

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *National Retail Association Limited, Union of Employers* [2022] QIRC 206

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

CASE NO.: TH/2022/3

PROCEEDING: Application for Declaration of Special Event

DELIVERED ON: 10 June 2022

HEARING DATE: 9 June 2022

MEMBER: Power IC

HEARD AT: Brisbane

DECLARATION:

- Pursuant to s 5(1)(c)(ii) of the *Trading (Allowable Hours) Act 1990 (Qld)*, I declare that the Mount Isa Show is a special event.**
- This declaration applies for the period commencing on 17 June 2022 up to and including 19 June 2022.**
- The declaration applies to the geographic area described as: Starting at Abel Smith Parade turning south onto Sunset Drive through to Comoowal Street then on to Patricia Street and West Street. Travelling south through to Isa Street then onto Pamela Street then to East Street. Turning east onto Barkly Highway then onto Abel Smith Parade to the starting point at Sunset Drive.**

CATCHWORDS: INDUSTRIAL LAW – TRADING HOURS – APPLICATION FOR DECLARATION OF SPECIAL EVENT – application to classify all non-exempt shops as exempt shops in part of the Mount Isa area for a specified period during a special event, namely, the Mount Isa Show –

whether the Mount Isa Show is a special event within the meaning of s 5 of the *Trading (Allowable Hours) Act 1990* (Qld) – declaration made

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

CASES: *National Retail Association Limited, Union of Employers* [2019] QIRC 154

National Retail Association Limited, Union of Employers [2021] QIRC 199

APPEARANCES: Mr D Stout and Ms L Charlton of the National Retail Association Limited, Union of Employers

Ms S Purton of the Shop Distributive and Allied Employees Association (Queensland Branch) Union of Employees

Mr D Marr of The Australian Workers' Union of Employees, Queensland

Mr B Atherinos of the Mount Isa City Council

Reasons for Decision

- [1] By Application filed 26 May 2022, the National Retail Association Limited, Union of Employers ('the NRA') applied for a declaration pursuant to s 5(2) of the *Trading (Allowable Hours) Act 1990* (Qld) ('the Act') in respect of the Mount Isa Show ('the Show') from 17 to 19 June 2022.
- [2] The declaration sought is that the Show be declared a 'special event' within the meaning of s 5(1)(c)(ii) of the Act. An affidavit was filed by Mr David Stout, Director of Policy of the NRA, in support of the application on 26 May 2022.
- [3] The effect of such a declaration, if made, is that non-exempt shops operating in the area to which the declaration applies would be treated as exempt shops for the period for which the declaration applies. Relevantly, pt 4 of the Act restricts the trading of non-exempt shops.
- [4] On 27 May 2022, a Directions Order was issued directing that the application and the Directions Order itself be served on the following parties:
 - Mount Isa City Council ('the Council');

- Shop Distributive and Allied Employees Association (Queensland Branch) Union of Employees ('the SDA');
- The Australian Workers' Union of Employees, Queensland ('the AWU');
- Local Government Association of Queensland Ltd;
- Executive Director, Industrial Relations, Office of Industrial Relations, Department of Education; and
- Chief Industrial Inspector, Office of Industrial Relations, Department of Education.

- [5] The Directions Order provided that those who may be affected by the application may make a formal application seeking leave to be heard and, if leave was granted, such a person was to file an outline of submissions by 6 June 2022.
- [6] As required under the Act, the application and Directions Order were published on the Commission's website.
- [7] The SDA and the AWU filed applications seeking leave to be heard on 27 May 2022 and the Council filed an application seeking leave to be heard on 31 May 2022. I subsequently granted leave for the SDA and the AWU to be heard on 30 May 2022 and the Council leave to be heard on 31 May 2022.
- [8] The question for determination is whether the declaration sought should be made.

Relevant legislative provisions

- [9] Section 5 of the Act relevantly 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; or
 - (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
[Examples omitted]
 - (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.

...

[10] Upon application, where the Commission declares an event to be a 'special event', s 5 of the Act provides that non-exempt shops, operating in a stated area for a significant event, are exempt shops for the period of that event.

[11] In deciding whether the Show is a 'special event' for the purpose of s 5(1)(c)(ii) of the Act, the following factors must be considered:

- (a) the cultural, religious or sporting significance of the event; and
- (b) the significance of the event to the economy and the tourism industry.

[12] Consideration may also be given to submissions made by the local government in which the declaration is likely to have an impact, namely, the Mount Isa City Council. Mr Atherinos provided oral submissions on behalf of the Council supporting this application.

Cultural, religious or sporting significance of the Show

[13] Mr Stout, in his affidavit, deposes that the Show has a sporting significance, submitting that the Professional Bull Ride ('PBR'), which will return to the Show in 2020, forms part of the Touring Pro Division which offers a pathway for Australian bull riders to compete in the professional international bull riding circuit.

