

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

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

PARTIES: **CQ American Motorcycles Pty Ltd T/A Rocky Harley Davidson**
(Applicant)

CASE NO: TH/2021/2

PROCEEDING: Application

DELIVERED ON: 30 March 2021

HEARING DATE: 29 March 2021

SUBMISSIONS: Applicant's further written submissions: 30 March 2021
SDA's further written submissions: 30 March 2021

MEMBER: Hartigan IC

HEARD AT: Brisbane

DECLARATION:

- 1. Pursuant to s 5(1)(c)(ii) of the *Trading (Allowable Hours) Act 1990 (Qld)*, I declare that the RockyNats is a special event.**
- 2. The declaration shall apply for the period commencing on Saturday 3 April 2021 and concluding on Monday 5 April 2021, between the hours of 8.00 am and 5.00 pm on each of those days.**
- 3. The declaration applies to the geographical area located at CQ American Motorcycles Pty Ltd T/A Rocky Harley Davidson, 125 William Street, Rockhampton.**

CATCHWORDS: INDUSTRIAL LAW - TRADING HOURS - APPLICATION FOR DECLARATION OF SPECIAL EVENT - application for the applicant to trade as an exempt shop during a special event, namely, the RockyNats - whether the RockyNats is a special event within the meaning of s 5 of the

Trading (Allowable Hours) Act 1990 - declaration made

LEGISLATION:

Industrial Relations Act 2016 (Qld), s 539

Trading (Allowable Hours) Act 1990, s 5, s 36B, s 16EA

APPEARANCES:

Ms E. Kannis of the Motor Trade Association Queensland, Registered Industrial Organisation for the applicant

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

Reasons for Decision

Introduction

- [1] On 18 March 2021, CQ American Motorcycles Pty Ltd T/A Rocky HD ("the applicant") applied, pursuant to s 5(2) of the *Trading (Allowable Hours) Act 1990* ("the Act"), for orders that the RockyNats be declared a special event within the meaning of s 5(1)(c)(ii) of the Act. The RockyNats is scheduled to occur in Rockhampton over the Easter long weekend and the applicant seeks a declaration for the period commencing on Saturday 3 April 2021 to Monday 5 April 2021.
- [2] The terms of the relief sought in the application are as follows:
- a) This application requests permission by way of a Declaration to apply for a period of 3 days commencing on Saturday 3 April 2021 and concluding on Monday 5 April 2021,
 - b) The Applicant be allowed to trade on these days from 8am to 5pm,
 - c) The location of this shop is 125 William Street, Rockhampton, QLD Australia 4700
- [3] The applicant is a licensed Harley Davidson retailer and operates out of premises located at 125 William Street, Rockhampton. At the premises, the applicant operates a showroom, retails new and used motorcycle spare parts and accessories, operates a mechanical workshop and café. The applicant submits that it expects demand for its mechanical workshop over the course of the RockyNats to include selling and fitting tyres and undertaking mechanical repairs of motorcycles.
- [4] The effect of the relief sought by the applicant is that it would permit the applicant to trade on the public holiday during which the RockyNats event is scheduled to occur.
- [5] On 18 March 2021, a Directions Order was issued, which provided that those who may be affected by the Application to make an application seeking leave to be heard. The Application and Directions Order were published on the Queensland Industrial Relations Commission ("the Commission") website on 22 March 2021.

[6] On 23 March 2021, the Shop Distributive and Allied Employees Association (Queensland Branch), Union of Employees ("the SDA"), made an application seeking leave to be heard. On 23 March 2021, the Commission granted leave for the SDA to be heard¹ and the SDA subsequently filed written submissions.

[7] The question for my determination is whether I should make the declarations sought by the applicant in its application.

The provisions of the Act

[8] Section 5 of the Act relevantly provides:

5 Exempt shops

(1) An *exempt shop* is-

- (a) a shop of a description mentioned in schedule 1AA used predominantly for selling goods by retail, or for supplying services, a reasonable person would expect to be sold or supplied in that shop; or
- (b) an independent retail shop; or
- (c) a shop operating in a stated area for an event –
 - (i) that is a unique or infrequent event of local, State or national significance; and

Examples—

- 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

¹ *Industrial Relations Act 2016* (Qld) s 539.

