

Background Information paper

Review of the *Trading (Allowable Hours) Act 1990*



Office of Industrial Relations
oir.qld.gov.au



Background

The trading hours of shops in Queensland are regulated by the *Trading (Allowable Hours) Act 1990* (the Trading Hours Act).

The *Trading (Allowable Hours) Amendment Act 2017* (the Amendment Act) amended the Trading Hours Act to require that the Minister must undertake a review of the Trading Hours Act within five years from 31 August 2017, and that the review must be finalised before the end of the moratorium period, which is 31 August 2022 (section 46B).

The moratorium period refers to the suspension of the power of Queensland Industrial Relations Commission (QIRC), other than in specified circumstances, to adjudicate allowable trading hours outside permitted hours, for non-exempt shops for a five-year period.

The requirement for this review (section 46B) was included in the Act following the recommendation made in the 2016 independent review of Queensland's retail trading hours' arrangements (the 2016 Review)¹.

The 2016 Review was established by the Queensland Government in response to concerns by business and the community that Queensland's trading hours arrangements were difficult to navigate and may act as a disincentive to business expansion, employment and economic growth.

For the 2016 Review, the Government appointed a Trading Hours Review Reference Group, comprising of key business groups, the Queensland Tourism Industry Council and unions to consider and report to the Government on Queensland's trading hours' regulatory framework and to make recommendations that would improve trading hours regulation to promote employment and economic growth while continuing to balance the interests of consumers, workers and small and large businesses. The 2016 Review was chaired by former Speaker of the Legislative Assembly and Queensland Minister, Mr John Mickel.

Following an extensive consultation process, which involved consideration of more than 170 public submissions lodged in response to an issues paper released to guide the 2016 Review, the Chairperson made 13 recommendations, these can roughly be categorised as follows:

- recommendations dealing with permitted hours by area or business type including:
 - South East Queensland;
 - areas outside South East Queensland;
 - Tourist areas;
 - Seaside resort areas;
 - non-exempt hardware shops;
 - non-exempt shops selling motor vehicles or caravans;
- recommendations dealing with extended hours before Christmas, including protecting workers by ensuring work during extended hours is voluntary;
- compulsory closure of non-exempt and certain independent shops on specified public holidays;
- amalgamation of the categories of exempt and independent shops and a redefinition of independent shops;
- changes to what may be categorised as an exempt shop by:
 - adding to the list of shops exempt due to the goods or service provided;
 - including otherwise non-exempt shops during 'special events' as ordered by the QIRC;
 - treating all shops in the Mossman and Port Douglas Tourist Area as exempt shops for a five year trial period;

¹ A Review of Queensland's Trading (Allowable Hours) Act 1990, A Report by Mr John Mickel Chair – Trading Hours reference Group December 2016, page 9

- acknowledging the QIRC's ongoing power to continue to adjudicate allowable trading hours outside permitted hours for non-exempt shops. However, as recommended by the Chairperson, this power has been suspended during a five-year moratorium period (commencing 31 August 2017) where no applications can be made to amend permitted hours, with a further review of permitted hours to be undertaken prior to the end of the moratorium period.

The Government, adopted, or adopted with modification, all 13 recommendations. **Appendix 1** lists all recommendations to the 2016 Review and the Queensland Government's response to these recommendations, including amendments to the Act.

In response to the 2016 Review, the Government introduced the *Trading (Allowable Hours) Amendment Act 2017* (the 2017 amendments), which received Royal Assent on 31 August 2017.

Terms of Reference for the 2021 Review

The Legislative Assembly referred responsibility to inquire into and report on the operation of the *Trading (Allowable Hours) Act 1990* (the Act) to the Education, Employment and Training Committee. The Referral Motion reads:

That the Education, Employment and Training Committee inquire into and report to the Legislative Assembly by 31 January 2022 on:

The operation of the *Trading (Allowable Hours) Act 1990* (the Act), in particular:

1. To consider the impact of amendments made by the *Trading (Allowable Hours) Amendment Act 2017*, with particular regard to:
 - (a) examining the impact of the moratorium on trading hours orders and restriction on making applications (section 59 of the Act) and recommendations following its expiry;
 - (b) examining the impact of the moratorium applicable to shops in Mossman and Port Douglas Tourist Area (section 56 of the Act) and recommendations following its expiry;
 - (c) examination of applications made, and consequences, for relaxation of provisions under section 5 of the Act and recommendations for improvement;
 - (d) the effectiveness of prescribing permitted hours in legislation;
 - (e) the suitability of the permitted hours as currently prescribed; and
 - (f) the role of the Queensland Industrial Relations Commission in setting permitted hours outside the prescribed hours
2. The operation and performance of the provisions of the Act and how, in practice, different provisions are contributing to the objects of the Act and consider the impact of the existing framework for the regulation of trading hours in Queensland.
3. The effects of trading hours regulation on the Queensland economy and on regional Queensland.

Regulatory Model

Subject to any restriction that may exist in other legislation, permitted trading hours for certain shops operating in Queensland are regulated by the Act and orders of the QIRC, which may only be made in accordance with the empowering provisions of, and conditions imposed through, the Act. The Act also prescribes when trading hours are either not regulated or regulated in specific circumstances.

The main objective of the 2016 Review was to consider the existing trading hours framework, and any alternative model for the regulation of trading hours in Queensland. As part of the 2016 Review, consideration was given to full deregulation of Queensland's trading hours. However, as noted in the 2016 Review Report³, this was not recommended on public interest grounds which included the

³ A Review of Queensland's Trading (Allowable Hours) Act 1990, A Report by Mr John Mickel Chair – Trading Hours reverence Group December 2016, page 20

impact deregulation would have on: employment opportunities; rural towns; and independent retail stores.

Current Model

The Act imposes restrictions on permitted trading hours for certain shops in Queensland. The Act distinguishes between the following three classes of shops:

- Exempt shops;
- Independent Retail Shops, which are a category of exempt shops; and
- Non-exempt shops.

Exempt shops

Exempt shops are exempt from the restrictions imposed on trading hours through the Act. As such, exempt shops may trade at any time, subject to any restriction that may exist in other legislation.

Recommendations 10 and 11 of the 2016 Review sought several amendments to the Act with regard to treatment of exempt shops.

Section 5 of the Act makes provision for the exemption of shops as follows:

- exempt due to the nature of goods or services provided;
- exempt if the shop operates in an area where an event is occurring which has been declared by the QIRC to be a special event;
- exempt because the shop is an independent retail shop.

Exempt shops have historically been shops that the public should have, or may seek access to, outside of ordinary business hours for reasons such as necessity, practicality, or leisure. Examples of exempt shops include: chemists; funeral directors premises; bakeries; take-away food shops; service stations; sporting goods shops; and hairdressers, beauticians or barbers shops.

In accordance with recommendation 10 of the 2016 Review, butcher shops and special exhibition or display of goods are now classified as exempt shops. Shops that are exempt because of the type of good or service they provide are listed in schedule 1AA of the Act.

Arrangements for Special Events – Section 5

The QIRC can declare an event as a special event and shops within a stated area that would otherwise be subject to trading hours regulation are exempt from restrictions for the period that the declaration applies. Since the 2017 amendments came into force the following applications to the QIRC have been made for the declaration of a special event:

- Gold Coast 2018 Commonwealth Games – 3 to 17 April 2018
- Mount Isa Rotary Rodeo – 17 July 2018
- Extended Christmas trading at Westfield Chermside & Westfield Garden City – 20 to 21 December 2018 (**not granted**)
- Chinchilla Melon Festival - 1 February 2019
- Burdekin Annual Show (Ayr) – 26 June 2019
- Mount Isa Rotary Rodeo – 5 August 2019
- Brisbane Festival – 5 to 29 September 2019
- Gold Coast 600 Motor Race – 25 to 27 October 2019
- Toowoomba Royal Show – 26 to 28 March 2020
- Townsville 400 – 29 to 30 August 2020

- Brisbane Festival – 4 to 26 September 2020
- Toowoomba Carnival of Flowers – 18 to 27 September 2020
- Australian Football League Grand Final – 24 to 25 October 2020
- Bris Asia Festival – 12 to 14 February 2021 (**not granted**)
- Rocky Nats – 3 to 5 April 2021
- Chinchilla Show – 21 to 22 May 2021
- Proserpine Show – 18 to 19 June 2021
- Mt Isa Show – 18 to 20 June 2021
- Bowen Show – 22 June 2021
- Burdekin Show (Ayr) – 23 June 2021
- Charters Towers Show – 25 to 27 July 2021
- Mt Isa Mines Rodeo – 12 to 15 August 2021

With the exception of the applications for the 2021 BrisAsia Festival and the 2018 Christmas trading at Westfield Chermside & Westfield Garden City, applications were granted by the QIRC for all of the above special events.

The major effect of a special event declaration is the ability of non-exempt shops (e.g. large grocery and department stores) to trade as exempt shops (i.e. no restrictions on opening hours) for a prescribed area and period of time. The Act does not allow for a special event declaration to limit opening hours but rather once a declaration of a special event is made non-exempt shops in the declared area and during the declared period may open the hours they choose (but they are not compelled to open).

Anecdotal evidence based on the lack of noticeable advertising of extended hours by large retail shops linked to special event declarations, suggests that the usage of the extended hours has been limited in metropolitan areas.

In regional areas where large retail stores are not allowed to trade on Sundays and public holidays, the granting of a special event declaration linked to the local agricultural show and show public holiday has seen a greater number of large retail stores increasing their trading hours on the relevant Sunday and/or show public holiday. Nevertheless, it should be noted that the conduct of a local agricultural show in a local government area has not led to applications for special event declarations in all regions.

Information on the extended hours of non-exempt shops as a result of special event declarations has been gathered for several special events as follows:

- Brisbane Festival – 5 to 29 September 2019
 - The declaration applied to the geographic area of a number of named BCC wards (Central, Gabba, Morningside, Coorparoo, Tennyson, Walter Taylor and Paddington) and to Hamilton North Shore Area.
 - No increased hours by large retail stores identified from advertisements.
- Gold Coast 600 Motor Race – 25 to 27 October 2019
 - The declaration applied to the geographic area contained within the boundaries of the Coomera River, Tallebudgera Creek, the M1 Motorway and the coastline between the mouth of the Coomera River and Tallebudgera Creek.
 - All large retail stores advertised hours appear to remain within the hours allowed for non-exempt shops in the south-east Queensland Area or Gold Coast Coastal Tourist area.
- Toowoomba Carnival of Flowers – 18 to 27 September 2020

- Coles Glenvale advertised as opening one hour earlier at 7am Monday to Saturday.
- Australian Football League Grand Final – 24 to 25 October 2020
 - Applicable to a defined area of Brisbane encompassing the Central and Gabba Wards.
 - Woolworths Newstead and Woolworths Teneriffe Metro opened till 9pm Sunday 25 October – 3 hours later than the normal closing time of 6pm.
- Mt Isa Show – 18 to 20 June 2021
 - Woolworths opens 9am – 6pm on Friday 18 June show public holiday and 10am – 4pm on Sunday 20 June (both usually closed days)
 - Coles opens 9am – 6pm on Sunday 20 June (usually a closed day)
 - Kmart opens 10am – 4pm on Sunday 20 June (usually a closed day)
- Bowen Show – 22 June 2021
 - Woolworths opens 9am - 4pm on Tuesday 22 June show public holiday (usually a closed day)
- Burdekin Show (Ayr) – 23 June 2021
 - Woolworths opens 9am - 4pm on Wednesday 23 June show public holiday (usually a closed day)
- Charters Towers Show – 25 to 27 July 2021
 - Woolworths opens 8am - 5pm on Sunday 25 July and 8am - 5pm on Tuesday 27 July show public holiday (both usually closed days)
- Mt Isa Mines Rodeo – 12 to 15 August 2021
 - Woolworths opens 9am – 6pm on Sunday 15 August (usually a closed day)
 - Coles opens 9am – 5pm on Sunday 15 August (usually a closed day)
 - Kmart opens 10am – 6pm on Sunday 15 August (usually a closed day)

Other issues relating to applications for special event declarations are provided at **Appendix 2** and additional detail on each application is provided at **Appendix 3**.