[14] Mr Stout further deposes that:

- (a) the Show is an annual two-day festival with competitions, PBR, petting zoos, sideshows and amusement rides, displays of farming and commercial goods, music, fireworks and other entertainment;
- (b) the Show is a major tourist drawcard in regional Queensland, providing tourism, sporting and employment opportunities;
- (c) the 2022 Show will be its 40th celebration and the purpose of the Show is about taking everything great about the Mount Isa region and celebrating it with the whole community; and
- (d) agricultural shows have played a leading role in the development of agricultural and rural communities, being one of the oldest continuous events in Australia.

Significance of the Show to the economy and the tourism industry

- [15] The NRA submits the Show presents an opportunity for competitors, businesses and volunteers, who rely on the Show for employment, funding and business promotion opportunities. The NRA outlines an extensive list of partners for the Show, drawn from both the private and public sector.
- [16] The NRA highlights that Glencore Mount Isa Mines being one of the major sponsors of the Show for 2022, 2023 and 2024, contributing \$20,000 each year towards the children's entertainment zone is a testament to the perceived economic and cultural importance of the event to the local community.
- [17] The NRA outlines that the Show is a ticketed event with revenue being invested back into the improvement of the Show and local community.
- [18] The NRA relies on statements made by the former Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development who highlighted that agricultural shows are part of the fabric of regional Australia, showcasing everything positive about the communities and local industries.
- [19] The NRA further submits the Show has received federal funding for Mount Isa's 100 years celebration.
- [20] The SDA submits the term 'significance' was not intended to be used as an unmeasured benchmark available to the NRA to point to any cultural, religious or sporting aspect of an event to satisfy an application for extended trading. The SDA submits a reasonable understanding of the legislation 'would be it does not apply where an event possess a very basic level of significance but applies where an event is of such significance it creates the real possibility of retail opportunities in the extended hours'.¹
- [21] The SDA submits that the NRA fails to demonstrate an adequate connection between the Show and the surrounding retailers. The SDA highlights that the NRA's general assertion of support for the application from non-exempt retailers within the highlighted area is made in the absence of direct comments from those retailers. Further, the NRA fails to explain what the customers' expectations are or how the operation of non-exempt retailers in the extended hours will achieve this.
- [22] The SDA submits that the Commission should consider factors such as attendance numbers, size of the event, media coverage, and contribution to Queensland's national and international reputation when determining whether the Show meets an adequate understanding of 'significance'.
- [23] I am satisfied that the Show is an event which is significant to the local economy and tourism industry.

¹ Submissions of the SDA, filed 6 June 2022, [3].

Is the Show a 'special event' within the meaning of s 5(1)(c)(ii) of the Act?

- [24] In making a decision as to whether the Show is a special event, I am required to consider the cultural, religious or sporting significance of the Show as well as the significance of the Show to the economy and the tourism industry.
- [25] I firstly note that the AWU does not oppose the application, however, refers to the requirement of s 36B of the Act that an employer must not require an employee to work extended hours unless the employee has freely elected to do so.
- [26] The SDA submits that where s 5 of the Act is used to suggest the significance of any event without demonstrating real necessity for extended trading by major retailers, it undermines the existing regime. The SDA outlines that the consequence may benefit some major retailers, however, puts significant pressure on the availability of retail workers, removes the competitive advantages relied upon by small business owners and operators and can detract from the services available at the event itself.
- [27] The NRA submits that the Show clearly meets the criteria under the Act as 'a unique or infrequent event of local, State or national significance'.² The NRA further submits that the Commission 'could comfortably rely on the available evidence in support of the cultural significance of the event, and its significance to the economy and tourism'.³
- [28] I note that the 2022 Mount Isa Show will be its 40th celebration. I also note the Show will host the PBR which offers a pathway for Australian bull riders to compete in the professional international bull riding circuit.
- [29] I am satisfied the events that are occurring at the Show are of both sporting and cultural significance to the Mount Isa region.
- [30] I am satisfied the Show will add significant value to the local economy based on the NRA's submissions about the entry fee, various partnerships between the Show, and government and private sector entities, and the expectations in relation to attendance by people from throughout the region and the reasons for their attendance.
- [31] I am also persuaded that the unique location of the Show along with several of the signature events being held over the duration of the weekend will be of substantial value to the tourism sector.

