

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Re: National Retail Association Limited, Union of Employers* [2015] QIRC 044

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

CASE NO: TH/2014/9

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

DELIVERED ON: 9 March 2015

HEARING DATES: 24, 25 November 2014
16 January 2015 (Applicant Submissions)
19 February 2015 (Respondent Submissions)

MEMBER: Deputy President Swan

ORDERS : **1. The Application is dismissed.**

CATCHWORDS: INDUSTRIAL LAW - TRADING HOURS ORDER
- Application to amend trading hours order -
Inspections - Opposition from Master Grocers
Australia - Strong consumer opposition to
Application - Various Surveys conducted - Members
of Parliament opposition to Application - Limited
local support for Application except for 1 Survey and
evidence of Commerce North West Support - No
evidence from Mt Isa City Council.

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 D Sztrajt, for Master Grocers Australia Limited.

Decision

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

1. By inserting the following new provisions in clause 3.2 of the Order as follows:

(31) Mt Isa Area

	<u>Opening Time</u>	<u>Closing Time</u>
Monday to Friday	8.00 am	9.00 pm
Saturday	8.00 am	5.00 pm
Sunday	9.00 am	6.00 pm
Public Holidays (as defined) Excluding Good Friday, 25 April, Labour Day, 25 December	8.30 am	5.30 pm

2. By inserting the following new definitions in Schedule 1 of the Order (Definitions):

(40) *The Mt Isa Area*

The area within the following boundaries:

In the city of Mt Isa, commencing at the corner of Barkly Highway and Leichardt River Road; then along Leichardt River Road to Ryan Road; then in a straight line in a south easterly direction to the intersection of Barkly Highway and Breakaway Drive; then in a straight line in a south westerly direction to the intersection of Twenty-third Avenue and Mount Isa-Duchess Road; then along Twenty-third Avenue in an easterly direction to Diamantina Development Road; in a northerly direction along Diamantina Development Road to Barkly Highway; then along Barkly Highway in a northerly direction to the point of commencement.

The Legislation

[3] Section 21 of the Act states:

"21 Trading hours orders on non-exempt shops

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

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

(a) 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."

[4] 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."

Party to the Proceeding

[5] In support of the Application:

- National Retail Association Limited, Union of Employers Queensland.

[4] Organisations granted leave to be heard:

- Master Grocers Australia Limited who opposed the Application; and
- The Australian Workers' Union of Employees, Queensland who was not opposed to the Application.

Witnesses

[5] Witnesses for the NRA were:

- Mr Charles Hammersla - employed by Kmart, now holds a new position as National Facilities and Compliance Manager, Kmart Australia Ltd;
- Mr Scott Wallace - former State Support Manager, Queensland, Woolworths Limited, currently Group Manager for Woolworths Limited, based in Queensland;
- Mr David Stout - not currently employed by Coles, former State Compliance Manager, for Coles;
- Dr Gary Mortimer - Senior Lecturer - International Business in the Business School at the Queensland University of Technology.

[6] Witnesses for MGA were:

- Mr Bob Burrow - Owner/Operator of Colonial Convenience Market;
- Ms Annette Cunningham - Owner Turanga Butchery;
- Ms Peta MacRae - Owner/Operator of MacRae News, Newsagency;
- Mr Jose Rivas - Owner/Operator of 2 Foodworks stores.

[7] Independent witnesses were:

- Mr Bob Katter - State Member for Mount Isa;
- Mr Rob Katter - Federal Member for Kennedy.

Inspections

[8] Inspections of the local retail area of Mt Isa were conducted by the Commission with all representatives involved in the matter present.

Commerce North West

[9] An issue arose concerning Commerce North West which is as follows:

Initially, NRA had amongst its list of witnesses, Mr Travis Crowther who is the President of the Mount Isa Chamber of Commerce. Mr Crowther's Affidavit was submitted within the correct time in response to the Directions Order issued by the Commission.

Notwithstanding that Mr Crowther's Affidavit had been submitted by the NRA on 5 September 2014, on 13 November 2014 Commerce North West, under the hand of Mr Crowther, wrote to the Industrial Registrar of the Commission to the effect that Commerce North West had just been made aware of the Application before the Commission concerning this case.

It should be noted that in the Directions Order which issued from the Commission on 2 July 2014, the NRA was advised to serve by Friday 4 July 2014 a copy of the Application and this Order on a range of parties including:

- Queensland Chamber of Commerce and Industry Limited (CAN 009662060);
- Local Government Association of Queensland Ltd;
- Mount Isa City Council.

The Application had been advertised in the local Mount Isa newspaper on October 13, 2014 as well as in the Courier Mail.

The Commission provided Commerce North West with this information and also stated that the request for Commerce North West (received on 13 November 2014) to now be heard was refused.

Commerce North West's request was significantly out of time as the matter was scheduled for hearing in Mount Isa on 24 November 2014. The Commission explained that Mr Crowther already had submitted an Affidavit, and to permit further material by way of evidence from Commerce North West would seriously disadvantage other parties who had already responded to the Affidavit material submitted by NRA. In effect, there was no opportunity, in the short space of time before the hearing, to attempt to accommodate this request.

At the commencement of the hearing in Mt Isa, NRA told the Commission that Mr Travis Crowther had advised NRA that he wished to withdraw his Affidavit. NRA said that Mr Crowther would seek to be heard before the Commission, not as an individual, but as representing Commerce North West and that he was waiting outside the court room.

The Commission said it would hear what Mr Crowther had to say.

In the interim, another NRA witness, who was on the witness list, had advised that he would be unavailable to give evidence beyond the first day of hearing and the Commission determined to hear his evidence first. That witness's evidence lasted until the end of the hearing on the first day.

Upon resumption of the hearing on the following day, there was no further mention of Mr Crowther and he was not present at the Court house on that day or any hearing day thereafter.

As Mr Crowther was no longer in a position to ask NRA to supply information to the Commission (as they were not representing him), there had been no approach made directly, or by way of further correspondence, to the Commission by Mr Crowther to be heard at least upon his preliminary request.

As it transpired, during the hearing, evidence was given of a public meeting held at Commerce North West, and the result of a vote taken by members of that organization in regard to NRA's trading hours Application.

