big W were geared towards the average Australian family. In his view, Big W's Kingaroy store made an important contribution to the shopping infrastructure in the town, helping to revitalise the local shopping precinct and assist in limiting escape expenditure.
- [18] Material in Mr Watson's statement identified the contribution to weekly sales figures from Sunday trading for a number of Big W stores located across Queensland. The performance of the stores identified was said to strongly suggest that the Big W store in Kingaroy would trade successfully on Sundays if the application was granted.
- [19] Mr Watson said that if Sunday trading was introduced stock could be received from the distribution centre on Saturdays, enabling shelves to be filled prior to opening on Sunday. The store would also be able to receive goods on a Sunday, which would help diminish delays in stock replenishment, thus benefiting customers through a fuller range of product on store shelves.
- [20] Mr Watson also said that if the application was successful, all work undertaken on a Sunday be voluntary for existing staff, with a further 100 hours generated each week. Increased employment opportunities would also be available for contractors.
- [21] The evidence concluded with reference to financial assistance provided each year to various charitable and other organisations (e.g. Women's and Children's Hospitals) by Big W and its customers.
- [22] Under cross-examination, Mr Watson was taken to data contained within his statement which recorded Sunday sales in a number of stores located in the greater Brisbane area and was asked how that data be reliably used as a

comparison for potential sales in Kingaroy. Mr Watson said that he had relied upon historical data for other stores where Sunday trading had been introduced for guidance because there were no Sunday trade figures for Kingaroy.

- [23] Mr Wallace did not accept that the Kingaroy store currently failed to adequately replenish stock or provide a full range of product. However the opportunity to trade seven days would allow for a more efficient replenishment program.
- [24] **Ms Kelly Musson** - the Centre Manager for Kingaroy Shoppingworld, said that Kingaroy Shoppingworld is anchored by Woolworths, Big W, Best and Less and has 40 specialty stores. She said the Centre fully supported NRA's application.
- [25] Ms Musson believed, from her experience, that sales were lost as a consequence of the centre being closed on Sundays, with consumers disposing of their discretionary spend in other locations, such as Toowoomba, and on other activities. If the application was granted, the Centre would open on Sunday with trading being voluntary for all tenants.
- [26] **Mr Gerard Winzenberg** - the Queensland District Manager for Target Australia Pty Ltd, is responsible for the business performance of 14 Queensland based stores out of the 290 plus Target and Target Country stores that operate throughout Australia. The vast majority of these stores traded on Sundays.
- [27] Mr Winzenberg said Target supported the application, and argued that the capital investment in its Kingaroy store should be able to be utilised over seven days rather than six days each week and committed to opening on Sundays should the application be granted. He said that benefits likely to occur from seven day trading included eliminating the high levels of store congestion in the store during the Thursday to Saturday trading days as well as allowing for a more balanced stock replenishment. This would allow Target to provide better service to its customers.
- [28] Target's Toowoomba Store had commenced Sunday trading on 16 May 2010 and sales figures for that store were used to support his views about the likelihood that congestion on Thursdays, Fridays and Saturdays in the Target Country store in Kingaroy would be reduced by a redistribution of sales from those days to Sundays.
- [29] Mr Winzenberg said that participation of existing staff in Sunday work would be voluntary with the possibility of increased employment opportunities for others to cover the additional 936 hours per annum that would be required to facilitate Sunday trading if the application was granted.
- [30] Under cross-examination, Mr Winzenberg, when questioned about the primary aim of Target as a public company, indicated that the Company's aim was to produce positive results for shareholders, provide employment opportunities and generate positive economies in towns.
- [31] On the topic of Sunday trade across the country as a percentage of weekly sales, he acknowledged that Sundays contributed the lowest percentage of all days to the weekly total. However, Sunday was also the day on which the least number of hours were utilised for trading. Sunday trading across Queensland, on a per hour basis, was also the biggest growth day of the week.
- [32] In response to a question from the Bench about the level of Thursday, Friday and Saturday sales in Kingaroy being noticeably higher than Toowoomba, Mr Winzenberg offered the view that much of the population in the area lived outside of the township and came to town in the latter part of the week to do their shopping. This resulted in a higher than normal level of sales in the latter part of the week.
- [33] **Mr Scott Wallace** - the Regional Retail Support Manager in Queensland for Woolworths Limited, gave evidence in respect of the overall operations of a business that had over 800 supermarkets nationally serving 13 million customers each week. In terms of staff, Woolworths employed more than 107,000 people, with 23,000 of those being employed in Queensland.
- [34] Mr Wallace said some 3,000 large and small suppliers are engaged by the business, with 100% of the fresh meat and 95% of fruit and vegetables sourced and grown in Australia. At least 80% of its suppliers had been in partnership with Woolworths from more than 10 years.
- [35] Woolworths was committed to supporting the community through fundraising and charitable partnerships, having contributed more than \$27 million in 2009. At a local level, a number of organisations were provided with grants from the Fresh Food Kids Community Grants scheme.
- [36] Woolworths supported the application to allow seven day trading in Kingaroy for a number of reasons including:
- Relief of congestion at registers and in the car park;
  - More efficient use of trolleys;