As noted, section 5 also provides that an exempt shop is an independent retail shop. In accordance with recommendation 11 of the 2016 Review, the former standalone category of independent retail shop is now a type of exempt shop. Further discussion on independent retail shops is provided below.

In addition to section 5 exemptions, the Act was also amended in response to recommendation 10 to provide a specific exemption to shops, including shops that would otherwise be non-exempt or independent retail shops, operating in the Mossman and Port Douglas Tourist Areas for a trial period of five years.

Treatment of all shops in these tourist areas as exempt shops differs from treatment of other shops in recognised tourist areas which are either:

- exempt if exempt in accordance with the type of shop listed at schedule 1AA and no trading hours restrictions apply;
- exempt because they are an independent retail shop, and in this case subject to mandated closures; or
- not exempt and subject to trading hours restrictions that apply to non-exempt shops.

This trial period was adopted in response to submissions by the Douglas Chamber of Commerce and the Douglas Shire Council. The trial period total exemption is justified in the 2016 Review Report, on the basis that this temporary exemption ‘will allow shops in this area to open without restriction to

service the needs of cruise ship arrivals and the tourist industry and provide information on the effects of deregulated trading for the post moratorium review of the legislation.’⁴

It is noted that a fulsome review of the effectiveness of this trial may be impeded by the effects of the COVID-19 health pandemic.

Independent retail shops

Independent retail shops used predominantly for the sale of food and/or groceries are exempt from trading hours restrictions. The only trading hours restriction imposed on other independent shops applies to a requirement that these shops must be closed on Christmas Day, Good Friday and Anzac Day up until 1.00pm when these shops must be closed.

As noted, independent retail shops are a subset of exempt shops. Unlike other exempt shops which are exempt from trading hours restrictions because of the nature of goods or services provided, eligibility for exemption to restrictions upon trading hours for independent retail shops are based on small business type criteria. An independent shop may not engage more than 30 persons at any one time, including the owner, in a shop or where a number of shops are operated throughout the state, no more than 100 persons at any one time throughout the state.

Prior to the legislative amendments that were made in response to the 2016 Review, independent shops were a separate category of shops for the purpose of trading hours legislation. Employee restrictions for determining if a shop was an independent shop were set at 20 persons for the shop, including the owner, or where a number of shops are operated throughout the state, no more than 60 persons throughout the state.

Non-exempt shops

A significant focus of the 2016 Review involved the regulation of Queensland’s permitted trading hours for non-exempt shops, which included consideration of whether these hours should continue to be regulated. Non-exempt shops are shops other than exempt and independent retail shops, examples of non-exempt shops include large grocery and department stores. Wholesale shops are also non-exempt shops regardless of size or the nature of goods sold.

The Act establishes core trading hours for non-exempt shops, these hours are not standard across the State, rather hours are determined by area based on the needs of the stated area. Areas include:

- south-east Queensland;
- tourist area;
- Schedule 1AB area (identified regional and rural areas that have extended trading hours when compared with other non-specified areas outside of south-east Queensland. These extended trading hours are not as great as those permitted for shops in south-east Queensland);
- seaside resort; and
- other area.

A significant difference between stated areas concerns treatment of trading hours on Sundays and public holidays, other than ‘closed days’. Closed day are Good Friday, Anzac Day, Labour Day and Christmas Day, all non-exempt shops must be closed to the public on ‘closed days’. The Act specifies whether trading is permitted on these days and, if so, what the permitted trading hours are.

The Act also contains other specific trading hours arrangements for:

- non-exempt hardware shops;
- non-exempt shops selling motor vehicles or caravans; and

⁴ A Review of Queensland’s Trading (Allowable Hours) Act 1990, A Report by Mr John Mickel Chair – Trading Hours reverence Group December 2016, page 29

- extended hours for Christmas trade throughout Queensland three Sundays prior to 18 December with further extended trade for shops in the Westfield Chermside and Garden City complexes on 23 and 24 December each year.

A feature of the amended Act is that where extended trading hours have been permitted, protections exist to ensure that employees are not forced to work these hours but freely elect to do so. This protection recognises the importance of protecting employees' family and leisure time. It also responds to concerns raised by the Queensland Council of Unions regarding related safety issues when employees work unsociable hours. This requirement was inserted into the Act in response to recommendation 8.

This arrangement is similar to a protection adopted in New South Wales (NSW) which permits trade on Boxing Day provided shops are only staffed with employees who have freely elected to work on that day. This provision was included in the *Retail Trading Act 2008* (NSW) (RT Act NSW) on a trial basis for the 2015 and 2016 Boxing Day public holidays. Following an independent review which recommended the continuation of this arrangement, the RT Act NSW was amended by *Retail Trading Amendment (Boxing Day) Act 2017* to formalise this arrangement on an ongoing basis.

QIRC orders and the ongoing role of the QIRC

The legislated hours included in the 2017 amendments to the Act represent a rationalisation of arrangements that were contained in QIRC orders. Prior to the 2017 amendments, 99 trading hours provisions were contained in 40 pages of QIRC orders. Much of the complexity and confusion surrounding Queensland's permitted trading hours have been attributed to these orders. The decision to replace orders with legislated permitted hours was made to simplify arrangements for all parties, to reduce regulatory red tape and to create greater efficiencies for businesses. The rationalisation of arrangements has resulted in varying degrees of change for areas and locations or certain sorts of shops within areas.

In addition to the regulated trading hours, the QIRC is empowered to make trading hours orders for non-exempt shops. This power is limited as follows:

- the QIRC may extend the permitted trading hours of non-exempt shops on days that shops may trade;
- the QIRC may not make an order that permits trade on a day prescribed in the legislation as a closed day
- may not make an order that shortens permitted trading hours.

In response to recommendation 13 of the 2016 Review, the QIRC's power to make these sorts of orders is currently suspended as a five-year moratorium applies until 31 August 2022.

The moratorium period was included to give industry, employers, employees and the public a period of certainty with regard to permitted trading hours, with the expectation that a proper assessment of the effectiveness of these arrangements and efficiencies achieved can only be assessed after such arrangements have been in place for a reasonable period of time.

While the moratorium has suspended this function of the QIRC, the 2016 Review noted that there was continued support for the QIRC as an independent arbiter to determine trading hours' orders and variations. Support for the ongoing role of the QIRC was submitted by members of the reference group including the National Retail Association, The Shop, Distributive and Allied Employees' Association and The Australian Workers' Union and opposed by the Master Grocers Association and Chamber of Commerce & Industry Queensland.

Economic benefits

As part of the 2016 Review, consideration was given to the estimated financial benefits and potential employment growth predicted as a result of standardising permitted trading hours.

Economic growth and increased jobs were predicted through the reform of Queensland's trading hours, particularly with regard to the implementation of Recommendations 1, 2, 6 and 10.

Recommendation 1 sought permitted trading hours for all non-exempt shops in the south-east Queensland area of:

- 7am – 9pm Monday to Saturday; and
- 9am – 6pm Sundays and most public holidays.

Recommendation 1 was adopted as recommended.

Recommendation 2 sought that all non-exempt shops in areas **outside south-east Queensland** may open:

- 7am – 9pm Monday to Friday;
- 7am – 6pm Saturday (consideration is to be given to how extended hours are phased in); and
- 9am – 6pm Sundays and most public holidays.

Recommendation 2 was not introduced as proposed. Recommendation 2 applies to shops outside south-east Queensland as identified in Schedule 1AB of the Act, with the exception that other than in relation to the Townsville Tourist Area which is permitted to trade from 7am Monday to Friday, trading hours from Monday to Saturday are permitted from 8am, not 7am.

Shops trading in other regional areas are permitted to trade from 8am Monday to Saturday and not 7am as recommended. Shops in these areas are not permitted to open on Sundays and public holidays (excluding Easter Saturday).

Predicted benefits of adopting Recommendation 6, which sought an extension in permitted trading hours for non-exempt shops during the period prior to Christmas Day, included increased retail trade and job creation.

Recommendation 6 was adopted with some modification for extended trading hours for shops in the Westfield Chermside and Garden City complexes.

Recommendation 10 sought among other things, to exempt all shops in the Mossman and Port Douglas Tourist from trading hours restrictions for a five year period. The purpose of lifting trading hours restrictions in the Mossman and Port Douglas area, which was unanimously endorsed by the reference group, was to benefit the 'local tourism servicing cruise ships arrivals and provide a useful case study on the impacts of deregulation.

While Recommendation 10 was not adopted as recommended, the intent of the recommendation, including the exemption for the Mossman and Port Douglas was adopted.

While it was anticipated that there would be financial and employment growth as a consequence of the implementation of the 2016 Review recommendations, it should be noted that the introduction of amendments not as recommended is likely to have had an impact on predicted economic growth and job creation. It is also noted that COVID-19 health pandemic has had a significant impact on the retail and tourism industries in Queensland.

Responding to extraordinary circumstances including the COVID 19 pandemic, natural disasters and other extraordinary circumstances

In the event of an extraordinary situation, a change to permitted retail trading hours may be necessary or desirable. For instance, when a disaster is declared orders may be issued under the *Disaster Management Act 2003* (Disaster Management Act) in response to the declared event, including orders relevant to trading hours, particularly with regard to shops providing food and other essential items in an affected district.

Similarly, the Chief Health Officer has issued notices under the *Public Health Act 2005* (Public Health Act) on a range of matters, including one on trading hours, to assist in containing the spread of, or responding to, COVID-19 related matters. Through the Trading Hours Notice, which applied for the period from 19 May 2020 to 3 July 2020:

- shops used predominantly for the sale of food and/or groceries were permitted to open from 7am on a permitted trading day, to enable people to obtain essential groceries; and

- shops could limit access to certain classes of people, such as those that hold a pension card, for health and safety reasons, this enabled some more vulnerable members of the community to shop at designated times to minimise risk of exposure to infection.

The chief benefit of adopting a centralised approach when responding to an extraordinary event is that it limits sources of authority for responses to that event, which in turn makes it easier for the public to find relevant authorisations.

Another benefit of this approach is that the issuing of an order from a central body tasked with responding to event related matters as a priority, should result in a relatively quick response, particularly when compared with amending legislation or subordinate legislation.

