

Queensland



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

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TABLE OF PROVISIONS

Section		Page
PART 1—PRELIMINARY		
1	Short title	4
2	Commencement	4
PART 2—AMENDMENT OF TRADING HOURS ACT 1990		
3	Act amended in Pt 2 and Schedule	4
4.	Amendment of s 1.1 (Short title)	4
5	Amendment of s 1.3 (Objects of Act)	4
6	Amendment of s 2.1 (Meaning of terms)	5
7	Amendment of s 2.2 (Exempt shops)	6
8	Replacement of s 4.1 (This Part not to override Pt 5)	6
	4.1 Section 4.4 subject to Industrial Commission orders	6
9	Amendment of s 4.3 (Closure of independent retail shops)	6
10	Replacement of s 4.4 (Closure of non-exempt shops)	7
	4.4 Allowable opening hours of nonexempt shops	7
11	Replacement of s 4.5 (Closure of non-exempt shops not to confer advantage)	7
	4.5 Closure of nonexempt shops not to confer advantage	7
12	Replacement of s 5.1 (Trading hours orders on non-exempt shops)	8
	5.1 Trading hours orders on nonexempt shops	8
13	Insertion of new s 5.3A	8
	5.3A Industrial Commission hearings	9
14	Amendment of s 5.5 (Matters relevant to s 5.1 order)	9
15	Omission of ss 5.11–5.13	9

Trading (Allowable Hours) Amendment

16	Insertion of new s 6.2A	9
	6.2A Real estate sales prohibited	9
17	Insertion of new Pt 8	9
	PART 8—TRANSITIONAL PROVISIONS	
	8.1 Extension of trading hours does not affect pay rates	10
	8.2 Amendment of Industrial Commission orders	10
	PART 3—AMENDMENT OF RETAIL SHOP LEASES ACT 1984	
18	Act amended in Pt 3	11
19	Replacement of s 14A (Trading hours pursuant to retail shop leases)	11
	14A. Trading hours under retail shop leases	11
	SCHEDULE	13
	MINOR AMENDMENTS	

1994

A BILL

FOR

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

The Parliament of Queensland enacts—	1
PART 1—PRELIMINARY	2
Short title	3
<i>Clause1.</i> This Act may be cited as the <i>Trading (Allowable Hours) Amendment Act 1994</i> .	4 5
Commencement	6
<i>Clause2.</i> This Act commences on a day to be fixed by proclamation.	7
PART 2—AMENDMENT OF TRADING HOURS ACT 1990	8 9
Act amended in Pt 2 and Schedule	10
<i>Clause3.</i> This Part and the Schedule amend the <i>Trading Hours Act 1990</i> .	11
Amendment of s 1.1 (Short title)	12
<i>Clause4.</i> Section 1.1, ‘ <i>Trading Hours Act 1990</i> ’—	13
<i>omit, insert—</i>	14
‘ <i>Trading (Allowable Hours) Act 1990</i> ’.	15
Amendment of s 1.3 (Objects of Act)	16
<i>Clause5.(1)</i> Section 1.3, ‘are’—	17
<i>omit, insert—</i>	18
‘include’.	19

(2) Section 1.3(a), before ‘trading’—	1
<i>insert</i> —	2
‘allowable’.	3
(3) Section 1.3(d), ‘lawful’—	4
<i>omit, insert</i> —	5
‘allowable’.	6
(4) Section 1.3(e)—	7
<i>omit, insert</i> —	8
‘(e) to facilitate trading in tourist areas.’.	9
Amendment of s 2.1 (Meaning of terms)	10
<i>Clause 6.</i> (1) Section 2.1, definitions “ Industrial Commission ”,	11
“ Industrial Court ”, “ Industrial Inspector ” or “ inspector ”, “ Industrial	12
Magistrate ”, “ local authority ”, “ Minister ”, “ order ”, “ Part ” and	13
“ place of public amusement ”—	14
<i>omit.</i>	15
(2) Section 2.1—	16
<i>insert</i> —	17
‘ “Industrial Commission order” means an order made by the Industrial	18
Commission under Part 5, and includes an order made under the	19
<i>Industrial Conciliation and Arbitration Act 1961</i> that continues to have	20
effect for the purposes of this Act;	21
“Industrial Inspector” or “ inspector ” means the Chief Industrial	22
Inspector and any other Industrial Inspector appointed for the purposes	23
of the <i>Industrial Relations Act 1990</i> ;	24
“open” , for a shop, means the shop is not closed;	25
“place of public amusement” means a place, or part of a place, used or	26
intended to be used—	27
(a) as a cinema, theatre, dance hall or music hall; or	28
(b) for a circus; or	29

