

## QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *National Retail Association Limited, Union of Employers (Mount Isa Mines Rodeo) [2024] QIRC 184*

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

CASE NO: TH/2024/2

PROCEEDING: Application for Declaration of Special Event

DELIVERED ON: 30 July 2024

HEARING DATE: 18 July 2024

MEMBER: Knight IC

HEARD AT: Brisbane

DECLARATION:

- Pursuant to s 5(1)(c) of the *Trading (Allowable Hours) Act 1990 (Qld)*, I declare that the Mount Isa Mines Rodeo is a special event.**
- This declaration applies for the period commencing on 8 August 2024 up to and including 11 August 2024.**
- The declaration applies to the geographic area described as: Starting at Abel Smith Parade turning south onto Sunset Drive through to Camooweal Street then on to Patricia Street and West Street. Travelling south through to Isa Street then on to Pamela Street and then East Street. Turning east onto Barkly Highway then onto Abel Smith Parade to the starting point at Sunset Drive.**
- Section 36BA of the *Trading (Allowable Hours) Act 1990 (Qld)* applies in relation to an employee of particular**

**shops in the area to which the declaration applies.**

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

**LEGISLATION:** *Industrial Relations Act 2016* (Qld)  
  
*Trading (Allowable Hours) Act 1990* (Qld) ss 5, 31A, 31B, 36BA

**CASES:** *Re National Retail Association Limited, Union of Employers* [2018] QIRC 118

**APPEARANCES:** Mr M. Cole and Ms L. Charlton of the National Retail Association Limited, Union of Employers

Ms L. Leo of Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees

Mr B. Atherinos of the Mount Isa City Council

Mr G. Taylor of the Australian Workers' Union of Employees, Queensland

### **Reasons for Decision**

- [1] On 3 July 2024, the National Retail Association Limited, Union of Employers ('the NRA') applied for a declaration under Part 5, Division 3 of the *Trading (Allowable Hours) Act 1990* (Qld) ('the Act'), in respect of the Mount Isa Mines Rodeo ('the Rodeo') which is being held from 8 to 11 August 2024 inclusive.

- [2] The declaration sought is that the Rodeo be declared a "special event" within the meaning of s 5(1)(c) of the Act.
- [3] The Director of Policy for the NRA, Mr David Stout, swore an affidavit in support of the application. The affidavit was filed on 3 July 2024.
- [4] The area that is sought to be covered by the Application is the geographical area as set out in Exhibit B to the affidavit of Mr David Stout.<sup>1</sup> The area is described as follows:
- Starting at Abel Smith Parade turning south onto Sunset Dr through to Camooweal 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.<sup>2</sup>
- [5] The practical impact of the granting of a declaration will result in the restrictions for non-exempt shops within the defined area being lifted for the nominated days and times within the declaration.
- [6] On 5 July 2024, I issued a Directions Order which directed that the Application and the Directions Order itself be served on the following persons:
- Mount Isa City 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.
- [7] 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 12 July 2024.
- [8] As required under the Act, the Application and Directions Order were published on the Commission's website.
- [9] On 8 July 2024, the SDA made an application seeking leave to be heard. On 16 July 2024, the AWU made an application seeking leave to be heard. Similarly, on

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<sup>1</sup> Affidavit of David Stout filed 3 July 2024, Exhibit B.

<sup>2</sup> Ibid.

5 July 2024, the Mount Isa City Council confirmed by email to the Industrial Registry a request to be involved in the proceedings.

[10] On 18 July, the Commission granted leave for all parties to be heard during the hearing of the matter.

[11] The question for my determination is whether I should make the declaration sought.

### **The relevant provisions of the Act**

[12] 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 an area to which a special event declaration applies.
- (2) A class of shop may be declared for the purposes of schedule 1AA, item 23 by reference to—
  - (a) the business conducted in shops of the class; or
  - (b) the location of shops within any area or areas of the State defined in the relevant regulation; or
  - (c) such other criteria as the Governor in Council thinks fit.
- (3) In respect of the sale of goods wholesale in an exempt shop the provisions of this Act apply to the shop and a reference in this Act to an exempt shop does not include the shop.

[13] Part 5 of the Act provides for the making of orders and declarations by the Commission. Part 5, Division 3 of the Act provides for the making of special event declarations.