Evidence

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

- [10] It is a matter of fact that Mount Isa covers an area of 41,000 kms and is the major service centre for North West Queensland with a population of around 33,000.
- [11] As a major service centre for North West Queensland it includes, within that broad definition, townships such as Cloncurry, Boulia, Burketown, Carpentaria, Doomagee, Flinders, and the Mornington and Richmond Shires.
- [12] The closest large city to Mount Isa is Townsville which is 883 kms away. Brisbane is 1829 kms from Mount Isa.
- [13] It is accepted that Mt Isa is primarily an isolated township - being removed considerably in distance from other reasonably sized townships in North Queensland and at a significant distance from the capital city of Brisbane.
- [14] In Mount Isa there are a range of facilities including the Splashez Aquatic Centre, a cinema, a hospital and a broad range of educational facilities including public and private primary and secondary schools, the School of the Air, a TAFE and James Cook University Centre for Rural and Remote Health.
- [15] NRA state that the Mount Isa Rodeo is the biggest event on the Australian rodeo calendar, attracting international competitors. NRA claims that during the two week program of the Rodeo accommodation providers experience 100% occupancy with additional visitors accommodated in camping grounds.
- [16] Mt Isa has one of the largest mining and smelting operations in Australia.
- [17] NRA submit that, with the mining boom, there has been a greater demand for accommodation and land. The city has spread out with new suburbs to the north and south-east being planned and developed.
- [18] Dr Mortimer's survey confirmed that Mount Isa residents do not leave the town to do their shopping [Exhibit 16].
- [19] Comparisons have been drawn by NRA witnesses to Mt Isa and other western Queensland towns such as Emerald, for example, in relation to Sunday trade patterns. NRA states that the introduction of Sunday trading has been successful in every environment that it had been introduced into and states that *"It is further implied and follows that no reason exists why Mt Isa would not follow a similar pattern of being successful"* [NRA submissions - point 8.2].
- [20] This has been a feature of many trading hours' cases where often Australian and Queensland wide comparisons have been drawn by non-exempt stores in order to establish a pattern of sales which might be similar if the Application under consideration was successful. This analysis however does not include any statistical data of what might be happening to exempt traders within those cities after a successful Application.

[21] Many trading hours decisions have made reference to the lack of relevance of statistical data emanating from different Legislative regimes in various Australian States with regard to trading hours generally and that view is reiterated by the Commission in this matter.

[22] The retail structure of Mt Isa is as follows:

There are four non-exempt stores. One Coles store, two Woolworths stores and one Kmart. Coles and Kmart are located in the Kmart Plaza, one Woolworths store is located at the Town Centre and another Woolworths store is located on Abel Smith Parade. These stores are within what might be called the city area of Mt Isa.

Exempt stores (which contain similar product lines to the non-exempt stores) include 2 "full size" FoodWorks Supermarkets, a First and Last Supermarket, Colonial Convenience Store, MacRae News Newsagency and the Turanga Butchery. These are all located outside of the city area of Mt Isa.

Exhibit 4 shows the placement of these stores in Mount Isa. In the immediate City circle is a Woolworths store, a Cole store, a Kmart. Situated outside of that circle and into the suburban areas, are the following exempt stores:

- two Spar stores (on either side of the City circle),
- a Foodworks store,
- two Mt Isa Newsagencies (in two discrete locations), and
- a Colonial Convenience store situated beside a newsagency, which is also situated away from the City circle.

Other retailers in Mount Isa (which are exempt stores) include Harvey Norman, Bunnings Warehouse, BCF, Pillow Talk, Chemist Warehouse and Super Cheap Auto.

[23] The placement of retail stores in Mount Isa is a relevant factor. This is so because there is only sporadic and particularized public transport operating in Mt Isa. It has been submitted by MGA that because of the heat, it would be difficult for the public to walk to the non-exempt stores (which are primarily located in the city area of the township) if the smaller exempt stores outside of the city precinct were forced to close due to falling sales.

[24] In Matter No: TH/2009/5, the Commission found that the lack of public transport in the town was a significant factor to be considered. That decision referred to the greater dependency by consumers upon the smaller suburban stores. It is submitted by MGA that this factor retains its significance in this matter [MGA submissions - point 32].

Consideration of s 26(a) locality

[25] Mount Isa is an isolated city, removed by significant distance from other surrounding townships.

[26] Reference has been made to a Full Bench decision in TH/2007/7 where the following was stated:

"In our view the Legislature does not impose any test of "uniqueness" in relation to the factor of locality, either expressly or by reference to the extrinsic material."

- [27] It is clear that a range of issues may arise for consideration under this criterion. The Full Bench mentioned the type of factors that might be considered and these included the geographic location of the town or area; the retail infrastructure and other relevant features of the town or area concerned.
- [28] With this in mind, the type of factors which have arisen in this case are the town's isolation; that the township does not in reality have a public transport system; the location of various convenience stores and the town's weather. It is reasonable to take into consideration people living in Mount Isa where they might have to walk some distance in the heat to the City area were any of the local convenience stores outside of the city area to close as a consequence of a successful Application. This factor will be explored further under the heading of s 26(e) Business Interest (small, medium and large).
- [29] These views will be considered together with all other relevant criteria.
- [30] In my view, those factors (isolation; stores selling identical products; location of stores around the City; lack of public transport and climate indicates that Mount Isa has considerations beyond what might be evident in other locations.

s 26(b) and (c) Tourist Industry Needs and the Needs of an Expanding Tourism Industry

- [31] Tourism is an enhanced criterion for consideration given that there are two elements relating to the tourism industry that require consideration.
- [32] MGA submitted that there was no evidence to suggest that "tourists" or "... *an expanding tourism industry*" need non-exempt stores to trade on a Sunday and/or Public Holidays.
- [33] NRA highlighted statistical data showing that in the *Mount Isa Tourism Strategy 2007 - 2017* (prepared by the National Centre for Studies in Travel and Tourism and commissioned for the Mount Isa City Council and the Mount Isa Tourism Association in January 2007) it was estimated that Mount Isa Tourism economic contribution to the GNP amounted to \$54 million and 1023 jobs [Attachment A to Exhibit 25].
- [34] Further in that report, it was stated that Mount Isa is a significant tourism destination. Cited as attractions in the town were:
- 'Outback at Isa' featuring the Isa Experience Gallery and Hard Times Mine tour;
 - World Heritage listed Riversleigh Fossil area;
 - Lawn Hill Gorge;
 - Lake Julius;
 - Camooweal Caves National Park;
 - Royal Flying Doctor Visitor Centre;

- The Fossicking Way Tourist Drive;
- Lake Moondarra and Kalkadoon Tribal Centre and Cultural Keeping Place.