(c) for sporting entertainment; or	1
(d) for any other public amusement or entertainment;	2
whether or not a charge is, or is to be, made for admission;’.	3
(3) Section 2.1, definition “ shop ”, paragraph (e), ‘order in council’—	4
<i>omit, insert—</i>	5
‘regulation’.	6
Amendment of s 2.2 (Exempt shops)	7
<i>Clause 7.</i> (1) Section 2.2(2)—	8
<i>insert—</i>	9
‘(sa)marine shop; or’.	10
(2) Section 2.2(2)(za) and (3)(b), ‘order in council’—	11
<i>omit, insert—</i>	12
‘regulation’.	13
Replacement of s 4.1 (This Part not to override Pt 5)	14
<i>Clause 8.</i> Section 4.1—	15
<i>omit, insert—</i>	16
‘Section 4.4 subject to Industrial Commission orders	17
‘ 4.1 Section 4.4 has effect subject to Part 5 and, if there is an	18
inconsistency between section 4.4 and an Industrial Commission order, the	19
order prevails and must be given effect. ¹ ’.	20
Amendment of s 4.3 (Closure of independent retail shops)	21
<i>Clause 9.</i> Section 4.3(3)—	22
<i>omit, insert—</i>	23

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) 5

Clause 10. Section 4.4— 6

omit, insert— 7

‘Allowable opening hours of nonexempt shops 8

‘4.4(1) The occupier of a nonexempt shop must ensure the shop is not open— 9 10

(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 11 12

(b) before 8 a.m., or after 5 p.m., on a Saturday that is not a public holiday; or 13 14

(c) on a Sunday or public holiday. 15

‘(2) In subsection (1)— 16

“public holiday” has the meaning given by the *Holidays Act 1983*.’ 17

Replacement of s 4.5 (Closure of non-exempt shops not to confer advantage) 18 19

Clause 11. Section 4.5— 20

omit, insert— 21

‘Closure of nonexempt shops not to confer advantage 22

‘4.5(1) A person must not— 23

(a) hawk goods; or 24

(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 25 26

(c) sell goods by auction; 27

at a locality on a day or during hours when a nonexempt shop in which the 28

goods are sold at the locality would be required under this Act to be closed. 1

‘(2) This section does not apply to— 2

(a) the conduct of a bazaar or fair, or the sale of work, for a religious, 3
charitable, educational or other purpose from which no private 4
profit is to be derived; or 5

(b) the normal conduct of business of an exempt shop or independent 6
retail shop.’ 7

Replacement of s 5.1 (Trading hours orders on non-exempt shops) 8

Clause 12. Section 5.1— 9

omit, insert— 10

‘Trading hours orders on nonexempt shops 11

‘5.1(1) A Full Bench of the Industrial Commission may decide to allow 12
business to be conducted in a nonexempt shop on a day or during hours that 13
the shop would otherwise be required under section 4.4 to be closed. 14

‘(2) The Full Bench may make any order it considers necessary or 15
convenient to give effect to a decision made under subsection (1), including, 16
for example, an order specifying— 17

(a) the earliest time when nonexempt shops may open on any day 18
and the latest time when nonexempt shops must close on any 19
day; or 20

(b) hours for trading wholesale different from the hours fixed for 21
trading retail; or 22

(c) different trading hours by reference to— 23

(i) classes of nonexempt shops; or 24

(ii) localities, or parts of localities, where nonexempt shops are 25
situated.’ 26

Insertion of new s 5.3A 27

Clause 13. After section 5.3— 28

insert— 29

‘Industrial Commission hearings	1
‘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.’	2 3 4
Amendment of s 5.5 (Matters relevant to s 5.1 order)	5
<i>Clause 14.</i> Section 5.5, ‘may’—	6
<i>omit, insert—</i>	7
‘must’.	8
Omission of ss 5.11–5.13	9
<i>Clause 15.</i> Sections 5.11 to 5.13—	10
<i>omit.</i>	11
Insertion of new s 6.2A	12
<i>Clause 16.</i> After section 6.2—	13
<i>insert—</i>	14
‘Real estate sales prohibited	15
‘6.2A A person must not conduct the business of selling real estate on Anzac Day.	16
Maximum penalty—40 penalty units.’.	17 18
Insertion of new Pt 8	19
<i>Clause 17.</i> After section 7.11—	20
<i>insert—</i>	21