As orders of this nature need to be made quickly and for the overall good of the state/affected area, it is not proposed to take matters responding to extraordinary circumstances to a third party such as a tribunal for determination on the basis that ordinary tribunal proceedings which require the hearing of submissions from opposing parties and/or parties that have an interest/obligation to promote members' interests may hinder an expedited response.

As previously noted, experiences in the Mossman and Port Douglas Tourist Area may inform deliberations as a five year exemption on trading hours restrictions has applied to all shops in this area since August 2017.

Impact of technological changes on the retail sector and how the regulation of trading hours impacts on business viability

Another significant issue to be addressed through the current review involves the change to consumer demand and shopping patterns facilitated by changes in technology, including the increasing presence of online shopping. While online shopping has become prominent in recent years, it is likely forced isolations associated with COVID-19, particularly for older people and those with chronic health conditions, have increased the rate of uptake in online shopping and that the rapidity of uptake may not have been anticipated by businesses.

It is noted the 2016 Review considered technological change and the prevalence of online shopping. One justification relied upon in recommending the extension of trading hours in the lead up to Christmas (recommendation 6) was to assist retail businesses 'regain some competitiveness relative to online retail' where it was acknowledged that '[t]his benefits Queensland to the extent that consumers switch spending away from online businesses located interstate or overseas to local businesses.'⁷

Trading Hours Arrangements in Other Jurisdictions

In considering Queensland's regulatory framework, consideration was also given to trading hours arrangements in other jurisdictions.

A comprehensive overview of jurisdictions' regimes was provided in the Issues Paper that guided the 2016 Review. The Issues Paper provides the following summary of these arrangements:

Shop trading hours' legislation in all Australian jurisdictions traditionally had as its focus the restriction of opening hours by non-exempt shops (i.e. large retailers). ...

Queensland is one of three states, along with South Australia and Western Australia, where non-exempt shop trading hours are still subject to a number of restrictions based on geographical location and/or types of goods sold in the shop.

Non-exempt shopping hours are substantially deregulated in New South Wales, Victoria and Tasmania where restrictions on trading apply only on certain public holidays (i.e. Christmas Day, Good Friday and morning of ANZAC Day with additional closed days in New South Wales on Easter Sunday and Boxing Day). Shop trading hours are totally deregulated in the Australian Capital Territory and the Northern Territory.

⁷ A Review of Queensland's Trading (Allowable Hours) Act 1990, A Report by Mr John Mickel Chair – Trading Hours reference Group December 2016, page 27

Queensland is the only jurisdiction where trading hours are decided by a combination of regulations set out in the Trading Hours Act and decisions of the QIRC. In all other jurisdictions, trading hours are decided by government in legislation.⁸

Since the 2016 Review there has been little change to the way in which trading hours are regulated or not regulated in other jurisdictions. However, some minor changes that may be of interest to this review involve amendments made to NSW legislation, which include:

- the formalisation of an ongoing protection to ensure employees working on Boxing Day only do so those working when they freely elect to do so; and
- an amendment was made to permit supermarkets to trade on Good Friday, Easter Sunday and Anzac Day in 2020 provided employees freely choose to work. This amendment was made in recognition of special circumstances that existed due to the pandemic.

The South Australian government introduced the Retail Trading Bill 2018 to fulfil its election promise to allow bigger retailers in metropolitan Adelaide the same flexible trading hours afforded to smaller independent stores and those operating in regional SA. The Retail Trading Bill 2018 was defeated in the upper house in 2018.

The Retail Trading Bill 2018 was initially supported by Business SA, however, changed its position on deregulating trading hours in 2021. Business SA (the state's Chamber of Commerce and Industry) instead announced support for partial deregulation, which would allow all businesses to trade an extra hour on Saturday until 6:00pm, open two hours earlier on Sunday at 9:00am and open on Boxing Day.

In announcing its change in policy position, Business SA noted that there are some 2000 independent supermarkets right across South Australia and they've got about 30% of the market share. Their suppliers are small businesses and are too small to supply a large national/international supermarket but can get in the door of smaller independent supermarkets. Full deregulation risked "rationalising the market in favour of the big players" at the expense of smaller businesses.

⁸ Queensland Trading Hours Review 2016 - Issues Paper, page 23

Appendix 1

Recommendations from the 2016 Review and the Government response through 2017 amendments of the Trading (Allowable Hours) Act 1990

• Recommendation 1

All non-exempt shops **in the south-east Queensland area** may open:

- 7am – 9pm Monday to Saturday; and
- 9am – 6pm Sundays and most public holidays.

It was estimated that the extension and standardisation of trading hours for non-exempt shops in south east Queensland would provide annual benefits of \$60 million in Gross State Product and create 720 jobs.

Government response – adopted in full

• Recommendation 2

All non-exempt shops in areas **outside south-east Queensland** may open:

- 7am – 9pm Monday to Friday;
- 7am – 6pm Saturday (consideration is to be given to how extended hours are phased in); and
- 9am – 6pm Sundays and most public holidays.

The estimated economic and employment benefits of this recommendation was \$19 million in Gross State Product and 225 jobs, including \$3.6M in Gross State Product and 42 jobs as a consequence of increased trading hours on Sundays; and \$15.4M in Gross State Product and 183 jobs as a consequence of increased trading hours between Monday and Saturday.

Government response – adopted in part.

Outside south-east Queensland, trading hours for non-exempt shops in a Schedule 1AB area (i.e. where Sunday and public holiday opening was already allowed for non-exempt shops at the time of making amendments) are Monday to Friday 8 am to 9 pm, Saturday 8 am to 6 pm, Sunday and most public holidays 9 am to 6 pm (Townsville Tourist Area retained its 7 am opening time on Monday to Friday).

Regional towns outside of Schedule 1AB areas (i.e. areas where Sunday and public holiday opening was not allowed for non-exempt shops at the time of making amendments) are Monday to Friday 8 am to 9 pm, Saturday 8 am to 6 pm and closed on Sundays and public holidays (except Easter Saturday).

• Recommendation 3

In special and tourist areas (i.e. the following areas as currently defined in the trading hours' orders - New Farm, Hamilton North Shore, supermarkets in Gold Coast Coastal Tourist Area and Port Douglas, Great Barrier Reef Wonderland Tourist Complex) non-exempt shops may open:

- 6am – 10pm Monday to Friday;
- 7am – 10pm Saturday; and
- 7am – 9pm Sunday and most public holidays.

Government response – adopted in full

- **Recommendation 4**

In all areas of the State hardware and builders' material supply non-exempt shops (as currently defined in the trading hours' order) may open from 6am Monday to Sunday and most public holidays with a closing time the same as other non-exempt shops in their area.

Government response – adopted in part.

- **Recommendation 5**

The public holidays on which all non-exempt shops must be closed (closed days) are to be the same in all areas of Queensland.

Consideration is to be given to whether there are to be four closed days (i.e. Good Friday, ANZAC Day, Labour Day and Christmas Day) or five closed days (i.e. Good Friday, ANZAC Day, Easter Sunday, Labour Day and Christmas Day).

Government response – adopted in full, noting the closed days for non-exempt shops does not include Easter Sunday.

- **Recommendation 6**

Extended trading will apply in the period prior to Christmas Day by allowing non-exempt shops in all areas of the state to open:

- 8am - 6pm on the three Sundays prior to 18 December each year, and
- until midnight Monday-Sunday in the period from 18-23 December.

All non-exempt shops to be closed from 6pm on 24 December.

To the extent that consistent trading hour extensions over the Christmas period lead employers to lengthen their trading hours, this would create additional working hours. Many businesses already hire casual, non-permanent staff over the Christmas period to cope with additional demand. The ability to open for longer may encourage employers to hire more staff in the pre-Christmas period, generating additional employment.

Government response – adopted with some modification for extended trading hours for shops in the Westfield Chermside and Garden City complexes.

- **Recommendation 7**

The trading hours for non-exempt shops selling motor vehicles or caravans are to be the same as for all other non-exempt shops in Queensland (as provided in recommendations 1, 2, 3, 5 and 6).

Government response – not adopted. Government prescribed allowable hours in the Act but made no changes to existing hours based on submissions from industry stakeholders.

- **Recommendation 8**

Legislative protections are to be provided to workers which will ensure that agreement to work on any of the new extended hours is to be voluntary.

Government response – adopted in full

- **Recommendation 9**

A five year moratorium on further trading hours' applications to amend the allowable trading hours for non-exempt shops with a commitment to further review prior to the end of the moratorium period.

It is also recommended that reasonable notice be afforded to regional businesses prior to the new trading hours' arrangements for non-exempt shops being commenced.

Government response – adopted, noting that the part of the recommendation that pertains to the review prior to the end of the moratorium cannot be achieved until this review is complete.

- **Recommendation 10**

The following shops are to be included in the list of exempt shops:

- special exhibitions, trade shows;
- shops in international airports, cruise terminals, casinos, tourist resorts on offshore islands;
- butcher shops;
- shops operating within a designated area around and during international special events (e.g. Commonwealth Games) and for local festivals. An application for special event or local festival status and the designated area will be made to the QIRC for determination; and
- shops in the Mossman and Port Douglas Tourist area to be exempt for a trial period of five years.

Shops in the Mossman and Port Douglas Tourist area to be exempt from trading hours' restrictions for a trial period of 5 years. This will allow shops in this area to open without restriction to service the needs of cruise ship arrivals and the tourist industry and provide information on the effects of deregulated trading for the post moratorium review of the legislation.

Government response – the intent of the recommendation is adopted. However, it is noted that while the recommended exemptions are legislated for, not all of the recommended exemptions were included in the list of exempt shops which can be found at Schedule 1AA of the Act. Some of the above exemptions are achieved through other provisions of the Act (e.g. exemptions for special events and the Mossman and Port Douglas Tourist area).

- **Recommendation 11**

The categories of independent retail and exempt shops are to be amalgamated into a single category of exempt shop. Current trading hours' restrictions for independent retail shops on Good Friday, Christmas Day, and to 1pm on ANZAC Day are to remain (other than those selling groceries and fresh food).

Government response – adopted in full

- **Recommendation 12**

The number of persons that may be engaged at an independent retail shop or shops at any one time is to be increased from 20 to 30 in any one shop, and where a number of related retail shops are operated, increased from 60 to 100 overall.

Government response – adopted in full

- **Recommendation 13**

The QIRC will continue to adjudicate allowable trading hours outside the legislated spread of hours for non-exempt shops (however this power is suspended during the period of the proposed moratorium).

Government response – adopted in full

Declaration of a Special Event

Section 5 Trading (Allowable Hours) Act 1990

A review of the *Trading (Allowable Hours) Act 1990* (the Trading Hours Act) chaired by Mr John Mickel was conducted in 2016. A report on the review “A Review of Queensland’s Trading (Allowable Hours) Act 1990” was released in December 2016 (the Review Report). The Review Report made a number of recommendations on trading hours arrangements that were enacted through amendments to the Trading Hours Act in 2017.

The Review Report at section 6.1 “Core trading hours for non-exempt (large) retail shops” stated that the recommendations -

“provide for greater liberalisation and standardisation of the allowable trading hours across Queensland, reducing complexity while recognising that in a decentralised state such as Queensland it is appropriate to provide for trading hours’ that are suitable for south-east Queensland, for regional and rural areas, for identified tourist areas and for special events.”