- [35] Mr Burrows agreed with NRA that Mount Isa was "*almost the heart of the outback*". Further, when considering statistical data showing that 350,000 visitors to the outback spent \$260.9 million over a three year average which ended in March 2014, Mr Burrows believed that to be of significance.
- [36] The statistical data showed that approximately 2,000 visitors driving by road to Far North Queensland and Alice Springs passed through Mount Isa by caravan between March and September of each year. Those visitors utilized one of the eight caravan parks in Mount Isa. Mr Burrows agreed with these propositions [T2-55].
- [37] NRA submitted that the Queensland Government's Outback Regional Snapshot showed that overnight visitors to Mount Isa (over the preceding 3 years) had increased by 3%. As well, international overnight travel showed that Mount Isa had 11,000 international visitors in the period of December 2009 to December 2012 [Exhibit 24].
- [38] Mr Wallace agreed that he had assumed, but had no evidence to show, that if there was seven day shopping in Mt Isa, visitors would stay longer. Mr Wallace accepted the proposition that tourists may well be spending their money at local stores and with local businesses in Mount Isa.
- [39] The evidence produced by NRA established that a significant number of tourists come to Mount Isa. There was no evidence, however, to show that these tourists needed to or wanted to shop on a Sunday. One might draw the inference that there are already sufficient retail outlets in the township to cater for these tourists.
- [40] It is of relevance that the Council's Mount Isa Tourism Strategy does not identify a need for extended trading hours in Mount Isa.

Consideration of s 26 (b) and (c) Tourist Industry Needs and the Needs of an Expanding Tourism Industry

- [41] Section 26(b) and (c) state that the Commission must consider the '*needs*' of the Tourist Industry and the '*needs*' of an expanding tourism industry. Implicit in that would be a requirement of a party seeking to extend trading hours on a Sunday in non-exempt stores, to show firstly that there are tourists in the town and that their needs are not being met by the available shopping facilities being open on a Sunday. Likewise for the requirement to consider the needs of an expanding tourist industry.
- [42] It is the case that there are tourists travelling through Mt Isa and staying in Mount Isa for short periods of time. There is also evidence that there are a number of tourist attractions in Mount Isa and its environs.
- [43] The local Council did not adopt a position on this Application and consequently it is unknown as to what future tourism industries are contemplated.
- [44] Of significance is the fact that there had been no mention of a need for extended 7 day trading in Mt Isa in the Mt Isa Tourism Strategy created by the Mt Isa City Council.

[45] There is evidence which shows that tourists attend the Mount Isa area - whether that is related to seeing attractions in Mount Isa (or its whereabouts) or whether it is for the purpose of a stop-over for tourists going through to other major destinations. That is a relevant consideration, but what has not been shown is that there has been a demand from tourists for extended trading hours on a Sunday.

s 26(d) The needs of an expanding population

[46] Mr Stout gave evidence to the effect that "*We believe that the Mt Isa community which included visitors, residents, employees and retailers derive a benefit from the introduction of even day trading through its contribution to increased convenience and additional working opportunities. According to the Federal Government's Green Paper On Developing Northern Australia, Mt Isa is expected to experience the biggest rate of population growth for northern Australian regional cities within the next 12 years*" [Exhibit 14 - Attachment A].

[47] NRA statistical data showed that the resident population of Mount Isa was predicted to increase between 2013 and 2036 from 22,779 persons to 27,352 persons [Exhibit 20 - page 5].

[48] NRA's evidence was drawn from a consideration of a number of factors - some included:

- \$560M Diamantina Power Station;
- \$27M sewerage infrastructure upgrade;
- \$17M Laura Johnson Home for the Aged;
- Major housing developments at Gliderport and later stage Healy Heights;
- Iconic Argent Hotel development in CBD;
- New industrial estate to accommodate growing business needs;
- New Catholic child minding facility;
- New complex at Good Shepherd [NRA submissions - point 10.4].

[49] Further planned developmental activities related to the expansion of existing mining operations and the potential development of new mines in Mount Isa and the broader region.

[50] There was considerable scepticism on the part of witnesses opposed to the Application to what they viewed as an overly 'optimistic' approach taken by the local Council and others to proposed development and projected population growth in Mount Isa.

[51] Mr Rob Katter (State Member for Mount Isa) was of the view that "*some politicians consider it important to create optimism and - and identify positive things that are happening in the area. I don't like doing - being negative*" [T1-42].

[52] Statistical data presented by Mr Stout was to the effect that Mt Isa's population over the next twelve years would grow by 2.5%.

[53] Mr Burrows was unable to accept that, from the statistical data relied upon by NRA, a positive approach could have been taken by the local Council that the Mount Isa area was growing [T2-44]. This view was reflected by other residents and owners of

small businesses in Mount Isa including Mr Rivas and Ms MacRae. Within this context, NRA believed that many of those opposed to the Application "*simply failed and/or refused to accept statistical data or information provided by the Queensland Government, Commerce North West or of their own City Council as being correct alleging that these authorities are not presenting the true picture.*"

- [54] MGA succinctly posed the proposition that there were two primary issues arising out of the consideration of the needs of the Mount Isa population. The first issue was whether the population of Mount Isa was expanding and the second was whether there was in fact a '*need*' for the alleged expanding population in terms of extended trading hours.
- [55] Mr Rob Katter's evidence was that the township was not growing, but that it was contracting [T1-41].
- [56] Mr Rob Katter expanded on this by stating "*It's projected to grow over the next five or 10 years of the - some of the - based on some of the statistics, but I think that we could debate about that too, because I know some of the future of the mining industry - there's some critical points that I'm not willing to say publically that could heavily impact on the future of this place that - so, no, I - I wouldn't say that's a fair statement to make that it's going to grow*" [T1-41].
- [57] Mr Rob Katter viewed the Council's commentary concerning growth in the area as "*a bit of spruiking*", but stated that "*I don't think you could rely on that because there's as many factors to say that we won't as there are*".
- [58] Amongst these '*factors*' was the rising price of gas which would have an effect on energy costs for mining.
- [59] MGA submitted that the view of Mr Rob Katter should be given substantive probative value. This was because Mr Rob Katter had lived in Mount Isa for 13 years and understood the local population and community through being the local Member for Mount Isa and also because he had previously operated a property valuation business within the town. Further, Mr Rob Katter had served on the local Council and had strong ties with the local community.
- [60] The evidence of Mr Rob Katter was replicated in the evidence given by local small business operators opposed to the Application and the evidence of Mr Bob Katter.
- [61] Ms MacRae stated that "*I just think it's been a particularly hard year for business in Mount Isa this year and I think there's businesses just hanging on to - by the skin of their teeth now and I think this would tip them over the edge*". She further stated that there had been a reduction of people in Mount Isa and that the Council would say what they did "*because they would like to get re-elected, I'm guessing*" [T2-100].
- [62] Mr Burrows view was that "*That - that tourism is - is booming and the town is growing, yeah. I don't believe that at all. As I've said, I've spoken to real estates who's - who - I know myself before I moved to Mount Isa I had to wait six months before I could find one house to rent and all you've got to do is hop in your car now and drive around any street and if you don't see at least one house for sale in the street, I think you'll*

find there's four or five and a lot of vacant houses, and there was never any of that here six years ago" [T2-44].