- Efficiencies in the usage of refrigeration and air-conditioning systems;
- Improved store replenishment processes;
- Improved work environment for staff; and
- Improved shopping environment for customers.

- [37] Mr Wallace said the current restriction on hours in Kingaroy negatively affected the local community through unnecessary inconvenience and cost, lost employment opportunities and lost expenditure. Woolworths would trade seven days each week if the application was granted, providing an estimated 105 additional hours of work each week. All Sunday work for existing employees would be voluntary with the possibility that extra staff may be employed to cover the additional hours.
- [38] Under cross-examination, Mr Wallace relied upon data contained within his affidavit to confirm operational benefits that had flowed to other stores following the introduction of Sunday trading. He did not accept that population demographics had any influence on the way Sunday trading was perceived, and utilised, by customers.
- [39] As to the percentage of trade during each hour, Mr Wallace said that Sunday was the second best trading day of the week, behind only Saturday.
- [40] Mr Wallace acknowledged that certain statements made in his statement were not supported by verifiable evidence, but said he was entitled to make such statements because they were based on his experience.
- [41] **Mr Jason Frecklington** - operates the Gloria Jean's Coffee franchise located in Kingaroy Shoppingworld. He currently trades on seven days per week. He supported the application to extend trading hours on the basis that if the shopping centre was open on Sundays the increased activity in the centre would benefit his business.
- [42] In response to a question from the Full Bench, Mr Frecklington said that while he would benefit from Sunday trade he also thought it could hurt a lot of smaller shops in Kingaroy and in the surrounding areas.

#### **Evidence called by QRTSA**

- [43] **Ms Toni Ralph** - and her husband operate an Independent Retail Butchery (incorporating a Lenards Franchise) which is located in the Kingaroy Shoppingworld Centre. The business currently trades 44 hours per week over six days, including Thursday night.
- [44] Ms Ralph opposed NRA's application and took issue with the evidence advanced by witnesses supporting the application in the areas of tourism (major events), industry expansion, escape expenditure and increased population.
- [45] She also expressed the view that extended trading hours would diminish the return on her investment in the business because of the increased expenses involved with penalty rates and extra outgoings relating to Sunday trading. There was no ability to generate additional income to compensate for the extra costs.
- [46] Increased trading hours, according to Ms Ralph, had a negative impact on community volunteer groups and sporting clubs through reduced participation in their activities. This placed a strain on the financial base of the various organisations.
- [47] Under cross-examination, Ms Ralph confirmed her business would not trade on Sundays unless there was some benefit. The expense associated with additional outgoings and higher wage costs were reasons likely to mitigate against opening on Sundays.
- [48] **Mr John Hyslop** - is the Sole Director of the company that owns and operates Supa IGA Kingaroy, a full-line supermarket which includes a serviced deli and full on-site butchery. Mr Hyslop said his Supa IGA offered fresh produce and grocery lines comparable in price to his major competitors which meant that Kingaroy residents were not disadvantaged when shopping locally on Sundays.
- [49] The Supa IGA employed over 100 staff, made up of full-time and casual positions. Because current Sunday trade represented such a large percentage of weekly turnover, Mr Hyslop estimated that between 15 and 25 jobs would be lost if the application was granted. In addition, a community donation program which currently operated would be likely to be put on hold, and then either terminated or significantly reduced.
- [50] Mr Hyslop said his business had not seen any noticeable decrease in Sunday takings since the commencement of extended hours in Toowoomba, which was said to put a "question mark" over NRA's claims of escape expenditure to seven day trading areas.

