

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Trading (Allowable Hours) Act 1990 - s 5(2) - declaration for special event

National Retail Association, Union of Employers (TH/2017/26)

TRADING HOURS - EXEMPT SHOPS - COMMONWEALTH GAMES

DEPUTY PRESIDENT SWAN

13 December 2017

Declaration

- [1] Pursuant to s 5(1)(c) and s 5(2)(a) and (b) of the *Trading (Allowable Hours) Act 1990*, National Retail Association, Union of Employers (NRA), has sought a Declaration relating to the Gold Coast 2018 Commonwealth Games.

LEGISLATION

- [2] The relevant legislation to this Application is as follows:

"5 Exempt shops

- (1) An *exempt shop* is -

(c) a shop operating in a stated area for an event -

- (i) that is a unique or infrequent event of local, State or national significance; and
- (ii) declared by the industrial commission to be a special event for this paragraph.

- (2) A declaration for subsection (1)(c) -

(a) may be made by the industrial commission on an application by an organisation, chief executive, local government or any other person; and

(b) must state the following -

- (i) details of the event the subject of the declaration;
- (ii) the period for which the declaration applies;
- (iii) the area to which the declaration applies; and

(c) must be published on the QIRC website.

- (3) In deciding whether to declare an event to be a special event for subsection (1)(c), the industrial commission -

- (a) must consider -
 - (i) the cultural, religious or sporting significance of the event; and
 - (ii) the significance of the event to the economy and the tourism industry; and
- (b) may consider a submission made by a local government for an area in which the declaration is likely to have an impact."

(5)(3)(a)(i) Cultural, Religious or Sporting Significance of the Event

- [3] From information provided by the Gold Coast 2018 Commonwealth Games Corporation, the Applicant advised that the event would be the largest sporting event to be held in Australia this decade. As well, it would be the largest sporting event ever held on the Gold Coast.
- [4] The Gold Coast 2018 Commonwealth Games website states that:

"The city will shine on the world sporting stage and the promotional exposure for business, trade, investment, tourism and events will herald a new era in the region's growth and maturity."
- [5] The Gold Coast 2018 Commonwealth Games (the Games) would feature more than 6,600 athletes and team officials from 70 Commonwealth nations and territories, supported by close to 15,000 volunteers. It will also be broadcast to a global audience of 1.5 billion.
- [6] A social and cultural program is in place (Festival 2018). The website also states that this Festival will feature:

"...a mix of highly acclaimed theatrical productions, an eclectic array of world-class musicians, breathtaking dance and physical theatre pieces, striking visual art and traditional Indigenous arts practice."

(5)(3)(a)(ii) Significance of the Event to the Economy and the Tourism Industry

- [7] The Applicant referred to a study undertaken by Griffith University with regard to the likely economic impact of the Games. The report refers to a range of economic benefits that demonstrate the significance of the event to the economy and the tourism industry. For example:

Economy
- [8] An estimation of the Gross State Product for the period from 2012-2022 showed an increase of around \$2 billion. The construction for venues undertaken for this event together with other infrastructure equates to approximately more than \$1.1 billion in the pre-Games years of 2012-2017.
- [9] This construction has ensured the generation of more than 16,000 full-time equivalent jobs before, during and after the Games. Approximately 15,000 employees will be

engaged in the Games year and more than 450 full-time equivalent jobs will occur on average for the four years following the Games.

Trade

[10] The Applicant states that:

"In the four years following the Games (2018-2022) and the related promotion of major Queensland and Australian industries and products, such as food and agribusiness, professional services, education, health and environment, the induced exports are estimated to amount to \$81 million per year."

Investment

[11] It is anticipated that the Games, through showcasing investment and opportunities for foreign business, would result in an increase in the flow of foreign direct investment of approximately \$41 million per year over the post-Games period (2018-22).

Tourism

[12] It is anticipated that the Games will attract approximately 672,000 visitors including:

- 356,000 day trippers
- 265,000 domestic overnight visitors
- 50,000 overseas visitors (including more than 6,000 athletes and officials)

[13] This degree of tourism is estimated to generate more than \$320 million including:

- \$225 million from the domestic overnight visitors
- \$63 million from overseas visitors
- \$35 million from day trippers

[14] A further \$26.6 million is expected from the spill-over effect of the inbound visitors to the Games.

(5)(3)(b) The Commission "may consider a submission made by a local government for an area in which the declaration is likely to have an impact"

[15] This is not a mandatory provision. However, in this case, both relevant Local Government Councils have responded to this Application by expressing their full support for the Application made by NRA. [The Commission was in receipt of Correspondence from Office of the Mayor, City of Gold Coast dated 22 November 2017 and Office of the Lord Mayor of the Brisbane City Council, dated 4 December 2017.]

(5)(2)(b)(i) Period for which this Declaration Applies

[16] The period for which this Declaration applies is from 3 April 2018 to 17 April 2018.

(5)(2)(b)(ii) Area to which this Declaration Applies

[17] The area to which this Declaration applies is as follows:

- Brisbane City Heart (as defined by post code 4000); and
- City of the Gold Coast Local Government Area

[18] In each location, appropriate maps defining the nominated areas have been provided to the Commission.