- [63] The distinction drawn by MGA between the local residents and business owners, and the local Members of Parliament for Mount Isa on the one hand and the representatives from NRA (all of whom had flown into Mount Isa for the hearing) on the other hand was that NRA did not call any local retailer or resident of Mount Isa to give evidence.
- [64] MGA stress that the "*current*" evidence given by local people (as identified above) is in clear contrast to that given by NRA with statistical data as from 30 June 2013 [T2-103].
- [65] MGA believed that the data relied upon by NRA was outdated in terms of population projections for the town and outdated in terms of the current situation relating to the population of the town.
- [66] MGA reiterated its point that the NRA had not outlined a case for the '*needs*' of the population (and projected population) to shop in an extended trading hours environment.
- [67] Dr Mortimer admitted, under cross-examination from MGA, that there was nothing in his Survey that showed that Mount Isa consumers could not shop on a Sunday. He agreed that shoppers were already shopping on a Sunday in Mount Isa [T2-16].
- [68] While Dr Mortimer had stated in his Survey that there was a '*growing need*' for residents to shop on Sunday, he agreed that the word "growing" was misplaced in his assessment [T2-16].
- [69] MGA states that NRA has failed to draw any evidence which demonstrated that there was a nexus between the needs of Mount Isa residents to shop on Sunday in non-exempt shop and an '*ensuing requirement to change the existing status quo in Mount Isa*' [MGA submissions - point 73].
- [70] Much was made by NRA that, with non-exempt stores closed on a Sunday in Mount Isa, residents would be unable to buy shoes. MGA assumed that this point was taken to press the submission that Kmart should open on a Sunday.
- [71] Exhibit 22 (newspaper article from North West Star entitled "*Mathers Shoes Walk Away*" dated 13.02.14) showed that the only shoe store in Mount Isa closed as a direct result of Kmart Plaza's increase in rent. Further, MGA says that no evidence was adduced from any resident of Mount Isa (nor had NRA called a resident of Mount Isa to give evidence) that not being able to buy shoes on a Sunday was problematic for them.
- [72] MGA's primary submission on this criterion was that there was no substantial evidence produced by NRA to indicate that the population '*needs*' any changes to the existing trading hours in Mount Isa.

Consideration of s 26(d) an expanding population

- [73] The documentary evidence presented to the Commission by NRA relating to this criterion, is dated 4 November 2011, (*Economic Structure and Performance of the Australian Retail Industry - Productivity Commission Inquiry Report*) and the Winter 2013 edition of *Council Calling*.
- [74] None of the witnesses called by NRA either lived in the area or had worked in the area. Of note is that the Local Council and the Chamber of Commerce did not to give evidence in this hearing.
- [75] Consequently, the NRA witnesses consisted of Senior Managers of Coles, Woolworths, Kmart and Dr Mortimer from QUT in Brisbane.
- [76] Witnesses opposed to the Application and called by MGA included local independent retail store owners/operators. These people conducted small businesses and larger businesses in Mount Isa equally spread across the suburbs of Mount Isa as well as being close to the city centre.
- [77] Added to that component of local knowledge, evidence was also given independently by the Local Federal and State Members of Parliament.
- [78] Credible current statistical data must be considered by the Commission. As well, evidence from those actually living in and conducting businesses in Mount Isa, together with that of local Government representatives must be taken into account and particularly so when it relates to what is perceived to be the 'current' state of play in Mount Isa.
- [79] While it is a known factor that 'fly in - fly out' workers come to Mount Isa, there was no information given to the Commission as to whether these persons are counted for the purpose of calculating the current population of Mount Isa.
- [80] There was no evidence from the NRA dealing with the question of "fly-in, fly-out" workers and what proportion of the town's workforce is made up of these people.
- [81] When asked about the make-up of the labour force in the Mount Isa area Mr Bob Katter replied "*I'm guessing here, because obviously I won't give the figures. ... I'd say 25 percent if I had to hazard a guess.*"

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

Public interest

[82] 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)].

Consumer Interest

[83] Before considering the various Surveys and Petitions which have arisen in this matter, it requires reiteration that the local Council has refrained from expressing a view on this Application and that an Affidavit from Mr Crowther was withdrawn.

[84] NRA submits that it would be wrong and misleading to try to characterize the competition in the retail sector in Mount Isa by "*drawing conclusions*" that the ability for non-exempt stores in Mt Isa, to trade on a Sunday would result in the loss of sales for all other retailers to the point that they could no longer compete [NRA submissions - point 11.1(c)].

[85] After this Application had been made by NRA, a number of events occurred in Mount Isa.

a) *Exhibit 10 is a copy of a Facebook Page under the heading of "ABC North West Queensland").*

On that page, the following question is posed:

"Should Mount Isa have Sunday trading? The push to bring 7 day trade to Mount Isa is back on the agenda. Back in 2010 the matter went to a hearing in the Queensland Industrial Relations Commission and that will happen again soon. The hearing will be 24 to 26 November 2014 in Mt Isa. What do you think? Should Mount Isa have 7 day trading?"

[86] Of the responses recorded (56), the 'yes' vote was 32, the 'no' vote was 16 and the 'neutral' vote was 8. NRA says that this represents 57% of those who responded were supportive of the Application.

[87] NRA submits that the Commission should seriously consider this result.

[88] In cross-examination Mr Rob Katter said he was pleased to have been shown the survey "*because if you asked me, without being informed about the impacts of this on your community, I'd be in favour of it*" [T1-36].