‘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 1
ACT 1984 2

Act amended in Pt 3 3*Clause 18.* This Part amends the *Retail Shop Leases Act 1984*. 4**Replacement of s 14A (Trading hours pursuant to retail shop leases)** 5*Clause 19.* Section 14A— 6*omit, insert—* 7**‘Trading hours under retail shop leases** 8**‘14A.(1)** In this section— 9**“core trading hours”**, for a retail shopping centre, means hours not 10
outside the allowable trading hours under the *Trading (Allowable* 11
Hours) Act 1990 that— 12(a) are stated in a resolution passed by the eligible tenants of the 13
centre under subsection (2) as the hours all retail shops in the 14
centre must open for trading; or 15(b) until a resolution is passed—the tenants of the centre were 16
required, immediately before the commencement of the *Trading* 17
(Allowable Hours) Amendment Act 1994, to keep the retail shops 18
open for trading; 19**“eligible shop”**, for a retail shopping centre, means a retail shop in the 20
centre (whether or not the shop is leased under a retail shop lease); 21**“eligible tenant”**, for a retail shopping centre, means a tenant of a retail 22
shop in the centre (whether or not the tenant is a tenant under a lease 23
that is a retail shop lease); 24**“existing lease”** means a retail shop lease current at the commencement of 25
the *Trading (Allowable Hours) Amendment Act 1994*. 26**‘(2)** A resolution is passed by the eligible tenants of a retail shopping 27
centre if— 28

(a) the resolution is put to a vote of the eligible tenants by 1 or more 29

of the tenants or the landlord; and	1
(b) at least 7 days before the vote is taken, each eligible tenant is given a written notice that includes—	2 3
(i) the terms of the resolution; and	4
(ii) information about how and when the vote is to be taken; and	5
(c) voting is by secret ballot on the basis of 1 vote for each eligible shop in the centre; and	6 7
(d) each eligible tenant is allowed to vote on that basis; and	8
(e) the resolution is supported by the tenants of at least 75% of the eligible shops; and	9 10
(f) each person who casts a vote may scrutinise the counting of votes.	11 12
‘(3) A landlord must not require a tenant under an existing lease to extend the hours that, immediately before the commencement of the <i>Trading (Allowable Hours) Amendment Act 1994</i> , the tenant was required to keep the retail shop open for trading.	13 14 15 16
Maximum penalty—100 penalty units.	17
‘(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.	18 19 20
‘(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.	21 22 23
‘(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.’.	24 25 26 27

SCHEDULE	1
MINOR AMENDMENTS	2
section 3	3
1. Section 1.2(3)—	4
<i>omit.</i>	5
2. In Part 1—	6
<i>insert—</i>	7
‘Numbering and renumbering of Act	8
‘1.4 Section 43 (Numbering and renumbering of provisions) of the	9
<i>Reprints Act 1992</i> must be used in the next reprint of the Act produced	10
under the <i>Reprints Act 1992</i> .	11
‘Repeal of Industrial Commission orders	12
‘1.5(1) The following Industrial Commission orders are repealed—	13
• Trading Hours—Non-exempted Shops Selling Boats—Gold	14
Coast Area	15
• Trading Hours—Non-exempted Shops Selling Boats—State	16
(Exclusive of the Gold Coast Area).	17
‘(2) This section expires on the day it commences.’.	18
3. Section 1.6—	19
<i>omit.</i>	20

SCHEDULE (continued)

4. Sections 2.1 (definitions “closing time” and “opening time”),	1
3.3(1)(a)(ii), (d) and (e), 3.5, 5.8 (1st mention), 5.10(1) (1st mention),	2
7.1(1), 7.5(b) (1st mention) and 7.7(1), before ‘order’—	3
<i>insert—</i>	4
‘Industrial Commission’.	5
5. Section 3.1—	6
<i>omit.</i>	7
6. Section 3.8—	8
<i>omit, insert—</i>	9
‘Protection from liability	10
‘3.8(1) In this section—	11
“official” means—	12
(a) the Minister; or	13
(b) an Industrial Inspector.	14
‘(2) An official is not civilly liable for an act or omission done honestly	15
and without negligence under this Act.	16
‘(3) If subsection (2) prevents civil liability attaching to an official, the	17
liability attaches to the State instead.’.	18
7. Sections 3.10 and 3.11—	19
<i>omit.</i>	20
8. Section 4.2(2), ‘, (d) or (e)’—	21
<i>omit.</i>	22

SCHEDULE (continued)

9. Part 5 heading, ‘; PERMITS FOR NON-PRIVATE PROFIT PURPOSES’—	1
	2
<i>omit.</i>	3
10. Section 5.2(2)(e) and (f)—	4
<i>omit.</i>	5
11. Section 5.3(2A)—	6
<i>omit.</i>	7
12. Section 6.4(f) to (h)	8
<i>omit, insert—</i>	9
‘(f) a shop mentioned in the <i>Anzac Day Act 1921</i> , Schedule, Part 1; or	10
(g) a factory or shop to the extent that an activity mentioned in the	11
<i>Anzac Day Act 1921</i> , Schedule, Part 2 is carried on in the factory	12
or shop.’.	13
13. After section 7.10—	14
<i>insert—</i>	15
‘Regulations	16
‘7.11 The Governor in Council may make regulations under this Act,	17
including regulations imposing fees.’.	18
	19