

Trading (Allowable Hours) Amendment Bill 2017

Explanatory Notes

Short title

The short title of the Bill is the *Trading (Allowable Hours) Amendment Bill 2017*.

Policy objectives and the reasons for them

The amendments to the *Trading (Allowable Hours) Act 1990* seek to reduce restrictions on trading hours in Queensland. The amendments represent significant reform with substantial economic and employment benefits to Queensland.

Reducing restrictions on trading hours is consistent with the Queensland Government's Economic Framework and the Government's strong focus on growing a more innovative and productive economy, which is critical for facilitating private sector business growth and investment.

Queensland's current trading hours' regimen has created a lack of uniformity and uncertainty of trading hours between different areas and in the types of shops that may open on Sundays and public holidays. Considerable variation and anomalies in the treatment of retail trading hours apply throughout regional Queensland. This has created complexity and confusion for consumers and has placed an administrative burden on small and large business.

In August 2016, in response to concerns raised by business and the community that Queensland's trading hours arrangements are difficult to navigate and may act as a disincentive to business expansion, employment and economic growth, the Queensland Government approved the review of Queensland's trading hours arrangements and appointed Mr John Mickel, Associate Professor with the School of Justice at Queensland University of Technology (QUT) and former Speaker of the Queensland Legislative Assembly, as the Chair of an independent reference group established to conduct the review (the Review) and report to the Treasurer, Minister for Aboriginal and Torres Strait Islander Partnerships, Minister for Sport and the Minister for Employment and Industrial Relations, Minister for Racing and Minister for Multicultural Affairs, with recommendations for reform. The report of the review was provided to the Government in December 2016 and was publicly released on 13 February 2017.

The proposed package of reform measures contained in the Bill represents significant reform with substantial economic and employment benefits to Queensland. Based on previous independent studies, the implementation of the reform measures is expected to:

- increase gross state product (GSP) by up to an estimated \$79 million per year;
- support up to an additional 945 full-time equivalent (FTE) jobs;
- reduce regulatory burden on businesses, workers and consumers by replacing the 99 specific trading hour provisions for non-exempt shops contained in over 40 pages of trading hours' orders with six legislated allowable trading hours provisions;
- bring the State's trading hours further in line with other east coast States, enhancing the competitiveness of Queensland's retail and tourism industries;
- promote retail competition and lower prices for consumers;
- promote and enhance Queensland's tourism industry; and
- provide adequate protections for workers by requiring that any additional hours worked under extended hours are done so voluntarily.

Businesses benefit from reduced administrative costs in complying with regulations; enhanced productivity through higher capital utilisation and operational efficiency; increased competitiveness with other industries and jurisdictions, including online retailing; and higher sales from residents and tourists.

Retail workers benefit from an increased range and number of potential working hours, increased flexibility and higher incomes. The retail trade industry employed 255,000 Queenslanders in 2015-16, equating to 11 per cent of overall jobs in Queensland and almost \$10 billion in wages.

Consumers benefit from less restrictive trading hours' regulation through increased choice, flexibility and convenience, as well as lower prices through enhanced competition and lower congestion costs where total retail activity is spread over increased hours.

Achievement of policy objectives

The Trading (Allowable) Hours Amendment Bill 2017 will achieve the policy objectives of the Government by amending the *Trading (Allowable Hours) Act 1990* to give effect to a range of reform measures to broaden and simplify Queensland's allowable trading hours while ensuring important protections for retail workers

Alternative ways of achieving policy objectives

The policy objectives can only be achieved by legislative amendment. There are no alternative ways of achieving the policy objectives other than by amendment of the *Trading (Allowable Hours) Act 1990*.

Estimated cost for government implementation

There are no additional costs to Government anticipated to be associated with the Trading Hours Amendment Bill 2017.

Consistency with fundamental legislative principles

Clause 7 of the Bill which inserts a new section 16B, creates a new offence providing that occupiers of a non-exempt shop must ensure that shops are closed except during the prescribed trading hours on that day. This has been identified as a potential breach of the fundamental legislative principle of protecting the rights and liberties of individuals. The provision is considered justified as it continues existing arrangements in the Act which previously have been constructed around a general offence provision at section 41 which has now been stated as a specific requirement on compliance with permitted hours by occupiers.