- [89] It should be pointed out that 104 of the 1,870 signatures which were produced by Mr Bob Katter opposing the Application to grant extended trading hours were from a Facebook Page [T1-17].
- [90] While the outcome of the Facebook Surveys is noted, it would be difficult to view these Surveys as a significant barometer of public opinion in Mount Isa.
- [91] Presumably one would have to know where to find the Surveys on the internet and it is fair comment to say that a large demographic of residents of Mount Isa would arguably have little knowledge of Facebook or Facebook Surveys. Noted also is the number of respondents. In the case of the ABC Survey there were 56 respondents and this not a large enough sample number to draw any real conclusions or views with regard to the Surveys and nor were the 104 respondents to Mr Bob Katter's questionnaire.
- b) *The Chamber of Commerce (Commerce North West) meetings called for the purpose of considering the application.*
- [92] There was no direct evidence given to the Commission from Commerce North West.
- [93] MGA's position was, however, that it believed that NRA continued to rely upon the Affidavit of Mr Crowther. The Commission has not considered Mr Crowther's Affidavit as it was not submitted as evidence and therefore the Commission can draw no conclusion with regard to MGA's assertions.
- [94] NRA submitted that various witnesses gave evidence concerning a meeting called by Commerce North West and at that meeting there was support for the Application. The public meeting had members of the public and members of Commerce North West present but MGA witnesses state that members of the public were not permitted to vote.
- [95] Ms MacRae is a member of Commerce North West and was a member of that organization who gave evidence to the Commission in opposition to the Application.
- [96] Her evidence was that the '*first meeting*' alluded to by NRA was a survey which had been sent from Commerce North West to which she responded. There was no further information given around this discrete point to the Commission. She then went to a public meeting and she had believed initially that the public would be given a vote. However, the vote was available only to members of Commerce North West. She advised that there were many people at the meeting who were not eligible to vote.
- [97] NRA submitted that 58% of those who voted at the meeting had voted in favour of the Application. Ms MacRae's view was that the majority of those at the meeting were opposed to the Application.
- [98] The only conclusion which can be drawn from the meeting held at Commerce North West was that, notwithstanding that the meeting was called a public meeting, only members could vote and that vote (58%) was in favour of the Application. In forming that view, I have relied upon the evidence of Ms MacRae, Mr Rob Katter and Mr Rivas who attended the meeting.

c) *Petitions from the public addressed to the Mount Isa City Council.*

The questions posed on those Petitions were:

"We petition the MICC, which is the Mount Isa City Council, to resist the application of the National Retail Association to amend the trading hours in order to allow large retail stores to open on a Sunday."

and

*"To Mount Isa City Council
The petition of electors of the Mount Isa electorate draws to the attention of the Mount Isa City Council the desires of the people of Mount Isa to restrict Sunday trading to the current exempt shops. We petition the MICC to resist the application of the National Retail Association to amend the trading hours in order to allow large retail stores to open on a Sunday.*

The opening of Sunday trading hours to large retail stores will threaten our small convenience stores, pharmacies and newsagents. We want Sunday kept for rest, relaxation, family time and sport.

Principal Petitioner: Rob Katter, Member for Mount Isa".

[99] Exhibit 6, Attachment A shows that 1,870 (including the collation of separate Petitions and a Facebook Survey) signatures were attached to that Petition. While this Petition was given to the Council, one is unable to speculate as to why the Council did not seek to be heard in this Application as is its right pursuant to s 26(h) of the Act.

d) *Exhibit 16 includes an Affidavit from Dr Mortimer and his Survey entitled "Consumer Attitudes towards Proposed Extended Trading Hours at Mt Isa".*

[100] Dr Mortimer states that NRA requested that Queensland University of Technology conduct research into the views of shoppers and/or visitors to the Mount Isa Village Shopping Centre and Woolworths about the proposed new trading hours and to prepare a report detailing the findings of the research [Exhibit 16 - point 4].

[101] The Report is Attachment A to Exhibit 16.

[102] The data for this Report was collected *"to measure shopper's attitudes toward the proposed Sunday and limited public holiday trading in Mt Isa"*. Survey questionnaires were conducted between 15 August to 17 August at Kmart Plaza, Woolworths, Miles St and Mt Isa Plaza. Three hundred respondents participated in the Survey.

[103] The primary findings from the Survey were as follows:

- 96% of residents surveyed were local, permanent residents of Mount Isa.

- Residents of Mount Isa visit shopping centres and stores on average 2.4 times per week. This mirrors the average Australian shopping behaviour at 2.5 times per week (Roy Morgan Supermarket Monitor).
- Saturday was the busiest day for shopping with a majority of respondents indicating they visited stores on that day of the week.
- 71% of respondents support the proposal of extended trading hours at shopping centres in Mount Isa, 25% oppose and 4% are unsure.
- 87% of the respondents agree that residents of Mount Isa should be allowed the same choice as other regional towns and cities in supporting/opposing changes to trading hours. The remaining 13% expressed a disagreement.
- A larger percentage of males supported the proposal for Sunday and limited holiday trading. Of all the males surveyed, 81% were in support, 17% were opposed and 2% unsure. By contrast, 64% of female respondents support the proposal, while 3% oppose it and 5% are unsure.
- The highest percentage of support exists in fulltime workers with 85% of those respondents supporting the proposal. By contrast, the lowest percentage of support was found in the non-working respondents, where 62% opposed the Application.
- 78% of couples living with children at home expressed support for Sunday and limited public holiday trading, while 60% of couples without children also supported the Application.
- Of the respondents surveyed, virtually none (less than 1%) have travelled outside of Mt Isa on a Sunday to shop. This indicated that due to the remote and isolated location of this town, residents do not have the option to travel reasonable distances in order to access a range of retailers.
- 70% of the respondents often find it necessary to do some shopping in Mt Isa on a Sunday.
- Convenience is cited as the major reason for support (79%) followed by lifestyle (75%).
- The most cited reasons for supporting "*it would be convenient*" (82%). "*it may create more jobs*" (77%), "*it may reduce congestion during busy shopping periods*" (74%), and "*it would make it easier for working families with kids*"(74%).
- The most cited reasons for opposing the proposed changes are that "*it will disadvantage smaller businesses*" (41%), "*it is unnecessary*" (29%).

- 72% of shoppers who indicate they already undertook some shopping on Sunday, indicate they would continue to shop and support smaller retailers.
- 98% of respondents indicated they would not change their sporting or social commitment if changes to trading hours were implemented.

Consideration s 26(e) consumer interest

[104] Many consumers in Mount Isa have taken an interest in this Application and to that end, petitions have been presented to the local Council opposing the Application.

[105] Both local members of State and Federal Parliament have also independently given evidence opposing the Application.

[106] In my view, the Petitions signed by consumers opposing the Application carry significant weight.

[107] Three hundred consumers were surveyed by Dr Mortimer in an NRA sponsored Survey. Of those, there was a majority in favour of the Application (71%).

[108] By far the majority of consumers in Mount Isa were opposed to the Application.

[109] As well, it is necessary to take into account the views expressed by the two local members of Parliament who are opposed to the Application

[110] These two members of Parliament have had a long and involved history in Mount Isa. Members of Parliament, because of the nature of their jobs, interact with the local community on a regular basis. This may be through representation on behalf of their constituents, or through involvement in local activities and matters of concern to the community. That perspective is of significance in considering an Application of this type.

[111] Primarily, it is clear that the majority of consumers in Mount Isa (i.e. those who have responded to questions about the Application) are opposed to the Application.

Large Business Interest

[112] Those businesses in support of the Application primarily were those for whom the Application was brought.