The Review Report at section 6.4 “Redefining some non-exempt shops as exempt shops” outlined Recommendation 10 regarding special events trading hours as follows:

“Recommendation 10

The following shops are to be included in the list of exempt shops: shops operating within a designated area around and during international special events (e.g. Commonwealth Games) and for local festivals. An application for special event or local festival status and the designated area will be made to the QIRC for determination”

In section 6.4, the Review Report further expands on special events trading hours:

“Recommendation 10 proposes a number of additions to the list of exempt shops which may trade without any trading hours’ restrictions Shops operating within a designated area around and during international special events (e.g. Commonwealth Games) and for local festivals are able to be declared exempt from trading hours’ regulation after consideration of an application to the QIRC (Queensland Industrial Relations Commission). The QIRC will decide the appropriateness of area and timeframe for exemption only and may call on submissions from the local government for the affected area in making that decision. The Queensland Government and other organisations conducting or sponsoring the event will have standing to make application in these cases

The following shops (formerly non-exempt or the subject of special application to the QIRC) are to be added to the list of exempt shops shops operating within a designated area around and during international special events (e.g. Commonwealth Games) and for local festivals

Removing restrictions on shops in designated areas related to special events would support the State’s tourism industry both in terms of facilitating increased retail expenditure by existing tourists and increasing the competitiveness of the State as a tourist destination, leading to an overall increase in tourism”

The Trading (Allowable Hours) Amendment Bill 2017 included amendments to the Trading Hours Act implementing Recommendation 10. The Explanatory Notes accompanying the Bill stated that:

“Exempt shops are now also to include shops in an area surrounding a special event as declared by the Queensland Industrial Relations Commission (QIRC). Applications may be made by an organisation, a chief executive of a Government department, a local government or any other person. In deciding on a special event the QIRC must consider the cultural, religious or sporting significance of the event and its significance to the economy and the tourism industry.”

The amendments to the Trading Hours Act implementing Recommendation 10 of the Review Report took effect from 31 August 2017.

The legislative provisions setting out arrangements for special event trading hours are at sections 5(1)(c), 5(2) and 5(3) of the Trading Hours Act. A copy of those provisions are at **Appendix 2.1**.

According to the Trading Hours Act, an "exempt shop" includes shops in an area surrounding a special event as declared by the Commission. The declaration is made in respect of the event – not the shops. The status of non-exempt (large retail) shops is changed to exempt shop as a consequence of the declaration. The significance of a non-exempt shop becoming an exempt shop by such a declaration is that they are able to trade without any restriction on their opening and closing times. However, the status of a shop as an exempt shop because of a special event declaration applies only in an area and for the time specified in the declaration.

The Trading Hours Act places a number of conditions on when the Commission may declare a special event.

- The event must be a unique or infrequent event of local, State or national significance. Two examples of such events are given.
- 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 and may consider any submission made by a local government impacted by the declaration.

The Trading Hours Act also requires certain procedures be followed before making a declaration of a special event.

- A declaration may be made on application by an organisation, chief executive, local government or any other person.
- A declaration must state details of the event the subject of the declaration, the period for which the declaration applies and the area to which the declaration applies.
- A declaration must be published on the QIRC website.

Some Issues Discussed in the Decisions

*Note: a summary of each of the decisions can be found at **Appendix 3**.*

1. Arguments by the Applicant for Special Event Status

The National Retail Association, Union of Employers (the NRA) has made all the 23 applications for declarations of special events except for the 2021 Rock Nats decision in April 2021 which applied to only a single business which made its own application. In making these applications the NRA acts on behalf of the interests of businesses likely to benefit from being allowed to trade unrestricted hours as an exempt shop within an area nominated for the special event during the period of the declaration. The benefits flowing from such a declaration relate to large retail businesses such as the major grocery and department stores who are subject to some restrictions on their hours of opening each day or even prohibited from trading on certain days (e.g. Sundays and public holidays) in regional areas.

The NRA have consistently and successfully argued that when a significant national or international festival (e.g. Commonwealth Games, Brisbane Festival or AFL Grand final in Brisbane) or a local festival (e.g. linked to the local agricultural, horticultural or industrial show) is conducted that this is of cultural or sporting significance and of significance to the economy and the tourism industry locally or wider. Statistics on the influx of tourists and increased spending benefiting the economy are commonly offered as part of the NRA applications as well as supporting media statements by local, state and federal political representatives.

The Queensland Industrial Relations Commission (the Commission) have accepted applications including such information as sufficiently satisfying the criteria for declaration of a special event with or without conditions. Only two applications have been dismissed either because the NRA have failed to convince the Commission that the special event status is applicable to the event in question (Extended Christmas

trading at Westfield Chermside & Garden City 2018) or because the Commission was not convinced that the event in question was significant to the economy and the tourism industry (BrisAsia Festival 2021).

Although the legislation provides for consideration to be given to submissions made by a local government for an area likely to be impacted by a special event declaration, this option has not been greatly relied on by either applicant or respondent in decisions as reported to date. In the Gold Coast 2018 Commonwealth Games decision it is reported that in written correspondence to the Commission, both relevant Local Government Councils (Brisbane and Gold Coast) expressed their full support for the application. In some other decisions the attitude of the local government council is noted as being neutral. The support of the Brisbane City Council for the dismissed BrisAsia Festival 2021 application is noted in the relevant decision but discounted as being only an outline of Council's view of trading hours broadly providing no specific evidence or any detailed submission of the significance of the event in particular.

2. Conditions Imposed by the Commission on Areas subject to a Special Event Declaration

In several applications the Commission has modified declarations made to a smaller area than that which was originally sought in an NRA application. This may occur by agreement of parties or at the direction of the Commission. These modifications arise from the Commission questioning the need for a wide area sought in an application (i.e. should exempt shop status be granted over a wide area or limited only to shops in the immediate vicinity of an event). Such modified declarations include the following:

- Brisbane Festival - September 2019 - By agreement of the parties the geographical range of the order was significantly reduced from the whole of the Brisbane City Council area to a number of named BCC wards (Central, Gabba, Morningside, Coorparoo, Tennyson, Walter Taylor and Paddington) and to the Hamilton North Shore Area sufficient to cover the geographic scope of events during the festival. Although not agreed by the parties the Commission also decided to not include Westfield Chermside, Carindale and Garden City shopping centres which had been argued as necessary as transport hubs in the area to which the declaration was applicable.
- Gold Coast 600 Motor Race - October 2019 - The SDA took issue with the geographical scope of the order sought being too wide. The NRA conceded this and indicated a willingness to reduce it to have a northern boundary at Hope Island. The Commission decided that the declaration was to apply only in a reduced geographic area contained within the boundaries of the Coomera River, Tallebudgera Creek, the M1 Motorway and the coastline between the mouth of the Coomera River and Tallebudgera Creek.
- Toowoomba Royal Show - March 2020 – The NRA reduced the area to which the declaration would be applicable to a defined area of Toowoomba being the Toowoomba CBD and suburbs adjacent or close to it.
- Brisbane Festival - September 2020 - Applicable to a defined area of Brisbane reduced from City of Brisbane to the Central and Gabba Wards only sufficient to cover the geographic scope of events during the festival.
- Bris Asia Festival - February 2021 – This application was dismissed but was originally to apply to a defined area of Brisbane Central Ward covering the area of Brisbane CBD, Bowen Hills, New Farm and Milton. In its decision the Commission was critical as it was tenants of Queen's Plaza that would be most affected if the application was granted.

3. Right to Appear and be heard in an Application

In the first application (Gold Coast 2018 Commonwealth Games) decided under the provisions of section 5 of the Trading Hours Act, the Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees (the SDA) and the State of Queensland sought leave and were granted the right to be heard in the application. The SDA was permitted to appear and make submissions in the matter. DP Swan observed that leave to appear in trading hours' special event declaration applications under s5 of the Trading Hours Act must be properly sought through the Industrial Registry rather than direct communication with a Commissioner.

Subsequently the SDA, and where relevant the Australian Workers Union of Employees (Queensland) (the AWU), have been included in directions orders issued by the Commission and have sought and been granted leave to be heard on applications as interested parties.

4. Voluntary Employment

The SDA have consistently argued in their written and verbal submissions before the Commission that if a declaration of a special event is made that the Commission also order that an employer must not require an employee to work during extended hours unless the employee has freely elected to work during extended hours. Such provisions are already prescribed by section 36B of the Trading Hours Act in respect of extended hours in non-exempt shops resulting from the 2017 amendments to the Trading Hours Act (see text of the provision at **Attachment 1**).

The SDA have relied on the precedent set in the decision of DP Swan in the first declaration made for for the Commonwealth Games. The SDA also reasoned that the Commission has the power to make ancillary orders to implement any declaration.

NRA has not taken a position in opposition to this and generally commits to voluntary employment in each of its applications.

The Commission in early applications imposed a voluntary employment order as part of its declaration (e.g. Gold Coast 2018 Commonwealth Games, Chinchilla Melon Festival 2019, Mount Isa Rotary Rodeo 2019, Brisbane Festival 2019 and Gold Coast 600 Motor Race 2019) referencing the provisions of section 36B of the Trading Hours Act.

A change of attitude by the Commission is evident in the 2020 applications (commencing with the Toowoomba Royal Show 2020 decision) where the Commission's power to make an order for voluntary employment in respect of a declaration is questioned by the Commission itself resulting in refusal to make such an order as part of a declaration. The Toowoomba Royal Show 2020 decision has been relied on by the Commission in subsequent applications.

In more recent applications decided in 2021 (commencing with the Chinchilla Show 2021 decision) the Commission has continued to state its position that it does not consider it has the power to impose voluntary employment conditions in section 5 the Trading Hours Act special event declarations. In several of these decisions the Commission has gone on to state that the provisions of section 36B the Trading Hours Act prescribing voluntary employment only, do apply to work during the period of a special event declaration (e.g. Chinchilla Show 2021, Proserpine Show 2021, Mt Isa Show 2021, Burdekin Show 2021, Mt Isa Mines Rodeo 2021 and Weipa Fishing Classic 2021).

5. Submissions Opposing Applications

The SDA has consistently questioned whether the applications of the NRA satisfy the criteria for extending trading hours in shops both specifically in relation to the criteria established in section 5 of the Trading Hours Act and more generally as the extensions relate to the scheme of trading hours regulation. These submissions are in addition to those reported above relating to voluntary employment.

Since the Commission's consideration of the applications for declaration of special events for the Brisbane Festival 2019, Gold Coast 600 2019 and the Toowoomba Royal Show 2020, the Commissions decisions report that the SDA submissions have generally contended that applications do not afford the Commission an absolute discretion to grant declarations and that it is imperative the Commission vigorously assess and only declare an event a '... unique or infrequent event of local, State or national significance' when the factual circumstances and evidence strongly dictate that circumstance. The SDA's concern appears to be that applications will be used to suggest that any event, no matter of what significance held in any area will procedurally be declared a special event and hence all retail stores in the proximity of any event will be afforded the expansion of hours to those of an exempt shop (i.e. no restrictions on opening hours). Although the Commission has on several occasions agreed with the need to "vigorously assess" applications, the SDA submissions have not been accepted by the Commission as sufficient argument to justify the dismissal of an application.

