

# TRADING HOURS ACT

No. 34 of 1990

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No. 34 of 1990

**An Act to regulate the trading hours of shops, to amend the Factories and Shops Act 1960-1988, the Anzac Day Act 1921-1987 and the Holidays Act 1983-1989, each in certain particulars, to repeal the Trading Hours Act 1987 and for related purposes**

[ASSENTED TO 15TH JUNE, 1990]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

### PART 1—PRELIMINARY

**1.1 Short title.** This Act may be cited as the *Trading Hours Act 1990*.

**1.2 Commencement.** (1) Section 1.1 and this section commence on the day this Act is assented to for and on behalf of Her Majesty.

(2) Except as provided by subsection (1), the provisions of this Act, commence on a day appointed by Proclamation.

The day so appointed is, in this Act, referred to as “the commencement of this Act”.

**1.3 Objects of Act.** The objects of this Act are—

- (a) to regulate the trading hours of shops, other than exempt shops, throughout Queensland;
- (b) to regulate the closing times of factories and places of public amusement on 25 April (Anzac Day);
- (c) to provide for closure of banks and insurance companies on bank holidays;
- (d) to prohibit soliciting in any publication for business to be transacted outside lawful trading hours at any factory or shop;
- (e) to provide for the issue of permits for trading at bazaars, fairs and fetes outside lawful trading hours.

**1.4 Amendments and repeals.** (1) The Acts specified in the first column of the following Table are amended as prescribed in the second column of the Table:—

### TABLE

Act Amended	Amendments
<i>Factories and Shops Act 1960-1988</i> .....	(a) omit from s.3 (Parts of this Act) the words—“PART VIII—HOURS OF BUSINESS IN SHOPS (ss.60-64)”;

## TABLE—continued

Act Amended	Amendments
	(b) omit from s.5(1) (Meaning of terms) the following definitions:— “Closed” “Closing time” “Exempt shop” “Half-holiday” “Independent retail shop” “Market” “Non-exempt shop” “Opening time” “Order” “Stall”;
	(c) s.8 (Power of the Governor in Council to exempt from Act) is repealed;
	(d) s.55 (Shop assistants etc. not to be employed as watchmen) is repealed;
	(e) ss.60 to 64A inclusive and the heading preceding s.60 are repealed;
	(f) s.86 (Refrigerators, ice-chests and ice-boxes) is repealed;
	(g) s.87 (Permits to hold bazaars, etc., outside lawful trading hours) is repealed.
<i>Holidays Act 1983-1989</i> . . . . .	omit from s.10 (Bank holidays) subsections (4), (5), (6) and (7).

(2) The *Trading Hours Act 1987* is repealed.

**1.5 Citation of amended Acts.** (1) The *Factories and Shops Act 1960-1988* as amended by this Act may be cited as the *Factories and Shops Act 1960-1990*.

(2) The *Holidays Act 1983-1989* as amended by this Act may be cited as the *Holidays Act 1983-1990*.

**1.6 Savings.** (1) Any order relating to the trading hours of shops, notice, permit or act of authority that has effect under or for the purposes of any provision of the *Factories and Shops Act 1960-1988* or the *Industrial Conciliation and Arbitration Act 1961-1989* immediately before the commencement of the corresponding provision of this Act, to the extent that it is not inconsistent with this Act, continues to have effect for the purposes of this Act until it is revoked, suspended, cancelled or superseded under this Act.

(2) Every proceeding instituted before the commencement of this Act in the Industrial Commission for the purposes of Part VIIA of the *Industrial Conciliation and Arbitration Act 1961-1989* may be carried on and determined as if this Act had not been passed and every determination or order made therein takes effect in law and is to be complied with, as if it had been made in a corresponding proceeding for the purposes of this Act.

(3) Any inspector or other person who immediately before the commencement of this Act holds an appointment relevant to this Act for the purposes of the *Factories and Shops Act 1960-1988* or the *Industrial Conciliation and Arbitration Act 1961-1989* continues to hold the appointment for the purposes of this Act until the inspector or other person ceases to hold the appointment according to law.

## PART 2—INTERPRETATION

**2.1 Meaning of terms.** In this Act, unless a contrary intention appears—

“Chief Industrial Inspector” means the Chief Industrial Inspector within the meaning of the *Industrial Relations Act 1990*;

“closed” means locked, or otherwise secured, to the complete exclusion of the public;

“closing time” means, in relation to a shop, the time at which the shop is required, by an order relating to trading hours or by Part 4, to be closed for business on any day;

“Commissioner” means an Industrial Commissioner within the meaning of the *Industrial Relations Act 1990*;

“employee” means a person employed in any calling, whether on wages or piecework rates, or as a member of a buttygang, and includes—

(a) a person whose usual occupation is that of an employee in a calling;

(b) a person employed in any calling notwithstanding that—

(i) the person is working under a contract for labour only, or substantially for labour only;

(ii) the person is lessee of any tools or other implements of production, or of any vehicle used in delivery of goods;

(iii) the person is the owner, wholly or partially, of any vehicle used in transport of goods or passengers;

if such factor is the only reason against holding the person to be an employee;

(c) each person, being one of 4 or more persons who are, or claim to be, partners working in association in any calling or industry;

“exempt shop” means a shop prescribed by section 2.2 to be an exempt shop;

“factory” means—

(a) a place in which—

(i) 2 or more persons (whether the occupier or not) are engaged in a manufacturing process;

or

(ii) steam, water, mechanical or other power is used in, or in aid of, a manufacturing process, or in packing goods for transport;

or

(iii) electricity is generated or transformed for the supply of heat, light or power;

(b) any bakehouse, cafe or other place whatsoever in which food or drink for human consumption is prepared or manufactured for sale, trade or gain;

(c) a laundry in which 2 or more persons (whether the occupier or not) are engaged, or in which mechanical power is used, and in which laundry work is performed for hire or reward or other gain, or which is carried on as ancillary to another business;

(d) any boat-building yard, ship-building yard, dock, dockyard, ship-repairing yard or other place in which a boat or ship is constructed, reconstructed, repaired, fitted, refitted, finished or broken-up;