[113] Other than for knowledge that a positive vote was taken at a meeting of Commerce North West by members of that body, there were no local businesses (other than the named non-exempt stores supporting the Application) which gave evidence in support of the Application.

[114] As previously stated, the local Council did not express a view on the Application.

[115] In considering the "large" businesses where evidence was given, that evidence was as follows:

Mr Bob Katter

[116] While the large retailers said extended trading hours would benefit consumers by increasing competition, Mr Bob Katter stated that *"Once the competition is knocked out what conceivable purpose would there be for Woolworths to stay open till 10 o'clock at night, as a number of our stores do now."*

[117] Mr Bob Katter said that access to public transport was a factor in considering the Application. *"From time to time we do have a bus service, but it is so small and so particularized that I don't think it's unreasonable to say that, effectively, the bigger picture is that we cannot access community transportation as you would in Townsville or Cairns or Brisbane or Gold Coast."*

[118] Not all owners/operators of retail outlets in Mt Isa had the opportunity to express their view as *"The Chamber of Commerce don't have a number of the small businesses as members"*.

[119] Mr Bob Katter said *"The people working in the mines, the bulk of them are shiftworkers. Shifts finish at midnight. You know - I mean, does anyone seriously believe Woolworths and Coles will be open at midnight."*

[120] Products for sale in the non-exempt stores were not locally sourced and Mr Bob Katter said, *"The vast bulk of North Queensland produce - for instance, I don't understand - Woolworths and Coles don't buy it here. So we've got to send it down to the markets in Brisbane and Woolworths and Coles buy it from the markets in Brisbane. There are some exceptions to this rule. But I think it's a pretty fair call."*

Mr Hammersla (Kmart)

[121] Mr Hammersla's evidence was that Kmart operated one store in Mount Isa.

[122] Data was produced showing the average distribution of trade across seven days a week for its Sunday trading generally. Those statistics showed that the span of Percentage of Weekly Sales on Average was 9% for Monday, 9% for Tuesday, 12% for Wednesday, 23% for Thursday, 13% for Friday, 20% for Saturday and 14% for Sunday [Exhibit 15].

[123] Customers of the Mount Isa Kmart travelled significant distances to shop at Kmart because there was no comparable retailer in other local shopping areas [Exhibit 15].

[124] Mr Hammersla said that Kmart was significantly disadvantaged by not being able to trade on Sundays because other major exempt retailers, who sell similar goods, could trade.

[125] In Mount Isa, Kmart employs 110 people including 65% of those being youths under the age of 25. If extended trade was granted, then there would be approximately 80 additional hours available to employees.

[126] Work on a Sunday and public holidays would be voluntary for employees if the Application was granted.

Mr Wallace's evidence

[127]Mr Wallace (Woolworths) gave the following evidence.

[128]By way of background, Woolworths has been operating in Australia since 1924. There are more than 3000 large and small suppliers with a focus on supplying local products. All fresh meat is sourced in Australia and 95% of its fresh fruit and vegetables are grown and farmed in Australian. Woolworths also employs approximately 111,300 employees across the country and of those, 23,000 are employed in Queensland.

[129]Reference was made to the Mount Isa Tourism Strategy 2007-2017 where it was estimated that Mount Isa's tourism economic contribution to the GNP amounted to \$54 million and 1023 jobs [Mount Isa Tourism Strategy - January 2007].

[130]Mr Wallace believed that the apparent growth experienced in Mount Isa would encourage tourists and others to stay longer in Mount Isa and that "*expenditure by tourists and others on Sundays is lost, and their perception of Mount Isa may be negative, if they want to, but cannot, access non-exempt shops on Sundays*" [Exhibit 25 - point 10].

[131]Mr Wallace believed that a successful Application would ensure that:

- There would be reduced congestion at registers by effecting some redistribution of demand from current trading days to Sundays. There would also be a more efficient utilization of trolleys and a generally improved service environment would be achieved.
- There would be better efficiencies of energy usage resulting from the extension of trade as refrigeration and air conditioning systems currently must continue to run when the store is closed. This would not only provide a better economy of scale, but it would also allow for a more appropriate use of energy resources.
- Trade on Sundays would also smooth out peaks in scheduled deliveries and store replenishment would result from the more even spread of trade across the week. This would provide a more efficient work environment for staff and a better shopping environment for customers.

[132]Mr Wallace made reference to the Woolworths store which had commenced Sunday trade in November 2012 at Woodford where the Average Percentage of Weekly Sales was 13.94% [Exhibit 25 - point 15].

[133]Other comparisons concerning Sunday trade were drawn with Woolworths stores in Biloela, Innisfail, greater Brisbane stores and stores in other states of Australia.

[134]Primarily, the evidence was that Sunday trade was popular with local residents in many regional areas of Australia.

[135]Mr Wallace said that the introduction of seven day trading on a Sunday in Mount Isa would not diminish the choice consumers currently have with regard to other retailers. In relation to the township of Emerald, Mr Wallace said that a Supa IGA opened after

the granting of seven day trade in that town for non-exempt stores, and no other local stores closed their doors after seven day trade was granted.

[136]Mr Wallace made comment upon the Productivity Commission Inquiry Report into the Economic Structure and Performance of the Australian Retail Industry (4 November 2011) and in particular to Chapter 10 - Retail Trading Hours Regulation.

[137]In a summary of that Chapter, Mr Wallace said that the restrictions placed on trading hours gave an opportunity to smaller traders to trade without competition from larger retailers and reduced the need for retail employees to work outside "traditional" working hours.

[138]That approach was not suitable for consumers because the restrictions caused inconvenience and congestion costs. For retailers, there are efficiency costs and administration costs in complying with state trading regimes. The largest costs are for retailers who are prevented from trading to the extent they would like. They forego trade to other retailers and also to other avenues of discretionary consumer spending.

[139]The most restrictive States in Australia with regard to extended trade are Western Australia, South Australia and Queensland. These restrictions created '*boundary*' anomalies that fundamentally distort retail markets.

[140]There are sound reasons why trading hours in Australia should be fully deregulated. These include:

- increased consumer welfare benefits associated with greater convenience and produce choice;
- reduced discrimination and greater competition between retailers;
- potentially lower retail prices and higher retail employment.

[141]As a consequence of consumers being able to shop wherever they like through online suppliers, *"there is now an even stronger imperative for retailers to not be inhibited in their ability to respond to changing consumer tastes and preferences"* [Exhibit 25].

Evidence of Mr Stout (Coles)

[142]Mr Stout stated that Coles' total community investment for 2013 was \$38.5 million. This represented the value of its community investment made directly and indirectly through financial and product donations, customer and office fundraising, in-kind support, team member volunteering and workplace giving.