The SDA submissions are reported in various degrees of detail in a number of the Commission's decisions but one decision (i.e. Charters Towers Show 2021) contains a summary considered to represent the range of issues raised by the SDA in that particular application as well as in those that came before and after it. Likewise, the response of the Commission in this application is considered representative of the Commission's responses in earlier applications where the submissions of the SDA of this type were not accepted and declarations of special events were made by the Commission.

The following is taken from the Charters Towers Show 2021 decision at paragraph 16:

"Those submissions, in summary, include as follows:

- (a) whilst s 5(3) of the Act describes matters the Commission must consider when making a determination whether to declare an event to be a "special event", there is a deficiency within the Act for not providing guidance or any reference to considerations on such matters as:
 - (i) the necessity of non-exempt shops to actually trade as exempt shops during the special event;*
 - (ii) the impact such a declaration has on employees of shops effected by the granting of such a declaration;*
 - (iii) the necessity to limit any retails hours during the special event period.**
- (b) recommendations arising out of the Office of Industrial Relations review in December 2016, stated that a change to the trading hours legislation was considered in terms of assisting tourism by specifically providing "shops operating within a designated area around and during international special events (example Commonwealth Games) and for local festivals to be able to be declared exempt from trading hours regulation after consideration of an application to the QIRC and the QIRC will decide the appropriateness and time frame for the exemption";*
- (c) the review recommendations were not intended to make every event significant nor to make all non-exempt activities in a location near an event free from trading regulation and that these types of applications are simply a false suggestion by the NRA that there is a necessity for de-regulation of trading hours to assist the economy and tourism without approving the actual necessity for extending trading hours in the events or into the future;*
- (d) the application by the NRA raises concerns around the immediate and long-term consequences for the SDA's members including:
 - (i) where s 5 applications are used to suggest the significance of any event without demonstrating real necessity for extending trading by major retailers, the application undermines the existing trading regime. This consequence may benefit some major retailers but is likely to put significant pressure on the availability required of retail workers in the future and removes the competitive advantage of late night trading relied upon by many small business owners and operators.*
 - (ii) the existing protections around voluntary work available under statutes or other instruments are not always adequate in preventing the reality or other relational pressures in store. Whilst it is ideal to hypothesise additional hours will be available to those employees who request work, employers usually direct employees to work a particular roster for the relevant period on the basis of operational needs or requirements. The SDA submits that it is regularly informed by its members that they experience relationship breakdown and other consequences if those rosters are declined, regardless of the reason for declining.**
- (e) due to the current situation in Queensland relating to Covid-19, if the event does proceed, the SDA is not confident it will hold the same level of significance it has in previous years. It submits it is likely the economic and tourism interests of the area would be better served by minimising any unnecessary gathering opportunities such as shopping at Woolworths in extended hours, to*

avoid increasing fears of community transmission. The SDA also submits that the current situation with Covid-19 is very likely to have a significant impact on any domestic tourism in the month of July and this will not only reduce attendance numbers at the event, but locals to the area are accustomed to the existing regime and will not have an expectation of additional shopping opportunities;

- (f) *it is submitted that if the event does proceed, the existing trading regime is sufficient for the period of the Charters Towers Show and that the application does not serve any genuine need of patrons attending the event;*
- (g) *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 response of the Commission at paragraphs 19 – 23 was as follows:

[19] Section 5(3)(a) of the Act prescribes the matters the Commission must consider in deciding to declare an event to be a special event for the purpose of s 5(1)(c) of the Act. I will address those matters further below.

[20] The parties each raise matters in their submissions which go beyond the matters required by s 5(3)(a) of the Act. Section 5(3) does not provide that in deciding whether or not to make the declaration, the Commission must have regard only to the matters specified in that section. However, any other matter that the Commission is bound to consider must be determined by implication from the subject matter, scope and purpose of the Act.

[21] It may well be that some of the matters raised by the SDA in its submissions including, for instance, the impact on employees if a declaration is made fall within consideration of whether a declaration be made if it can be established those matters are relevant to the subject matter, scope and purpose of the Act. The SDA's submissions are of a general nature and do not establish by reference to evidence or any other information the relevance of such matters in the context of this application.

[22] Further, I do not accept the SDA's submissions that the word "significance" in s 5(3)(a) of the Act was intended to be used as an unmeasured bench mark available to an applicant to point to any cultural, religious or sporting aspects or any event to satisfy an application for extended trading.

[23] The word significance should be read within its ordinary context. That is, it is of importance and/or consequence.

The decision in the Mt Isa Mines Rodeo 2021 application also provides a useful but similar summary of the submissions of the SDA in special events declarations applications.

6. Usage of Extended Hours as a result of Special Event Declarations

The major effect of a special event declaration is the ability of non-exempt shops (e.g. large grocery and department stores) to trade as exempt shops (i.e. no restrictions on opening hours) for a prescribed area and period of time. The Trading Hours Act does not allow for a special event declaration to limit opening hours but rather once a declaration of a special event is made non-exempt shops in the declared area and during the declared period may open the hours they choose (but they are not compelled to open). This prompts the question as to what extent non-exempt shops have increased their hours as a result of a special event declaration applicable in their area?

Anecdotal evidence based on the lack of noticeable advertising of extended hours by large retail shops linked to special event declarations, suggests that the usage of the extended hours has been limited in metropolitan areas.

In regional areas where large retail stores are not allowed to trade on Sundays and public holidays, the granting of a special event declaration linked to the local agricultural show and show public holiday has

seen a greater number of large retail stores increasing their trading hours on the relevant Sunday and/or show public holiday. Nevertheless, it should be noted that the conduct of a local agricultural show in a local government area has not lead to applications for special event declarations in all regions.

Information on the extended hours of non-exempt shops as a result of special event declarations has been gathered for several special events as follows:

- Brisbane Festival - 5 to 29 September 2019
 - The declaration applied to the geographic area of a number of named BCC wards (Central, Gabba, Morningside, Coorparoo, Tennyson, Walter Taylor and Paddington) and to Hamilton North Shore Area.
 - No increased hours by large retail stores identified from advertisements.
- Gold Coast 600 Motor Race - 25 to 27 October 2019
 - The declaration applied to the geographic area contained within the boundaries of the Coomera River, Tallebudgera Creek, the M1 Motorway and the coastline between the mouth of the Coomera River and Tallebudgera Creek.
 - All large retail stores advertised hours appear to remain within the hours allowed for non-exempt shops in the south-east Queensland Area or Gold Coast Coastal Tourist area.
- Toowoomba Carnival of Flowers - 18 to 27 September 2020
 - Coles Glenvale advertised as opening one hour earlier at 7am Monday to Saturday.
- Australian Football League Grand Final - 24 to 25 October 2020
 - Applicable to a defined area of Brisbane encompassing the Central and Gabba Wards.
 - Woolworths Newstead and Woolworths Teneriffe Metro opened till 9pm Sunday 25 October – 3 hours later than the normal closing time of 6pm.
- Mt Isa Show – 18 to 20 June 2021
 - Woolworths opens 9am – 6pm on Friday 18 June show public holiday and 10am – 4pm on Sunday 20 June (both usually closed days)
 - Coles opens 9am – 6pm on Sunday 20 June (usually a closed day)
 - Kmart opens 10am – 4pm on Sunday 20 June (usually a closed day)
- Bowen Show – 22 June 2021
 - Woolworths opens 9am - 4pm on Tuesday 22 June show public holiday (usually a closed day)
- Burdekin Show (Ayr) – 23 June 2021
 - Woolworths opens 9am - 4pm on Wednesday 23 June show public holiday (usually a closed day)
- Charters Towers Show – 25 to 27 July 2021
 - Woolworths opens 8am - 5pm on Sunday 25 July and 8am - 5pm on Tuesday 27 July show public holiday (both usually closed days)
- Mt Isa Mines Rodeo – 12 to 15 August 2021
 - Woolworths opens 9am – 6pm on Sunday 15 August (usually a closed day)
 - Coles opens 9am – 5pm on Sunday 15 August (usually a closed day)
 - Kmart opens 10am – 6pm on Sunday 15 August (usually a closed day)

Trading (Allowable Hours) Act 1990

5 Exempt shops

- (1) An **exempt shop** is—
- (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—
- the 2018 Commonwealth Games
 - the Weipa Fishing Classic event
- (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.

36B Protection for employees—extended hours under Trading (Allowable Hours) Amendment Act 2017

- (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
- (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.

**Submissions in response to applications for a Declaration of a Special Event
section 5 Trading (Allowable Hours) Act 1999
(as reported in decisions of the Queensland Industrial Relations Commission)**

1. Gold Coast 2018 Commonwealth Games - 3 to 17 April 2018
National Retail Association, Union of Employers (TH/2017/26)
 - Application made by National Retail Association Limited, Union of Employers (NRA).
 - Application for declaration granted (DP Swan).
 - Applicable to the area of Brisbane City Heart (as defined by post code 4000) and City of the Gold Coast Local Government Area.
 - In written correspondence to the Commission, both relevant Local Government Councils (Brisbane and Gold Coast) expressed their full support for the application made by NRA.
 - The Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees (the SDA) and the State of Queensland sought leave and were granted the right to be heard in the application. The SDA was permitted to appear and make submissions in the matter. DP Swan observed that leave to appear in trading hours' special event declaration applications under s5 of the TAH Act must be properly sought through the Industrial Registry rather than direct communication with a Commissioner.
 - The SDA, while not disputing the significance of the Commonwealth games, sought a limitation on the spread of allowable trading hours and also that workers be protected such that any work during additional trading hours be voluntary. DP Swan observed that there is no discretion to set opening and closing times within the scope of the application. The declaration by the QIRC includes a condition agreed by the parties that any work during the additional hours as a result of the declaration is to be voluntary.
 - Concerns regarding voluntary employment expressed by the SDA related to the impact of this type of decision upon employees who are employed by non-exempt stores and the potential for them to be required to work additional hours allowed by the decision. In the body of the decision (para 28) the provisions of s 36B of the TAH Act (i.e. an employer must not require an employee to work during extended hours unless the employee has freely elected to work during extended hours) were stated to be conditions of employment during extended hours although not included as part of the formal declaration. The matter of voluntary employment during the extended hours was agreed to by the NRA. Upon submission by the State of Queensland DP Swan accepted that the Commission has the jurisdiction under s539(f) of the IR Act to make such a condition on the declaration.

2. Mount Isa Mines Rotary Rodeo - 8 to 12 August 2018 (TH/2018/1)
National Retail Association Limited, Union of Employers [2018] QIRC 096
 - Application by NRA.
 - Application for declaration granted (DP O'Connor).
 - Applicable to a defined area of Mt Isa.
 - No appearances or submissions from any other parties.
 - No mention of voluntary work conditions in body of decision or as part of formal declaration.

3. Extended Christmas trading at Westfield Chermside & Garden City - 20 to 21 December 2018 (TH/2018/2)
Re: National Retail Association Limited, Union of Employers [2018] QIRC 118
 - Application by NRA. Intervention by Minister.
 - Application for declaration dismissed (DP O'Connor).
 - Applicable to Westfield Chermside and Garden City.
 - Sought unlimited trading on 20 and 21 December on the basis that pre-Christmas shopping was a special event. Commission did not accept the status of a special event but viewed it only as an attempt to move for that year extended trading arrangements already allowed by the TAH Act.

