

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

**National Retail Association Limited, Union of Employers AND
Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees (TH/2011/12)**

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

DEPUTY PRESIDENT SWAN
COMMISSIONER FISHER
COMMISSIONER THOMPSON

17 November 2011

DECISION

Area of New Farm of Inner City of Brisbane

[1] This application is made by the National Retail Association Limited, Union of Employers (NRA) pursuant to the *Trading (Allowable Hours) Act 1990 (the Act)* for an amendment to the trading hours fixed by the Order, *Trading Hours Order - Non-Exempt Shops Trading by Retail - State*.

[2] The amendment sought is as follows:

"1. By deleting clause 3.2(6) and inserting the following in lieu thereof:

(6) Area of New Farm of Inner City of Brisbane

	<u>Opening Time</u>	<u>Closing Time</u>
Monday to Friday	7.00 a.m.	9.00 p.m.
Saturday	7.00 a.m.	9.00 p.m.
Sunday	7.00 a.m.	9.00 p.m.
Public Holidays (except 25 December, Good Friday, 25 April, and Labour Day)	7.00 a.m.	9.00 p.m.

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) 8a.m. and 9p.m. for Monday to Friday;
 - (b) 8a.m. and 5p.m. for Saturday.
- (2) The full bench may make any order it considers necessary or convenient to give effect to a decision made under subsection (1), including, for example, an order specifying -
 - (a) the earliest time when non-exempt shops may open on any day and the latest time when non-exempt shops must close on any day; or
 - (b) hours for trading wholesale different from the hours fixed for trading retail; or
 - (c) different trading hours by reference to -
 - (i) classes of non-exempt shops; or
 - (ii) localities, or parts of localities, where non-exempt shops are situated.

(3) In subsection (1A) -

public holiday means -

- (a) a public holiday under the *Holidays Act 1983*; or
- (b) a day that would have been a public holiday had there not been a substitution under the *Holidays Act 1983*, section 2(2) or (3) or 3."

[4] Section 26 of the Trading Act states:

"26 Matters relevant to s 21 order

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

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

Background to the Application

[5] New Farm is an inner-city suburb of Brisbane.

[6] While the suburb of New Farm has many small retail outlets providing the community with a range of goods including foodstuffs and general convenience goods, the suburb is serviced by only one principal shopping precinct, Merthyr Village in which Coles Supermarket is situated.

[7] New Farm has the highest population density of any suburb in the Brisbane residential area. It is also a dominant inner city residential area with 12,000 persons resident in the suburb representing nearly 13% of the population of inner Brisbane.

Parties

[8] The Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees were the only other party to the application and had not sought to oppose the application.

Correspondence

[9] While the Brisbane City Council did not record any view regarding the application, correspondence was received from the Lord Mayor of Brisbane, Mr Graham Quirk and Councillor for the Central Ward, Mr David Hinchliffe. Both recorded their individual support for the application, but did not seek to give evidence.

Evidence

[10] Evidence was given in support of the application by the following:

- Mr David Dunley - Owner of the Premier Newsagency situated within Merthyr Village Shopping Centre;
- Mr Lawrie Bray - Partner in Malouf Pharmacy situated within the Merthyr Village Shopping Centre;
- Mr David Stout - State Compliance Manager for Coles;
- Dr Judy Drennan - Professor in the Queensland University of Technology [QUT] Business School and Director of the Services Innovation Research Program in the Faculty of Business at QUT; and

- Mr Matthew Sorbello - the Sorbello family are the developers and owners of the Merthyr Village Shopping Precinct.

Consideration of the evidence pursuant to the legislative requirements of s. 26 of the Act

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

- [11] Merthyr Village is situated within the inner city suburb of New Farm.
- [12] Merthyr Village is occupied by a range of retail businesses including dress shops, restaurants, a pharmacy, a post office, and doctors' surgeries amongst other businesses. The major tenant within the Village is the Coles Supermarket.
- [13] The residential population of the New Farm area is within a 3 km to 4 km radius of the Coles Supermarket.
- [14] Residential developments within the area include, for example, Admiralty towers, Cloudland, Teneriffe Woolstores, Central Brunswick and other Fortitude Valley residential developments, together with the Kangaroo Point Dockside apartments.
- [15] Mr Sorbello's evidence was that the demographic profile of New Farm has changed over the last 20 or so years. A large proportion of residents now consist of single people and couples with few children. Many would describe the newer residents as time-poor city workers who chose the area because of lifestyle and convenience to the Brisbane central business district.
- [16] Research undertaken by the Urban Renewal Taskforce, estimates that by 2025, approximately 75% of people will live in inner cities "*hence the sensitivity to creating environments and infrastructure that accommodates the changing lifestyles of inner city dwellers. Retail is part of this adaptation.*". [Exhibit 4 - point 5]

Consideration

- [17] The Full Bench accepts that Merthyr Village is a prominent trading precinct within the area generally. Coles is at the core of the Village with many other retailers forming a retail hub where many consumer needs can be met with considerable ease.
- [18] We accept that the New Farm area has a discrete demographic profile relative to inner city living with consumers demanding retail service outside of the normal confines of non-exempt retail shopping hours.

(b) *the needs of the tourist industry or other industry in such locality or part*

- [19] NRA says that the tourist characteristics of New Farm have previously been recognised by the Queensland Industrial Relations Commission (Commission) in its 2009 decision where the following was stated:

"The New Farm area also encompasses many tourist attractions. Where once New Farm Park may have been the only tourist attraction in the area there is now a substantial and growing artistic community with the Powerhouse Centre for the Live Arts having opened in 2000."