[143]In the Mount Isa area, Coles had supported various community projects to the value of approximately \$29,000 over the last eight months.

[144]Mr Bob Katter stated that money made by small local retailers stays in the community. He gave the following example *"Eddie Lee had the supermarket in Cloncurry. Eddie used to give us, in terms of today's money, about \$85 000 a year for Rugby League."*

[145]Coles believed through its business strategies, they were driving down prices and keeping them down. In many instances, Coles brand prices have been offered at 30%

less than previously. Similarly to Woolworths, Coles sources around 96% of its fresh fruit and vegetables from Australian growers and 100% of its milk.

[146] Mr Stout referred to the Federal Government's *Green Paper On Developing Northern Australia* where Mount Isa is expected to experience the biggest rate of population growth for northern Australian regional cities within the next 12 years [Exhibit 14 - Attachment A]. From that Paper, Mr Stout said that Mount Isa should reach a population growth of 2.5% within the next twelve years.

[147] Statistical data was tendered which showed that Sunday trade for Coles proved to be a popular day for customers of Coles in regional towns.

[148] Mr Stout said that "*a common misconception in relation to Sunday trading is that it provides a redistribution of sales across the week but does not result in incremental sales growth*". In his view, that statement was incorrect. He claimed an incremental growth to the business could occur by virtue of:

- ease of congestion;
- opportunity to shop in a more leisurely fashion;
- opportunity to shop at times convenient to customers;
- impulse buying; and
- increased spend of discretionary dollar.

[149] Mr Stout also stated that it was more efficient for supermarkets to trade on all days of the week because refrigeration must be maintained even when the store was closed. He also said that in seven day supermarkets, there was no requirement to run perishable stock down or deplete stock on Saturday afternoons before closure. Also, inefficiencies also arise from the '*start up*' of six day trading supermarkets on Mondays following the closed day on Sundays [Exhibit 14 - point 32].

Small and medium business

Evidence of Ms Cunningham

[150] Ms Cunningham is the owner/partner of the Turanga Butchery. Ms Cunningham and her husband have owned this store for over 13 years.

[151] Ms Cunningham's business is situated in a shopping centre with seven other small locally owned and operated business.

[152] Apart from herself and her husband, the business employs two full time butchers, one part-time butcher and three apprentices.

[153] The centre in which they are situated has a busy trading day on Sundays. Their customers are able to park easily on a Sunday because they are not competing with Coles and Woolworths on that day.

[154] The Cunningham's business keenly supports local charities, sporting clubs and many fundraising events.

- [155] Ms Cunningham queried Coles and Woolworths' claims that they are sourcing produce from local producers. She claims that they import '*fresh bread*' from Ireland, oranges and other citrus fruits from the USA and bananas from the islands.
- [156] Ms Cunningham said that the three major non-exempt stores now open from 8.00 am to 9.00 pm Monday to Friday and 8.00 am to 5.00 pm on Saturdays and she queried how many more hours they wanted.
- [157] Ms Cunningham made reference to 'fly in - fly out' workers saying that the only shopping those people did was to buy cigarettes and cold drinks as their accommodation and food was catered for by their employers.
- [158] A petition was also conducted in Ms Cunningham's store to which she collected some 55 signatures opposed to the Application.
- [159] The Survey conducted by Dr Mortimer was conducted around the Kmart, Mount Isa Plaza and Woolworths area. She stated '*The respondents will of course disproportionately support Woolworths and Kmart. Come stand out the front of my store and ask my customers what they want*' [Exhibit 17 - point 17].

Evidence of Mr Burrows

- [160] Mr Bob Burrows, store owner/operator of the Colonial Convenience Market says that his opening hours are from 5.30 am to 9.00 pm on weekdays. On weekends, the hours are from 7.00 am to 9.00 pm. His store also opens on public holidays, including Christmas Day.
- [161] Mr Burrows said that Coles and Woolworths opened approximately 90% of the allowable trading hours in Mount Isa.
- [162] His store is larger than other convenience stores, and customers tend to do 'basket shops' rather than full weekly shops.
- [163] The store employs 15 employees who work either full time, part time or as a casual. Eight staff are employed on a Sunday.
- [164] Mr Burrows said he relied heavily on Sunday trade without the competition from non-exempt stores and business on a Sunday to keep his business viable.
- [165] Mr Burrows had noticed a decline in business as a consequence of a slowdown the mining industry around Mt Isa.
- [166] Mr Burrows questioned the NRA's evidence that Mr Isa's population and tourism was growing. He says he does not accept this. He stated that "*over the past 24 months there have been several businesses closing down due to lack of sales. Some of these businesses include Supa IGA, Little Chefs Kitchen, Mitre 10, Office Max, Crazy Clarks, Chicken Alley, Aminos Giftware, Gloria Jeans Coffee, Mathers Shoe Store, Isa Bubs Store, Domino's Pizza, Mt Isa Pet Store, Under One Cloud, Computer Store, Spoilt Rotten Hair Dressers, as well as several other smaller stores*" [Exhibit 19 - point 16].

[167] In his store, Mr Burrows' customers completed 500 forms in opposition to the Application.

[168] Mr Burrows was sceptical of the Survey conducted by Dr Mortimer where it is reported that, notwithstanding that respondents were in favour of the Application, they would continue to shop at local retailers.

[169] Mr Burrows attended the public meeting at Commerce North West and his view was that the majority of people who attended were opposed to the Application.

Evidence of Mr Rivas

[170] Mr Rivas is the owner/operator of two Foodworks stores in Mount Isa. The stores are full supermarkets and occupy 1,000 square metres and sell a comprehensive range of items including fresh produce, meat, dairy and bakery items. Mr Rivas has resided in Mount Isa for 45 years.

[171] Mr Rivas estimated that 25% of his weekly sales come from Sunday trading and he predicted that his stores could not survive if the non-exempt stores began trading on Sundays.

[172] During the mining boom, some three years ago, Mr Rivas' stores would compete with the now closed Mount Isa IGA which also traded on a Sunday. He said the competition was challenging but he was able to maintain his business as both stores were more profitable during the height of the mining boom.

[173] Mr Rivas predicted that compared to his Sunday losses when IGA was trading, he would predict that he would lose around 50% of this trade on Sundays and the impact would be felt on items such as cigarettes, phone cards, milk and bread.

[174] If it were the case that there was a growth in population and tourism, then the independent stores could easily meet that demand without non-exempt stores opening on a Sunday.

[175] Mr Rivas referred to the lack of public transport in Mount Isa and how the closure of some of the local convenience stores would create difficulties for his older less mobile customers.