- [51] Under cross-examination, Mr Hyslop confirmed that the current trading hours of his Kingaroy store were 7.00 a.m. to 9.00 p.m. seven days a week, with Sunday being his best day of trade at around 20% of weekly sales.
- [52] Mr Hyslop said the store had been open for two and a-half years and he accepted that he had captured the business of other stores in that time.
- [53] In responding to a question on the impact on his store as a result of the opening of an Aldi store in Kingaroy some 12 months earlier, Mr Hyslop stated that the initial impact on his business had been "pretty horrific". However, he was subsequently able to grow his turnover back to previous levels.
- [54] In respect of his claim that between 15 and 25 jobs would be lost if the application was granted, Mr Hyslop said that the number of employees engaged in the store across the whole of Sunday was between 35 and 40. For a Thursday and Saturday the number was around 30.

### **Evidence called by SDA**

- [55] SDA did not seek to call witness evidence, confining its participation to limited cross-examination of witnesses and submissions.

### **Submissions**

#### *NRA*

- [56] NRA said its application sought to introduce trading on Sundays and certain public holidays within the defined Kingaroy area. This would put Kingaroy on an even keel with a number of other locations in close proximity which currently traded across seven days, especially Caboolture, the Sunshine Coast and Toowoomba.
- [57] Kingaroy was highly dependent on the agricultural sector as the largest employer in the region, with the retail sector holding second place. The difficulty for those involved in retail was said to be the inability to fully utilize their investment in assets compared to other regions where seven day trading was available.
- [58] In terms of the tourist industry, NRA acknowledged that limited evidence had been adduced, however there was some other evidence of expanding numbers through visitation to stores that are open to trade on Sundays.
- [59] NRA said the population of the region is over 32,000 persons, with Kingaroy accounting for in excess of 8,600 of those. This population level was significant and quite capable of supporting the existing retail structure as well as the extension of hours sought by the application.
- [60] There was a strong public interest argument for the granting of the application, in NRA's view, on the basis that at least 85% of the population of Queensland had access to seven day trading. With the high density of population in the south-east of the State, there was also significant public interest in having consistent hours throughout the region, as opposed to the situation at present which saw areas within two hours drive of each other being restricted in their ability to trade seven days.
- [61] NRA also said there was evidence from five retailers in support of the application while only two retailers gave evidence in opposition, with one of those retailers, Ms Ralph, indicating that her business would be unlikely to trade on Sunday. The other, Mr Hyslop, operated a large 2,000 square metre Supa IGA that currently has the monopoly on Sunday trade in the Kingaroy area. As such he was understandably seeking to preserve that position. NRA submitted that it was not in the public interest, nor a proper reflection of the intent of the Trading Hours legislation, to provide such a commercial advantage to a store with an offer comparable to that of the Woolworths store.
- [62] There was also substantial evidence from major "non-exempt" retailers in terms of the level of additional employment that would be created if the application was granted, particularly in giving opportunities in the region for the youth and female demographics, NRA said.
- [63] In relation to the view of Local Government on the application, there was no evidence before the proceedings for consideration.
- [64] On the matter of traffic congestion, no evidence was advanced.
- [65] In response to the submission by SDA that Easter Sunday be excluded from any Order that the Commission might make, NRA submitted that in all areas other than the South-East Queensland area Easter Sunday had been included as a trading day. However, at the end of the day, that was a matter to be decided by the Full Bench.