[14] Section 31A of the Act relevantly provides:

#### **31A Industrial commission may make declaration of special event**

- (1) On an application by a chief executive, local government, organisation or any other person, the industrial commission may declare an event to be a special event.
- (2) A declaration for subsection (1) (a *special event declaration*) must state the following matters—
  - (a) details of the event the subject of the declaration;
  - (b) the period for which the declaration applies;
  - (c) the area to which the declaration applies;
  - (d) that section 36BA applies in relation to an employee of particular shops in the area to which the declaration applies.

*Note—*

A shop in the area to which the declaration applies is an exempt shop.

- (3) A special event declaration must be published on the QIRC website.

[15] Section 31B of the Act sets out the factors the Commission must consider when determining an application, namely:

**31B Deciding application for special event declaration**

- (1) In deciding whether to declare an event to be a special event, the industrial commission must consider—

- (a) whether the event is a unique or infrequent event of local, State or national significance; and

*Examples—*

- the 2032 Olympic and Paralympic Games
- the Weipa Fishing Classic event

- (b) the cultural, religious or sporting significance of the event; and

- (c) the significance of the event to the economy and the tourism industry; and

- (d) whether there is a need for a non-exempt shop, or a class of non-exempt shops, to trade for hours greater than the core trading hours for the shop or class of shops under this Act for the period of the event.

- (2) In considering the matters mentioned in subsection (1), the industrial commission must also have regard to the following—

- (a) the size of a place where the event will be held;

- (b) whether the event will be held at multiple places;

- (c) the predicted attendance numbers;

- (d) any expected media coverage;

- (e) any contribution the event may make to Queensland's national or international reputation;

- (f) a submission made by—

- (i) a local government for an area where the special event declaration is likely to have an impact; or

- (ii) an industrial organisation in relation to the likely impact of the special event declaration on employees.

[16] Section 36BA prescribes certain protections for employees where core trading hours are increased because of a special event declaration, namely:

**36BA Protection for employees—other extended hours**

...

- (2) An employer of an employee employed in the shop must not require the 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.

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## **NRA's submissions and evidence**

### *Cultural, religious and sporting significance*

[17] Mr Stout, the NRA Director of Policy, deposes the Rodeo is recognised as the largest rodeo in the southern hemisphere and is a significant event for the local community, economy and tourism in circumstances where:

- The Rodeo forms part of the national circuit governed by the Australian Professional Rodeo Association which culminates at the National Finals Rodeo each year to determine the Australian Champions;
- The event includes Open, 2<sup>nd</sup> and Junior Division events across Saddle Bronc Ride, Bull Ride, Bareback Bronc Ride, Rope & Tie, Steer Wrestling, Team Roping, Barrel Race and Breakaway Roping; and
- In partnership with the Mona Aboriginal Corporation the Rodeo will include the Mount Isa Mines Indigenous Rodeo Championships, the purpose of this event is to "*showcase the amazing talents of Indigenous Rodeo competitors and give visibility to the stories of Australia's Indigenous Stockman and Stockwomen. It will connect visitors to the northwest Queensland region, the Kalkadoon people, their stories and culture as well as the visiting indigenous communities of northern Queensland.*"<sup>3</sup>

[18] Mr Stout's evidence is that the Rodeo, through its continuing partnership with the Mona Aboriginal Corporation, provides an opportunity to celebrate Aboriginal and Torres Strait Islander communities through sport, song, dance, art and storytelling.<sup>4</sup>

[19] Mr Stout further deposes that the development of the Mount Isa Mines Indigenous Rodeo Championships with Mona Aboriginal Corporation won the Partnership category in the 2024 Queensland Reconciliation Awards, and that the event:

... was designed to elevate and celebrate First Nations people through sport, art and culture. It seeks to strengthen Mount Isa community relationships, create economic benefits, drive social change, and elevate Queensland's international reputation for exceptional and unique First Nations events and experiences. In two years, the event has doubled in size, expanded its cultural entertainment program, employed 65 Indigenous contractors, and celebrated Aboriginal and Torres Strait Islander communities through sport, song, dance, art and storytelling.<sup>5</sup>

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<sup>3</sup> Ibid, Exhibit A [17].

<sup>4</sup> Ibid, Exhibit A [14].

<sup>5</sup> Ibid, Exhibit A [18].

- [20] In 2022 the Rodeo had Australia's largest prize pool for competitors of over \$300,000 across four days with a record 956 competitor entries. In 2023 the Rodeo attracted 200 entries from women.

*What is the significance of the event to the economy and tourism?*

- [21] The NRA submits the Rodeo is expected to have a high tourism attendance, given that in 2023 the Rodeo saw a record attendance of over 40,000, which was an increase from 34,574 attendees in 2022 and 25,000 in 2021.

- [22] With an existing population of 21,000 in Mount Isa, Mr Stout deposes the Rodeo is a significant tourism opportunity for local businesses who will benefit from the increased foot traffic and sales opportunities, having regard to the following breakdown of attendance:

- 51.9% from the Mount Isa region;
- 31.4% from intrastate;
- 14.4% from interstate; and
- 2.3% from overseas.

- [23] The NRA submits that in 2021, attendees to the Rodeo spent an average of 8.7 nights away from home, while interstate visitors spent 15.5 nights away from home. In this respect, the NRA contends all hotels and motels in Mount Isa through Wotif and Booking.com are currently booked out for the duration of the event.

- [24] The NRA maintains the tourism significance of the Rodeo, is clear having regard to the national recognition the event has received since 2017, with multiple awards over several years, including through the Qantas Australian Tourism Awards for the best Festivals and Events category, namely:

- Gold in 2016;
- Silver in 2017;
- Gold in 2018; and
- Gold in 2019.

- [25] Mr Stout observed within his affidavit that the Mount Isa Mines Indigenous Rodeo Championship won Gold, while the Rodeo won Silver in the Festival and Events Category in 2022.

- [26] As to the economic impact of the Rodeo, the NRA submits that in 2022 the Rodeo generated more than \$6.7 million for the local Mount Isa economy, and \$10 million in Queensland. Separately, the Mount Isa Mines Indigenous Rodeo Championship

generated \$818,000 within the Mount Isa economy and \$497,000 for the Queensland economy.

- [27] The NRA further submits the Rodeo's economic benefit extends across multiple outback towns, having regard to the overnight stops and rest breaks taken by travelling tourists.<sup>6</sup>

### **SDA's Submissions**

- [28] The SDA argues the legislative restrictions of the existing regime should remain unless the Commission is persuaded that extended hours are necessary for the requested period.<sup>7</sup>
- [29] The union opposes the application, questioning whether the NRA has adequately demonstrated a genuine need for non-exempt shops to be reclassified for the period of the Rodeo. While it is concerned about the impact of the declaration on workers and their families, the union acknowledges it has "*generally been demonstrated that the influx of visitors, who do significant shopping on Sunday before heading back home (especially to remote towns) does occur.*"<sup>8</sup>
- [30] Although the SDA recognises that visitors undertake shopping on the Sunday of the Rodeo before departing Mount Isa, the union is concerned that a declaration in the form that is sought may expose workers to unnecessary pressure to work extended hours where there may be insufficient staff to accommodate the extended hours. It is submitted this may impact the workers and their families, particularly those with caring responsibilities.<sup>9</sup>
- [31] In support of its submissions, the SDA observes that Woolworths and Coles already trade from 8.00 am to 9.00 pm on weekdays and 8.00 am to 6.00 pm on Saturdays.<sup>10</sup> In those circumstances, it is argued there is no pressing need for the trading hours of non-exempt stores to be extended on any of the days listed in the application, other than Sunday, 11 August 2024.
- [32] In response to the NRA's submissions that the influx of visitors to the area warrants an extension to trading hours, the SDA maintains that tourists visiting Mount Isa for the Rodeo are likely to be in attendance at the Rodeo during the extended times proposed within the application.<sup>11</sup>

### **Mount Isa City Council**

- [33] The Act provides that I may consider submissions made by a local government in making my decision. The Mount Isa City Council attended the hearing for the Application and

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<sup>6</sup> Ibid, Exhibit A [26], [29].

<sup>7</sup> The SDA's submissions filed 12 July 2024 [5].

<sup>8</sup> Ibid [7].

<sup>9</sup> Ibid [4]-[5].

<sup>10</sup> Ibid [6.1].

<sup>11</sup> Ibid [6.2].



provided some written materials to the Commission. Within those materials the Council foreshadowed it would be open to exploring an opportunity for businesses to have expanded trading hours and allow business growth for a consistent seven-day trade.

