

Queensland



**TRADING (ALLOWABLE
HOURS) AMENDMENT ACT
1994**

Act No. 23 of 1994

Queensland



**TRADING (ALLOWABLE HOURS)
AMENDMENT ACT 1994**

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Queensland



Trading (Allowable Hours) Amendment Act 1994

Act No. 23 of 1994

An Act to amend the *Trading Hours Act 1990* and the *Retail Shop Leases Act 1984*

[Assented to 10 May 1994]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Trading (Allowable Hours) Amendment Act 1994*.

Commencement

2. This Act commences on a day to be fixed by proclamation.

PART 2—AMENDMENT OF TRADING HOURS ACT 1990

Act amended in Pt 2 and Schedule

3. This Part and the Schedule amend the *Trading Hours Act 1990*.

Amendment of s 1.1 (Short title)

4. Section 1.1, '*Trading Hours Act 1990*'—
omit, insert—
'*Trading (Allowable Hours) Act 1990*'.

Amendment of s 1.3 (Objects of Act)

5.(1) Section 1.3, 'are'—
omit, insert—
'include'.

(2) Section 1.3(a), before ‘trading’—

insert—

‘allowable’.

(3) Section 1.3(d), ‘lawful’—

omit, insert—

‘allowable’.

(4) Section 1.3(e)—

omit, insert—

‘(e) to facilitate trading in tourist areas.’.

Amendment of s 2.1 (Meaning of terms)

6.(1) Section 2.1, definitions **“Industrial Commission”**, **“Industrial Court”**, **“Industrial Inspector”** or **“inspector”**, **“Industrial Magistrate”**, **“local authority”**, **“Minister”**, **“order”**, **“Part”** and **“place of public amusement”**—

omit.

(2) Section 2.1—

insert—

‘**“Industrial Commission order”** means an order made by the Industrial Commission under Part 5, and includes an order made under the *Industrial Conciliation and Arbitration Act 1961* that continues to have effect for the purposes of this Act;

“Industrial Inspector” or **“inspector”** means the Chief Industrial Inspector and any other Industrial Inspector appointed for the purposes of the *Industrial Relations Act 1990*;

“open”, for a shop, means the shop is not closed;

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

(a) as a cinema, theatre, dance hall or music hall; or

(b) for a circus; or

(c) for sporting entertainment; or

(d) for any other public amusement or entertainment;

whether or not a charge is, or is to be, made for admission;’.

(3) Section 2.1, definition “**shop**”, paragraph (e), ‘order in council’—

omit, insert—

‘regulation’.

Amendment of s 2.2 (Exempt shops)

7.(1) Section 2.2(2)—

insert—

‘(sa)marine shop; or’.

(2) Section 2.2(2)(za) and (3)(b), ‘order in council’—

omit, insert—

‘regulation’.

Replacement of s 4.1 (This Part not to override Pt 5)

8. Section 4.1—

omit, insert—

‘Section 4.4 subject to Industrial Commission orders

4.1 Section 4.4 has effect subject to Part 5 and, if there is an inconsistency between section 4.4 and an Industrial Commission order, the order prevails and must be given effect.¹’.

Amendment of s 4.3 (Closure of independent retail shops)

9. Section 4.3(3)—

omit, insert—

¹ This section must be read in conjunction with section 8.2 (Amendment of Industrial Commission orders).

‘(3) If, under the *Holidays Act 1983*, a day is to be observed as a public holiday in substitution for a day mentioned in subsection (2), the substitution of the day as a public holiday does not apply for the purposes of this section.’

Replacement of s 4.4 (Closure of non-exempt shops)

10. Section 4.4—

omit, insert—

‘Allowable opening hours of nonexempt shops

‘**4.4(1)** The occupier of a nonexempt shop must ensure the shop is not open—

- (a) before 8 a.m., or after 9 p.m., on a Monday, Tuesday, Wednesday, Thursday or Friday that is not a public holiday; or
- (b) before 8 a.m., or after 5 p.m., on a Saturday that is not a public holiday; or
- (c) on a Sunday or public holiday.

‘(2) In subsection (1)—

“**public holiday**” has the meaning given by the *Holidays Act 1983*.’