## QRTSA

- [66] QRTSA opposed the application, submitting that the evidence before the Commission in relation to the factors specified at s. 26 of the Act did not support the granting of the application.
- [67] NRA had failed to adduce any compelling factors to suggest that the nature of the locality supported the granting of extended trading hours, with the evidence showing that Kingaroy was part of an agricultural region which was already adequately serviced by existing retail facilities.
- [68] The proximity of Kingaroy to other locations was also not of relevance, in that each of the locations mentioned had their own unique appeal to tourists and attractions that Kingaroy did not offer. There was no evidence of significant escape expenditure from the region, nor was there any evidence of any economic development and growth that would support any demand for extended retail hours.
- [69] Further, there was no evidence to the effect that tourism was growing in the region, with NRA simply relying on "some comments in a number of (unspecified) statements", as well as, mere assertions to substantiate this criterion.
- [70] QRTSA said the evidence provided by Mr Hyslop to the effect that visitor numbers to Kingaroy on weekends were lower than during the week was not contested by NRA. This supported an argument that visitors during the week should be distinguished from tourists visiting on the weekend in the assessment of applications of this type.
- [71] While there had been some reference to the number of residents within the region increasing, there was no evidence the population was expanding at a rate which would justify an increase in trading hours.
- [72] Equally, NRA had not adduced any evidence relating to the needs of any other industry in the Kingaroy region which may have supported the need for Sunday trade. This meant there was no evidence which could lead to this criterion being considered in favour of the application.
- [73] There was also an absence of compelling evidence to support the public interest argument, other than NRA mentioning that "everyone else" has seven day trading. Similarly, in respect to consumer interest, there was a failure to produce evidence of consumer support for the extension of trading hours.
- [74] QRTSA said the interests of small and medium business was touched on by Mr Frecklington who suggested that the extension of shopping would not be in the interest of small business. At Transcript 2-32, he had stated:
- "I suppose my thing with - with Sunday trade is, you know, I would - it'd benefit me personally, the shop, but I think it could hurt a lot of the smaller shops in Kingaroy and in - in the surrounding areas if Sunday trade was to come to town. So I'm - I'm sort of on a bit of a ledge. It'd be great for us but on a - over a - on a whole I don't think it's a good idea."*
- [75] QRTSA challenged the evidence of Ms Musson who claimed to speak on behalf of retailers that operated within the shopping centre on the basis there was no evidence that Ms Musson had any authority to speak for any retailers in the Centre.
- [76] QRTSA also said the impact on small and medium business of extended hours was raised in the evidence of Ms Ralph who spoke about increased costs to small business due to penalty rates and other operational expenses associated with opening on Sunday. Further, her evidence raised the spectre that those stores which declined to open on Sundays risked losing market share to the larger traders.
- [77] The evidence of Mr Hyslop of the impact on his business when Aldi opened its store in Kingaroy was also supportive of the argument that the business interests of medium level traders would be negatively affected with an introduction of expanded hours of trade, QRTSA said.
- [78] Finally, QRTSA challenged the evidence of NRA witnesses about the expected level of Sunday trade in Kingaroy, as well as their evidence that extended hours would lead to operational efficiencies.

## SDA

- [79] SDA neither opposed nor supported the application. However, it did request the Commission to specifically exclude Easter Sunday from any Order it might decide to make which would ensure substantial consistency with other South-East Queensland seven day trading areas, such as:
- South-East Queensland area generally;
  - Brisbane;
  - the Gold Coast Area; and

- the Sunshine Coast Area.

[80] SDA highlighted the evidence from witnesses representing non-exempt employers which confirmed that work on Sundays and public holidays would be voluntary. SDA also said that while it has Enterprise Agreements with a number of non-exempt businesses whereby work in extended hours is voluntary, such agreements have a limited lifespan. As such, SDA sought a more prominent and permanent outcome by way of having the following wording included in the published decision if the application is granted:

*"Work during extended hours is to be voluntary in all non-exempt shops."*

[81] In conclusion, SDA stated that because work on Sundays and public holidays would be voluntary the application would not have a significant impact on its members.

### **The criteria under the Trading Act**

[82] The criteria which the Full Bench must consider when determining an application to amend Trading Hours is set out in s. 26 of the Trading Act. We consider each criterion in turn.

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

[83] NRA said Kingaroy as a township of approximately 8,600 people, situated approximately 210 kilometres north-west of Brisbane. It is located within the area of the South Burnett Regional Council (the Council). The locations of Toowoomba, Sunshine Coast and Caboolture, which all currently have access to seven day trading, are within a two hour drive of Kingaroy.

[84] QRTSA questioned whether any compelling factors relating to the "locality" criterion of s. 26(a) of the Trading Act had been evidenced in the proceedings other than the alleged proximity of Kingaroy to the centres of Toowoomba, Sunshine Coast and Caboolture which currently trade seven days per week.

[85] There is no question that Kingaroy is the major population centre within the South Burnett Region and as such, services the needs of numerous sections of the population. However, the evidence indicates that Thursday, Friday and Saturday are the days of higher levels of trade due to farm and property workers coming into town.

[86] All things considered, there is nothing special about the locality to cause us to assess the relevance of this criterion as anything other than neutral.

#### **(b) Needs of tourist and other industries and**

#### **(c) Needs of an expanding tourism industry**

[87] Evidence in relation to the tourism aspect of the criteria, it must be said, was scant. Although the "Statement of Facts and Circumstances" attached to the application identified that 348 tourism businesses operated in the region no evidence about the nature of these businesses, nor the number of tourists they might have serviced, was provided.

[88] The other industries said to operate within the region were those of:

- power generation;
- mining;
- agriculture; and
- retail.

[89] Only one of the first three industries was mentioned in the evidence. In respect of the agricultural sector, Mr Winzenberg said that Thursday, Friday and Saturdays were the best trading days of the Target Country Store which he attributed to "people on the land" travelling to town close to or on the weekend to shop and to do other business.