4. Chinchilla Melon Festival - 14 to 17 February 2019 (TH/2019/1)
National Retail Association Limited, Union of Employers [2019] QIRC 026
 - Application by NRA.
 - Application for declaration granted (Commissioner Knight).
 - Applicable to a defined area of Chinchilla.
 - SDA sought and was granted leave to be heard in the matter. SDA submissions related to importance of preserving protections for employees who if the application was granted may be required to work increased hours.
 - Voluntary employment - In body of decision (para 27) it is stated that the statutory protections set out at s 36B of the TAH Act will apply for employees engaged by non-exempt shops during the nominated period. At hearing SDA indicated in those circumstances it was willing to have the application proceed.

5. Burdekin Annual Show (Ayr) - 26 June 2019 (TH/2019/2)
National Retail Association Limited, Union of Employers [2019] QIRC 095
 - Application by NRA.
 - Application for declaration granted (DP Merrell).
 - Applicable to a defined area of Ayr.
 - No person made application seeking leave to be heard.
 - No mention of voluntary work conditions in body of decision or as part of formal declaration.

6. Mount Isa Rotary Rodeo - 7 to 11 August 2019 (TH/2019/3)
National Retail Association Limited, Union of Employers [2019] QIRC 112
 - Application by NRA.
 - Application for declaration granted (VP O'Connor).
 - Applicable to a defined area of Mt Isa.
 - Voluntary employment - In body of decision (para 8) it is stated that the Australian Workers' Union of Employees (Queensland) (the AWU) in correspondence indicated that it did not intend to seek leave to appear but raised the application of s 36B of the TAH Act which provides that an employer must not require a current employee to work during extended hours (such as would result if the application was granted) unless the employee agrees, in writing, to work during extended hours. Such conditions were not made part of the Commission's declaration.

7. Brisbane Festival - 5 to 29 September 2019 (TH/2019/4)
National Retail Association Limited, Union of Employers [2019] QIRC 127
 - Application by NRA.
 - Application for declaration granted (Commissioner Dwyer).
 - Applicable to a defined area of Brisbane.
 - The SDA sought and was granted leave to be heard on the application and subsequently made submissions and appeared in the matter.
 - The decision states that while the SDA questioned the need for a declaration in their written submissions, they did not disagree that the Brisbane Festival was a significant event locally. It was apparent from their submissions that the SDA was predominately asking the Commission to make a vigorous assessment of this application and to apply appropriate limitations and protections for its members. The SDA issues with respect to the application were limited to the geographic scope of the application and the need for protections for their members that were consistent with the protections set out for employees in s 36B of the Act.
 - By agreement of the parties the geographical range of the order was significantly reduced from the whole of the Brisbane City Council area to a number of named BCC wards (Central, Gabba, Morningside, Coorparoo, Tennyson, Walter Taylor and Paddington) and to Hamilton North Shore Area (sufficient to cover the geographic scope of events during the festival). Although not agreed by the parties the Commission also decided to not include Westfield Chermiside, Carindale and Garden City shopping centres in the area to which the declaration was applicable.
 - Voluntary employment - In body of decision (para 14) the NRA indicated that it had no difficulty with an order including protections for employees consistent with s 36B of the TAH Act. The Commission's declaration states

“5. The statutory protections set out at s 36B of the Act will apply to all employees engaged by non-exempt shops covered by this declaration during the nominated period”.

8. Gold Coast 600 Motor Race - 25 to 27 October 2019 (TH/2019/5)
National Retail Association Limited, Union of Employers [2019] QIRC 150
- Application by NRA.
 - Application for declaration granted (Commissioner Dwyer).
 - Applicable to a defined area of the Gold Coast.
 - The SDA sought and was granted leave to be heard on the application and subsequently made submissions and appeared in the matter.
 - In their submissions the SDA cautioned that a vigorous assessment of applications of this nature needs to be made and to apply appropriate limitations and protections for its members. To this end, the SDA submitted that the GC600 was not a "unique or infrequent event of local, state or national significance". The SDA also took issue with the geographical scope of the order sought being too wide. The NRA conceded this and indicated a willingness to reduce it to have a northern boundary at Hope Island.
 - The Commission decided that the GC600 was a special event for the purposes of s 5 of the TAH Act as it is a unique event of local and State significance but that the area to which the declaration was to apply was the geographic area contained within the boundaries of the Coomera River, Tallebudgera Creek, the M1 Motorway and the coastline between the mouth of the Coomera River and Tallebudgera Creek.
 - Voluntary employment - Formal declaration includes *“4. The statutory protections set out at s 36B of the Act will apply to all employees engaged by non-exempt shops covered by this declaration during the nominated period”.*
9. Toowoomba Royal Show - 26 to 28 March 2020 (TH/2020/1)
National Retail Association Limited, Union of Employers [2020] QIRC 031
- Application by NRA.
 - Application for declaration granted (DP Merrell).
 - Applicable to a defined area of Toowoomba reduced by the NRA to the Toowoomba CBD and suburbs adjacent or close to it.
 - The SDA sought and was granted leave to be heard on the application and subsequently made submissions and appeared in the matter.
 - The SDA opposed the making of the declaration sought. It submitted that the application does not afford the Commission an absolute discretion to grant the declaration and that it is imperative the Commission vigorously assess and only declare an event a '... unique or infrequent event of local, State or national significance' when the factual circumstances and evidence strongly dictate that circumstance. The SDA's concern was that s 5 applications will be used to suggest that any event, no matter of what significance held in any area will procedurally be declared and hence all retail stores in the proximity of any event will be afforded the expansion of hours to those of an exempt shop (i.e. no limits).
 - The SDA submitted that while the TAH Act describes the matters the Commission must consider when making a determination about whether an event is a 'special event', there is a deficiency within the TAH Act whereby the Commission has no guidance or any reference to considerations for matters such as the necessity of non-exempt shops to actually trade as exempt shops during the special event, the impact a declaration has on employees of shops affected by the granting of such a declaration and the necessity to limit any retail hours during the special event period. In response to these submissions DP Merrell stated that he had not had argument from the parties about whether such matters are relevant in determining whether or not to declare an event to be a special event, having regard to the subject matter, scope and purpose of the TAH Act and that in the absence of that argument, these questions should be left to another day.
 - As part of its submission the SDA stated that an application of this type gives the Commission a significant power to declare a 'non-exempt shop' to be an 'exempt shop' for a specified event and that such a declaration extends the possible trading hours of non-exempt shops and has significant impacts on employees and its members. As a result, employees may be required to work 'extended hours' as defined under the TAH Act without the requisite protections (i.e.

voluntary work only) afforded to employees of non-exempt shops pursuant to s 36B of the TAH Act.

- The SDA contended that the Commission had to some extent set a precedent in relation to the protection of employees in non-exempt shops regarding extended trading hours. The SDA referred to the decision of Swan DP in the Commonwealth Games declaration where her Honour stated that the rights and conditions of employment by employees engaged by non-exempt stores, would be retained during the period of the declaration made in the that case. In that case her Honour incorporated the meaning of s 36B of the TAH Act into her decision as a condition applying to those non-exempt employees working during the extended trading hours during the nominated period for the Games although the condition did not form part of the declaration itself.
- The SDA submitted that the Commission can provide ancillary orders to any declaration made that a protection from working extended hours should be provided to employees in all affected shops.
- DP Merrell raised with the SDA and the NRA the source of the power for the Commission to make such an ancillary order. In its further submissions, the SDA submitted that the Commission had previously considered and ordered such protections and that the Commission should also take into account the '... agreement by all parties that such protections are applicable in the circumstances' and that the Commission may be guided by the precedent set by previous orders made by the Commission (e.g. Commonwealth Games 2018, Gold Coast 600 2019 and Brisbane Festival 2019).
- The NRA made no further submissions about the issue.
- DP Merrell was not persuaded the Commission has the power to make such an order as sought by the SDA. It was accepted that there is a long-standing principle that where the exercise of power is conferred by statute, the conferral of such power is said to carry with it the powers that are 'necessary' for, 'incidental' to or 'consequent' upon the exercise of that power granted. DP Merrell was not persuaded that an order of the kind sought by the SDA is indispensable to, fairly incidental to or consequential upon the statutory power to make a declaration under s 5(2) of the TAH Act. The decision stated that none of these considerations, or any other source of power for the Commission to make an order of the kind sought by the SDA, appeared to have been argued before Swan DP in the Commonwealth Games 2018 case.

10. Townsville 400 Motor Race- 29 to 30 August 2020 (TH/2020/3)

National Retail Association Limited, Union of Employers [2020] QIRC 112

- Application by NRA.
- Application for declaration granted (Commissioner McLennan).
- Applicable to a defined area of Townsville.
- The SDA sought and was granted leave to be heard on the application and subsequently made submissions and appeared in the matter.
- The AWU did not seek leave to be formally heard but did make a written submission stating that the Commission should take into consideration all matters referred to in s 5 of the TAH Act and whether there is any necessity for a non-exempt shop to be redefined as an exempt shop for the purpose of such application and that if the application was granted it should ensure that all employees in the affected shops receive a protection from working extended trading hours by reason of s 36B of the TAH Act.
- The SDA submissions re-stated the concerns expressed in the 2019 Toowoomba Royal Show application (see above) regarding vigorous assessment of the application and voluntary employment conditions.
- Commissioner McLennan stated his agreement the SDA's submissions that "...it is imperative the Commission vigorously assess..." such applications for extended trading hours and that such decision should not be taken lightly. But in circumstances where the experience of past years demonstrates the Townsville 400 event is one of sporting significance, with economic and tourism benefits to the regional economy, the application was accepted.
- Regarding voluntary employment conditions, the NRA indicated their acceptance of the unions' proposal. Commissioner McLennan stated his absolute agreement that such protections (referencing s36B of the TAH Act) for affected employees are appropriate, applicable and necessary in these circumstances and emphasised the good sense of leaving each affected retail

worker to make their own decision about whether or not to accept any additional hours that may be offered to them. However, those conditions were not made part of the formal declaration.

11. Brisbane Festival - 4 to 26 September 2020 (TH/2020/4)

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

- Application by NRA.
- Application for declaration granted (Commissioner Dwyer).
- Applicable to a defined area of Brisbane reduced from City of Brisbane to the Central and Gabba Wards only (sufficient to cover the geographic scope of events during the festival).
- The SDA sought and was granted leave to be heard on the application and subsequently made submissions and appeared in the matter.
- The SDA was broadly opposed to the application submitting that the Commission should make a vigorous assessment of the application and apply appropriate limitations in protection of its retail worker members (i.e. voluntary employment protections under s36B of the TAH Act). The NRA was not opposed to the making of a voluntary employment order.
- The Commission stated that in response to the submissions of the SDA it is not convinced that the Commission has the discretionary power under the TAH Act to make an order about voluntary employment and therefore declined to make such an order. Commission further stated:

[32] In doing so, I note that s 36B is not the only protection available to employees who may find themselves subject to duress or coercion etc with respect to being directed to work during extended hours. There are any number of scenarios where an employee might reasonably and lawfully refuse such a direction or seek protection available under other statutes or instruments.

