

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *National Retail Association Limited, Union of Employers* [2021] QIRC 287

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

CASE NO: TH/2021/10

PROCEEDING: Application

DELIVERED ON: 20 August 2021

HEARING DATE: 20 August 2021

MEMBER: Dwyer IC

HEARD AT: Brisbane

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

- 1. The Weipa Fishing Classic is, for the purposes of s 5(1)(c)(ii), a special event;**
- 2. The declaration shall apply for a period commencing on 3 September 2021 and shall continue up to and including 5 September 2021; and**
- 3. The declaration applies to the geographic locations described as: Starting at Rocky Point Boat Ramp, travelling south east to Hibberd Drive, through the roundabout into Central Avenue travelling southbound on Central Avenue to Kerr Point Drive at Nanum turning**

west onto Kerr Point Drive and travelling alongside the bay back to Rocky Point Boat Ramp.

CATCHWORDS: INDUSTRIAL LAW – TRADING HOURS – APPLICATION FOR DECLARATION OF SPECIAL EVENT – application to classify all non-exempt shops as exempt shops in the geographic location for a specified period during a special event, namely, the Weipa Fishing Classic

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

APPEARANCES: Mr D. Stout and Ms L. Charlton for the Applicant

Mr T. McQuillan for the Australian Workers' Union of Employees, Queensland

Reasons for Decision

Introduction

- [1] The National Retail Association Limited, Union of Employers ('the NRA') is seeking an order under the *Trading (Allowable Hours) Act 1990* (Qld) ('the Act') to classify all non-exempt shops as exempt shops in a geographic area in Weipa for a specified period during a special event, namely, the Weipa Fishing Classic.
- [2] The Weipa Fishing Classic is said to be an infrequent and significant event in the local region.
- [3] According to the Act, 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] The applicant seeks a declaration that the Weipa Fishing Classic is a special event pursuant to s 5(1)(c) of the Act. It is proposed for a period beginning on 3 September 2021 and continuing up to and including 5 September 2021.

- [6] Exhibit B to the Affidavit of Mr David Stout filed 30 July 2021, describes the area proposed to be covered as:

Starting at Rocky Point Boat Ramp, travelling south east to Hibberd Drive, through the roundabout into Central Ave travelling southbound on Central Ave to Kerr Point Dr at Nanum turning west onto Kerr Point Drive and travelling alongside the bay back to Rocky Point Boat Ramp.

- [7] The application was made on 30 July 2021. A directions order subsequently issued on 4 August 2021 required *inter alia* that the application be served on the Weipa Town Authority and other parties affected by the application. Those parties were directed to make a formal application seeking leave to be heard by 10 August 2021. The directions order also stated that the application would be listed for hearing at 11.30am on 20 August 2021.
- [8] As required under the Act, the application and directions order were published on the Commission's website.
- [9] On 10 August 2021, Ms Laura Armstrong, Industrial Officer of the of the Shop Distributive and Allied Employees Association (Queensland Branch) Union of Employees ('the SDA') wrote to the Commission as a union who has members who have an interest in the effect of the declaration sought, but did not seek leave to be heard.
- [10] On 16 August 2021, Mr Terry McQuillan, Industrial Advocate of the Australian Worker's Union of Employees, Queensland ('AWU') filed an outline of submissions in support of the Application.

Should the Commission grant the declaration sought?

The Act

- [11] The applicant submits that the Show fits the description of a special event under the Act.
- [12] 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.

[13] 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".

[14] 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.

NRA submission

[15] Mr David Stout, on behalf of the applicant, submitted in his affidavit filed 30 July 2021 that the Weipa Fishing Classic is Cape York's largest community event. It is a three-day sporting event with various competition categories and with competitors competing for a prize pool of more than \$100,000.