Area to which the declaration applies

- [32] Mr Stout attaches a map titled 'Exhibit B – Description of Location' to his affidavit along with the following description for the proposed area:

Starting at Abel Smith Parade turning south onto Sunset Dr through to Comooweal St then on to Patricia St and West St
 Travelling south through to Isa St then onto Pamela St then to East St
 Turning east onto Barkly Hwy then onto Abel Smith Parade to the starting point at Sunset Dr

² *Trading (Allowable Hours) Act 1990* (Qld) s 5(1)(c)(i).

³ Affidavit of David Stout filed 26 May 2022, Exhibit A, page 3 [7].

- [33] Notably, this area extends beyond the bounds of Buchanan Park where the Show will be held to include its immediate surrounds as well as parts of the town of Mount Isa.
- [34] The AWU and SDA did not object to the area requested by the NRA.
- [35] On the basis that the proposed area by the NRA is uncontested, I accept the NRA's submission that the proposed area will allow visitors to take advantage of retail trade opportunities at the start or end of the days' official events and that non-exempt retailers within that area support the application.

Period for which the declaration applies

- [36] The NRA submits that although the Show itself concludes at 10.00pm on 18 June 2022, the period for which the declaration applies should include 19 June 2022. Neither the SDA or the AWU objects to the period requested by the NRA.
- [37] Due to Mount Isa's remoteness, the NRA submits out of town visitors are unlikely to leave at the conclusion of the Show and that the inclusion of the following day will allow local businesses to better service those visitors for the duration of their stay. I note the NRA's submission that an attendee survey during the 2021 Mount Isa Mines Rodeo found that only 9.98% travelled to Mount Isa via air, with the rest of the attendees travelling by road. In these circumstances, I accept the NRA's submission that a substantial number of visitors are likely to still be in area on Sunday, 19 June 2022 and will benefit from extended trading hours on this day.
- [38] The NRA relies on earlier decisions regarding the Mount Isa Mines Rotary Rodeo and the Show, noting that in those circumstances, the Commission considered it appropriate to include the day after the event within the applicable period.
- [39] In *National Retail Association Limited, Union of Employers*,⁴ Industrial Commissioner Knight held the following:
- [51] ...given the remoteness of Mount Isa and the large distances out of town visitors, competitors and exhibitors will no doubt be required to travel in order to attend the Show, I am satisfied on this occasion, there is some merit to the NRA's submission as to the value in extending the period for which the declaration applies to include 20 June 2021, such that both visitors and locals more broadly can take advantage of extended trading hours over what will no doubt be a particularly busy period.
- [40] Having regard to the reasons given by Industrial Commissioner Knight and absent any objections to the period applied for by the NRA, I am satisfied that the period for which the declaration has been applied for should include the 19 June 2022.

Other matters – Voluntary work

- [41] The AWU and the SDA request the importance of voluntary work within the extended hours be expressed in any order made by the Commission.

⁴ [2021] QIRC 199.

[42] The NRA submits that any additional work during extended hours will continue to be on a voluntary basis and further, other protections are available to employees who find themselves subject to duress or adverse action in respect of working extended hours.⁵

[43] The terms of s 36B of the Act are clear in that an employee may only work over the extended hours if they freely elect to do so. An employee will not be considered to have freely elected to work during extended hours if they have been coerced, harassed, threatened or intimidated by or for the employer. I am satisfied that the clear wording of this section, and the civil penalties attached to any breach, should make the obligations regarding the voluntary nature of any work over the extended hours abundantly clear to all employers.

Conclusion

[44] I am satisfied the Mount Isa Show is a special event within the meaning of s 5(1)(c)(ii) of the Act because it is an event of cultural and sporting significance to the people of the Mount Isa area and regional Queensland more broadly. The Show is both unique and infrequent and is significant to Mount Isa's economy and tourism sector.

[45] For these reasons, I am satisfied that I should make the declaration sought.

[46] The area to which the declaration should apply is not in dispute and I am satisfied it is a suitable area having regard to the submissions made.

[47] For the reasons set out above, I also accept the NRA's submissions and consider, in this circumstance, the period for which the declaration applies ought to commence on 17 June 2022 and conclude on 19 June 2022.

[48] I make the following declaration:

- 1. Pursuant to s 5(1)(c)(ii) of the *Trading (Allowable Hours) Act 1990 (Qld)*, I declare that the Mount Isa Show is a special event.**
- 2. This declaration applies for the period commencing on 17 June 2022 up to and including 19 June 2022.**
- 3. The declaration applies to the geographic area described as: Starting at Abel Smith Parade turning south onto Sunset Drive through to Comooweal Street then on to Patricia Street and West Street. Travelling south through to Isa Street then onto Pamela Street then to East Street. Turning east onto Barkly Highway then onto Abel Smith Parade to the starting point at Sunset Drive.**

⁵ citing *National Retail Association Limited, Union of Employers* [2019] QIRC 154 (Dwyer IC), [32].