(e) a shearing shed, woolscour or boiling-down works;

and includes—

(f) any place of a description referred to in paragraphs (a) to (e) inclusive, although it is—

• in the open air;

or

• in a building only partly constructed or under construction;

(g) where the operations of a factory are carried on in 2 or more places that are adjacent, all of those places notwithstanding that any of those places are separated by any place or places not forming part of the factory in question;

but does not include any—

• prison or prison farm, reformatory or reformatory farm;

or

• industrial school;

“independent retail shop” means a shop prescribed by section 2.3 to be an independent retail shop;

- 
- “Industrial Commission” means the Industrial Commission within the meaning of the *Industrial Relations Act 1990*;
- “Industrial Court” means the Industrial Court within the meaning of the *Industrial Relations Act 1990*;
- “Industrial Inspector” or “inspector” means the Chief Industrial Inspector and any other Industrial Inspector appointed or taken to be appointed for the purposes of the *Industrial Relations Act 1990*, and includes an acting Industrial Inspector;
- “Industrial Magistrate” means an Industrial Magistrate within the meaning of the *Industrial Relations Act 1990*;
- “industrial organization” means an industrial organization within the meaning of the *Industrial Relations Act 1990*;
- “Industrial Registrar” means the person who is, for the time being, the Industrial Registrar within the meaning of the *Industrial Relations Act 1990*;
- “Local Authority” means a Local Authority constituted under the *Local Government Act 1936-1988* and includes any Joint Local Authority, Brisbane City Council, and any corporation declared by any Act to be a Local Authority;
- “market” means any place where persons occupy or have the use of stalls at which goods are sold, by retail;
- “manufacturing process” means any handicraft or process in or incidental to making, assembling, altering, repairing, renovating, preparing, ornamenting, finishing, cleaning, washing or adapting goods or any part thereof, for sale, trade or gain, or as ancillary to any business;
- “Minister” includes a Minister of the Crown who for the time being is performing the duties of the Minister;
- “non-exempt shop” means a shop other than—
- (a) an exempt shop;
  - (b) an independent retail shop;
  - (c) an office;
- or
- (d) a stall;
- “occupier” means, in relation to a factory, shop or other place—
- (a) a person in actual occupation of the factory, shop or place;
  - (b) a person who employs another person in, or in connexion with, the business conducted in the factory, shop or place;
  - (c) a principal, agent, manager, foreman or other person acting, or apparently acting, in the general management or control of the business conducted in the factory, shop or place;



“office” means a place where any person is employed, directly or indirectly—

- (a) to perform work of a clerical nature; or
- (b) to perform, or to assist in the performance of, work of a professional nature;

“opening time” means, in relation to a shop, the time at which the shop may, as permitted by an order relating to trading hours or by Part 4, be lawfully opened to the public for business on any day;

“order” means an order made under Part 5 and includes an order relating to trading hours made under a corresponding provision of *The Industrial Conciliation and Arbitration Act of 1961* as amended and in force for the time being;

“Part” includes, in relation to a Part of this Act, any Order in Council or regulation in force relating to the subject matter of that Part;

“place” means any land, water, building, structure, vehicle, vessel, pontoon, carriage or aircraft, and includes any part thereof;

“place of public amusement” means a place used or intended to be used—

- as a theatre, dance hall or music hall;
  - for a circus, or cinematograph exhibition;
  - for any sporting entertainment;
- or
- for any public amusement or entertainment of whatever description;

whether or not a charge is, or is to be, made for admission thereto, and includes any part thereof;

“records” means any collection of data in whatever form it is held, including on film, disc, tape, perforated roll or other device in which visual representations or sounds are embodied so as to be capable of reproduction therefrom, with or without the aid of another process or instrument;

“sell” includes—

- (a) offer or attempt to sell;
  - (b) supply or receive for sale;
  - (c) have in possession for sale;
  - (d) exhibit or expose for sale;
  - (e) send, forward or deliver for or on sale;
  - (f) cause or permit to be sold, offered for sale, exhibited or exposed for sale or sent, forwarded or delivered for or on sale;
- or
- (g) have in possession, exhibit or expose for any purpose of advertisement, trade or gain;

“shop” means—

- (a) any place, pack or storage in or from which goods are sold, by retail or wholesale;
- (b) any place, pack or storage in or from which goods ordinarily sold in shops are delivered or disposed of, or any document or thing evidencing title to such goods is delivered in accordance with any agreement, arrangement, condition, scheme, device or contrivance whereby property in such goods passes from any person to another;
- (c) any place occupied or used by a hairdresser, beautician or barber;
- (d) any office;
- (e) any place used for a purpose declared by Order in Council for the purposes of this definition;

but does not include the sample room of a commercial traveller.

“stall” means—

- (a) any barrow, stand, table, platform or other structure at a market;
  - (b) any vehicle, vessel, pontoon, carriage or aircraft at a market;
- or
- (c) any space at a market;
- on or in which are goods for selling at the market;

**2.2 Exempt shops.** (1) An exempt shop is a shop of a description of shop specified in this section used predominantly for selling goods, by retail, or for supplying services, that a reasonable person would expect to be sold or supplied in that shop.

(2) The specified descriptions of shops are—

- antique shop;
- art gallery;
- aquarium and aquarium accessories shop;
- arts and crafts shop;
- bait and tackle shop;
- bookseller’s shop, newsagent’s shop, railway bookstall;
- bread shop, cake shop, pastry shop;
- camping equipment shop;
- chemist shop;
- confectionary shop;
- cooked provisions shop where the provisions are cooked or heated on the premises immediately before sale;
- delicatessen;

- 
- fish shop;
  - flower shop;
  - fruit shop, vegetable shop, fruit and vegetable shop;
  - funeral director's premises;
  - hairdresser's, beautician's or barber shop;
  - ice-cream parlour;
  - licensed premises within the meaning of the *Liquor Act 1912-1989*;
  - milk bar;
  - nursery (plant); shop for selling garden plants and shrubs, seeds, garden and landscaping supplies or equipment and associated products;
  - pet shop;
  - photographic shop;
  - premises in relation to which a pawnbrokers licence under the *Pawnbrokers Act 1984-1989* is in force;
  - restaurant, cafe, refreshment shop;
  - service station;
  - shop of a class declared by Order in Council to be a class of exempt shop;
  - shop for selling motor vehicle spare parts or motor cycle spare parts or both;
  - soap shop;
  - souvenir shop;
  - sporting goods shop;
  - temperance beverages shop;
  - tobacconist's shop;
  - toy shop;
  - veterinary supplies shop;
  - video-cassette shop (blank or pre-recorded).