[16] It is submitted that the 2020 Weipa Fishing Classic was postponed until November 2020 due to COVID-19. It was successfully livestreamed on Facebook and was accessed by international viewers. Mr Stout highlighted in his affidavit comments made by Weipa Town Authority chair Mr Michael Rowland and the Committee President Mr Aaron

Schleich regarding how important the Weipa Fishing Classic was in 2020 and the COVID environment.

- [17] The submission is further made that events such as the Weipa Fishing Classic are important for small outback communities which rely on major community events for social interaction, to raise money and enjoy the unique lifestyle of their location.
- [18] In the material filed for the NRA, Mr Stout contends that the Weipa Fishing Classic provides a huge economic and tourism benefit for local businesses, stall holders and exhibitors. In addition, profit is donated back to community organisations by the voluntary Fishing Classic Committee each year. There are also a number of sponsors which speaks to the economic and tourism significance of the event to the local community
- [19] Mr Stout submits that the Weipa Community Plan 2012-2022 ('the Plan') aims to ensure the economic diversity of the region by developing tourism and promoting Weipa as a world class fishing destination. He submits that the sporting significance is identified in the Plan and there is an aim to continue to grow the competition as a major community event to become known as the premier fishing competition in Australia.
- [20] Quite apart from any submission of the NRA, it is difficult to see a scenario where the Weipa Fishing Classic would not produce a range of positive economic and tourism outcomes for the community. It will inevitably draw attendances from the wider region, which will increase demand for services, including retail.

SDA correspondence

- [21] The SDA sent correspondence via an email to the Industrial Registry on 10 August 2021.
- [22] The SDA's email broadly sought to emphasise the 'deficiencies in the legislation'. It highlighted that the wording used in s 5(3) of the Act does not provide any guidance or reference to other significant considerations, namely:
- The necessity of non-exempt shops to trade;
 - The impact of the declaration on employees; and
 - The necessity to limit retail hours.
- [23] The SDA also made reference to the importance of voluntary work in extended hours and requested it be expressed in any order made.

AWU submission

- [24] The AWU filed written submissions with the Industrial Registry on 16 August 2021.
- [25] The AWU submits that it represents members in the affected area and supports the application. It further notes that the Commission can provide ancillary orders to ensure that all employees in the affected shops receive protection from working extended trading hours pursuant to s 36B of the Act.

Consideration

- [26] I am satisfied that the Weipa Fishing Classic is a unique event of local significance. As I have previously held, these terms as they appear in s 5 of the Act are to be given a wide and diverse meaning, and ought to be considered in the context of the event for which the exemption is sought.¹ Taking that approach, an annual show in a small regional community comfortably falls within those terms for *inter alia* all of the reasons submitted by the NRA.
- [27] The Weipa Fishing Classic is a stand-alone, singular event, of which there is no replica or rival in that community. The fact that it occurs annually does not make it less unique. Further, an event does not have to attract the crowds of an AFL grand final to be 'significant'. The term 'significant' can be (and is) a reference not only to attendance numbers, but also to the impact and importance of the event on those in attendance.²
- [28] The Commission did not receive any objections to the application.
- [29] I am comfortable that the Act provides adequate protection for retail employees potentially impacted by the application being granted. There are statutory protections for employees 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—
- (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

¹ *National Retail Association Limited, Union of Employers* [2021] QIRC 155, 6 [25].

² *Ibid*, 6 [27].

(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.

[30] I am not empowered to pre-emptively make orders incorporating the protections contained in s 36B. However, from the submissions made by all parties to participating in the hearing there was clear consent by the parties that employees affected by a granting of the application, whose hours may extend outside the normal range as prescribed by their Certified Agreements and Awards, would only be required to work those additional hours on a voluntary basis.

[31] In all of the circumstances I am prepared to grant the application.

Declaration

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

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

- 1. The Weipa Fishing Classic is, for the purposes of s 5(1)(c)(ii), a special event;**
- 2. The declaration shall apply for a period commencing on 3 September 2021 and shall continue up to and including 5 September 2021; and**
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