

# QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *National Retail Association Limited, Union of Employers* [2019] QIRC 026

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

CASE NO: TH/2019/1

PROCEEDING: Application

DELIVERED ON: 1 February 2019

HEARING DATE: 1 February 2019

MEMBER: Knight C

HEARD AT: Brisbane

ORDER: **Pursuant to s 5(1)(c) of the *Trading (Allowable Hours) Act 1990* I declare that:**

- 1. The Chinchilla Melon Festival ("Melonfest") is for the purposes of s 5(1)(c)(ii) a special event;**
- 2. The declaration shall apply for a period commencing on 14 February 2019 and shall continue up to and including 17 February 2019; and**
- 3. The declaration applies to an area from a point on the corner of Helena Street and Railway Street, travelling south-east along Railway Street until its intersection with Colamba Street, travelling southwest along Colamba Street to the intersection of Hypatia Street, then travelling northwest along Hypatia Street to its intersection with**

**Helena Street, then in a north-easterly direction to the starting point (the intersection with Railway Street).**

CATCHWORDS: INDUSTRIAL LAW – TRADING HOURS – APPLICATION FOR DECLARATION OF SPECIAL EVENT – application to classify all non-exempt shops as exempt shops in the Chinchilla CBD for a specified period during a special event, namely, the Chinchilla Melon Festival ("Melonfest").

LEGISLATION: *Trading (Allowable Hours) Act 1990* (Qld)  
s 5, 36B

*Trading (Allowable Hours) Amendment Act 2017* (Qld)  
s 5

CASES: *Application filed by National Retail Association, Union of Employers* (TH/2017/26) (13 December 2017) (unpublished)

APPEARANCES: Mr. M. Cole, of the applicant

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

### **Decision (ex tempore)**

- [1] The National Retail Association Limited, Union of Employers ("the applicant") is seeking an order under the *Trading (Allowable Hours) Act 1990* (Qld) ("the Act") to classify all non-exempt shops as exempt shops in the Chinchilla CBD for a specified period during a special event, namely, the Chinchilla Melon Fest ("Melonfest").
- [2] Held biennially in February, Melonfest is said to be a celebration of the fruit's significance to the region's economy, involving three days of activities to celebrate the industry and the community supporting it. It is submitted to have become a major cultural event, creating significant tourism and economic benefits for Chinchilla and the surrounding region.

- [3] Consequent upon the *Trading (Allowable Hours) Amendment Act 2017*, an "exempt shop" includes shops in an area surrounding a special event as declared by the Commission.
- [4] This application is made under s 5(2)(a) of the Act and may be made by an organisation, chief executive, local government or any other person.
- [5] Put simply, the applicant seeks a declaration that Melonfest is a special event pursuant to s 5(1)(c) of the Act. The area to be covered by the declaration is the business district of Chinchilla, as demarcated in Exhibit A to the application and mapped in Appendix B. It is for a period beginning on 14 February 2019 and continuing up to and including 17 February 2019.
- [6] Exhibit A to the application relevantly provides:
- from a point on the corner of Helena Street and Railway Street, travelling south-east along Railway Street until its intersection with Colamba Street, travelling southwest along Colamba Street to the intersection of Hypatia Street, then travelling northwest along Hypatia Street to its intersection with Helena Street, then in a north-easterly direction to the starting point (the intersection with Railway Street).
- [7] The application was made to this Commission on 11 January 2019. A directions order was issued, which required *inter alia* that the application be served on the Western Downs Regional Council and that those affected by the application would need to make a formal application seeking leave to be heard by 22 January 2019. The directions order also stated that the application would be listed for hearing today at 10:00 AM on 1 February 2019.
- [8] As required under the Act, the application and directions order were published on the Commission's website.
- [9] On 18 January 2019, an amended directions order was issued, which ensured that the Industrial Registry served the Application for Declaration and the amended directions order on the following parties:
- a. Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees ("SDA");
  - b. The Australian Workers' Union of Employees, Queensland;
  - c. Local Government Association of Queensland Ltd;
  - d. Executive Director, Industrial Relations, Office of Industrial Relations, Department of Education; and
  - e. Chief Industrial Inspector, Office of Industrial Relations, Department of Education.

- [10] On 22 January 2019, Mr Darryn Gaffy of the SDA wrote to the Commission to seek leave to be heard in this matter, filing an application and affidavit on behalf of the SDA to this end.
- [11] Later that day, the Commission received correspondence from Mr Scott Thompson, Western Downs Regional Council, which stated that the Council will neither file any submissions nor attend the hearing.
- [12] On 23 January 2019, the Deputy Industrial Registrar approved the SDA's application for leave to appear, issuing an order to that effect.
- [13] On 29 January 2019, the SDA filed an outline of submissions in respect of the substantive application for a trading hours declaration.

### **Should the Commission grant the declaration sought?**

- [14] The applicant submits that Melonfest fits the description of a special event under the Act. Relevantly, s 5 of the Act provides:

#### **5 Exempt shops**

- (1) An *exempt shop* is—
- (a) a shop of a description mentioned in schedule 1AA used predominantly for selling goods by retail, or for supplying services, a reasonable person would expect to be sold or supplied in that shop;
  - (b) an independent retail shop; or
  - (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) the 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.

[15] The Act provides for non-exempt shops operating in a stated area for an event to be considered exempt for the period of that event if the Commission declares the event to be a "special event".