Replacement of s 4.5 (Closure of non-exempt shops not to confer advantage)

11. Section 4.5—

omit, insert—

‘Closure of nonexempt shops not to confer advantage

‘**4.5(1)** A person must not—

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

at a locality on a day or during hours when a nonexempt shop in which the

goods are sold at the locality would be required under this Act to be closed.

‘(2) This section does not apply to—

- (a) the conduct of a bazaar or fair, or the sale of work, for a religious, charitable, educational or other purpose from which no private profit is to be derived; or
- (b) the normal conduct of business of an exempt shop or independent retail shop.’.

Replacement of s 5.1 (Trading hours orders on non-exempt shops)

12. Section 5.1—

omit, insert—

‘Trading hours orders on nonexempt shops

‘**5.1(1)** A Full Bench of the Industrial Commission may decide to allow business to be conducted in a nonexempt shop on a day or during hours that the shop would otherwise be required under section 4.4 to be closed.

‘(2) The Full Bench may make any order it considers necessary or convenient to give effect to a decision made under subsection (1), including, for example, an order specifying—

- (a) the earliest time when nonexempt shops may open on any day and the latest time when nonexempt shops must close on any day; or
- (b) hours for trading wholesale different from the hours fixed for trading retail; or
- (c) different trading hours by reference to—
 - (i) classes of nonexempt shops; or
 - (ii) localities, or parts of localities, where nonexempt shops are situated.’.

Insertion of new s 5.3A

13. After section 5.3—

insert—

‘Industrial Commission hearings

‘**5.3A** When dealing with an application under section 5.1 or 5.2, the Industrial Commission must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper hearing of the issues.’

Amendment of s 5.5 (Matters relevant to s 5.1 order)

14. Section 5.5, ‘may’—

omit, insert—

‘must’.

Omission of ss 5.11–5.13

15. Sections 5.11 to 5.13—

omit.

Insertion of new s 6.2A

16. After section 6.2—

insert—

‘Real estate sales prohibited

‘**6.2A** A person must not conduct the business of selling real estate on Anzac Day.

Maximum penalty—40 penalty units.’

Insertion of new Pt 8

17. After section 7.11—

insert—

‘PART 8—TRANSITIONAL PROVISIONS

‘Extension of trading hours does not affect pay rates

‘8.1 The extension of the trading hours of a nonexempt shop because of—

- (a) the enactment of the *Trading (Allowable Hours) Amendment Act 1994*; or
- (b) an Industrial Commission order;

is not intended to imply that the extended hours are to be the hours for which ordinary rates of pay are to be paid under an award.

‘Amendment of Industrial Commission orders

‘8.2(1) In this section—

“order” means an Industrial Commission order in force on the day this section commences, but does not include an order—

- (a) mentioned in Schedule 4 of the *Trading Hours—Non-Exempt Shops Trading By Retail—State order*; or
- (b) prescribed by regulation.

‘(2) If an order has the effect of prescribing—

- (a) an opening time on a day later than an opening time mentioned in section 4.4; or
- (b) a closing time on a day earlier than a closing time mentioned in section 4.4;

the order is taken to prescribe the opening and closing times mentioned in the section.

‘(3) As soon as practical after this section commences, the Industrial Registrar must amend the order to agree with section 4.4.

‘(4) This section expires 3 months after it commences.’

PART 3—AMENDMENT OF RETAIL SHOP LEASES ACT 1984

Act amended in Pt 3

18. This Part amends the *Retail Shop Leases Act 1984*.

Amendment of s 5 (Application of Act)

19. Section 5(2), after ‘and 7’—

insert—

‘and section 14A’.

Replacement of s 14A (Trading hours pursuant to retail shop leases)

20. Section 14A—

omit, insert—

‘Trading hours under retail shop leases

‘14A.(1) In this section—

“core trading hours”, for a retail shopping centre, means hours not outside the allowable trading hours under the *Trading (Allowable Hours) Act 1990* that—

- (a) are stated in a resolution passed by the eligible tenants of the centre under subsection (2) as the hours all retail shops in the centre must open for trading; or
- (b) until a resolution is passed—the tenants of the centre were required, immediately before the commencement of the *Trading (Allowable Hours) Amendment Act 1994*, to keep the retail shops open for trading;

“eligible shop”, for a retail shopping centre, means a retail shop in the centre (whether or not the shop is leased under a retail shop lease);

“eligible tenant”, for a retail shopping centre, means a tenant of a retail shop in the centre (whether or not the tenant is a tenant under a lease that is a retail shop lease);

“existing lease” means a retail shop lease current at the commencement of the *Trading (Allowable Hours) Amendment Act 1994*.

‘(2) A resolution is passed by the eligible tenants of a retail shopping centre if—

- (a) the resolution is put to a vote of the eligible tenants by 1 or more of the tenants or the landlord; and
- (b) at least 7 days before the vote is taken, each eligible tenant is given a written notice that includes—
 - (i) the terms of the resolution; and
 - (ii) information about how and when the vote is to be taken; and
- (c) voting is by secret ballot on the basis of 1 vote for each eligible shop in the centre; and
- (d) each eligible tenant is allowed to vote on that basis; and
- (e) the resolution is supported by the tenants of at least 75% of the eligible shops; and
- (f) each person who casts a vote may scrutinise the counting of votes.

‘(3) A landlord must not require a tenant under an existing lease to extend the hours that, immediately before the commencement of the *Trading (Allowable Hours) Amendment Act 1994*, the tenant was required to keep the retail shop open for trading.

Maximum penalty—100 penalty units.

‘(4) However, a retail shop lease may include a term requiring the tenant to keep the premises open for trading in the core trading hours for the retail shopping centre.

‘(5) A term of a retail shop lease that purports to impose on the tenant an obligation to open the premises for trading outside the core trading hours for the retail shopping centre is void.

‘(6) However, if the term is in an existing lease, it is void only to the extent that it requires the tenant to open the premises for trading outside the core trading hours for the retail shopping centre.

‘(7) A tenant under a retail shop lease (the “**first tenant**”) is not liable under the first tenant’s lease for any additional outgoings only because an eligible tenant’s shop is open for trading outside the core trading hours when the first tenant’s shop is not open for trading.

‘(8) Subsection (7) applies despite any term in the first tenant’s lease.’

SCHEDULE

MINOR AMENDMENTS

section 3

1. Section 1.2(3)—

omit.

2. In Part 1—

insert—

‘Numbering and renumbering of Act

‘1.4 Section 43 (Numbering and renumbering of provisions) of the *Reprints Act 1992* must be used in the next reprint of the Act produced under the *Reprints Act 1992*.

‘Repeal of Industrial Commission orders

‘1.5(1) The following Industrial Commission orders are repealed—

- Trading Hours—Non-exempted Shops Selling Boats—Gold Coast Area
- Trading Hours—Non-exempted Shops Selling Boats—State (Exclusive of the Gold Coast Area).

‘(2) This section expires on the day it commences.’.

3. Section 1.6—

omit.

SCHEDULE (continued)

4. Sections 2.1 (definitions “closing time” and “opening time”), 3.3(1)(a)(ii), (d) and (e), 3.5, 5.8 (1st mention), 5.10(1) (1st mention), 7.1(1), 7.5(b) (1st mention) and 7.7(1), before ‘order’—

insert—

‘Industrial Commission’.

5. Section 3.1—

omit.

6. Section 3.8—

omit, insert—

‘Protection from liability

‘3.8(1) In this section—

“official” means—

- (a) the Minister; or
- (b) an Industrial Inspector.

‘(2) An official is not civilly liable for an act or omission done honestly and without negligence under this Act.

‘(3) If subsection (2) prevents civil liability attaching to an official, the liability attaches to the State instead.’.

7. Sections 3.10 and 3.11—

omit.

8. Section 4.2(2), ‘, (d) or (e)’—

omit.

SCHEDULE (continued)

9. Part 5 heading, ‘; PERMITS FOR NON-PRIVATE PROFIT PURPOSES’—

omit.

10. Section 5.2(2)(e) and (f)—

omit.

11. Section 5.3(2A)—

omit.

12. Section 6.4(f) to (h)

omit, insert—

- ‘(f) a shop mentioned in the *Anzac Day Act 1921*, Schedule, Part 1; or
- (g) a factory or shop to the extent that an activity mentioned in the *Anzac Day Act 1921*, Schedule, Part 2 is carried on in the factory or shop.’.

13. After section 7.10—

insert—

‘Regulations

‘**7.11** The Governor in Council may make regulations under this Act, including regulations imposing fees.’.