[33] I hasten to add that if the SDA identifies any cases of its members being compelled to work involuntarily during extended hours, such evidence is likely to be a relevant consideration in future applications of this type. I would expect that the NRA will ensure that its members appreciate that while the protections for employees under s 36B are not applicable during the period of the exemption, they ought to conduct themselves as if they were."

12. Toowoomba Carnival of Flowers - 18 to 27 September 2020 (TH/2020/5)

National Retail Association Limited, Union of Employers [2020] QIRC 168

- Application by NRA.
- Application for declaration granted (Commissioner Hartigan).
- Applicable to a defined area of Toowoomba.
- The SDA sought and was granted leave to be heard on the application and subsequently made submissions and appeared in the matter.
- The parties each raised matters in their submissions which go beyond the matters required by s 5(3)(a) of the TAH Act (e.g. submissions from the SDA on the necessity of additional trading hours for business or patrons, whether additional hours for the shop is for the event or merely during the event, etc). Section 5(3) does not provide that in deciding whether or not to make the declaration, the Commission must have regard only to the matters specified in that section. However, any other matters that the Commission is bound to consider must be determined by implication from the subject matter, scope and purpose of the TAH Act.
- Whilst the parties each raised matters regarding the benefit (or conversely, potential detriment) to be derived from the declaration and the sufficiency or otherwise of the current trading hours, they did so without identifying how these matters are a relevant consideration to the determination to be made by the Commission, having regard to the subject matter, scope and purpose of the TAH Act. Accordingly, the submissions made by the parties did not establish the extent to which those other matters are relevant to consideration of the application.
- The SDA also submitted that the Commission provide to all employees in any affected stores, as part of the declaration, a protection from working extended hours by reason of s 36B of the TAH Act, to allow work in extended hours to be voluntary. The Commission stated that it was not persuaded that it has the power to grant the relief sought by the SDA and declined to make the order sought. At the request of the Commission, no source of power to make such an order was able to be identified by the SDA. Reference was made back to a similar decision of DP Merrell in the Toowoomba Royal Show declaration (see above).

13. Australian Football League Grand Final - 24 to 25 October 2020 (TH/2020/6)
National Retail Association Limited, Union of Employers [2020] QIRC 177
- Application by NRA.
 - Application for declaration granted (Commissioner McLennan).
 - Applicable to a defined area of Brisbane encompassing the Central and Gabba Wards.
 - The SDA sought and was granted leave to be heard on the application and subsequently made submissions and appeared in the matter.
 - The SDA submissions repeated many of the arguments from earlier applications regarding vigorous assessment and questioning the necessity for extended hours related to the special event. It was additionally stated that there was anecdotal evidence from retail employees that stores do not generally implement the extended hours despite the NRA's suggestion that these applications are desired by retailers.
 - The SDA expressed concern that employees working during the extended hours granted should do so only on the basis of volunteering to do the work. The NRA gave an undertaking in the application that work would be on a voluntary basis in accordance with s36 B of the TAH Act. Commissioner McLennan stated in the decision that such protections for affected employees are appropriate, applicable and necessary and any additional work during extended hours will be on a voluntary basis as per section 36B of the TAH Act. Reference was made to the decision of DP Swan in the Commonwealth Games 2018 case.
14. Bris Asia Festival - 12 to 14 February 2021 (TH/2021/1)
National Retail Association Limited, Union of Employers [2021] QIRC 029
- Application by NRA.
 - Application dismissed (Commissioner McLennan).
 - Applicable to a defined area of Brisbane Central Ward covering the area of Brisbane CBD, Bowen Hills, New Farm and Milton.
 - The SDA sought and was granted leave to be heard on the application and subsequently made submissions and appeared in the matter.
 - At the hearing of this matter, the NRA tabled a short letter of support from Lord Mayor Adrian Schrinner in which he stated:

“Council supports liberalising trading hours generally and supports this application specifically. We believe that increased access to trading hours during major events and celebrations is critical to helping businesses recover from the recent economic downturn and enhances Brisbane’s reputation as a liveable and prosperous city.”
 - The NRA also handed up a letter of support for the application from Queens Plaza Centre Management.
 - The NRA also stated that the application dates had been further revised down to a range of 12 – 14 February 2021 inclusive. The compressed dates of the application were said to coincide with the Lunar New Year celebrations in the 2021 event program in the Chinatown Mall and the greater CBD, with the major event occurring in the Chinatown Mall on 13 February 2021.
 - The NRA advised that the application was envisaged to effect specifically the attendants of Queens Plaza and associated businesses in the Edwards Street strip. It was confirmed that the location of the sole festival event in the Brisbane Ward is in the Chinatown Mall and not in the immediate vicinity of Queens Plaza, but was instead potentially a walk of 15 – 20 minutes. The Lunar New Year event in the Chinatown Mall was scheduled to run from 6 – 9 pm.
 - The SDA opposed the application submitting that the NRA's application does not afford the Commission an absolute discretion to grant the declaration and that it is imperative the Commission vigorously assess and only declare an event a “unique or infrequent event of Local, State or National significance” when the factual circumstances and evidence strongly dictate that circumstance. In its oral submissions the SDA maintained objection to the NRA's application on the grounds it is questionable as to whether the event is ‘significant’ within the parameters of the legislation.
 - The SDA submissions strongly advocated for the voluntary nature of work in any extended hours that may be granted through the application. The NRA's submitted that any additional work during extended hours will be on a voluntary basis as per section 36B of the TAH Act.

- The Commission in its decision stated that the BrisAsia Festival was an unique or infrequent event of local, State or national significance and had cultural, religious or sporting significance. However, it was not convinced that it was an event significant to the economy and the tourism industry.
- The Commission noted the position of the NRA in relation to the tenants of Queen’s Plaza and was critical of basing the application on an expectation that potential customers would walk 15-20 minutes from the Chinatown Mall at the conclusion of the major festival event to shop at Queen’s Plaza. The Commission was also critical as the NRA maintained the area sought for the declaration as the whole of the Central Ward when they had indicated that it was tenants of Queen’s Plaza that would be most affected if the application was granted.
- The Commission also stated that the letter of support from Brisbane City Council only outlines Council’s view of trading hours broadly. It does not provide specific evidence or any detailed submission of the significance of the event in particular – the mandatory criteria that informs consideration of such applications.
- In concluding its decision to dismiss the Commission stated:
“[49] I entirely agree with the SDA’s comments that it is imperative the Commission vigorously assess such applications for extended trading hours and that such decision should not be taken lightly. The BrisAsia event is of some cultural and religious significance. However, in such circumstances where the experience of past years (even pre-COVID) demonstrates dwindling attendance numbers, flow-on economic and tourism benefits to the economy are unlikely to be realised as a result of the BrisAsia Festival.”

15. Rocky Nats - 3 to 5 April 2021 (TH/2021/2)

Re: CQ American Motorcycles Pty Ltd T/A Rocky Harley Davidson [2021] QIRC 109

- Application by CQ American Motorcycles Pty Ltd trading as Rocky Harley Davidson (represented by Motor Trades Association of Queensland).
- Application related only to a single business premises to operate extended hours over the Easter weekend public holidays to service the 2021 Rocky Nats car and motorbike festival event.
- Application granted (Commissioner Hartigan)
- The SDA sought and was granted leave to be heard on the application and subsequently made submissions and appeared in the matter.
- The SDA objected to the application on the basis that the RockyNats is not of sufficient significance to be declared a special event and that the application did not provide guidance or any reference to considerations on such matters as the necessity for non-exempt shops to actually trade as exempt shops during the special event, the impacts such a declaration has on employees of shops effected by the grounding of such a declaration and the necessity to limit any retails hours during the special event period.
- The SDA also submitted that in the event a declaration is granted, that the Commission provide, as part of such declaration, an expression as to the importance of work within extended hours remaining voluntarily. Commissioner Hartigan stated he was not persuaded that the Commission has the power to grant the relief sought by the SDA and therefore declined to make the declaration sought by the SDA.

16. Chinchilla Show – 21 to 22 May 2021 (TH/2021/3)

National Retail Association Limited, Union of Employers [2020] QIRC 155

- Application by NRA.
- Application for declaration granted (Commissioner Dwyer).
- Applicable to a defined area of Chinchilla.
- The SDA sought and was granted leave to be heard on the application and subsequently made submissions and appeared in the matter.
- No objections were received to the declaration from the Chinchilla area with the Western Downs Regional Council appearing in the hearing but maintaining an essentially neutral stance. Although the application was not prompted by local retailers the Commission noted this was not a pre-requisite for the application to succeed.

- Submissions from the SDA broadly concentrated on emphasising the preservation of protections afforded to employees whose employment, by reason of the declaration, would temporarily be in 'exempt shops' rather than 'non-exempt' shops potentially increasing their hours of work.
- The Commission stated it was comfortable that the TAH Act sets out at s 36B adequate protection for retail employees potentially impacted by the application being granted and that it was not empowered to make orders incorporating those provisions. The Commission noted that during the proceedings, 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.

17. Proserpine Show – 18 to 19 June 2021 (TH/2021/4)

National Retail Association Limited, Union of Employers [2021] QIRC 197

- Application by NRA.
- Application for declaration granted (Commissioner Pidgeon).
- Applicable to a defined area of Proserpine.
- The SDA sought and was granted leave to be heard on the application and subsequently made submissions and appeared in the matter.
- The SDA's objected to the application. The SDA believe the application may benefit major retailers however is likely to put significant pressure on the availability required of retail workers and removes the competitive advantage of late-night trading which is relied upon by small business owners.
- The SDA submitted that the existing protections are not always adequate in preventing the reality of pressures in store where a worker may wish to decline work during the period of the event. However, Commissioner Pidgeon stated that protections exist under s36B of the TAH Act and there are mechanisms for complaints to be made or disputes notified where the protections are not adhered to. The NRA noted the voluntary nature of work should the declaration be made.

18. Mt Isa Show – 18 to 20 June 2021 (TH/2021/5)

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

- Application by NRA.
- Application for declaration granted (Commissioner Knight).
- Applicable to a defined area of Mt Isa.
- The SDA sought and was granted leave to be heard on the application and subsequently made submissions and appeared in the matter.
- In respect of the significance to the economy and tourism of making a declaration, the SDA argued 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 argues a reasonable understanding of the legislation "would be it applies where an event is of such significance it creates the real possibility of retail opportunities in the extended hours". The SDA contended that on "nearly every occasion" where similar applications have been granted, exempt shops have not opened for longer periods.
- Within the proceedings, the SDA requested the Commission reflect, in any declaration made, the importance of extended work hours being voluntary. In support of its position, the SDA argued the existing protections (s36B of the TAH Act) are not always adequate in preventing a breakdown of relationships, in store where a request to work additional hours is rejected by the employees. The NRA referred to 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. Commissioner Knight did not consider that the Commission has the power to make a declaration of the type sought by the SDA but was comfortable that both the NRA and the SDA will take the appropriate steps to remind their respective members of the voluntary nature of any additional hours worked during the period, along with the statutory protections afforded to employees as set out at s 36B of the TAH Act.
- Commissioner Knight accepted that 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, 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 (the day after

closure of the show), 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.