(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.

...

[9] Accordingly, the Commission must consider, in determining whether an event is a special event pursuant to s 5(1)(c)(ii) of the Act, the following:

(a) the cultural, religious or sporting significance of the event;² and

(b) the significance of the event to the economy and the tourism industry.³

[10] Further, the Commission may consider a submission made by a local government for an area in which the declaration is likely to have an impact.⁴ The Rockhampton Regional Council ("the Council") did not file any submissions. However, two affidavits deposed to by the representatives of the Council are relied on by the applicant and I will refer to them below.

[11] The applicant is a non-exempt shop selling motor vehicles. Section 16EA of the Act relevantly states:

16EA Shops selling motor vehicles or caravans

(1) This section applies to a non-exempt shop engaged in selling motor vehicles or caravans.

(2) The shop's core trading hours are—

Day		Opening time	Closing time
If the shop sells motor vehicles but not caravans			
Monday to Friday		8.a.m.	9p.m.
Saturday		8.a.m.	(a) if the shop is in a prescribed area— 6p.m. (b) otherwise—5.p.m.
Sunday		n/a	n/a
Public holidays, other than closed days	(a)	(b) if the shop is in a prescribed area— 8a.m. (c) otherwise—n/a	(a) if the shop is in a prescribed area— 6p.m. (b) otherwise—n/a
If the shop sells both caravans and motor vehicles			
Monday to Friday		8.a.m.	9p.m.
Saturday		8.a.m.	5p.m.
Sunday and public holidays, other than closed days		n/a	n/a
If the shop sells caravans but not motor vehicles			

² *Trading (Allowable Hours) Act 1990* (Qld) s 5(3)(a)(i).

³ *Ibid* s 5(3)(a)(ii).

⁴ *Ibid* s 5(3)(b).

Monday to Friday		8.a.m.	9p.m.
Saturday		8.a.m.	6p.m.
Sunday and public holidays, other than closed days		n/a	n/a

(3) In this section—

"n/a" means the shop is not permitted to open.

"prescribed area" means any of the following areas within the meaning of the repealed car yards order—

- (a) The Gold Coast Area;
- (b) Redcliffe Peninsula;
- (c) City of Brisbane Area;
- (d) City of Logan Area;
- (e) Town of Beenleigh Area;
- (f) Near North Coast Area;
- (g) Shire of Pine Rivers Area;
- (h) Redland Shire Area;
- (i) City of Ipswich.

...

[12] Accordingly, by operation of s 16EA of the Act, and the definition of "prescribed area", the core trading hours of the applicant do not include Sundays and public holidays.

Should the RockyNats be declared to be a special event?

The applicant's material and submissions

[13] The applicant filed written submissions together with supporting material. The supporting material included an affidavit of Mr Evan Pardon, Chief Executive Officer of the Council and Mr Greg Bowden, Executive Manager of Advance Rockhampton, the Economic Development, Tourism, Events and Marketing Unit of the Council.

[14] After a hearing of the matter on 29 March 2021, I directed the applicant to file further submissions addressing the cultural, religious or sporting significance of the RockyNats. Those further submissions were received on 30 March 2021.

[15] The affidavit of Mr Pardon relevantly provides the following information:

- (a) that at an ordinary meeting on 2 April 2019, the Council authorised Mr Pardon to sign a five year agreement with RockyNats Pty Ltd to jointly deliver an annual car and motorbike festival event within Rockhampton known as "RockyNats";
- (b) that Council officers and RockyNats have collaborated with the organisers of the 2021 Queensland State Harley Owner's Group (H.O.G) Rally for their event to be held in conjunction with RockyNats – this collaboration is fully supported by the Council with the intent of strengthening the unique appeal of the event, the number of expected participants/entrance and visitors to the events and region; and

- (c) RockyNats is poised to be the largest car and motorbike festival held in Queensland, an event of Regional and State wide significance with the full benefits and opportunities available to the local economy and it is critical that the retail, service and repair sectors of the local automotive industry be permitted to open for trade between the period 3 April 2021 to 5 April 2021 inclusive.