A potential breach of fundamental legislative principles (adverse effect on rights and liberties) arises in requiring the Westfield Chermiside and Garden City shopping complexes to close at the earlier time of 6pm on 24 December when the formerly the closing time was 9pm. The 6pm closing time is applicable to the whole of the State and is justified to allow for social, cultural and religious needs of retail workers on Christmas Eve.

Clause 28 of the Bill inserts a new section 58 dealing with the opt-in process for localities which currently are not allowed to trade on Sundays and public holidays. A potential breach of fundamental legislative principles regarding appropriate delegation of legislative power has been identified in respect of this provision. The opt-in process requires an application and order by the QIRC. However that order does not take effect until it is approved by a regulation. This arrangement is justified to consolidate all regulation of trading hours within legislation.

The Bill contains a new section 59 providing for a 5 year moratorium on applications to the QIRC (other than for opt-in applications) commencing from the date of introduction of the Bill. Sections 60 - 63 deal with transitional arrangements for applications and appeals. These provisions have been identified as potential breaches of the fundamental legislative principle that obligations should not be imposed retrospectively. The Bill provides that the outcome of such matters will be limited only to the outcomes possible during the moratorium period under an extended hours order (i.e. the hours available from an opt-in application) or that such matters will end. The provisions are justified to support the Government's policy of standardised trading hours.

Consultation

On 31 August 2016, the Queensland Government approved the establishment of an independent reference group, chaired by Mr John Mickel, Associate Professor with the School of Justice at Queensland University of Technology (QUT) and former Speaker of the Queensland Legislative Assembly and comprising of the National Retail Association, the Master Grocers Association (MGA), the Queensland Tourism Industry Council, the Shop, Distributive and Allied Employees' Association (SDA), United Voice, Australian Workers' Union and the Queensland Council of Unions to review Queensland's trading hours.

The Review received 179 submissions from business, consumers, workers and other community representatives. These submissions responded to questions raised in an Issues Paper released by the reference group on 2 October 2016. These submissions provided a diverse range of observations, comments and suggestions for the treatment of trading hours in this State. In addition, consultation with stakeholders was undertaken between September 2016 and early December 2016

The Review also commissioned an independent survey of 3,364 Queensland households to gauge the community's views on trading hours' regulation. While approximately half of respondents agreed that retail businesses should be able to determine their own trading hours there was not an overwhelming movement towards the deregulation of trading hours for all retail businesses.

The Report of the review was submitted to the Government on 22 December 2016 making 13 recommendations for trading hours' reform. The Report, and Government response to its recommendations, was publicly released on 13 February 2017.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland. While there is no requirement for uniformity with or complementary to legislation of the Commonwealth or another state it is noted that all Australian jurisdictions have instigated varying degrees of trading hours deregulation over the past three decades; with national productivity and other reviews indicating significant consumer welfare and economic benefit through removing retail trading hours' restrictions.

Notes on provisions

Clause 1 gives the amendments in this Bill the short title of the *Trading (Allowable Hours) Amendment Bill 2017* (the Bill).

Clause 2 provides that this Bill amends the *Trading (Allowable Hours) Act 1990* (the Act).

Clause 3 provides for an amendment to make it clear that one of the objects of the Act is to decide the allowable trading hours' non-exempt shops and independent retail shops throughout Queensland.

Clause 4 provides for an amendment of the definition of exempt shop to now include independent retail shops. The list of exempt shops has been moved into a Schedule 1AA to the Act and now includes new categories for butcher shops, special exhibitions or displays of goods and shops in international airport terminals, cruise terminals, casinos or tourist resorts on an off-shore island.

Exempt shops are now also to include shops in an area surrounding a special event as declared by the Queensland Industrial Relations Commission (QIRC). Applications may be made by an organisation, a chief executive of a Government department, a local government or any other person. In deciding on a special event the QIRC must consider the cultural, religious or sporting significance of the event and its significance to the economy and the tourism industry.