(3) A class of shop may be declared for the purposes of subsection (2) by reference to—

- (a) the business conducted in shops of the class;  
or
- (b) the location of shops within any area or areas of the State defined in the relevant Order in Council;  
or
- (c) such other criteria as the Governor in Council thinks fit.

(4) In respect of the sale of goods wholesale in an exempt shop

the provisions of this Act apply to the shop and a reference in this Act to an exempt shop does not include the shop.

**2.3 Independent retail shops.** (1) Subject to subsections (2) and (3), an independent retail shop is a shop where—

- (a) the business for which the shop is maintained is wholly owned by a person, or by persons in partnership, or by a proprietary company within the meaning of the *Companies (Queensland) Code* that is not a related corporation pursuant to section 7(5) of that Code;
  - and
- (b) the number of persons engaged at any one time in the shop (including an owner of the business) does not exceed 6;
  - and
- (c) the number of persons at any one time engaged by the owner of the business (including an owner of the business) in that and any other shop or shops (exempt or non-exempt) in the State does not exceed 20;
  - and
- (d) the business for which the shop is maintained is not conducted in a shop, or part thereof, used for the conduct of business of a non-exempt shop at a time when the non-exempt shop is required by or under this Act to be closed.

(2) A shop is not an independent retail shop if—

- (a) it is an exempt shop;
- (b) it is an office;
- (c) the business of the shop is, wholly or partly—
  - the selling of goods wholesale;
  - the selling of motor vehicles or caravans;
- (d) it is a stall in a market.

(3) If business is conducted in 2 or more areas within a building in such circumstances that it would be reasonable to believe that the business in each such area is part of one business conducted by any one person, or persons in partnership, none of such areas is an independent retail shop unless all areas together would constitute an independent retail shop as defined by subsection (1) if such belief were correct.

(4) Each of the following circumstances is evidence of the reasonableness of a belief such as is referred to in subsection (3):—

- (a) the absence of walls, or fixed partitions, from floor to ceiling, defining the limits of one area used for trade in relation to another area used for trade;
- (b) the availability of access from one area used for trade to another area used for trade, without the need to pass through common area;
- (c) the availability of access from one area used for trade to another area used for trade through common area, without

- 
- the need to pass through a structurally defined exit or entrance;
- (d) the making of financial arrangements in relation to trade in any area at a location used for making such arrangements in relation to—
- trade in that area;
  - and
  - trade in any other area;
- (e) the use of a common accounting system in respect of 2 or more areas;
- (f) the use of any advertising device, or means of advertising, that does not indicate that business conducted in each of 2 or more areas is conducted by a different proprietor.
- (5) For the purpose of applying subsection (3) in a particular case—
- (a) it is not necessary that any person has formed a belief, such as is referred to in that subsection;
  - (b) subsection (4) is not to be construed as exhaustive of circumstances evidencing reasonableness of a belief, such as is referred to in subsection (3), which could be formed.

### PART 3—ADMINISTRATION

**3.1 Appointment of officers.** Such number of officers as is necessary for the effectual administration of this Act may be appointed under and in accordance with the *Public Service Management and Employment Act 1988-1990*.

**3.2 Confidentiality.** An Industrial Inspector or officer appointed for the purposes of this Act is not to disclose to any person information that the inspector or officer has acquired in exercise of powers or performance of duties under this Act or by virtue of holding any appointment unless—

- (a) the disclosure is for the purposes of this Act and in the proper performance of the duties of office;
- or
- (b) the disclosure is made with the Minister's permission first obtained;
- or
- (c) the disclosure is in accordance with an order of a court for the purposes of proceedings before that or another court or before a tribunal constituted according to law.

**3.3 Industrial Inspector's powers of investigation and enforcement.**

(1) An Industrial Inspector is authorized—

- (a) subject to section 3.4, to enter, inspect and examine at any time any place—
  - used or intended to be used, or which the inspector reasonably suspects to be used or intended to be used, as a shop;
  - or
  - in which, or in respect of which the inspector reasonably suspects that, a person is contravening or failing to comply with any provision of this Act or of an order;and therein to carry out such investigation as the inspector considers necessary for the purposes of this Act;
- (b) to call in aid a police officer if the inspector reasonably apprehends obstruction to or hindrance in the exercise of the inspector's powers, or performance of the inspector's duties, under this Act;
- (c) to question with respect to matters relevant to this Act any person found in any place entered, or any person whom the inspector reasonably believes to be an occupier of such place, or to be or to have been an employee of such an occupier and to require such person to answer truthfully the questions put and to sign a declaration of the truth of the answers given;
- (d) to make such investigations, enquiries and examinations as the inspector considers to be necessary to ascertain whether the provisions of this Act, or of an order, are being complied with;
- (e) at any time during the hours when business is, or may be, conducted in any place subject to an order to require an occupier of the place to produce for the inspector's examination all or any time-sheets, pay-sheets or other records relating to persons employed by the occupier, and to examine and to make copies of or extracts from time-sheets, pay-sheets or other records;
- (f) to require a person whom the inspector reasonably suspects to have possession or control of records relating to—
  - (i) conferral of entitlements to occupy, or to conduct business in, any areas within a building;
  - (ii) the identity of the proprietors of businesses conducted in any areas within a building;
  - (iii) financial arrangements suspected to exist between proprietors of businesses conducted in any areas within a building, or between such proprietors and—
    - the owner of the building;
    - the occupier of the whole building;

- the person by whom such entitlements were conferred; to produce for the inspector's examination such records, which the inspector is authorized to examine and make copies or extracts thereof as the inspector thinks fit;
- (g) to require a person whom the inspector finds committing, or whom the inspector reasonably suspects to have committed, an offence against this Act, or whom the inspector is authorized to question, or whose name and address is, in the inspector's opinion, reasonably required for the purposes of this Act, to state the person's name and address and, if the inspector reasonably suspects the name or address stated to be false, to require evidence of the correctness thereof;
- (h) to institute and conduct proceedings in the Industrial Court, Industrial Commission or an Industrial Magistrates Court for the purposes of this Act.