[90] QRTSA challenged the lack of evidence to support any reliance upon the tourism criterion and relied upon the local knowledge of Mr Hyslop to the effect that the availability of accommodation in Kingaroy on weekends was greater than during the other days of the week. This suggested that the level of weekend visitation to Kingaroy was lower over the weekend than it was during the week.

[91] In respect of tourism in general, there was no evidence of any substance that would lead the Commission to conclude that Kingaroy is a vibrant tourist destination with expanding numbers of tourists either at present or into the immediate future. As such, we have formed the view that the tourist criterion has not been enlivened to an extent that would support the granting of application.

***(d) Needs of an expanding population***

- [92] The population of the region at 30 June 2009 was at 32,495 with 8,606 of those persons residing in Kingaroy. The application referred to an expectation that there would be growth of 1% annum through until 2026. NRA, in submissions, made the point that the existing population was capable of supporting the extended shopping hours sought.
- [93] QRTSA, on the other hand, focussed on the failure of NRA to produce evidence of an expanding population and therefore the need to extend trading hours.
- [94] On consideration of this aspect of the legislation it is the needs of an expanding population that must be addressed and not the actual or predicted growth of population in a location. In the past three years a Supa IGA and an Aldi store have commenced trading in Kingaroy, providing to local residents an increased grocery offer. Whilst it would not be unreasonable to conclude that the addition of the two businesses to the existing offer could only have been achieved with population levels to support the establishment and continuation of the businesses, there is no evidence before the proceedings that would enable this criterion to be viewed as favouring the granting of the application.

***(e) Public, consumers' and business interest****Public*

- [95] The public interest argument was said, by NRA, to be strong. Firstly, 85% of the population of Queensland already have access to seven day trading. Secondly, the high density of population in the south-east of the State meant that consistency of trading hours was a matter of significant relevance.
- [96] QRTSA highlighted the lack of evidence around this issue.

*Consumers*

- [97] In many recent applications of a similar nature, the issue of consumer interest has been the subject of surveys of the general public commissioned by either NRA or other parties with an interest in the application. In this matter, no such survey was tendered in the proceeding therefore the Commission must consider this part of the criterion based solely upon the evidence of witnesses.
- [98] NRA's witnesses cited the opportunities for families to enjoy shopping together on a Sunday, reduced congestion in stores and the convenience of having access to seven day trading as factors that should be favourably considered with regard to consumer interests.
- [99] The convenience of being able to have access to seven day trading was also seen by NRA as a factor worthy of consideration.
- [100] QRTSA argued that there was a lack of evidence to support any argument that local consumers supported the application. Further, the Sunday trading figures relied upon by some of NRA's witnesses showed trading levels were well below those of other trading days, which suggested that consumer support for Sunday trading was not high.

*Business*

- [101] The bulk of NRA's evidence was focussed on the commercial benefits which seven day trading would bring. Messer's Lysaght, Watson, Winzenberg and Wallace said that whilst their stores in seven day trading areas traded lesser hours on a Sunday than other days of the week, the percentage of weekly sales represented by Sunday was at acceptable levels. The ability to replenish stock and the efficiency gains that accompanied seven day trading were also of benefit in the overall operations of the business.
- [102] The witnesses who appeared on behalf of QRTSA opposed the application for differing reasons. Ms Ralph had concerns around a diminished return on her investment if forced, by commercial or other pressures, to trade on Sundays due to the expenses that would be incurred through additional outgoings and penalty rates associated with work outside of Monday to Friday.
- [103] Mr Hyslop believed the current trading hours did not disadvantage Kingaroy residents as the grocery offer available through his store was comparable to that offered by his major competitors. Extended hours would have a negative effect on his business which currently had Sunday trade as the largest turnover day of the week. The impact on the Supa IGA when the Aldi store opened in Kingaroy was said to be supportive of the likely negative effect on medium sized businesses generally if Sunday trading was granted.