Clause 5 amends the conditions applying to independent retail shops to increase from 20 to 30 the number of persons that may be engaged at any one time in the shop. The amendment also provides that for owners of more than one shop the number of persons that may be engaged at one time in all of their shops is increased from 60 to 100.

Clause 6 inserts a new division heading 'Division 1 Application of part' before section 16 of the Act.

Clause 7 inserts a new division heading 'Division 2 Non-exempt shops' after section 16 of the Act and a number of new provisions.

Section 16A provides definitions of terms used in the division including for the 2017 trading hours order, closed day, hardware shop, south-east Queensland area and tourist area.

Section 16B provides for non-exempt shops to be closed except during the hours prescribed in the Act or in a QIRC order and establishes an offence for the occupier of a non-exempt shop who does not ensure compliance with the provision. The maximum penalty for an offence is 40 penalty units for an individual. Section 181B of the *Penalties and Sentences Act 1992* provides that if a provision doesn't provide specifically for a fine for a body corporate, the maximum penalty for a body corporate is 5 times the penalty stated – in this case 200 penalty units. From 1 July 2016 the value of a penalty unit is \$121.90

Sections 16C provides for the extended Christmas trading hours to apply to a non-exempt shop when they provide for an earlier opening time or a later closing time than the core trading hours.

Section 16D specifies the core trading hours that apply to non-exempt shops other than hardware shops in particular areas (i.e. south-east Queensland, tourist areas and any other area).

Section 16E specifies the core trading hours that apply to a non-exempt hardware shop in particular areas (i.e. south-east Queensland, tourist areas and any other area).

Sections 16F and 16G specify hours applying during the Christmas period for non-exempt shops throughout the State. This includes special arrangements transferred to the Act from the 2017 trading hours' order which specify trading hours on 23 and 24 December for Westfield Chermside and Westfield Garden City.

Clause 8 inserts a new divisional heading 'Division 3 Independent retail shops' after section 16G.

Clause 9 inserts a new divisional heading 'Division 4 Other provisions' after section 17.

Clause 10 omits a reference to independent retail shop (now dealt with by the reference to an exempt shop) in section 19 of the Act.

Clause 11 continues the effect of section 31B(7) of the Act in a new section 20A providing that in south-east Queensland, Sunday and public holiday trading hours are not part of the core hours in the *Retail Shop Leases Act 1994*, section 51.

Clause 12 omits special exhibitions from the heading to Part 5.

Clause 13 amends section 21 of the Act to specify that the QIRC may not make an order that allows a non-exempt shop to trade on a closed trading day or for shorter hours than provided for in the Act on another day,.

Clause 14 omits the provisions requiring that special exhibitions must be approved by the QIRC. Special exhibitions or display of goods is now part of the exempt shop category.

Clause 15 amends section 23 of the Act to provide for the omission of references to section 22 and to allow for local governments to make applications and be included in proceedings in the QIRC.

Clause 16 omits matters under section 22 of the Act from those matters that may be referred to a full bench of the QIRC.

Clause 17 omits matters under section 22 from requirements that the QIRC must deal with applications quickly and informally.

Clause 18 amends section 25 of the Act to provide that local governments may be given leave to appear before the QIRC and to omit references to orders made under section 22.

Clause 19 inserts into section 26 an additional criteria “the likely impact of the order on employees” that the QIRC must have regard to in making an order and renumbers subsequent sub-sections.

Clause 20 amends section 27 of the Act to provide that local governments must be considered in the QIRC dismissing or refraining from hearing or determining an application and to omit references to orders made under section 22.

Clause 21 omits sections 28 and 29 of the Act which deal with compliance with orders. The requirement for orders under section 22 has been omitted and compliance with section 21 orders is now dealt with under new section 16B.

Clause 22 amends section 30 of the Act to provide that local governments may apply for injunctions to enforce observance of trading hours. The section is relocated and renumbered as section 36C.