(2) The authority conferred on an Industrial Inspector to question an employee of any person includes authority to question the employee out of the presence and hearing of the employer or of any supervisor, deputy, manager or superior officer, or any other employee with respect to any matter.

**3.4 Limitation on authority to enter.** (1) The authority conferred by section 3.3 on an Industrial Inspector to enter a place does not include authority to enter premises used as a private dwelling-house unless—

- (a) the person apparently in charge of the premises consents to the inspector's entry;
- or
- (b) the inspector has the prescribed warrant to enter the premises, which is in force, and, if requested to do so, produces the warrant for examination by the person apparently in charge of the premises.

(2) Any justice who is satisfied on the complaint in writing of an Industrial Inspector that the inspector reasonably believes premises to be such that, but for the absence of a warrant to enter, an Industrial Inspector is authorized by this Act to enter therein may issue a warrant directed to the inspector to enter the premises for the purpose of exercising authority conferred on an Industrial Inspector by this Act.

(3) A warrant issued under subsection (2) remains in force for a period of one month following the date of its issue, and is lawful authority—

- (a) to the inspector to whom it is directed and all persons acting in aid of the inspector to enter the premises specified in the warrant;
- and
- (b) to the inspector to whom it is directed to exercise in respect of the premises specified in the warrant the authorities conferred on an Industrial Inspector by this Act.

(4) In this section the expression “private dwelling-house” does not include—

- (a) any part of premises that is not used exclusively for the purpose of private residence;
- or
- (b) the curtilage of any premises.

**3.5 Duty of Industrial Inspector.** (1) It is the duty of every Industrial Inspector to secure compliance with the provisions of this Act or of any order.

(2) An Industrial Inspector, other than the Chief Industrial Inspector, is to report to the Chief Industrial Inspector any breach of a provision of this Act or of an order that comes to the inspector’s knowledge.

**3.6 Duty of occupier etc. to assist Industrial Inspector.** A person who is an occupier of a factory, shop or place of public amusement, or is entitled to immediate possession thereof, and an agent or employee of any such person, is to furnish to an Industrial Inspector—

- such reasonable assistance;
- such information that is within the person’s, agent’s or employee’s capacity to furnish;

as the inspector lawfully requires to assist the inspector in the exercise of the powers of an Industrial Inspector or the performance of the duties of an Industrial Inspector under this Act.

**3.7 Protection from self-incrimination.** Notwithstanding any other provision of this Act, a person is not required to answer a question put by an Industrial Inspector, or other person, for the purposes of this Act, if the answer would incriminate the person to whom the question is put in any offence.

**3.8 Protection for official actions.** (1) The Crown or any person is not liable at law on account of any action done or omission made by the Minister, an Industrial Inspector or an officer holding an appointment for the purposes of this Act, acting pursuant to any provision of this Act, or purporting to act in good faith and without negligence for the purposes of this Act.

(2) The burden of proof of absence of good faith is upon a person who alleges such absence.

**3.9 Annual report.** (1) As soon as is practicable after 30 June in each year the Chief Industrial Inspector is to prepare and submit to the Minister a report on the administration of this Act throughout the period of 12 months preceding that date.

(2) The Minister is to lay every report submitted under subsection (1) before the Legislative Assembly within 14 sitting days after the report is received by the Minister.

**3.10 Tabling of Orders in Council.** Section 28A of the *Acts Interpretation Act 1954-1989* (Tabling of Regulations) applies in relation to every Order in Council made under this Act as if it were a regulation.



**3.11 Regulations.** The Governor in Council may make regulations, not inconsistent with this Act, whether general or to meet particular cases, with respect to—

- forms to be used for the purposes of this Act and the purposes for which they are to be used;
- fees payable for the purposes of this Act and the purposes for which they are to be paid;
- all matters required or permitted by this Act to be prescribed if the means of such prescription are not specified;
- all matters that, in the opinion of the Governor in Council, are necessary or expedient to be prescribed for the proper administration of this Act or to achieve the objects and purposes of this Act.

#### PART 4—TRADING HOURS IN SHOPS

**4.1 This Part not to over-ride Part 5.** The provisions of this Part do not derogate from or otherwise affect the operation of the provisions of Part 5, and if there be any inconsistency between a provision of this Part and a term of an order, the order prevails and is to be given effect.

**4.2 Cases where this Part not applicable.** (1) The provisions of this Part do not apply in respect of a place that is a shop only because it is an office and a reference in this Part to employment in or in connexion with the business of a shop does not include reference to employment in an office although the office premises may be part of the shop premises.

(2) The provisions of this Part do not apply so as to prohibit or restrict the selling by auction in a shop on a day, other than a day on which section 4.4(1)(c), (d) or (e) requires the shop (as a non-exempt shop) to be closed, at any time after closing time on that day fixed by or under this Act in relation to a shop of the description of that shop, of wool or tobacco leaf by reference to catalogues after inspection of the wool or tobacco leaf.

**4.3 Closure of independent retail shops.** (1) There is no prescribed opening time or prescribed closing time in relation to an independent retail shop except as prescribed by subsection (2).

(2) The occupier of an independent retail shop, other than one used predominantly for the sale of food or groceries or both, is to cause the shop to be closed—

- (a) throughout the whole of 25 December in each year (Christmas Day) and Good Friday;
- (b) throughout the whole of the first Monday in May in each year (Labour Day), except where no person is engaged on that day in the shop as an employee;
- (c) on 25 April in each year (Anzac Day) until one o'clock after noon.

(3) If, pursuant to the provisions of the *Holidays Act 1983-1990*, any day is to be observed as a public holiday in substitution for the day referred to in paragraph (b) of subsection (2) a reference to the day in that subsection is to be construed as a reference to the day so substituted.