- [20] Evidence was supplied by Mr Sorbello as follows:

- around 17,000 people visit New Farm Park every week;
- the Brisbane Powerhouse Arts Complex continues to be a major cultural drawcard for locals and visitors. Brisbane City Council estimates that over 350,000 people per year visit this complex; and
- there are a considerable number of art galleries in the New Farm area which can be visited by bus. The arts circuits have 17 stops. [Exhibit 4 - Point 20]

(c) *the needs of an expanding tourist industry*

- [21] There were no specific submissions around this point.

(d) *the needs of an expanding population*

- [22] Mr Stout (Exhibit 5) gave evidence that on the Queens Birthday holiday on June 13 2011, Coles at New Farm had processed 4,257 customers and that this number represented the largest volume for any one store in Queensland.

- [23] Further evidence from Mr Stout was to the effect that on a Sunday in New Farm, Coles is the busiest store of all Coles stores within the State processing 4,500 customers.
- [24] Mr Sorbello gave evidence to the effect that between 2001 and 2010, the Fortitude Valley population had increased by 100% and the Newstead population had increased by 95% thereby reflecting a growth rate of around 10% per annum.
- [25] The population density of the Brisbane Statistical Division was 340 people per sq km. The most densely populated Statistical Local Area in Brisbane SD at June 2010 was New Farm (5,900 people per sq km). New Farm is also the most heavily populated inner Brisbane residential area with 12,000 persons resident in the suburb, followed by the next most heavily populated inner Brisbane area being West End with a population of 7,918 persons.

Consideration

- [26] We have accepted that there has been significant growth in the local population of this area and that there would be greater demand generally by consumers for extended trading hours within this area.
- (e) *the public interest, consumers' interest, and business interest (whether small, medium or large)*
- [27] A survey had been undertaken by QUT Business School [Professor Judy Drennan PhD - Services Innovation Research Program Leader - QUT Business School, Brisbane].
- [28] The survey had been conducted over two weekends between 3 September and 11 September 2011 at the New Farm Shopping Precinct. There were 302 respondents in the survey.
- [29] The primary findings from the Survey were as follows:
- 75% of respondents supported extended trading hours for Coles New Farm. 14% opposed the application and 11% remained unsure;
 - 84% of those surveyed lived locally with 78% of those persons supporting the application;
 - There appeared to be no differences between males and females in terms of responses to the application;
 - The highest percentage of supporters came from casual workers;
 - 86% of support came from respondents living in shared accommodation; 77% of support from couples without children at home; 71% from people living alone; 65% from couples with children at home; 40% from single parents with children at home;
 - 64% of respondents said that it would be more convenient if they could shop later than 7 p.m. on Saturdays and later than 6 p.m. on Sundays and holidays;
 - 23% of those surveyed in support of the application, said they would most likely go to the supermarket on Sundays and holidays between 6 p.m. and 9 p.m.; 19% would most likely use both Saturdays between 7 p.m. and 9 p.m. and Sundays and holidays between 6 p.m. and 9 p.m.;
 - For 52% of supporters, convenience was the primary reason for their support; and
 - Other reasons included lifestyle, that Brisbane should catch up with other Australian cities and that Coles offered less expensive goods than other stores opening at night, although these reasons were far behind the primary reason of convenience.
- [30] Concern was expressed by 58.4% of respondents that the extended trading hours might disadvantage other retailers outside of the Coles Centre.
- [31] Proprietors of small businesses within the New Farm Shopping Precinct also gave evidence which was supportive of the application.

Consideration

- [32] We have accepted that there is strong support of the NRA application. The only evidence given by business interests was in support of the application.
- (f) *the alleviation of traffic congestion*
- [33] Evidence given by Mr Sorbello was to the effect that there was traffic congestion within the centre because of demand, but also that there was traffic congestion generally because of the limited road networks into the suburb of New Farm.

Consideration

[34] There was no evidence given to the contrary and we have accepted, after undertaking inspections and having heard the evidence of Mr Sorbello, that the granting of the application would provide an opportunity for traffic congestion to be more evenly managed.

(g) *the likely impact of the order on employment*

[35] There was no specific evidence given around this point. However, Mr Stout stated that some additional employment would result from the extended hours and this would also positively affect employment within businesses supplying support services to Coles.

(h) *the view of any local government in whose area the order is likely to have an impact*

[36] No position was taken by the relevant local government governing this particular area. The communications received from both the Lord Mayor of Brisbane and Councillor Hinchliffe were noted but they do not represent the views of "local government in whose area the order is likely to have an impact".

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

[37] There were no issues raised under this criterion.

Conclusion

[38] This application has attracted no opposition.

[39] The evidence given in the support of the application has been broad and has sought to address the mandatory criteria listed in s. 26 of the Act.

[40] On all relevant criteria of s. 26, positive evidence has been adduced which satisfies the Full Bench that the application should be granted.

[41] A draft Order has been supplied to the Commission by the applicant. The application is effective from 1 December 2011.

[42] Order accordingly.

D.A. SWAN, Deputy President.

G.K. FISHER, Commissioner.

J.M. THOMPSON, Commissioner.

Hearing Details:

2011 21 October

Released: 17 November 2011

Appearances:

Mr P. Dube, National Retail Association Limited, Union of Employers.

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