



Queensland

Liquor and Other Legislation Amendment Act 2017

Act No. 5 of 2017

An Act to amend the Liquor Act 1992, the Liquor Regulation 2002, the Penalties and Sentences Act 1992 and the Trading (Allowable Hours) Act 1990 for particular purposes

[Assented to 9 March 2017]



Queensland

Liquor and Other Legislation Amendment Act 2017

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The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Liquor and Other Legislation Amendment Act 2017*.

2 Commencement

(1) The following provisions are taken to have commenced on 1 February 2017 immediately after the commencement of the lock out amendments—

- (a) part 2, other than division 3;
- (b) part 3.

(2) In this section—

lock out amendments means the provisions of the *Tackling Alcohol-Fuelled Violence Legislation Amendment Act 2016* mentioned in section 2(2) of that Act.

Part 2 Amendment of Liquor Act 1992

Division 1 Preliminary

3 Act amended

This part amends the *Liquor Act 1992*.

[s 4]

Division 2 Amendments taken to have commenced on 1 February 2017

4 Amendment of s 4 (Definitions)

(1) Section 4, definition *3a.m. safe night precinct, lock out condition and trading period*—

omit.

(2) Section 4—

insert—

trading period, for part 5, division 6, see section 142AD.

5 Amendment of s 86 (Hours to which application may relate etc.)

Section 86(1)(b), ‘3a.m. safe’—

omit, insert—

safe

6 Amendment of s 103G (Authority of extended hours permit)

Section 103G, note—

omit.

7 Amendment of s 107C (Commissioner may impose conditions on licences and permits)

Section 107C(2), example—

omit.

8 Omission of pt 5, div 5 (Lock out provisions)

Part 5, division 5—

omit.

9 Amendment of s 155AD (Who must be present or reasonably available at licensed premises etc.)

Section 155AD(2)(b)(ii) and (3)(b)(ii), '3a.m. safe'—

omit, insert—

safe

10 Amendment of s 165A (Refusing entry to premises)

Section 165A(1)(e), example—

omit.

11 Omission of pt 6AB, div 5 (3a.m. safe night precincts)

Part 6AB, division 5—

omit.

12 Amendment of s 338A (Minister must review)

(1) Section 338A(3), definition *relevant provisions*, paragraphs (b) and (d)—

omit.

(2) Section 338A(3), definition *relevant provisions*, paragraphs (c) and (e)—

renumber as paragraphs (b) and (c).

- (a) for a licence other than a community other licence—
 - (i) trading between 12a.m. and 5a.m.; or
 - (ii) trading between 7a.m. and 9a.m.; or
 - (iii) trading between 9a.m. and 10a.m.; or
- (b) for a community club licence—trading between 7a.m. and 9a.m.

103IA Restrictions on grant of permit for trading between 12a.m. and 5a.m.

- (1) This section applies if an application is made under section 103I(a)(i).
- (2) The commissioner may grant an extended hours permit only if satisfied it is to sell liquor on a special occasion that persons independent of the licensee, and of the owner or occupier of the licensed premises, wish to celebrate on the licensed premises.
- (3) The commissioner may only grant an extended hours permit for—
 - (a) the time the special occasion is happening; and
 - (b) a reasonable time, before or after the time the special occasion is happening, the commissioner considers appropriate to ensure the maintenance of a safe environment in and around the licensed premises.

Example—

On the occasion of an international sporting match being televised from 1a.m. to 3a.m., the commissioner may grant a permit for trading between 12a.m. and 3.30a.m., in order to allow for the gradual arrival and departure of patrons attending the premises for the occasion.

[s 15]

(4) The commissioner may not grant extended hours permits relating to the same licensed premises that would extend trading hours on 2 or more consecutive days, or on more than 1 day in a calendar month, unless satisfied the permits are to sell liquor on the same special occasion.

(5) In this section—

celebrate includes mark.

special occasion means—

- (a) the occasion of a special public event; or
- (b) a wedding, birthday or other private occasion being celebrated at a function that is not open to the public.

special public event—

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

Examples—

a local music festival happening over a weekend

a televised international sporting match involving an Australian team

- (b) includes an event prescribed by regulation, or of a class of events prescribed by regulation, to be a special public event; and
- (c) does not include an event prescribed by regulation, or of a class of events prescribed by regulation, not to be a special public event.

103IB Restrictions on grant of permit for trading between 7a.m. and 9a.m.

- (1) On an application under section 103I(a)(ii), the commissioner may grant an extended hours permit only if satisfied it is to sell liquor to or for

persons genuinely attending a function held on the licensed premises during the period to which the permit relates.

- (2) On an application under section 103I(b), the commissioner may grant an extended hours permit only if—
 - (a) the commissioner is satisfied there is a demonstrated community need for the application to be granted; or
 - (b) the club to which the licence relates is a sporting club for a sport prescribed by regulation.

103IC Restrictions on grant of permit for trading between 9a.m. and 10a.m.

On an application under section 103I(a)(iii), the commissioner may grant an extended hours permit only if satisfied there is a demonstrated community need for the application to be granted.

103J Maximum number of permits that may be granted

- (1) The maximum number of extended hours permits that may be granted for particular licensed premises is—
 - (a) on an application under section 103I(a)(i)—6 permits in a calendar year; or
 - (b) otherwise—4 permits in any 1-year period.
- (2) A reference in subsection (1)(a) or (b) to a number of permits in a period is a reference to the number of permits authorising the sale of liquor on a day in the period (not the number of permits granted in the period).
- (3) This section applies subject to section 103JAA.

[s 16]

103JAA Maximum number of late night permits that may be granted in first calendar year of licence

- (1) This section applies to licensed premises in relation to the calendar year in which the premises become licensed premises.
- (2) Section 103J(1)(a) applies to the premises as if the reference to 6 permits were a reference to a lesser number of permits worked out on a pro rata basis according to the number of calendar months, in the calendar year, in which the premises are licensed premises.

Example—

Premises become licensed premises on 20 July 2018. For the 2018 calendar year, there are 6 calendar months in which the premises are licensed premises. Therefore, section 103J(1)(a) applies as if the reference to 6 permits were a reference to 3 permits.

- (3) If the number of permits worked out under subsection (2) is not a whole number, the number must be rounded up to the nearest whole number.

16 Amendment of s 173EF (Licensed premises to which this division applies)

- (1) Section 173EF(1)(b), ‘this Act’—

omit, insert—

an extended trading hours approval

- (2) Section 173EF(3)—

omit.

17 Amendment of s 173EH (Scanning obligations of licensees for regulated premises)

Section 173EH(9), definition *regulated hours*, paragraph (b), after ‘following day’—

insert—

(whether under the authority of a licence, extended hours permit or extended trading hours approval)

18 Insertion of new s 173NCA

After section 173NC—

insert—

173NCA Changing area of safe night precincts

- (1) This section applies in relation to an amendment of a regulation under section 173NC to change the area of a safe night precinct if—
 - (a) as a result of the amendment, particular licensed premises cease to be in the safe night precinct; and
 - (b) an extended trading hours approval (the *approval*) is in force for the licensed premises that extends trading hours to include trading between 12a.m. and 3a.m.
- (2) From the day the amendment commences, the approval has effect only to extend trading hours to include trading between 12a.m. and 2a.m.
- (3) Subsection (2) does not affect any later amendment or revocation of the approval.
- (4) The regulation containing the amendment must provide for the amendment to commence on a day no earlier than 7 days after the regulation is made.
- (5) As soon as practicable after the regulation containing the amendment is made, the commissioner must give the licensee written notice—
 - (a) that, when the amendment commences, the premises cease to be in the safe night precinct; and

[s 19]

(b) of the changed effect of the approval under subsection (2).

- (6) Failure to give the notice does not affect the operation of subsection (2).
- (7) No compensation is payable to any person because of the operation of this section.

19 Amendment of s 336 (Applications for extended trading hours between 2a.m. and 5a.m)

Section 336—

insert—

- (5) This section applies subject to section 351.

20 Amendment of s 337 (Existing extended trading hours approvals for trading between 2a.m. and 5a.m.)

Section 337—

insert—

- (5) This section applies subject to section 351.

21 Amendment of s 338 (Effect of certain court or tribunal decisions relating to extended trading hours approvals)

Section 338—

insert—

- (5) This section applies subject to section 351.

22 Insertion of new pt 12, div 19

Part 12—

insert—

Division 19 Transitional and declaratory provisions for

Liquor and Other Legislation Amendment Act 2017

346 Definitions for division

In this division—

2017 late night permit means an extended hours permit that extends trading hours, on a day in 2017, to include trading for all or part of the period between 12a.m. and 5a.m.

amending Act means the *Liquor and Other Legislation Amendment Act 2017*.

347 Declaration about period between 1 February 2017 and commencement

- (1) This section applies in relation to the period (the *relevant period*) from the commencement of the amending Act, part 2, division 2 on 1 February 2017 to the commencement of this section.
- (2) To remove any doubt, it is declared that, during the relevant period—
 - (a) no licence or permit is taken to have been subject to a lock out condition by force of repealed section 142AB; and
 - (b) the granting of an extended trading hours approval, and anything done in relation to an extended trading hours approval, was as valid as it would have been if a reference in section 86(1)(b) or 155AD to a 3a.m. safe night precinct were a reference to a safe night precinct.
- (3) The rights and liabilities of all persons are declared to be, and to have been throughout the relevant period, for all purposes the same as if—

[s 22]

- (a) repealed section 142AB had never been in force; and
 - (b) a reference in section 86(1)(b) or 155AD to a 3a.m. safe night precinct were a reference to a safe night precinct.
- (4) Subsections (2) and (3)—
- (a) do not apply for the purpose of a legal proceeding decided before the commencement; but
 - (b) otherwise apply for all purposes, including—
 - (i) a legal proceeding started, but not decided, before the commencement; and
 - (ii) a legal proceeding started after the commencement.
- (5) However, despite subsection (3)(b), an act done or omission made during the relevant period is not an offence against section 155AD(2)(b)(ii) or (3)(b)(ii) to the extent it would not have been an offence against that provision if the amending Act, section 9 had not commenced.
- (6) In this section—

lock out condition has the meaning given by repealed section 142AB.

repealed section 142AB means section 142AB inserted in this Act by the *Tackling Alcohol-Fuelled Violence Legislation Amendment Act 2016*, section 38.

Note—

Repealed section 142AB was repealed, immediately after it commenced, by the *Liquor and Other Legislation Amendment Act 2017*, section 8.

348 Cancellation of current 2017 late night permits

- (1) This section applies to a 2017 late night permit granted to a licensee before the commencement that extends trading hours on a day on or after the commencement.
- (2) On the commencement, the permit is cancelled by force of this section.
- (3) As soon as practicable after the commencement, the commissioner must—
 - (a) refund to the licensee the fee paid for the application for the permit; and
 - (b) give the licensee written notice that—
 - (i) the permit has been cancelled; and
 - (ii) the licensee may make a further application for an extended hours permit under part 4A, division 4.

349 Counting 2017 late night permits for s 103J

- (1) This section applies to a 2017 late night permit granted to a licensee before the commencement that extended trading hours on a day before the commencement.
- (2) In deciding, for section 103J, the number of 2017 late night permits granted for the licensed premises, a permit mentioned in subsection (1) is to be counted.

350 Current applications and legal proceedings relating to extended hours permits

- (1) An application under this Act for an extended hours permit made, but not decided, before the commencement must be decided under this Act as in force from the commencement.

[s 22]

- (2) Part 4A, division 4, as in force before the commencement, continues to apply for the purpose of a legal proceeding started under this Act but not decided before the commencement.

351 Retrospective change to operation of ss 336–338

- (1) Section 336 applies, and is taken to have applied since 1 February 2017, as if the reference in section 336(4)(a) to a 3a.m. safe night precinct were a reference to a safe night precinct.
- (2) Section 337 applies, and is taken to have applied since 1 February 2017, as if the reference in section 337(4)(a) to a 3a.m. safe night precinct were a reference to a safe night precinct.
- (3) Section 338 applies, and is taken to have applied since 1 February 2017, as if the reference in section 338(4)(a) to a 3a.m. safe night precinct were a reference to a safe night precinct.
- (4) The rights and liabilities of all persons are declared to be, and to have been since 1 February 2017, for all purposes the same as if the references in section 336(4)(a), 337(4)(a) and 338(4)(a) to a 3a.m. safe night precinct were references to a safe night precinct.

352 No compensation

Despite any Act or law, no compensation is payable by the State to a person because of the operation of the amending Act.

[s 28]

- (ii) an offence against the *Drugs Misuse Act 1986*, section 5 or 6; and

28 Insertion of new pt 14, div 19

Part 14—

insert—

**Division 19 Transitional provision for
Liquor and Other
Legislation Amendment
Act 2017**

254 Banning orders

A court may make a banning order under section 43J if the offender is convicted of an offence mentioned in section 43J(1)(a)(i) or (ii) after the commencement, even if the offence was committed, or the offender was charged with the offence, before the commencement.

**Part 5 Amendment of Trading
(Allowable Hours) Act 1990**

29 Act amended

This part amends the *Trading (Allowable Hours) Act 1990*.

30 Amendment of s 31B (Industrial commission order amended)

- (1) Section 31B(8), definitions *Brisbane statistical division*, *existing Sunshine Coast area* and *south-east Queensland area*—
omit.

(2) Section 31B(8)—

insert—

south-east Queensland area means the South-East Queensland Area within the meaning of the trading hours order.

(3) Section 31B(8), definition *closed day*, paragraph (b)—

omit.

31 Insertion of new s 31BA

Part 5A—

insert—

31BA Amendment of other orders—trading on Easter Sunday in south-east Queensland area

- (1) This section applies to an order, other than the trading hours order, made by the industrial commission under section 21 that—
 - (a) applies to a non-exempt shop in the south-east Queensland area; and
 - (b) does not permit the shop to trade on a Sunday or public holiday.
- (2) To the extent the order applies to a non-exempt shop mentioned in subsection (1)(a), the order is taken to prescribe the following permissible trading hours for Easter Sunday—
 - (a) opening time—9a.m.; and
 - (b) closing time—6p.m.
- (3) Subsection (2) applies despite any provision of the order that is in force immediately before the commencement.
- (4) Despite subsection (2), the order as affected by that subsection is taken to be an order of the industrial commission for the purposes of the

[s 32]

future application of section 21.

- (5) However, the industrial commission must not make an order prescribing for the south-east Queensland area an opening time later than 9a.m., or a closing time earlier than 6p.m., on Easter Sunday.
- (6) In this section—
south-east Queensland area see section 31B.
trading hours order see section 31B.

32 Amendment of s 36A (Protection for current employees)

Section 36A(3), definition *south-east Queensland area*—
omit, insert—

south-east Queensland area has the meaning given by section 31B as it was in force on 1 August 2002.

33 Insertion of new s 36AA

Part 7—
insert—

36AA Protection for employees—Liquor and Other Legislation Amendment Act 2017

- (1) An employer must not require an employee to work during extended hours unless the employee has freely elected to work during extended hours.
Maximum penalty—
 - (a) for a first offence—16 penalty units; or
 - (b) for a second or later offence—20 penalty units.
- (2) However, subsection (1) does not apply in relation to an employee if an industrial instrument

provides arrangements under which the employee may refuse or agree to work during extended hours.

- (3) For subsection (1), an employee has not freely elected to work during extended hours—
- (a) if the employee elects to work during extended hours because the employee has been coerced, harassed, threatened or intimidated by or for the employer; or
 - (b) only because the employee is rostered, or required under an industrial instrument, to work during those hours.

- (4) In this section—

elect means agree in writing for a stated or indefinite period.

employer means an employer of an employee in a non-exempt shop in the south-east Queensland area.

extended hours means the permitted trading hours under this Act on Easter Sunday for a non-exempt shop in the south-east Queensland area.

industrial instrument means any of the following within the meaning of the *Industrial Relations Act 2016*—

- (a) a modern award, bargaining award or certified agreement;
- (b) a federal industrial instrument.

south-east Queensland area see section 31B.

34 Insertion of new pt 8, div 5

Part 8—

insert—

Division 5 **Transitional provision for
Liquor and Other
Legislation Amendment
Act 2017**

54 Application of amended s 31B—Easter Sunday

Section 31B(2), as it applies on the commencement, has effect despite any provision of the trading hours order in force immediately before the commencement.

Note—

The *Liquor and Other Legislation Amendment Act 2017*, section 30 amended section 31B of this Act to provide that Easter Sunday is not a closed day for the south-east Queensland area.

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