**4.4 Closure of non-exempt shops.** (1) The occupier of a non-exempt shop is to cause the shop to be closed—

- (a) on Monday, Tuesday, Wednesday, Thursday and Friday in each week, from and after 6 o'clock after noon;
- (b) on Saturday in each week, from and after one o'clock after noon;
- (c) throughout the whole of Sunday in each week;
- (d) throughout the whole of—
  - 1 January in each year (New Year's Day);
  - 26 January in each year (Australia Day);
  - 25 April in each year (Anzac Day);
  - the first Monday in May in each year (Labour Day);
  - the second Monday in June in each year (Birthday of the Sovereign);
  - 25 December in each year (Christmas Day);
  - 26 December in each year (Boxing Day);
  - Good Friday and the following day (Easter Saturday) and the following Monday (Easter Monday);
- (e) throughout the whole of the day declared under the *Holidays Act 1983-1990* to be observed as a public holiday in respect of the annual agricultural, horticultural or industrial show held at the principal city or town, as specified in a current notification published pursuant to section 6 of the *Holidays Act 1983-1990*, of the district specified in the notification and in which the shop is situated.

(2) If pursuant to the provisions of the *Holidays Act 1983-1990* any day is to be observed as a public holiday in substitution for a day referred to in paragraph (d) of subsection (1) a reference to the day in that paragraph is to be construed as a reference to the day so substituted.

**4.5 Closure of non-exempt shops not to confer advantage.** Except in the normal conduct of business of an exempt shop or an independent retail shop, a person is not—

- (a) to hawk goods;
- or
- (b) to sell goods, by retail, exhibit or expose samples for the purpose of selling goods, by retail, or take an order for the sale of goods, by retail;

or

(c) to sell goods by auction;

being in any such case goods of a description usually sold in the course of business conducted in non-exempt shops in the city, town or part of the State where the action prohibited by this section occurs, or would occur, at a time or on a day when the non-exempt shops are required by or under this Act to be closed for the business of selling goods of that description.

**4.6 Closure on bank holidays.** (1) Subject to this section, the occupier of every banking office or insurance office is to cause the office to be closed on every bank holiday prescribed by the *Holidays Act 1983-1990*.

If any banking office or insurance office is not closed on a bank holiday prescribed by the *Holidays Act 1983-1990*, any person who authorized, directed or, except as an employee required by the person's employer to do so, otherwise aided the failure to close is taken to have committed an offence against this Act and is liable to the prescribed penalty.

(2) Subsection (1) does not apply to—

- an agency of a savings bank in respect of any Saturday;
- a banking office operating within the confines of an annual agricultural, horticultural or industrial show in respect of a bank holiday falling within the period of the show.

(3) If a day is a bank holiday in any district or districts of the State, but not throughout the State, subsection (1) applies only to banking offices and insurance offices situated in a district in relation to which the day is a bank holiday.

#### PART 5—ORDERS CONCERNING NON-EXEMPT SHOPS, EXHIBITIONS AND SPECIAL DISPLAYS; PERMITS FOR NON-PRIVATE PROFIT PURPOSES

**5.1 Trading hours orders on non-exempt shops.** (1) A Full Bench of the Industrial Commission may, by its order, fix hours during which business may be conducted in non-exempt shops, whether or not employees are engaged therein.

(2) Jurisdiction under subsection (1) includes jurisdiction—

- (a) to fix the earliest time at which non-exempt shops may open on any day and the latest time at which non-exempt shops must close on any day;
- (b) to fix hours for trading wholesale different from those fixed for trading retail;
- (c) to fix different trading hours by reference to—
  - classes of non-exempt shops;

- localities, or part thereof, in which non-exempt shops are situated;
- (d) to make such order or orders as the Industrial Commission thinks fit, at the one time or from time to time;
- (e) to amend, vary or revoke any order made.

**5.2 Orders on exhibitions etc.** (1) A Full Bench of the Industrial Commission may, by its order—

- (a) declare a statement of policy relating to the conditions to be observed, generally or in a particular case, in holding special exhibitions or special displays, whether permanent or temporary, of goods, other than goods that a reasonable person would expect to be sold in an exempt shop, whether the exhibition or display is held in a shop or elsewhere;  
or
- (b) declare the conditions to be observed in holding such exhibitions or displays.

(2) The jurisdiction conferred by subsection (1) includes jurisdiction—

- (a) to fix the earliest time at which a special exhibition or special display may open on any day and the latest time at which a special exhibition or special display must close on any day;
- (b) to permit, prohibit, or fix conditions pertaining to, the selling and the taking of orders for sale of goods exhibited or displayed or of goods of a description of those exhibited or displayed;
- (c) to fix different hours and different conditions by reference to—
  - classes of special exhibitions or special displays;
  - localities, or part thereof, in which special exhibitions or special displays are held;
- (d) where an order provides for the holding of a special exhibition or a special display subject to a grant of a permit, to delegate to the Chief Industrial Inspector (who is thereby authorized accordingly) authority to grant, refuse and cancel a permit for the purpose;
- (e) to make such order or orders as the Industrial Commission thinks fit, at the one time or from time to time;
- (f) to amend, vary or revoke any order made.

(3) The Industrial Commission constituted by a single Commissioner may, by its order, approve a special exhibition or special display in accordance with the policy declared under subsection (1) by a Full Bench of the Industrial Commission.

**5.3 Powers and procedures relevant to proceedings under sections 5.1 and 5.2.** (1) The Industrial Commission—

- (a) may make an order under section 5.1 of its own motion or upon application made by or on behalf of any industrial organization, or other organization;
- (b) may make an order under section 5.2(1) upon application made by or on behalf of any industrial organization, other person, or other organization.

(2) The Industrial Commission may, by its order made under section 5.1 or 5.2(1), delegate to the Chief Industrial Inspector authority necessary to the working out of that, or any other, order of the Industrial Commission made under the relevant section, including issuing requisitions, giving directions and preparing rosters and schedules.

If such a delegation is made, the Chief Industrial Inspector is authorized accordingly and every person concerned is to give effect to and comply with every action taken by the Chief Industrial Inspector under the authority so conferred.