- [34] As for the Rodeo, the Council confirmed that all accommodation venues within Mount Isa are at capacity and the event is reliant upon the Council organising overflow accommodation to cater for additional caravanners.
- [35] The Council observed that if trading hours are not extended both within the confines of this Application, and in a broader sense the foreshadowed support of a seven-day application, the city would be unable to meet the needs of tourists or take advantage of the growing tourism industry.<sup>12</sup>

### **Consideration**

- [36] In making a decision as to whether the Rodeo is a significant event, I must have regard to the matters set out in s 31B, including the cultural, religious or sporting significance of the Rodeo along with the significance of the event to the economy and the tourist industry. The Commission may also have regard to the submissions of the Mount Isa Council.
- [37] The term "cultural" was considered by O'Connor DP, as he then was, in *Re National Retail Association Limited, Union of Employers*.<sup>13</sup> There, his Honour observed:

There are two approaches in determining the meaning to be given to the adjective "cultural" in s 5 of the Act. The first, is to give the word "cultural" a meaning which relates to the ideas, customs, and social behaviour of a society. The second approach relates to use of the word "cultural" in the sense of the arts and to intellectual achievement. In my view, the context of "cultural" within s 5 of the Act reflects and sits more comfortably with the latter interpretation. The example being, for the purposes of s 5(3)(a)(i), a "cultural festival".<sup>14</sup>

- [38] In the absence of more detailed submissions and evidence in relation to the 'unique First Nations events and experiences' touched on by the NRA, it is not possible to conclude how the Rodeo conforms to either of the meanings given to "cultural" as detailed above.
- [39] Although I accept the Rodeo certainly represents aspects of Australian, and particularly regional indigenous culture, I am more persuaded by the sporting, tourist and economic significance of the event.
- [40] There is no question that the Rodeo is a significant regional event, attracting tens of thousands of visitors to the area with a record attendance of 40,000 in 2023. There is no evidence before me that indicates the event will be any less popular in 2024 than it has been in previous years.

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<sup>12</sup> Mount Isa City Council's submissions filed 17 July 2024.

<sup>13</sup> [2018] QIRC 118.

<sup>14</sup> *Ibid* [23] (footnotes omitted).

- [41] If anything, the submissions from the NRA and Mount Isa Council confirming that all accommodation in Mount Isa has been booked out and that it has been necessary to arrange overflow accommodation to cater for additional caravanners, supports a conclusion that the event will yet again attract record numbers.
- [42] I note the Rodeo will also host the various championship events listed in [17], some of which are a major qualifying event where the competitors earn placings toward the National Finals Rodeo.
- [43] I accept the addition of the Mount Isa Mines Indigenous Rodeo Championships as a stand-alone event will further enhance the attractiveness of the program, in turn drawing even more attendees to the event and generating further economic value for the region.
- [44] Having considered the evidence within Mr Stout's affidavit and the submissions of the NRA, I am satisfied the events that are occurring at the Rodeo are of sporting significance to the Mount Isa region.
- [45] Similarly, after considering the submissions of the NRA at [17] to [27], which includes Mr Stout's uncontested evidence about the value the event will deliver to the local economy and the various partnerships arising out of the Rodeo, I am satisfied the event will add significant value to the local economy.
- [46] I also accept the unique location of the Rodeo, in combination with several of the events being held during the period will deliver immense value to the tourism sector.

*The need for greater trading hours*

- [47] In deciding an application for a special event declaration, the Commission must also have regard to whether there is a need for a non-exempt shop or a class of a non-exempt shop, to trade for hours greater than the core trading hours for the shop or class of shop, for the period the exemption is sought.
- [48] The Rodeo will commence from 8.00 am on 8 August 2024 until its conclusion at 4.00 pm on 11 August 2024. The NRA submits the period for which the declaration applies should include the entire period between 8 to 11 August 2024.<sup>15</sup>
- [49] During the proceedings and within the SDA's submissions, it was argued that the Application did not demonstrate a genuine need for non-exempt shops to be reclassified during the entire period of the event.
- [50] In particular, the SDA and AWU raise concerns that Sunday (11 August 2024) is an important day for retail workers and their families and that issuing a declaration for the

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<sup>15</sup> Affidavit of David Stout filed 3 July 2024.

entire period may result in additional pressures for workers due to insufficient staff being available to accommodate extended hours of trading.

[51] In particular, the SDA contends the need for non-exempt stores to have trade extended on any days other than the 11 August 2024 is not required as:

... the town provides sufficient other stores that are open for trade for the influx of visitors that is sufficient to meet demand. Alternatively, visitors who have come to town for the event are likely to be attending the event at times outlined by Mr Stout at paragraph 3 of his Affidavit and would be unlikely to be shopping at non – exempt stores within the extended periods.

[52] While it accepts that s 36BA would apply to employees impacted by the declaration, the SDA maintains the NRA has failed to establish a demonstrated need to extend trading hours, particularly given the Rodeo itself caters for visitors in terms of food, beverages and general event necessities.

[53] In submissions, the SDA suggested the many of the attendees would in fact be at the Rodeo, therefore negating any need for trading hours to be extended beyond what is already permitted on those days.<sup>16</sup>

[54] In response, the NRA pressed its original application highlighting the influx of visitors to the area and the need for extended trading hours during the relevant period.

[55] For the reasons set out earlier at [40] – [41], it seems likely, having regard to past attendance numbers, that the population of Mount Isa may well double during the relevant period, with thousands of local, regional and international visitors likely demanding additional services, products and items.

[56] I am satisfied on this occasion, there is merit to the NRA's submission that the declaration being sought for the relevant period will allow both visitors and locals to take advantage of extended trading hours over what will no doubt be a particularly busy period.

*Other Matters - Relational Pressures and Protections for Workers*

[57] In its written and oral submissions, the SDA was particularly concerned about the relational pressures that arise in a store environment where a worker with family and other commitments may feel pressured to accept a request from an employer to work at a time during the Rodeo when they may not have ordinarily been required to work.

[58] Notwithstanding the existing protections,<sup>17</sup> the SDA maintains the laws are not always adequate in preventing a breakdown of relationships in stores where a request to work additional hours arises.<sup>18</sup>

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<sup>16</sup> The SDA's submissions filed 12 July 2024 [6.2].

<sup>17</sup> For example, s 36 BA provides an employer of an employee employed in the shop must not require the employee to work during extended hours unless the employee has freely elected to work during extended hours.

<sup>18</sup> The SDA's submissions filed 12 July 2024.

- [59] Although there was no evidence filed by the SDA in support of this submission, I accept it is plausible this may well have been the experience of some workers in the past.
- [60] In response to these concerns, I inquired with the NRA as to what processes are adopted by the organisation to advise members about the protections that are in place for workers. Mr Cole confirmed that if an order was issued by the Commission granting the Application, the NRA would seek to issue a memorandum to its members confirming an employer's legal obligations associated with staffing arrangements for the additional hours for the relevant period.<sup>19</sup>
- [61] The NRA further relies on its members' assurances that any requirement to work additional hours will be on a voluntary basis and that retailers will only trade in line with customer expectations.<sup>20</sup>
- [62] In its oral submissions the NRA further submitted that in the existing current 'cost of living' climate, the extension of trading hours and shift opportunities would likely be welcomed by employees.
- [63] Although I agree that the existing protections may not be sufficient in every conceivable circumstance, I accept there are provisions that have been included within the *Industrial Relations Act 2016* (Qld) that go some way to addressing the concerns of the SDA and the AWU.<sup>21</sup> Further, it is not for this Commission to presuppose an employer will breach its obligations.
- [64] In any event, I am comfortable that the NRA, SDA and AWU will take the appropriate steps to remind their respective members of the voluntary nature of any additional hours worked during the period of extended hours, along with the statutory protections afforded to employees as set out at s 36BA of the Act.

### **Conclusion**

- [65] I am satisfied the Rodeo is a special event within the meaning of s 5(1)(c) of the Act because it is an event of sporting significance to the people of the Mount Isa area and regional Queensland more broadly.
- [66] I am also of the view the Rodeo is significant to the Mount Isa economy and tourism sector.
- [67] I accept on the materials before me that the 2024 Mount Isa Rodeo is likely to attract upwards of 40,000 attendees during the course of the event.

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<sup>19</sup> T 1-8, ll 24-12.

<sup>20</sup> Affidavit of David Stout filed 3 July 2024.

<sup>21</sup> *Trading (Allowable Hours) Act 1990* (Qld) s 36BA.

[68] The doubling of the Mount Isa population during this period warrants a need for non-exempt retailers to vary their opening and closing hours to cater for the large influx of visitors to the area during the relevant period.

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

[70] 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.

[71] 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 8 August 2024 up to and including 11 August 2024.

[72] I make the following declaration:

- 1. Pursuant to s 5(1)(c) of the *Trading (Allowable Hours) Act 1990 (Qld)*, I declare that the Mount Isa Mines Rodeo is a special event.**
- 2. This declaration applies for the period commencing on 8 August 2024 up to and including 11 August 2024.**
- 3. The declaration applies to the geographic area described as: Starting at Abel Smith Parade turning south onto Sunset Drive through to Camooweal Street then on to Patricia Street and West Street. Travelling south through to Isa Street then on to Pamela Street and then East Street. Turning east onto Barkly Highway then onto Abel Smith Parade to the starting point at Sunset Drive.**
- 4. Section 36BA of the *Trading (Allowable Hours) Act 1990 (Qld)* applies in relation to an employee of particular shops in the area to which the declaration applies.**