- [104] The Commission was requested to weigh up the differences between the operations of small and medium businesses against those of larger businesses when assessing the effect on businesses through the introduction of extended hours.
- [105] The business interests are clearly divided. Larger businesses support the application while one medium and one small business, respectively, oppose it.
- [106] In the scheme of things the most interesting evidence given by any witness was that given by Mr Frecklington, on behalf of NRA. While supporting the application because of the perceived benefits to his business, Mr Frecklington also acknowledged that granting the application could have a negative impact on other smaller and medium sized businesses in Kingaroy.
- [107] On consideration of this section of the Act, we note that (on its face) the combined public, consumer and business interests constitute one criterion. The public interest component is of neutral standing, having no clear benefit one way or another. However in the view of the Commission the consumer interest component could reasonably be deemed to marginally support the granting of the application.
- [108] The interests of business (large, medium and small) is somewhat difficult to determine in this case because of the different range of views expressed, especially by Mr Frecklington. In the end result we have determined that while granting the application will have positive benefits for large businesses it will have negative implications for medium and smaller businesses. As such, we assess this aspect of the criterion as neutral.
- [109] On the overall consideration of the combined three interests, the Commission is of a view that this criterion should be assessed as being marginally in favour of the granting of the application.

***(f) Alleviation of traffic congestion***

- [110] This criterion was not enlivened in the course of the proceedings.

***(g) Likely impact of the Order on employment***

- [111] The evidence from NRA witnesses on behalf of the major retailers was consistent in that current employees would only be required to undertake the extended hours on a voluntary basis, with unfilled hours being taken up by new employees.
- [112] The increased hours identified were:
- Big W - 100 hours per week;
  - Woolworths - 105 hours per week;
  - Target Country - 18 hours per week (936 hours annually); and
  - Best and Less - five to ten Employees would undertake Sunday work.
- [113] QRTSA witness Mr Hyslop estimated that between 15 and 25 jobs would be lost if the application was granted. However this evidence was brought into question under cross-examination when he said that the current number of employees on a Saturday (when his major competitors also traded) was (only) between five and ten less than the current Sunday numbers.
- [114] The additional employment numbers likely to be generated if the application is approved, compared to the potential reductions, favours the granting of the application.

***(h) View of Local Government***

- [115] On 17 December 2010 the Commission received correspondence from the South Burnett Regional Council, dated 14 December 2010, which contained the view of the Council to the application to amend trading hours for Kingaroy. This was well outside the date by which any party interested in the proceedings had to advise the Commission of that interest (22 July 2010 to record an interest, 16 November 2010 to lodge material proposed to be relied upon).
- [116] However, as the hearing of the matter concluded on 30 November 2010, the parties were not privy to the position of the Council during the course of proceedings and, as a consequence, were unable to appropriately address any issues they may have had with the position of Council.
- [117] Accordingly, the Full Bench has determined that the view of the Council will not form part of its considerations of the application.

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

[118] There was nothing in the Inspections, evidence or submissions which would cause this criterion to be enlivened.

**Conclusion**

[119] Our consideration of the criteria under s. 26 of the Trading Act delivers the following outcome:

- locality - assessed as being neutral;
- needs of the tourist and other industries - assessed as not favouring the granting of the application;
- needs of expanding tourist industry - assessed as not favouring the granting of the application;
- needs of an expanding population - assessed as not favouring the granting of the application;
- public, consumers' and business interest - assessed as marginally favouring the granting of the application;
- alleviation of traffic congestion - assessed as not being enlivened;
- likely impact on employment - assessed as favouring the granting of the application;
- view of Local Government - not considered for reasons outlined in paragraphs [115] to [117] inclusive; and
- other matters the Commission considers relevant – assessed as not being enlivened.

[120] On the basis of the above assessment only two of the criteria we are required to consider under s. 26 of the Trading Act can be seen to favour the granting of the application. This is compared to one neutral assessment and three other criteria which have been assessed as not supporting the granting of the application. In the circumstances where only two of the eight criteria we have considered pursuant to s. 26 of the Trading Act support the granting of the application, the application must be rejected. Accordingly, it is the decision of the Full Bench that the application to amend the Order to include the Kingaroy Area is refused.

[121] We determine and order accordingly.

D.A. SWAN, Deputy President.

A.L. BLOOMFIELD, Deputy President.

J.M. THOMPSON, Commissioner.

*Hearing Details:*

2010 22 July (*For Mention*)  
 30 November (*Inspections & Hearing*)  
 2011 28 January (*For Mention*)  
 4 February (*Report Back Hearing*)  
 23 February (*Transcript*)  
 8 March (*Respondent's written submissions*)

*Appearances:*

Mr J. Moore, of National Retail Association Limited, Union of Employers.  
 Mr J. Huang and Ms A. Ruben, of Neumann Turnour Lawyers, for Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers).  
 Ms P. Town and Mr D. Gaffy, of Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees.

Released: 1 April 2011