

TRADING (ALLOWABLE HOURS) AMENDMENT BILL 1994

EXPLANATORY NOTES

The Principal objectives of this Bill are—

- extend the hours during which non-exempt shops in Queensland are allowed to trade
- retain the Queensland Industrial Relations Commission as the trading hours tribunal for determining
 - hours of trading additional to those prescribed by the legislation
 - upon application, areas of the State which by virtue of activities carried on could be considered tourist areas and the appropriate additional permitted trading hours for such areas.
- amend the *Retail Shop Leases Act 1984* to provide for owners of shopping centres to extend as a whole the trading hours of retail shop tenants in the centres only on a resolution supported by 75% of tenants of the shops.

PART 1—PRELIMINARY

Clause 1—Short title. This proposed section provides a short title for the amending legislation.

Clause 2—Commencement. This proposed section provides for the legislation to take effect from a date to be proclaimed.

PART 2—AMENDMENT OF TRADING HOURS ACT 1990

Clause 3—Act amended in Pt 2 and Schedule. Names the existing Act affected by the amendments contained in this Part and the Schedule of the amending legislation.

Clause 4—Amendment of s 1.1 (Short title). Alters the title of the existing legislation to reflect that the Act and orders made under it prescribe hours during which shops may, but not necessarily must, trade.

Clause 5—Amendment of s 1.3 (Objects of Act).

- the first amendment indicates that the objects of the Act are not restricted to those nominated
- the amendment to object (a) reflects the intent of the legislation that shops may trade during the hours prescribed in the legislation and the various trading hours orders
- the amendment to object (d) reflects the intent that the legislation contain hours during which shops are allowed to trade
- the amendment to object (e) replaces the current object dealing with issue of permits for trading at bazaars, fairs and fetes. A specific object to ‘facilitate trading in tourist areas’ is included.

The necessity to obtain a permit to hold a church bazaar or school fete outside the trading hours currently prescribed in either the legislation or trading hours orders of the Commission is archaic. It is proposed that these provisions be removed from the current legislation (see notes on Clause 15 of the Bill). Removal of the object accords with the later proposed amendment.

A specific object to facilitate trading in tourist areas gives expression to the intent to assist the growth and development of tourism.

Clause 6—Amendment of s 2.1 (Meaning of terms). The amendment omits certain terms and their definitions. With the exception of the terms ‘Industrial Inspector’ or ‘inspector’, ‘order’ and ‘place of public amusement’, the Acts Interpretation Act 1954 contains meanings of these terms and their omission accords with current drafting practice.

‘Industrial Commission order’ replaces the term ‘order’ and relates to trading hours orders made by the Industrial Commission under the current legislation as well as orders made under preceding legislation.

‘Industrial Inspector’ or ‘inspector’ replaces the current term with wording that reflects current drafting practice.

‘open’ is inserted to facilitate the provisions of the proposed section 4.4 (see notes on Clause 10 of the Bill)

‘place of public amusement’ has been altered to include part of a place and replace an archaic reference (cinematograph exhibition).

‘shop’ has been altered to replace ‘order in council’ with ‘regulation’ to accord with the provisions of the Statutory Instruments Act 1992 for uniformity in subordinate legislation.

Clause 7—Amendment of s 2.2 (Exempt shops). Includes ‘marine shops’ as being exempt shops for the purposes of the Act. Inclusion of marine shops in the exempt category accords with such premises being aligned closely to tourist and recreational activities.

Clause 8—Replacement of s 4.1 (This Part not to override Pt 5). The replacement section is similar in wording to the existing section 4.1.

Section 4.4 prescribes the hours during which and the days on which non-exempt shops are not allowed to trade. Additional trading hours may be provided for by an order of a Full Bench of the Industrial Commission (see notes on Clause 12 of the Bill).

Trading hours determined by the Commission will be in substitution of those prescribed in section 4.4

Clause 9—Amendment of s 4.3 (Closure of independent retail shops). The proposed amendment provides that where a holiday is substituted for any of the holidays mentioned in subsection (2) the substituted day will be a normal trading day.

In effect this means that independent retail shops (other than food and/or grocery shops) are to close on certain days as indicated in existing subsection [2].

Clause 10—Replacement of s 4.4 (Closure of non-exempt shops). The proposed replacement section prescribes the hours during which and the days on which non-exempt shops are not allowed to open for business.