[16] In deciding whether an event is a "special event", the Commission must consider the cultural, religious or sporting significance of the event, and the significance of the event to the economy and the tourism industry. Further, the Commission may consider a submission made by a local government for an area in which the declaration is likely to have an impact.

*The cultural, religious or sporting significance of the event.*

[17] Mr David Stout of the applicant submitted in his affidavit,<sup>1</sup> which accompanied the application, that Melonfest is billed as the largest melon festival in the world. Mr Stout submitted that in the past thirty years, the event has evolved into a major tourism and economic drawcard for Chinchilla and surrounding areas. In 2019, the festival is expected to attract close to 20,000 visitors – around three times the town's population.<sup>2</sup>

[18] By way of background, Chinchilla is described as Australia's 'melon capital' as it produces around one quarter of the country's melons each year. Melonfest is said to be a celebration of the fruit's significance to the region's economy.

[19] Over the three days, a significant number of free events and activities take place, supported by a 70-strong committee and around 400 community volunteers. These include sporting competitions, arts displays, movies, a rodeo, markets, children's activities and live entertainment, among other things.

*The significance of the event to the economy and the tourism industry*

[20] Mr Stout told the Commission admission to Melonfest is free, which maximises the ability of both locals and visitors to participate. According to organisers, the most recent

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<sup>1</sup> Exhibit 1.

<sup>2</sup> Exhibit 2.

iteration of Melonfest in 2017 attracted some 14,000 people to the town, including overseas visitors. All commercial accommodation was booked out, moreover, as well as more than 700 campsites at the showgrounds and other locations.

[21] As touched upon before, the festival is expected to attract 20,000 visitors this year. In monetary terms, Mr Stout deposes that Melonfest is forecast to bring in up to \$7 million into the region's economy over the course of the weekend, including between \$3 million and \$3.5 million to the retail sector. One local hotel manager reported receiving around five weeks' takings in a single weekend.<sup>3</sup>

### **Submissions of the SDA**

[22] The SDA was granted leave to be heard on 23 January 2019 by the Deputy Industrial Registrar, who was satisfied that the SDA have an interest in the matter. However, in circumstances where s 5 does not, in fact, provide an avenue (like s 21) through which "any industrial organisation, another organisation or a local government that claims to be concerned in the making of the order" may apply for leave to be heard and appear, the Commission has previously relied on its ability to grant leave as an exercise of power incidental to its jurisdiction.<sup>4</sup>

[23] For completeness, I am satisfied that the SDA may be heard and appear, relying on the Commission's powers incidental to the exercise of its jurisdiction.

[24] The crux of the SDA's submissions was in relation to the importance of preserving the protections afforded to employees whose employment, by reason of the declaration, would temporarily be in 'exempt shops' rather than 'non exempt' shops as usual.

[25] There are already statutory protections for employees in this regard, which are set out at s 36B of the Act:

- (1) 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—

- (a) for a first offence—16 penalty units; or
- (b) for a second or later offence—20 penalty units.

- (2) However, subsection (1) 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.

- (3) For subsection (1), an employee has not freely elected to work during extended hours—

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<sup>3</sup> Exhibit 3.

<sup>4</sup> See, for example, *Application filed by National Retail Association, Union of Employers* (TH/2017/26) (13 December 2017) (unpublished); *Industrial Relations Act 2016* (Qld) s 539.

- (a) 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
  - (b) only because the employee is rostered, or required under an industrial instrument, to work during those hours.
- (4) In this section—

*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) a modern award, bargaining award or certified agreement;
- (b) a federal industrial instrument.

[26] During the proceedings, there was an unequivocal acceptance by the parties that employees affected by the Declaration, whose hours may extend outside the normal range as prescribed by their Certified Agreements and Awards, would do so on a voluntary basis.

[27] The statutory protections set out at s 36B of the Act will apply for employees engaged by non exempt shops during the nominated period.

[28] In those circumstances, the SDA indicated it was comfortable for the application to proceed.

### **Conclusion**

[29] I am satisfied that Melonfest is a unique event of at least local, if not State, significance.<sup>5</sup> In respect of whether the event is a "special event", I am persuaded by the submissions of the applicant that Melonfest is of cultural significance,<sup>6</sup> and that the event is significant to the Chinchilla economy and tourism industry.<sup>7</sup>

[30] The Commission did not receive any objections to the application and there were no submissions made by a local government for an area in which the declaration is likely to have an impact.

### **Orders**

[31] For the reasons advanced above I am satisfied that I should grant the application. Accordingly, I make the following declaration:

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<sup>5</sup> *Trading (Allowable Hours) Act 1990* s 5(1)(c)(i).

<sup>6</sup> *Ibid* s 5(3)(a)(i).

<sup>7</sup> *Ibid* s 5(3)(a)(ii).

- 1. The Chinchilla Melon Festival ("Melonfest") is for the purposes of s 5(1)(c)(ii) a special event;**
- 2. The declaration shall apply for a period commencing on 14 February 2019 and shall continue up to and including 17 February 2019; and**
- 3. The declaration applies to an area from a point on the corner of Helena Street and Railway Street, travelling south-east along Railway Street until its intersection with Colamba Street, travelling southwest along Colamba Street to the intersection of Hypatia Street, then travelling northwest along Hypatia Street to its intersection with Helena Street, then in a north-easterly direction to the starting point (the intersection with Railway Street).**