Evidence of Ms MacRae

[176] Ms MacRae is the owner/operator of MacRae's Newsagency which she has operated for three years.

[177] For the considerable amount of time and money invested in this store, Ms MacRae won the Queensland Newsagency of the Year for the introduction of new technology in her store.

[178] Seven staff, including 5 casuals, are employed by Ms MacRae.

[179] The newsagency is open from 5.30 am to 6.40 pm Monday to Friday, and 6.30 am to 6.30 pm on Saturday and 6.30 am to 2.30 pm on Sunday.

[180] Sunday is the busiest day in her shops. If Coles, Woolworths and Kmart were to open on Sunday, she would lose a considerable part of her trade for the week.

[181] Like other exempt store owners, Ms MacRae questions the '*growth*' that is purportedly occurring in Mount Isa. She says that there has been a large reduction in Mount Isa's population in the last 6 months and there has been significant less demand for rental properties. She believed, from her discussions with many customers, many people have lost their jobs and appear to be trying to sell their houses.

[182] Ms MacRae says that as a result of the slowdown in mining over the last two years, there has been a 35% reduction in her daily customer numbers.

[183] Ms MacRae also attended the Commerce North West public meeting and she said that not one local resident spoke in favour of the Application.

[184] Ms MacRae made reference to the number of services she conducts for the local community through her business - e.g. sponsorship for various events.

[185] Ms MacRae's store is opposite an aged care facility and if her business closed, these people would have to use taxis to travel to the centre of Mount Isa for their shopping needs. She states "*Mount Isa has no public transport and evidently the people who would suffer the most if this application is successful are our less privileged community members*" [Exhibit 17 - point 18].

Consideration of s 26(e) - business interest (whether small, medium or large)

[186] The submissions put by all witnesses around this criterion have largely followed a similar pattern to what is heard in most trading hour's Applications.

[187] While those similarities exist, the added components to this Application include factors which have been previously mentioned such as a slowdown in the mining boom, the location of the various exempt stores, and the lack of public transport amongst other things.

[188] The competing interests of both non-exempt stores and exempt stores must be weighed and considered taking into account all of the evidence submitted.

[189] For the non-exempt stores, there are economies of scale in operating over a seven day cycle. There is the added component that extra working hours would be offered to existing employees. There is also the prospect that prices for various goods would be more economical for consumers. Added factors such as convenience for consumers, and a greater variety of goods being made available on a Sunday are relevant.

[190] The isolation of Mount Isa is a point addressed by the non-exempt stores. The view expressed was that consumers were restricted in travelling to other non-exempt stores on a Sunday if they required certain goods.

[191] Reference was also made to the other larger exempt stores trading in Mount Isa on a Sunday and in the case of Kmart, stores offering a similar type of product.

[192] Against this, the exempt stores claim that the granting of Sunday trade to the non-exempt stores would place their stores in jeopardy of survival.

[193] In considering this point, I have taken into account the somewhat unusual circumstances prevailing in Mount Isa where there is no public transport. It is a compelling argument when one considers the placement of the various stores (exempt and non-exempt) in Mount Isa.

[194] Were a local store to be adversely affected by granting the Application, then other prevailing circumstances in Mount Isa (which were identified as the slowing down of the mining industry and the closure of many small traders throughout the town, amongst other things) would have a significantly compounding effect upon those businesses and the community.

[195] In my view, considering all of the evidence around this criterion, the likely impact upon exempt stores in Mount Isa of a successful Application would be significant. There would be a follow-on disadvantageous effect to the community who, in this town, support their local stores.

[196] For the non-exempt stores, there is the loss of an opportunity to trade over seven days of the week. Witnesses opposed to the Application question why these large non-exempt stores require any more trading hours when the hours they utilize are extensive as it is.

[197] Considering all of this, it would disadvantage the town and its community if the smaller exempt stores, which service the broader community and upon which reliance is placed because of extenuating circumstances existing in Mount Isa, were placed in a parlous position as a result of a successful Application.

s 26 (f) The alleviation of traffic congestion

[198] This is not a major factor in this Application save for the views expressed by non-exempt stores that the opening of stores on a Sunday would help alleviate 'congestion' at checkouts during the week.

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

[199] There is the certainty of extra working hours for existing employees if the non-exempt stores were permitted to open on a Sunday [Exhibit 14, point 30]. Evidence was given by Mr Wallace, Mr Stout and Mr Hammersla where they estimated that Sunday and holiday trade would increase employment hours considerably between their three stores.

[200] This must be weighed against the very likely prospect of employees being put off work by the exempt stores.

s 26 (h) The view of any local Government in whose area the order is likely to have an impact.

[201] The Mount Isa City Council did not express a view with regard to this Application. It is not mandatory for the Council to participate, but it would be mandatory for the

Commission to consider the views of the local Council had those views been put to the Commission. What might have been of assistance is the Council's comments upon the current state of Mt Isa, traversing areas such as population growth, the state of the local economy etc.

Conclusion

[202] When considering all of the criteria in s 26 of the Act, it is clear from the evidence that the NRA has been unable to provide sufficient evidence (either direct or documentary) to support its Application.

[203] The Commission "*must have regard to*" all the criteria under s 26 of the Act. It is often the case, that some of the criteria are not as relevant to the Application as others - in this case s 26 (f) and (h).

[204] With regard to the "tourism" criteria in s 26 of the Act, while I have taken into account the statistical data presented by NRA witnesses, it is telling that the Mount Isa Tourism Strategy does not mention the need for extended trading hours in Mt Isa as part of that strategy. It could be said that if tourists needed extended trading on a Sunday it may be a matter of which the Mt Isa Council was aware.

[205] There has been significant credible evidence adduced by those opposed to the Application. There is strong consumer interest in retaining the *status quo* in Mount Isa and that evidence has not only come from witnesses who operate exempt stores but also from both local Members of Parliament, and consumers and their combined evidence has been compelling in this matter.

[206] The major part of business interest in this Application has come from those non-exempt businesses which seek to extend trade in Mt Isa on a Sunday. Apart from support from Commerce North West and support from the Survey conducted by Dr Mortimer, there were no other local businesses which gave evidence or any community representatives who supported the Application.

[207] In terms of the summation of the Productivity Commission Inquiry Report and particularly Chapter 10 of that Report where reference is made, amongst other things, to '*boundary*' anomalies which distort retail markets, the matters raised in that Report considering the question of deregulation of the retail industry generally in Australia are matters to be considered by the various Legislatures in Australia.

[208] In terms of the other matters raised specifically by NRA with regard to that Report, those matters have been duly considered.

[209] Having taken into account the evidence produced and the relevant statistical data presented in this matter, I have determined to dismiss the Application.

[210] Order accordingly