19. Bowen Show – 22 June 2021 (TH/2021/6)

Re: National Retail Association Limited, Union of Employers [2021] QIRC 217

- Application by NRA.
- Application for declaration granted (Commissioner McLennan).
- Applicable to a defined area of Bowen.
- The SDA sought and was granted leave to be heard on the application and subsequently made submissions and appeared in the matter.
- The SDA repeated the submissions made in the Mt Isa 2021 case (see above) regarding the significance of factors in making a declaration. Additionally, the SDA noted that the application did not demonstrate real necessity for extended trading by major retailers and thus undermined the existing trading regime by introducing increased competition for small traders already allowed to trade extended hours.
- The SDA's submissions sought to protect the voluntary nature of any work to be performed within the extended hours, in the event that the application was granted. The union submitted that existing protections around voluntary work available under statutes or other instruments are not always adequate in preventing the reality of other relational pressures in store.
- The SDA also argued that local retail workers should equally be able to enjoy the public holiday on the day of the Bowen Show, after being engaged in essential front-line work for their community over the last year and a half...without the pressure of an expectation to work it.
- The NRA indicated their acceptance of the proposition that work during extended hours as a result of a declaration should be voluntary only emphasising their commitment that whilst the Commission may not be afforded the discretionary powers to preserve the rights protected by s36B of the TAH Act, any additional work during extended hours will continue to be on a voluntary basis. Commissioner McLennan stated that he absolutely agree that such protections for affected employees are appropriate, applicable and necessary in these circumstances.

20. Burdekin Show (Ayr) – 23 June 2021(TH/2021/7)

National Retail Association Limited, Union of Employers (2021 Burdekin Show case) [2021] QIRC 220

- Application by NRA.
- Application for declaration granted (DP Merrell).
- Applicable to a defined area of Ayr.
- The SDA sought and was granted leave to be heard on the application and subsequently made submissions and appeared in the matter.
- The SDA opposed the application. Ms Armstrong, on behalf of the SDA, repeated the arguments made in the Mt Isa 2021 and Bowen Show 2021 cases (see above) regarding the significance of factors in making a declaration. Additionally, the SDA argued it is not enough for an event to have cultural, religious or sporting significance without some other compelling argument (e.g. economic significance) to disturb the existing regime (reference was made to the decision of Commissioner McLennan in dismissing the application in the BrisAsia 2021 case – see above).
- The SDA also argued that the Commission should consider that 23 June 2021 is a show/public holiday which should be enjoyed by the local retail workers who have engaged in essential front-line work for their community over the last year and a half. The public holiday represents an opportunity for the community to come together after the impact of the pandemic in 2020 and retail workers should have the opportunity to enjoy the public holiday without the pressure of an expectation to work on that day. It was also submitted that the NRA application did not provide enough information on population in Ayr, numbers attending the show and the need for large shops to open on the show day. Without such information it was submitted that the Commission did not have enough information to make a decision.
- The SDA's arguments were not accepted by DP Merrell. Reference was made to the declaration of a special event in the Burdekin Annual Show 2019 case. DP Merrell stated that the same reasons presently exist (in 2021) as to the unique local significance of the Burdekin Show, the cultural significance of the Burdekin Show and the significance of the Burdekin Show to the economy and tourism industry in and around Ayr.

- The SDA further submitted that existing protections around voluntary work available under statutes or other instruments are not always adequate in preventing the reality of other relational pressures in store. DP Merrell stated that as has been noted by decisions of members of the Commission about similar applications, the legislature has made it an offence for an employer to require an employee to work during extended hours unless the employee has freely elected to work during the extended hours (s36B of the TAH Act).

21. Charters Towers Show – 25 to 27 July 2021 (TH/2021/8)

Re: National Retail Association, Union of Employers

- Application by NRA.
- Application for declaration granted (Commissioner Hartigan).
- Applicable to a defined area of Charters Towers.
- The SDA and AWU sought and were granted leave to be heard on the application and subsequently made submissions and appeared in the matter.
- The SDA made general written submissions with respect to the operation of the TAH Act. The decision's description of those submissions are repeated here in full as it is considered they represent a summary of both the submissions particular to this case and a summary of submissions made consistently by the SDA in previous cases.

“Those submissions, in summary, include as follows:

- (a) whilst s 5(3) of the Act describes matters the Commission must consider when making a determination whether to declare an event to be a "special event", there is a deficiency within the Act for not providing guidance or any reference to considerations on such matters as:

 - (i) the necessity of non-exempt shops to actually trade as exempt shops during the special event;*
 - (ii) the impact such a declaration has on employees of shops effected by the granting of such a declaration;*
 - (iii) the necessity to limit any retails hours during the special event period.**
- (b) recommendations arising out of the Office of Industrial Relations review in December 2016, stated that a change to the trading hours legislation was considered in terms of assisting tourism by specifically providing "shops operating within a designated area around and during international special events (example Commonwealth Games) and for local festivals to be able to be declared exempt from trading hours regulation after consideration of an application to the QIRC and the QIRC will decide the appropriateness and time frame for the exemption";*
- (c) the review recommendations were not intended to make every event significant nor to make all non-exempt activities in a location near an event free from trading regulation and that these types of applications are simply a false suggestion by the NRA that there is a necessity for de-regulation of trading hours to assist the economy and tourism without approving the actual necessity for extending trading hours in the events or into the future;*
- (d) the application by the NRA raises concerns around the immediate and long-term consequences for the SDA's members including:

 - (i) where s 5 applications are used to suggest the significance of any event without demonstrating real necessity for extending trading by major retailers, the application undermines the existing trading regime. This consequence may benefit some major retailers but is likely to put significant pressure on the availability required of retail workers in the future and removes the competitive advantage of late night trading relied upon by many small business owners and operators.*
 - (ii) the existing protections around voluntary work available under statutes or other instruments are not always adequate in preventing the reality or other relational pressures in store. Whilst it is ideal to hypothesise additional hours will be available to those employees who request work, employers usually direct employees to work a particular roster for the relevant period on the basis of operational needs or requirements. The SDA submits that it is regularly informed by its members that they**

experience relationship breakdown and other consequences if those rosters are declined, regardless of the reason for declining.

- (e) *due to the current situation in Queensland relating to Covid-19, if the event does proceed, the SDA is not confident it will hold the same level of significance it has in previous years. It submits it is likely the economic and tourism interests of the area would be better served by minimising any unnecessary gathering opportunities such as shopping at Woolworths in extended hours, to avoid increasing fears of community transmission. The SDA also submits that the current situation with Covid-19 is very likely to have a significant impact on any domestic tourism in the month of July and this will not only reduce attendance numbers at the event, but locals to the area are accustomed to the existing regime and will not have an expectation of additional shopping opportunities;*
 - (f) *it is submitted that if the event does proceed, the existing trading regime is sufficient for the period of the Charters Towers Show and that the application does not serve any genuine need of patrons attending the event;*
 - (g) *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 also requested that the importance of work within the extended hours as remaining voluntary should be expressed in any order made by the Commission.
 - The Commission did not accept the arguments of the SDA, determining that the Charters Towers Show is significant to the economy and tourism of Charters Towers and declaring the Charters Towers Show a special event.
 - The SDA requested the importance of voluntary work within the extended hours be expressed in any order made by the Commission. The AWU appeared at the hearing and sought to emphasise the operation and effect of s 36B of the TAH Act which provides that an employer must not require an employee to work during extended hours unless the employee has freely elected to work during extended hours. Reference was made to the Toowoomba Carnival of Flowers 2020 declaration in which the Commission stated that it is not persuaded that it has the power to grant the relief sought by the SDA and declined to make the order sought (that 2020 case referred back to a similar decision of DP Merrell in the Toowoomba Royal Show 2020 declaration - see above). Commissioner Hartigan stated that for the same reasons, he declined to make an order in the terms sought by the SDA.

22. Mt Isa Mines Rodeo – 12 to 15 August 2021 (TH/2021/9)

National Retail Association Limited, Union of Employers (Mount Isa Mines Rodeo) [2021] QIRC 254

- Application by NRA.
- Application for declaration granted (Commissioner Pidgeon).
- Applicable to a defined area of Mt Isa.
- The SDA sought and was granted leave to be heard on the application and subsequently made submissions and appeared in the matter.
- The SDA submissions as outlined in the decision repeated many of the arguments from previous cases, for example:
 - there is a deficiency in the TAH Act for not providing guidance or any reference to considerations on such matters as: the necessity of non-exempt shops to actually trade as exempt shops during the special event; the impact such a declaration has on employees of shops affected by the granting of such a declaration and the necessity to limit any retail hours during the special event period.
 - It was not intended to make every event significant nor to make all non-exempt facilities in locations near an event free from trading regulation.
 - Applications which suggest the significance of any event without demonstrating real necessity for extended trading by major retailers undermines the existing trading regime. This may benefit some major retailers but is likely to put significant pressure on the availability required of retail workers in the future and removes the competitive advantage of late-night trading relied upon by many small business owners and operators.
 - The existing protections around voluntary work available under statutes or other instruments are not always adequate in preventing the reality of other relational pressures in store.

- There was no confidence that the event will hold the same level of significance it has in previous years as a result of the impact of COVID-19. It was submitted that the economic and tourism interests of the area would be better served by minimising any unnecessary gathering opportunities such as shopping in extended hours, to avoid increasing fears of community transmission.
- It was noted that the current COVID-19 situation is likely to have an impact on the attendance numbers at the event and that locals to the area will not have an expectation of additional shopping opportunities.
- It was submitted that the existing trading regime is sufficient for the period of the Mount Isa Mines Rodeo. The area requested has a number of existing exempt shops and the show website encourages patrons to purchase food and drink at the event. The application therefore does not serve any genuine need of patrons attending the event.
- It was requested that the Commission give particular thought to whether the Mt Isa Rodeo will be sufficiently significant to justify the order requested in consideration of all of the circumstances.
- Commissioner Pidgeon found that the Mount Isa Mines Rodeo:
 - is a unique event of local, state or national significance,
 - is of cultural and sporting significance and is both unique and infrequent,
 - is of significance to the economy and the tourism industry as per s 5(3)(a)(ii) of the TAH Act, and
 - there is nothing put forward in written or oral submissions that causes me to determine that the declaration of a special event should not be made.
- Commissioner Pidgeon stated that protections for voluntary employment only by retail workers during extended hours resulting from a special event declaration exist under s36B of the TAH Act. No order for voluntary employment was made in the declaration.

23. Weipa Fishing Classic 2021 – 3 to 5 September 2021 (TH/2021/10)

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

- Application by NRA.
- Application for declaration granted (Commissioner Dwyer).
- Applicable to a defined area of Weipa.
- The AWU filed an outline of submissions in support of the Application and submitting that 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.
- 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. 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. The SDA also made reference to the importance of voluntary work in extended hours and requested it be expressed in any order made.
- Commissioner Dwyer stated in the decision that he was satisfied that the Weipa Fishing Classic is a unique event of local significance.
- Commissioner Dwyer also stated in the decision that he was comfortable that the TAH Act (s36B) provides adequate protection for retail employees potentially impacted by the application being granted but he was 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 it was noted that 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.