(3) The Industrial Commission is to fix a date, time and place at which it will proceed with a view to making an order under section 5.1 or 5.2(1) and, if so required by the Commission, notification thereof—

- (a) is to be published in the Queensland Government Industrial Gazette;
- (b) is to be served on such industrial organizations, other persons, and other organizations as the Industrial Commission directs;
- (c) is to be advertised in such newspapers and periodicals as the Industrial Commission directs to ensure that all industrial organizations, other persons, and other organizations that are, or are likely to be, concerned in the making of the order are notified of the proceedings and of the time and place thereof.

Every such notification must specify a time before which any industrial organization, other person, or other organization that claims to be concerned in the making of the order may apply to the Industrial Registrar for leave to appear and be heard on the matter.

(4) If, upon application made to the Industrial Registrar before the time specified for the purpose in such notification, the Industrial Registrar is satisfied that the applicant is, or is likely to be, concerned in the making of the order, the registrar is to grant the leave applied for, but otherwise the registrar is to refuse the leave.

**5.4 Leave may be granted by Full Bench.** (1) Where the Industrial Registrar refuses an application for leave under section 5.3 the applicant may, within 7 days after being notified by the registrar of the refusal, require the registrar to refer the matter of the application to a Full Bench of the Industrial Commission and the registrar is to make the reference.

Upon such a reference the Industrial Commission may grant or refuse the application.

(2) A Full Bench of the Industrial Commission may at any time grant to any industrial organization, other person, or other organization leave to appear and be heard on the matter of the making of an order under section 5.1 or 5.2(1), if it is satisfied that there is good reason for granting the leave, notwithstanding that an application for such leave has not been duly made under section 5.3 to the Industrial Registrar.

**5.5 Matters relevant to s.5.1 order.** In relation to making an order under section 5.1 the Industrial Commission may have regard to—

- the locality, or part thereof, in which the non-exempt shop or class of non-exempt shop is situated;
- the needs of the tourist industry or other industry in such locality or part;
- the needs of an expanding tourist industry;
- the needs of an expanding population;
- the public interest and consumers' interest;
- the alleviation of traffic congestion;
- such other matters as the Industrial Commission considers relevant.

**5.6 Summary dismissal of application.** If a Full Bench of the Industrial Commission is of opinion that—

- (a) a decision has previously been made upon an application similar to that before it, and there is insufficient reason to warrant reconsideration of the matter;  
and
- (b) having regard to the interests of the industrial organizations, other persons, or other organizations immediately concerned, and of the community as a whole, further proceedings are not necessary or desirable;

the Industrial Commission may dismiss, or refrain from further hearing or determining, an application made for an order under section 5.1 or 5.2(1).

**5.7 Occupier to comply with order relating to premises.** If there is in force in relation to any premises, or class of premises, an order made under section 5.1, the occupier of those premises, or of premises of that class, is to cause the premises to be closed so as to comply in all respects with the terms of the order.

**5.8 Compliance with conditions for exhibitions etc.** If there is in force an order that declares conditions applicable to any special exhibition or special display, the occupier of each exhibit or display in such special exhibition or special display is to cause the exhibit or display to be conducted so as to comply in all respects with the terms of the order.

**5.9 Injunction to enforce observance of trading hours.** (1) Upon application made to it—

- by an Industrial Inspector;  
or
- by or on behalf of any industrial organization, other person, or other organization, aggrieved;

the Industrial Commission may make such orders in the nature of mandatory or restrictive injunctions, or otherwise, as it thinks fit—

- (a) to enforce compliance with an order of a kind referred to in section 5.1;  
or
- (b) to restrain a breach or the continuance of a breach of an order of a kind referred to in section 5.1.

(2) The form of notice to a person in relation to an application for an order under subsection (1), and the mode of service of such notice, is in the discretion of the Industrial Commission, which may order substituted service, by advertisement or otherwise, as it thinks fit.

**5.10 Cancellation of obsolete orders.** (1) If after such inquiry as the Industrial Registrar considers sufficient the registrar is of opinion that an order is obsolete the registrar may publish in the Queensland Government Industrial Gazette notification of an intention to declare the order identified in the notification to be obsolete.

(2) Any industrial organization, other person, or other organization may, within the time, and in the manner prescribed, lodge with the Industrial Registrar notice of objection to the proposed declaration.

The Industrial Registrar is to refer each such objection to the Industrial Commission, which is to hear and determine the question at issue.

(3) If no objection to a proposed declaration is duly lodged as prescribed, or all objections so lodged are dismissed, the Industrial Registrar, by notification published in the Queensland Government Industrial Gazette, may declare the order identified in the notification of intention referred to in subsection (1) to be obsolete, whereupon the order is no longer of any force or effect.

**5.11 Permit for non-private profit purposes.** (1) The Minister or the Chief Industrial Inspector may grant to any person, who intends to conduct an event referred to in this subsection, a permit in writing signed by the Minister or, as the case may be, Chief Industrial Inspector, that authorizes the person to conduct—

- a bazaar or fair;
- a sale of work;

- a public entertainment;

for any religious, charitable, educational or other purpose from which no private profit is to be derived (which event would, but for the permit, be subject to an order) freed from the operation of all or any of the terms of the order.

Every such permit is to be granted in respect of the day or days and the place or places specified therein.

(2) If there be any inconsistency between a term of an order and a term of a permit, the permit prevails and is to be given effect.

**5.12 Compliance with permit.** If there is in force a permit for the conduct of an event referred to in section 5.11(1), the person to whom the permit is granted is to cause the event to be conducted in compliance in all respects with the terms of the permit.

**5.13 Production of permit.** Any holder of a permit granted under section 5.11, or person claiming to act under the authority of such a permit, is to produce the permit for examination by an Industrial Inspector whenever required by the inspector to do so.

## PART 6—ANZAC DAY PROVISIONS

**6.1 Meaning of “Anzac Day”.** In this Part the expression “Anzac Day” means 25 April in each year, which day is required by the *Anzac Day Act 1921-1990* to be observed throughout Queensland as a holiday.

**6.2 Closure of factories and shops.** Subject to this Part, the occupier of a factory or shop is to cause the factory or shop to be closed throughout the whole of Anzac Day.