Upon application being made at a later date the Commission may make an order allowing non-exempt shops to trade—

- longer hours than those prescribed in the legislation
- on days during which the legislation requires the shops to be closed. The hours on these days are to be determined by the Commission. (See notes on Clause 12 of the Bill)

Clause 11—Replacement of s4.5 (Closure of non-exempt shops not to confer advantage). Removal of the need to obtain permits to hold church bazaars, school fetes and activities of a similar nature (see notes on Clause 15 of the Bill) necessitated amendment to section 4.5 to ensure that such activities could be conducted during the hours non-exempt shops are required to be closed.

Clause 12—Replacement of s 5.1 (Trading hours orders on non-exempt shops). Although the legislation provides for the hours during which and the days on which non-exempt shops may not trade the amendment proposes that a Full Bench of the Industrial Commission be allowed to extend trading in the non-allowable hours period.

In allowing the additional trading the Commission may make any order it considers necessary. Examples of matters that the order may specify are contained in paragraphs (a) to (c) of proposed subsection (2).

Paragraphs (a) to (c) are similar to the provisions of the corresponding paragraphs in existing section 5.1(2).

Existing paragraphs (d) and (e) have been omitted.

Paragraph (d) is no longer necessary due to the wording of the proposed section 5.1(2). The provisions of the Acts Interpretation Act 1954 (section 24AA) can be relied upon in place of the provisions of paragraph (e).

Clause 13—Insertion of new s 5.3A—Industrial Commission hearings. The proposed section requires the Industrial Commission to deal quickly with matters relating to trading hours.

Clause 14—Amendment of s 5.5 (Matters relevant to s 5.1 order). The proposed amendment makes it mandatory for the Commission to have regard to the matters listed in paragraphs (a) to (g) of existing section 5.5 when determining an application to allow trading during the hours, or on days, which non-exempt shops are required by proposed section 4.4 (Clause 10 of the Bill) to be closed.

The intent of this change is to place a particular emphasis on the needs of the tourist industry, as well as the public and consumer interests.

The authority for the Commission to alter these hours and days is found in proposed section 5.1 (Clause 12 of the Bill).

Clause 15—Omission of ss 5.11—5.13. The sections proposed to be omitted refer to an archaic necessity to obtain permits to hold, outside the normal trading hours of non-exempt shops, non-private profit making bazaars, fairs, sales of work and public entertainment for religious, charitable, educational or other purposes.

Issue of a permit enabled the sale of goods at such functions during the hours that non-exempt shops are required to be closed and did not offend section 4.5.

Under the amendment proposed to existing section 4.5(1) (Clause 11 of the Bill) sale of goods at such functions no longer will be an activity that cannot be carried out during the times non-exempt shops are required to be closed.

Clause 16—Insertion of new s 6.2A—Real estate sales prohibited. The proposed section will prohibit sales of real estate of any kind on Anzac Day. This would include activities commonly known as ‘open houses’ conducted away from an office.

Clause 17—Insertion of new Pt 8

PART 8—TRANSITIONAL PROVISIONS

Proposed section 8.1—Extension of trading hours does not affect pay rates. The section clarifies that any change to trading hours either by the amending legislation or later orders of the Commission is not to bring about an automatic change in the hours for which ordinary rates of pay are paid in relevant awards. To accord with recent amendments to the Industrial Relations Act the Commission would be encouraged to deal with such changes through the enterprise bargaining process.

Proposed section 8.2—Amendment of Industrial Commission orders. The provisions of the proposed section mean that any current trading hours

order of the Commission which on any day provides for—

- a later opening time, and/or
- an earlier closing time

than those proposed by the amending legislation will be taken to contain the hours proposed. This provision is to operate from the date the amending legislation takes effect.

Each such order affected by the legislation is to be amended by the Industrial Registrar to accord with the hours prescribed in proposed section 4.4. This action by the Registrar is to be completed within three months of the amending legislation coming into operation.

The proposed definition of ‘order’ excludes current trading hours orders of the Commission that will not be affected by the change in trading hours as proposed by section 4.4 (Clause 10 of the Bill). Consequently these orders will not be amended by the Registrar.

The orders that will not be amended apply to special displays or events and do not relate to regular conduct of business. The displays or events to which these orders relate occur generally for a limited period once a year.

PART 3—AMENDMENT OF RETAIL SHOP LEASES ACT 1984

Clause 18—Act amended in Pt 3. Names the existing Act (Retail Shop Leases Act) affected by the provisions of this Part of the amending legislation.

Clause 19—Replacement of s 14A (Trading hours pursuant to retail shop leases). The proposed section ensures that retail shop tenants in shopping centres cannot be compelled without the process of voting on a resolution to extend the operating hours of their business to accord with the trading hours allowed by proposed section 4.4 (Clause 10 of the Bill).

Leases can require tenants to trade ‘core hours’ being the hours passed by resolution or if there has not been a resolution passed, the hours that tenants were required to keep their shops open for trading immediately prior

to the commencement of the amending legislation. The core hours must be within the allowable trading hours.

The core hours of tenants can be altered by a resolution to this effect supported by the tenants of at least 75% of the shops in the centre.

The resolution will determine the core hours of trading for the tenants.

Voting on the resolution will be by secret ballot on the basis of 1 vote for each retail shop in the centre.

In effect it gives tenants a democratic right to determine core hours of trade that are to apply in the centre.

Any single tenant can trade to the extent of the allowable trading hours.

SCHEDULE

MINOR AMENDMENTS

Clause 1—Section 1.2(3) of the existing Act is unnecessary and has been omitted. Section 15C(2) of the *Acts Interpretation Act 1954* contains provisions to the effect of those being omitted.

Clause 2—In Part 1—insertion of section 1.4—Numbering and renumbering of Act. The proposed section 1.4 requires any reprint of the current Act and amendments to be numbered in a way that is consistent with current drafting practice.

In Part 1—insertion of section 1.5—Repeal of Industrial Commission orders. The proposed section 1.5 repeals two orders to accord with the amendment proposed in Clause 7 of the Bill by which marine shops are to become exempt shops not subject to trading hours regulation.

Clause 3—Section 1.6 (Savings) is omitted. Section 20A of the *Acts Interpretation Act 1954* provides for the ‘saving’ of matters that have arisen under a previous piece of legislation. Removal of ‘savings’ provisions from the current legislation accords with current drafting practice.

Clause 4—Amendment of the nominated sections of the existing legislation identifies ‘orders’ for trading hours as being ‘Industrial Commission orders’ to accord with the change in definition of ‘order’ in section 2.1 (Clause 6 of the Bill). In this section the term ‘order’ has been omitted and a new term ‘Industrial Commission order’ inserted. (see notes on Clause 6 of the Bill).

Clause 5—Omission of s 3.1—Appointment of officers—The section reflects the provisions of section 16 of the Public Service Management and Employment Act 1988 and is unnecessary.

Clause 6—Omission of s 3.8 and insertion of new s 3.8—Protection from liability. Existing section 3.8 has been

- amended to omit the reference to the appointment of an officer holding an appointment for the purposes of the Act. The provision has not been used and is unnecessary.
- redrafted to accord with current drafting practice.

Clause 7—Omits ss 3.10 and 3.11. Existing section 3.10—Tabling of orders in council—has been omitted. Section 43 of the *Statutory Instruments Act 1992* caters for the provisions contained in section 3.10.

Existing section 3.11—Regulations—has been remade as section 7.11 (see notes on clause 13 of the Schedule) to accord with current drafting practice.

Clause 8—Omits references to sections 4.4(1)(d) and (e) in section 4.2(2)—These paragraphs are no longer contained in the Act [see replacement of section 4.4—Clause 10 of the Bill].

Clause 9—Amends the heading to Part 5 of the existing Act. Sections 5.11 to 5.13 which formed part of Part 5 have been omitted by clause 15 of the Bill (see notes on that clause) making the reference words in the heading unnecessary.

Clause 10—Omits section 5.2(2)(e) and (f). Paragraph (e) is omitted as the authority under section 5.2(1) of a Full Bench of the Industrial Commission to make an order is sufficient authority for the Commission to take the actions included in paragraph (e).

Omission of paragraph (f) relies on the provisions of section 24AA of the *Acts Interpretation Act 1954* which provides that authorisation under an Act to make an instrument or decision includes a power to amend or repeal

the instrument or decision.

Clause 11—Omits section 5.3(2A) and in doing so relies on the provisions of section 27A of the *Acts Interpretation Act 1954* which provides for all matters necessary with regard to delegation of responsibility.

Clause 12—Replaces section 6.4(f) to (h) with section 6.4(f) and (g). Existing paragraphs (f) and (g) have been redrafted to accord with current drafting practice. Existing paragraph (h) has been omitted as licensed premises fall within the category of exempt shop under existing section 2.2 and do not require a listing separate to paragraph (d) of this section (6.4).

Clause 13—Section 3.11 has been omitted by clause 7 of the Schedule to the Bill and remade as section 7.11 to accord with current drafting practice.

ENDNOTES

TRADING (ALLOWABLE HOURS) AMENDMENT ACT 1994 No. 23

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