Clause 23 amends section 31 of the Act to provide that local governments may lodge objections to the cancellation of obsolete orders.

Clause 24 omits parts 5A and 5B from the Act.

Part 5A relates to trading hours arrangements in south-east Queensland which are now dealt with in new Part 4, Division 2.

Part 5B relates to trading hours on a particular public holiday in 2014. That provision is now redundant.

Clause 25 omits reference to an independent retail shop from section 33 of the Act. Both exempt shops and independent retail shops are listed as places in which employment is allowed on ANZAC Day. As independent retail shops now form part of the category of exempt shops, the reference has been omitted as redundant and relevant sub-clauses have been renumbered.

Clause 26 amends references in section 36 to renumbered clauses as a result of the amendment under Clause 25.

Clause 27 continues the effect of existing section 36A voluntary work provisions for south-east Queensland with necessary amendments to definitions to complement voluntary work provisions for the whole State in new section 36B.

Clause 28 provides for a new section 36B of the Act that prescribes that it is an offence for an employer to require an employee to work during the extended hours introduced by this amendment unless they have freely elected (i.e. agreed in writing) to work those hours.

Clause 29 provides for evidentiary provisions to be amended so that a document from the QIRC website purporting to be a copy of a declaration is admissible as evidence.

Clause 30 inserts a new part 7A Miscellaneous provisions.

Section 46A requiring that the 2017 trading hours order is published on the QIRC's website.

Section 46B provides that the effectiveness of the Act must be reviewed within 5 years from the commencement and that a report of the review must be tabled in the Legislative Assembly.

Clause 31 inserts a new Part 8 Division 6 providing for a number of transitional provisions.

Section 55 defines terms used in the new division.

Section 56 provides that all shops in the Mossman and Port Douglas Tourist Area are taken to be exempt shops with no trading hours' restrictions for a period of 5 years from the commencement of this amendment Act.

Section 57 provides that all trading hours orders made by the QIRC before the commencement of this amendment Act are repealed on commencement.

Section 58 provides that in areas outside south-east Queensland that have not been allowed to trade on Sundays and/or public holidays before the commencement of this amendment Act, the hours prescribed for Sundays and public holidays in section 16D of the Act do not apply. Those hours can only apply by making an application for an order by the QIRC. Applications may be made by industrial organisations, other organisations or a local government. Any such order is limited to the standard hours prescribed in section 16D "In any other area" for Sundays and public holidays. The order does not take effect until it is approved by regulation.

These "opt-in" arrangements do not apply to non-exempt shops in south-east Queensland or tourist areas or to areas which are allowed to trade on Sundays and public holidays immediately before the commencement of this amendment Act (listed in Schedule 1AB). These arrangements also do not apply to hardware shops, Christmas trading hours or to shops selling motor vehicles or caravans. In all of these areas and for all of these classes of non-exempt shops, the hours prescribed in Part 4, Division 2 of this amendment Act will apply from the date of commencement.

Section 59 provides for a moratorium on making trading hours orders for a period of 5 years from the introduction of this amendment Act. This moratorium does not apply to applications made under section 58.

Section 60 provides that applications made before introduction but decided by commencement are limited in their outcome only to orders that could be made under section 58 (i.e. standard Sunday and public holiday hours) or dismissal.

Section 61 provides that appeals in relation to a decision on a former section 21 application, started but not decided by the industrial court, before the commencement, either end on commencement or are limited in their outcome only to orders that could be made under section 58 (i.e. standard Sunday and public holiday hours).

Section 62 provides for restrictions on starting an appeal on decisions made before commencement.

Section 63 provides that on commencement, appeals on former section 22 applications not decided before commencement are taken to have been withdrawn or ended.

Clause 32 inserts 2 new Schedules to the Act.

Schedule 1AA lists exempt shops and relates to the definition of that category at section 5.

Section 1AB lists areas in which Sunday and public holiday trading is permitted at the time of the commencement of this amendment Act and relates to the “opt-in” arrangements at section 58.

Clause 33 amends Schedule 1 Dictionary to define new terms used in this amendment Act.