OTHER CONSIDERATIONS

[19] It is noted that the legislative requirements pursuant to s 5 "Exempt Shops", of the *Trading (Allowable Hours) Act 1990* (the Act) differ considerably from the requirements of s 21 of that Act. Section 21 considers the "Trading Hours orders on non-exempt shops".

[20] An "exempt shop" for the purposes of the Act includes at Schedule 1AA (re: s 5) a description of the type of shop which might naturally fit within this category. For the purposes of this Application, s 5 "Exempt Shops" identifies the 2018 Commonwealth Games as an example of the type of event to be considered under this category.

[21] As opposed to s 21 of the Act (*viz.*, Trading hours orders on non-exempt shops), s 5 does not contain any mention of a requirement that an application under this section be published on the Queensland Industrial Relations Commission website; that it be served on such individual organisations, other organisations and local governments as the Industrial Commission directs; nor is it advertised in newspapers and periodicals as the Industrial Commission directs to ensure:

"... that all industrial organisations, other organisations and local governments that are, or are likely to be, concerned in the making of the order are notified of the proceedings and the time and place thereof."

[22] There is no automatic right for any other person or organisation to be heard under s 5 of the Act. There is, however, a right of a person or organisation to seek to be heard in an application of this type pursuant to s 539 of the *Industrial Relations Act 2016*.

[23] Section 539 of the *Industrial Relations Act 2016* states *inter alia* as follows:

"Powers incidental to exercise of jurisdiction

Except as otherwise provided for by this Act or the rules, the court, commission or registrar may -

- (a) at or before a hearing, take steps to find out whether all persons who are to be bound by a decision to be made in proceedings have been called to attend or given notice of, the proceedings; and
- (b) direct, for proceedings -
 - (i) who the parties to the proceedings are; and
 - (ii) by whom the parties may be represented; and

- (iii) persons to be called to attend the proceedings, if the persons have not been called and it appears the persons should attend the proceedings; and
- (iv) parties to be joined or struck out; and
- (v) who may be heard and on what conditions; and
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- (f) give directions under a decision that the court, commission or registrar considers necessary for, or conducive and appropriate to, the effective implementation of the decision..."

- [24] At the commencement of the hearing, the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees (the SDA), sought the right to be heard as did a representative for the State of Queensland. Both persons sought leave and were granted the right to be heard.
- [25] The concern expressed by the SDA related to the impact of this type of Decision upon employees who are employed by non-exempt stores in Queensland.
- [26] There is a clear acceptance that these employees required to work extended hours outside of the normal range of hours in their Certified Agreements and Awards, do so on a voluntary basis.
- [27] It was stated by the Commission that those rights and conditions of employment by employees engaged by non-exempt stores, would be retained during the period of the extended hours of work in the nominated areas from 3 April 2018 to 17 April 2018.
- [28] To that effect, the following conditions apply to those non-exempt employees working during the extended trading hours during the nominated period for the Games. These are:
- An employer must not require an employee to work during extended hours unless the employee has freely elected to work during extended hours.
 - Maximum penalty - for a first offence - 16 penalty units; or
 - Maximum penalty - for a second or later offence - 20 penalty units.
 - However, this does not apply in relation to an employee if an industrial instrument provides arrangements under which the employee may refuse or agree to work during extended hours.
 - An employee has not freely elected to work during extended hours -
 - if the employee elects to work during extended hours because the employee has been coerced, harassed, threatened or intimidated by or for the employer; or

- only because the employee is rostered, or required under an industrial instrument, to work during those hours.
- *elect* means agree in writing for a stated or indefinite period.
- *employer* means an employer of an employee in a non-exempt shop
- *extended hours* means the permitted trading hours under this Act for a non-exempt shop on any day (other than a closed day), but only to the extent the hours are greater than the shop's permitted trading hours immediately before the commencement.
- *industrial instrument* means any of the following within the meaning of the *Industrial relations Act 2016* -
 - a modern award, bargaining award or certified agreement;
 - a federal industrial instrument.

CONCLUSION

- [29] The 2018 Commonwealth Games has already been referenced in the Act as an example of the type of event which would meet the requirements of "Exempt shops" under s 5 of the Act.
- [30] Notwithstanding that, the requirements pursuant to s 5(3) of the Act must be satisfied. The submissions made concerning these requirements have been detailed in this Decision.
- [31] It is clear that all of the required categories in ss 5(3)(a)(i), (ii) and 5(3)(b) have definitively been satisfied by the Applicant.
- [32] The Commission is satisfied that the requirements for a Declaration have been met.

DECLARATION

- [33] The Application for Declaration sought by NRA is Granted and is as follows:
1. **Pursuant to s 5 (1)(c)(ii) of the *Trading (Allowable Hours) Act 1990*, the Commission Declares that the "Gold Coast 2018 Commonwealth Games" is a "Special Event" for the purposes of s 5 of the Act, as it is a unique event of local, State, national and international significance.**
 2. **This Declaration applies for the nominated period of 3 April 2018 to 17 April 2018.**
 3. **The area to which this Declaration applies is the Brisbane City Heart (as defined by post code 4000) and the City of the Gold Coast, Local Government Area.**

[34] This Declaration will be published on the Queensland Industrial Relations Commission website, pursuant to s 5(2)(c) of the Act.

[35] Order accordingly.

Dated: 13 December 2017.

D.A. SWAN
Deputy President.

Operative Date: 13 December 2017
Released: 13 December 2017