**6.3 Closure of places of public amusement.** (1) The occupier of a place of public amusement is to cause the place to be closed on Anzac Day until 1.30 o'clock after noon, except if the Minister has given permission in writing to the occupier to keep the place open on that day before that time.

(2) It is an implied condition of a licence granted by a Local Authority in relation to a place of public amusement that the holder of the licence must not contravene the provisions of subsection (1).

A breach of such implied condition is a matter to be taken into account in the exercise of an authority under law to cancel or suspend the licence for a breach of a condition thereof.

**6.4 Places exempt from closure.** A requirement of this Act for closure throughout the whole of Anzac Day does not apply to—

- a racing venue at which a race meeting, trotting meeting or greyhound meeting is to be, or is being, held lawfully on that day;
- an office or agency of the Totalisator Board;
- a place of public amusement, which is to be, or is being, used lawfully on that day;



- an exempt shop;
- an independent retail shop;
- a shop of a description of shop referred to in Part I of the Schedule (as it is for the time being) to the *Anzac Day Act 1921-1990*;
- a factory or shop to the extent that an activity specified in Part II of the Schedule (as it is for the time being) to the *Anzac Day Act 1921-1990* is carried on therein;
- licensed premises within the meaning of the *Liquor Act 1912-1989*.

**6.5 Amendment of Anzac Day Act.** (1) The *Anzac Day Act 1921-1987* is amended—

- (a) in section 3—Interpretation—by inserting after the definition “Minister” the following definition:—
- “ “place of public amusement” means a place within the meaning of the *Trading Hours Act 1990* used or intended to be used—
- as a theatre, dance hall or music hall;
  - for a circus, or cinematograph exhibition;
  - for any sporting entertainment;
- or
- for any public amusement or entertainment of whatever description;
- whether or not a charge is, or is to be, made for admission thereto, and includes any part thereof.”;
- (b) in section 4—Anzac Day to be a public holiday—
- (i) by omitting from subsection (1) the words “*Factories and Shops Act 1960-1987*” and substituting the words “*Trading Hours Act 1990*”;
- (ii) by omitting subsection (2);
- (iii) by omitting from subsection (4) paragraph (a);
- (c) by repealing section 5—Places of public amusement;
- (d) in section 8—Offences against Act—
- (i) by omitting from subsection (1) the expression “,5”;
- (ii) by omitting from subsection (3) the words “sections 4 or 5” and substituting the words “section 4”.

(2) The *Anzac Day Act 1921-1987* as amended by subsection (1) may be cited as the *Anzac Day Act 1921-1990*.

## PART 7—OFFENCES AND PROCEEDINGS

### 7.1 Soliciting business to be transacted outside trading hours. (1)

If there is published a statement that is calculated, or apparently calculated, to promote business conducted in a factory or shop, which

statement states, suggests or implies that, at a time when the factory or shop is required by a provision of this Act or by an order to be closed—

- (a) the factory or shop will be open to the public for any purpose of trade or inspection of goods;  
or
- (b) goods will be sold, or offered or exposed for sale, in the factory or shop;  
or
- (c) a person will be in attendance at the factory or shop, or at any other place, for receipt of—
  - orders for goods;
  - requests for demonstration of goods, or delivery of goods on approval;

the following persons thereby commit an offence against this Act:—

- a person who publishes the statement, or causes or permits the statement to be published;
- the occupier of the factory or shop, the business of which is calculated, or apparently calculated, to be promoted by publication of the statement.

(2) The occupier of a factory is not to be taken to have committed an offence defined in subsection (1) only because goods manufactured wholly or partially at the factory are mentioned by a trade or other name in the statement.

(3) A statement is taken to have been published if it is communicated to any person by action, or by way of the spoken or written word, or by way of pictorial or other visual representation.

(4) A person is not to be prosecuted for publishing, or causing to be published, a statement referred to in subsection (1) unless—

- (a) the person had been warned by an Industrial Inspector that publication of the statement, or of one substantially similar, is, or would be, an offence against this Act;  
and
- (b) the person published, or caused or permitted to be published, the statement after receipt of the warning;  
and
- (c) the Minister's consent to the prosecution is first obtained.

This subsection does not apply where the person to be prosecuted is the occupier of the factory or shop, the business of which is calculated, or apparently calculated, to be promoted by publication of the statement in question.

**7.2 Certain persons not to be employed as watchmen.** A person who is an occupier of a shop is not to employ, as a watchman therein,

a person who is also employed as a salesperson or clerk in, or in connexion with—

- the business of that shop;  
or
- the business of any other shop of which the first-mentioned person is also an occupier.

**7.3 Obstruction of Industrial Inspector.** A person is not—

- (a) to assault, resist, impede, delay or otherwise obstruct or attempt to obstruct an inspector in exercise of powers or performance of duties under this Act;
- (b) to fail to answer any question put to the person by an inspector for the purposes of this Act, or give a false or misleading answer to any such question;
- (c) to fail to sign a declaration that the person is required by or under this Act, or by an inspector for the purposes of this Act, to sign;
- (d) to fail to comply in all respects with a lawful request, requisition or direction of an inspector;
- (e) when required by or under this Act to furnish—
  - assistance to an inspector;  
or
  - information to an inspector;
    - (i) to fail to furnish the assistance or information;  
or
    - (ii) to furnish information that the person knows to be false or misleading, or does not believe to be true;
- (f) to fail—
  - (i) to produce to an inspector any permit, certificate or authority had, or claimed to be had, by the person under or for the purposes of this Act, when required by the inspector to produce the same;
  - (ii) to produce to an inspector any timesheet, pay-sheet or other records required by law to be kept or had by the person, when required by the inspector to produce the same;
  - (iii) to produce to an inspector records referred to in section 3.3 (1) (f) in the possession or control of the person, when required by the inspector to produce the same;
  - (iv) to allow an inspector to whom any thing has been produced to examine the thing and to make copies of,

or take extracts from the thing, any part thereof or any entries therein;

- (g) to prevent, or attempt to prevent, directly or indirectly, any person from appearing before, or being questioned by, an inspector;
- (h) to use threatening, abusive or insulting language to an inspector, or to any employee, in respect of any inspection, examination or questioning;
- (i) to impersonate an inspector.