[16] The affidavit of Mr Bowden deposed to the following matters:

- (a) the goal of Advance Rockhampton and Council is to create an iconic, high-caliber automotive event that creates significant economic impact, promotes the region, drives tourist visitation and is celebrated and embraced by the local Rockhampton community;
- (b) the directors of RockyNats Pty Ltd are also the directors of SummerNats Pty Ltd who coordinate the annual SummerNats festival in Canberra, Australian Capital Territory and Red CentreNATS in Alice Springs, Northern Territory;
- (c) both the SummerNats and Red CentreNATS are proven destination tourism events bringing significant numbers of interstate entrance and spectators to Canberra and Alice Springs respectively;
- (d) as one of only three events in Australia hosted in partnership with the team that delivers the SummerNats and Red CentreNATS, RockyNats promises to be the largest car and motorbike festival held in Queensland, an event of regional and state wide significance;
- (e) Council officers in RockyNats have collaborated with the organisers of the 2021 H.O.G Rally for their event to be held in conjunction with RockyNats;
- (f) economic modelling undertaken by Advanced Rockhampton and via .id consulting Pty Ltd have noted the following expected economic benefits of the RockyNats events:
 - i. in excess of 35,000 attendees over the course of the events;
 - ii. approximately 5,000 overnight stays;
 - iii. total economic impact of \$22,915,679;
 - iv. generating 196.6 full time equivalent employment annually.
- (g) it is expected, as has been the case during the SummerNats and Red CentreNATS events, that retail service and repair sectors of the automotive industry in Rockhampton will similarly benefit economically and increase trade as a result of RockyNats if the event is declared a special event for the purpose of s 5 of the Act.

[17] The applicant submits that having regard to these matters that the relief it seeks should be granted because:

- (a) the applicant's business is in a unique situation being the only Harley Davidson motorcycle store in the city of Rockhampton and surrounding areas;
- (b) premium customers will expect professionals to be available to work on their extraordinary motorcycles which require specialised expertise, knowledge and training along with specific branded supplies and products;
- (c) due to there being no other specialised service workshops or other motor vehicle dealership businesses in the area during being open during this event, the applicant is expected to be open by its customers and those who attend this event along with members of the Queensland H.O.G attending their annual general meeting;
- (d) the applicant believes that the event meets the description of the special event within the meaning of s 5 of the Act;
- (e) that the application requests a temporary departure from the requirements of non-exempt shop being a motor vehicle dealership for 3 of this 4 day event;
- (f) the nature of this event and the attendance over the long weekend by the annual general meeting of H.O.G Queensland will bring some 300 Harley Davidson motorcyclists and their motorbikes, and there will be many other motorcyclists that will attend the event; and
- (g) this application is made by the specialised dealership requesting it to be allowed to trade as there is a significant expectation by their committed to brand customers that the flagship local entity be open for them to attend and to have a specific mechanical needs met in a timely manner.

The SDA's submissions

[18] On 26 March 2021, the SDA filed submissions in this matter.

[19] Relevantly, the SDA does not object to the terms of the declaration sought by the applicant. However, the SDA does object to the application on the basis that the RockyNats is not of sufficient significance to be declared a special event.

[20] The SDA submits that the Act does not provide guidance or any reference to considerations on such matters as:

- (a) the necessity for non-exempt shops to actually trade as exempt shops during the special event;

- (b) the impacts such a declaration has on employees of shops effected by the grounding of such a declaration; and
- (c) the necessity to limit any retails hours during the special event period.

- [21] The SDA submits that it considers it necessary to respond to the issues of the event's significance on the basis that if the declaration is made and the event is determined to be a special event, it will effectively open the door to similar applications by any non-exempt shop or employer organisation for this event in the future.
- [22] Further, the SDA submits that it is "not convinced" the event is sufficiently important to justify a declaration under s 5 of the Act. In this regard, it notes that although the relevant legislation does not provide further clarity of the threshold for cultural, religious or sporting "significance" of any event, the SDA does not believe this was intended to be utilised as an unmeasured standard available to suggest the significance of every event taken place. The SDA submits that the Commission uphold appropriate boundaries applicable to s 5 applications.
- [23] Further, the SDA submits that any economic opportunity presented by this event is not so significant so as to justify the need to extend trading hours beyond the hours by the existing regime. Relevantly, it is submitted that it is not clear that economic advantage presented by the event cannot be adequately experienced within the normal hours of trade.
- [24] Further, the SDA notes that the applicant has requested that it be allowed to trade from 8.00 am to 5.00 pm for a period of three days commencing Saturday 3 April 2021 and concluding Monday 5 April 2021. The SDA notes that upon review of the existing trading regime, which was also detailed in the applicant's application, the only day the hours requested are not currently available for trade is Sunday. The SDA submits that on that basis, the Commission limit the orders to Sunday 4 April 2021.
- [25] The SDA submits that if the Commission is minded to grant an order, the SDA does not object to the requested area which it understands to be the shop trading as "Rocky Harley Davidson" at 125 William Street, Rockhampton, Queensland, 4700.

Is the RockyNats a "special event" within the meaning of s 5(1)(c)(ii) of the Act

- [26] Section 5(3)(a) of the Act sets out the matters the Commission must consider in deciding to declare an unique or infrequent event of local, state or national significance, to be a special event for the purpose of s 5(1)(c) of the Act. These include the cultural, religious or sporting significance of the event and the significance of the event to the economy and tourism industry.
- [27] The material field on behalf of the applicant did not sufficiently address the cultural, religious or sporting significance of the event. I issued orders for the applicant to file further submissions addressing this consideration.
- [28] In further submissions filed on behalf of the applicant on 30 March 2021, the applicant submitted that the RockyNats event was one of sporting significance. The applicant submitted that the events at the RockyNats fall within the definition of motorsports

(being, any of several sports involving the racing or competitive driving of motor vehicles). The applicant submits that major events will include competitive driving and drag racing with respect to motor vehicles and racing and precision driving events for motorcycles.

- [29] In response, the SDA filed further submissions on 30 March 2021. The SDA submits that the primary purpose of the RockyNats is not clearly advertised through its website as being various sporting competitions. The SDA submits that the event page advertises a number of other activities, including rides, parades and music, which, when viewed as a whole, falls short of the event being viewed as one of sporting significance.
- [30] I am satisfied that the RockyNats is an event that is of sporting significance, at least on a local level. The RockyNats will have a number of motor sport events over the course of the long weekend including street drag races, which are unique to RockyNats, and a burnout competition which will be a qualifying event to the SummerNats Burnout Masters Series. There will be a series of competitive driving events for various classes of motor vehicles and motorcycles. I consider these events to be competitive motorsport events and that the primary purpose of the RockyNats is to host these events. In addition to this, there are events including drifting by the river, a street parade, a show and shine in the Quay street precinct, as well as a range of bike awards and events open to riders of custom, v-twin, café racer and heritage bikes from all manufacturers. I consider that these ancillary events supplement, rather than detract from, the significance of the sporting event. Having regard to these matters I am satisfied that the event is a sporting event of significance.
- [31] The RockyNats scheduled to operate in Rockhampton over the Easter long weekend in 2021 is the inaugural RockyNats events. Accordingly, the information I have before me is based on projected data as to the expected success of the event as opposed to historical data as to how the event has performed in the past.
- [32] Attached to the affidavit of Mr Pardon are several media releases from the Council regarding the event.⁵ A media release dated 26 February 2021 includes information that, as of that date, car entries had sold out with 1,200 cars having entered the event and all platinum and general admission 3 day tickets having been sold out. In an earlier media release of 28 January 2021,⁶ it was noted that over 6,000 people, as at that time, had secured their spot at the event.
- [33] During the hearing, submissions were made by the applicant that 12,000 tickets had been sold for people to attend the event on at least one of three days. It was submitted of those 12,000 registered attendees, 2,500 were from the Rockhampton area, 6,500 from other parts of Queensland and 200 from interstate. Whilst 2,500 people had not registered their location.
- [34] The SDA submitted that given the numbers of potential attendees referred to by the applicant, the event could not be considered to be a significant event. The SDA referred to previous orders made by the Commission in matters involving events with

⁵ Annexure EP5.

⁶ Annexure EP5.

considerably greater attendance, including, the Toowoomba Carnival of Flowers and the Brisbane Festival.

- [35] Whilst I accept the SDA's submission that the projected attendees at the RockyNats event may be less than the attendees at other "special events", I do not consider that the number of attendees should be looked at in isolation of other considerations when determining the significance of the event to the economy and tourism industry.
- [36] On the SDA's submissions, the population of Rockhampton is 50,000 people. I consider an influx of potentially 9,500 people over a period of three days to a community of 50,000 to be significant. Not only will the attendance of these visitors generate spending at the RockyNats event but it will generate commercial activity to local businesses including food retailers and accommodation providers.
- [37] The SDA further submitted that the numbers of actual attendees is further called into question by the current situation with COVID-19 in the Greater Brisbane area. The SDA's submissions is referring to an announcement made by the Queensland Premier on 29 March 2021 that the Greater Brisbane area will be placed into lockdown for three days from 5.00 pm on Monday 29 March 2021 to 5.00 pm on Thursday 1 April 2021. There is currently no information that the lockdown will extend beyond 1 April 2021. Accordingly, at this juncture, there is no evidence before me that the RockyNats will be impacted by the current lockdown announcement.
- [38] For the forgoing reasons, I am of the view that the RockyNats is significant to the economy of the Rockhampton area and the tourism industry of the Rockhampton area and that the event is a sporting event of at least local significance.

What should be the area to which the declaration applies?

- [39] The applicant applies for an area limited to the geographical location of the applicant's retail premises located at 125 William, Rockhampton, Queensland, Australia, 4700. The SDA does not object to the geographical area sought in the application.

What should be the period for which the declaration applies?

- [40] The applicant applies for a period of 3 days commencing on Saturday 3 April 2021 and concluding on Monday 5 April 2021, between the hours of 8.00 am to 5.00 pm. Each of these days have been declared a public holiday.
- [41] During the course of the hearing on 29 March 2021, the SDA indicated that it did not object to the period of time sought by the applicant in the application.

The SDA's claim for an ancillary order for the protection of employees

- [42] The SDA submits 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.

[43] I am not persuaded that the Commission has the power to grant the relief sought by the SDA.⁷ Accordingly, I decline to make the declaration sought by the SDA.

Conclusion

[44] The RockyNats is a special event within the meaning of s 5(1)(c)(ii) of the Act because the RockyNats is an event of sporting significance to the people of the Rockhampton area and is significant to the economy of the Rockhampton area and to the tourism industry of the Rockhampton area.

[45] For the reasons set out above, I am satisfied that I should make a declaration pursuant to s 5 of the Act. The period for which the declaration applies will be between Saturday 3 April 2021 to Monday 5 April 2021 between the hours of 8.00 am and 5.00 pm on each of those days. Further, the area to which the declaration applies will be limited to the geographical area of the applicant's retail shop located at 125 William Street, Rockhampton.

[46] I make the following declaration:

1. **Pursuant to s 5(1)(c)(ii) of the *Trading (Allowable Hours) Act 1990 (Qld)*, I declare that the RockyNats is a special event.**
2. **The declaration shall apply for the period commencing on Saturday 3 April 2021 and concluding on Monday 5 April 2021, between the hours of 8.00 am and 5.00 pm on each of those days.**
3. **The declaration applies to the geographical area located at CQ American Motorcycles Pty Ltd T/A Rocky Harley Davidson, 125 William Street, Rockhampton.**

⁷ See my reasons regarding a similar submission in *National Retail Association Limited, Union of Employers* [2020] QIRC 168.