**7.4 Forgery etc.** A person is not—

- (a) to counterfeit, forge or fraudulently alter any permit, notice or other document that the Minister or Chief Industrial Inspector is authorized to grant or issue under this Act;
- (b) to use, or attempt to use, any such permit, notice or other document knowing it to be counterfeit, forged or fraudulently altered;
- (c) to grant, issue, use or attempt to use any such permit, notice or other document knowing it to be false in a material particular;
- (d) to make an entry in any time-sheet or pay-sheet or in other records, knowing the entry to be false.

**7.5 General offence.** A person who contravenes or fails to comply with—

- a provision of this Act;
- a term of an order, including an order by way of injunction;
- a term of a permit issued under this Act;

commits an offence against this Act.

**7.6 Quantum of pecuniary penalty.** A person guilty of an offence against this Act is liable—

- (a) if the person is a body corporate, to a penalty of 200 penalty units;
- (b) if the person is an individual, to a penalty of 40 penalty units.

**7.7 Manner of proceedings under Act.** (1) A prosecution in respect of an offence against this Act that consists in a contravention or failure to comply with a term of an order by way of injunction is to be taken in the Industrial Court.

A person aggrieved by a decision of the Industrial Court upon such a prosecution may appeal against the decision to the Supreme Court sitting as a Full Court.

(2) Except as prescribed by subsection (1), a prosecution in respect of an offence against this Act is to be taken in a summary way in a court constituted by an Industrial Magistrate.

(3) The provisions of the *Industrial Relations Act 1990*, and of the Rules of Court having force and effect under that Act, that govern—

- proceedings in the Industrial Court, the Industrial Commission or an Industrial Magistrates Court;

- representation of parties in such proceedings;
- the powers of the Industrial Court, Industrial Commission or an Industrial Magistrates Court in relation to such proceedings;
- appeals from decisions of the Industrial Commission or an Industrial Magistrates Court;
- entitlement of the Crown and the Minister to intervene in proceedings before the Industrial Court, the Industrial Commission, an Industrial Magistrates Court or the Industrial Registrar;

apply, as far as may be (with any necessary adaptations), and subject to the provisions of this Act, in relation to the exercise of jurisdiction under this Act, and proceedings taken for that purpose, and decisions made therein.

(4) Jurisdiction is conferred on the Industrial Court, the Industrial Commission, and every Industrial Magistrate to hear and determine all proceedings duly brought before the Court, Commission or magistrate under this Act.

**7.8 Parties to offences.** (1) This section applies and is to be given effect—

- without prejudice to the application of section 7 of *The Criminal Code*;
- and
- notwithstanding the provisions of section 23 of *The Criminal Code*.

(2) Where an offence against this Act is committed in relation to a factory or shop or place of public amusement, of which there is more than one occupier (as defined by this Act), each such occupier is liable to be punished for the offence.

(3) If an occupier that commits an offence against this Act is a body corporate, each of the following persons is deemed to be criminally responsible for the contravention or failure to comply in question, to have committed the offence, may be charged with the offence, in addition to the body corporate, and is liable to the prescribed penalty:—

- the members of the governing body of the body corporate, by whatever name called;
- persons who manage or participate in the management or control of the body corporate's business in the State.

(4) Notwithstanding the provisions of subsection (2), a person is not liable to be punished for an offence for which the person would otherwise be liable to be punished if it is shown that the person committed the contravention or failure to comply as an employee acting under the express direction of the person's employer.

(5) Notwithstanding the provisions of subsection (3), a person therein referred to is not liable to be punished for an offence for which

the person would otherwise be liable to be punished if it is shown that the contravention or failure to comply occurred without the person's consent or connivance and that the person exercised reasonable diligence to prevent the commission of the offence.

**7.9 Liability for offence committed by employee.** (1) This section applies and is to be given effect, notwithstanding section 23 of *The Criminal Code*.

(2) Where an offence against this Act is committed by a person acting therein as an agent or employee of another, the principal or employer of that person is taken to have committed the offence and may be charged with the offence, in addition to the person who actually committed the offence.

It is immaterial that the offence was committed without the authority of, or contrary to the instructions of, the principal or employer.

(3) It is a defence to a charge of an offence made pursuant to subsection (2) that the defendant had no knowledge of the commission of the offence and could not, by the exercise of reasonable diligence, have prevented commission of the offence by the defendant's agent or employee.

**7.10 Evidentiary provisions.** In proceedings under or for the purposes of this Act (whether for an offence or not)—

- (a) the allegation or averment in a complaint that the defendant therein was, at the time of commission of an offence, occupier of the factory or shop or place of public amusement in question is sufficient proof of the matter alleged or averred until the contrary is proved;
- (b) the due appointment as Industrial Inspector of any person claiming to be, or stated to be, an Industrial Inspector is to be presumed in the absence of evidence to the contrary;
- (c) the authority of an Industrial Inspector to take a proceeding, or do any action, is to be presumed in the absence of evidence to the contrary;
- (d) a signature purporting to be that of the Minister or an Industrial Inspector is to be taken as the signature of that person in the absence of evidence to the contrary;
- (e) a document purporting to be a duplicate or copy of a notice or permit given or issued under this Act, upon its production in the proceedings, is admissible therein as evidence and, in the absence of evidence to the contrary, conclusive evidence of the original thereof;
- (f) the limits of any district or part of the State, or of any road or other place, and the situation of premises in or outside a particular district or part of the State are, or is, to be presumed in the absence of evidence to the contrary;
- (g) a copy of, or a document purporting to be an extract from the Queensland Government Industrial Gazette purporting

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to contain notification of a decision or order of the Industrial Court or Industrial Commission is admissible as evidence of the lawful making of the decision or order, and as conclusive evidence of the matters contained in the notification;

- (h) a certificate purporting to be that of the Chief Industrial Inspector that an article or class of article specified therein is such that a reasonable person would expect the article, or an article of that class, to be sold in a shop of a description specified therein is evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein.