

Trading (Allowable Hours) Amendment Bill 2017

Resupply of Explanatory Notes

**For amendments to be moved during consideration in detail by
The Honourable Grace Grace MP
Minister for Employment and Industrial Relations,
Minister for Racing and Minister for Multicultural Affairs**

Short title

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

Policy objectives and the reasons for them

Amendments to the *Trading (Allowable Hours) Amendment Bill 2017* (the Bill) to be moved during consideration in detail respond to recommendations for amendment made by the Finance and Administration Committee (the Committee) in its examination of the Bill and subsequent discussions with stakeholders.

On 1 March 2017, the Bill was introduced into the Queensland Parliament. The Bill was referred to the Committee for examination and report back to Parliament. The Committee tabled its report on 28 April 2017. Parliamentary debate on the Bill resumed on 24 May 2017 at which time the Government tabled its response to the Committee accepting all of its recommendations. Debate on the Bill was adjourned on 25 May 2017.

The Committee recommended three amendments to the Bill namely:

1. include the Cairns CBD in the defined tourist area,
2. refer to the street addresses for the Westfield Chermside and Westfield Garden City shopping centres, and
3. exclude the application of new extended hours to motor vehicle or caravan retailers (i.e. maintain the existing trading hours).

The trading hours in the Cairns CBD currently allow for late night trading on Saturday and Sunday. It is appropriate that the Cairns CBD be included as part of the defined tourist area for the purposes of the core trading hours for non-exempt shops, other than a hardware shop, as prescribed in the Bill.

While not a recommendation of the Committee, it is considered appropriate to include the Pacific Fair Shopping Centre in the Bill's defined tourist area. The Pacific Fair Shopping Centre is directly adjacent to the Gold Coast Coastal portion of the defined tourist area. It is therefore considered appropriate to include that shopping centre in the defined tourist area.

The reference to the Westfield shopping centres, which are permitted to trade special extended continuous hours prior to Christmas, based on their commonly understood street addresses rather than a real property description will remove any doubt that the whole of the shopping complex is covered in the event of expansion.

The Committee advised that it heard no support from the motor vehicle dealer and caravan retail industries for the extension of their core trading hours during their inquiry, preferring that the current trading hours' arrangements for that industry be retained.

After further consideration of its provisions the Bill is also amended to:

- remove any doubt that non-exempt shops allowed to trade extended hours in the pre-Christmas period must close at 6 p.m. on 24 December, and
- maintain trading hours arrangements in the current Tourist and/or Seaside Resorts area which allow trade on public holidays but not on Sundays.

Following discussions with stakeholders additional amendments are also to be made to the Bill.

Trading hours for non-exempt shops outside of South East Queensland (excluding the Bill's defined tourist area and hardware shops) are to be as follows:

- Monday to Friday - 8am-9pm
- Saturday - 8am-6pm, and
- Sunday and most public holidays - 9am-6pm

The effect of this amendment is to change the opening time currently proposed in the Bill from 7am Monday to Saturday, to 8am. An exception has been made in respect of the Townsville Tourist Area which will retain the arrangements under the current Act allowing it to continue to open from 7am Monday to Friday.

However, trading hours for non-exempt shops in those regional towns/areas that do not currently have Sunday and public holiday trading will remain that way for the period of the 5 year moratorium on further applications for extended trading hours. The amendment removes the provisions currently in the Bill that allows applications to be made to the Queensland Industrial Relations Commission (QIRC) for those areas to 'opt -in' to Sunday and public holiday trading, despite the operation of the moratorium.

The amendment will also confirm that trading hours' applications made to the QIRC prior to the introduction of the Bill and awaiting a decision are to be decided under the provisions of the Bill. The hours that can be decided by the QIRC on these applications will be limited to 9am to 6pm on Sundays and most public holidays.

As a result of decisions by the QIRC on 14 June 2017 to permit Sunday and public holiday trading in Warwick and Stanthorpe, an amendment will be made adding those areas to schedule 1AB of the Bill. That schedule lists those regional areas outside south-east Queensland within which non-exempt shops will be permitted by the Bill to trade on Sundays and most public holidays.

The amendment to the provision for a review of the Act will remove any doubt that the review must be conducted and completed before the end of moratorium period.

The proposed package of reform measures contained in these amendments to the Bill represents significant reform with substantial economic and employment benefits to Queensland. The implementation of the reform measures is expected to support up to an additional 1000 full-time equivalent jobs.

Achievement of policy objectives

All three recommendations by the Committee for amendments to the Bill have been accepted by the Government. It is appropriate that these recommendations, comment and other minor issues are resolved by amendments to the Bill.

It is also appropriate that other issues discussed with stakeholders subsequent to adjournment of debate on the Bill be resolved by amendments to the Bill.

All amendments will be moved during consideration in detail of the Bill.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives. The policy objectives can only be achieved by legislative amendment.

Estimated cost for government implementation

There are no additional costs anticipated to be associated with these amendments.

Consistency with fundamental legislative principles

The proposed amendments are consistent with fundamental legislative principles.

Consultation

The Shopping Centre Council of Australia and National Retailers Association made submissions to the Committee leading to recommendations about the Cairns CBD being included in the definition of tourist area; and the identification of the Westfield shopping centres by their street address. The National Retailers Association also raised the inclusion of the Pacific Fair Shopping Centre in the Bill's defined tourist area.

The Motor Trades Association of Queensland, the Caravan Trade and Industry Association of Queensland and several individual motor vehicle retailers made submissions and witness statements to the Committee supporting the exclusion of motor vehicle retailers from the extended hours proposed in the Bill.

Master Grocers Australia Ltd. discussed with Government amendments to the Bill regarding opening times in regional areas, opt-in provisions for Sunday and public holiday trading and the moratorium on applications for extended trading hours. They support the amendments proposed on those issues.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland, and is not required to be uniform with or complementary to legislation of the Commonwealth or another state.

Notes on provisions

Amendment 1 amends clause 7 section 16A Definitions for division – **tourist area** to add the Cairns CBD Area and the Pacific Fair Shopping Centre to the defined tourist area.

Amendment 2 amends clause 7 section 16C Application of subdivision to make the current provision sub-section (1).

Amendment 3 amends clause 7 section 16C to insert a new sub-section (2) which clarifies that the closing time for all non-exempt shops on 24 December is to be 6 p.m. as provided for in Subdivision 3 Extended trading hours.

Amendment 4 amends clause 7 to make the heading of section 16D ‘Shops other than hardware shops and shops selling motor vehicles or caravans’.

Amendment 5 amends clause 7 section 16D to provide that the section does not apply to shops selling motor vehicles or caravans.

Amendment 6 amends clause 7 section 16D(2) to prescribe a new opening time of 8 am Monday to Saturday in the defined schedule 1AB and seaside resort areas and in any other area. The hours prescribed for each of the areas will remain unchanged by QIRC orders during the five year moratorium on extension of trading hours under the Bill. A provision is included to ensure that the Townsville Tourist area retains the 7am opening time on Monday to Friday which is allowed in that area under the current Act.

Amendment 7 amends clause 7 section 16D to insert a new subsection defining terms (including schedule 1AB area and seaside resort) used in the table at subsection (2).

Amendment 8 amends clause 7 section 16D to omit a note cross referencing to section 58 as that section is also to be omitted.

Amendment 9 amends clause 7 to insert a new section 16EA setting out the hours applicable to shops selling motor vehicles or caravans.

Amendment 10 amends clause 7 to insert a new section 16EB which provides that Subdivision 3 Extended trading hours (for the pre-Christmas period) does not apply to shops selling motor vehicles or caravans.

Amendment 11 amends clause 7 section 16F to insert a new subsection (3) which provides for a 9am opening time on Sundays during extended pre-Christmas trading in areas that do not normally have Sunday trading.

Amendments 12 and 13 amend clause 7 section 16G to define the Westfield Chermside and Garden City shopping complexes by reference to their street address only.

Amendment 14 amends clause 13 section 21 to omit a note cross referencing to section 58 as that section is also to be omitted from the Bill.

Amendment 15 inserts an amendment after clause 27 to omit the sectional definition of south-east Queensland as the Bill now contains a definition of that area which is applicable in all sections.

Amendment 16 amends clause 28 to update a reference from section 36A to section 36AA as inserted by the Liquor and Other Legislation Amendment Act 2017.

Amendment 17 amends clause 30 section 46A to ensure that the current order regulating shops selling motor vehicles is published on the QIRC website.

Amendment 18 amends clause 30 section 46B to make it clear that a review of the Act must be completed before the end of the moratorium period.

Amendment 19 amends clause 31 section 55 to omit definitions of extended hours and extended hours order as the Bill will no longer permit such orders to be made.

Amendment 20 amends clause 31 section 55 to insert a new definition of prescribed section 16D shop which are shops to which section 16D applies that are not permitted to open on Sundays and public holidays. The term is used in sections 60, 61 and 62.

Amendment 21 amends clause 31 by omitting section 58 as the opt-in process to permit Sunday and public holiday trading in regional areas will no longer be a provision of the Bill.

Amendment 22 amends clause 31 section 59 to omit reference to extended hours orders made under section 21 which will no longer be permitted by the Bill. During the five year moratorium on applications for extension of trading hours the QIRC will only be permitted to make orders under section 21 for applications that were made before the introduction of the Bill and which remain undecided.

Amendment 23 amends clause 31 section 59 to provide that applications may not be made by organisations or local governments to the QIRC under section 21 during the five year moratorium on extension of trading hours.

Amendment 24 amends clause 31 section 59 to provide that an application made under section 21 to the QIRC during the five year moratorium is of no effect.

Amendment 25 amends clause 31 section 60 to provide that applications made to the QIRC before the introduction of the Bill for shops not permitted to trade on Sundays and public holidays may be dealt with by the QIRC as if the application was to permit trade from 9am to 6pm on those days. If the application is not dealt with in that way, it must be dismissed.

Amendment 26 amends clause 31 section 61(3) which deals with existing appeals against a decision by the QIRC at the commencement of the Bill, to omit reference to shops to which section 58 applies and replace it with prescribed section 16D shops (i.e. shops to which section 16D applies that are not permitted to trade on Sundays and public holidays).

Amendment 27 amends clause 31 section 61(4) which deals with existing appeals against a decision by the QIRC at the commencement of the Bill, to provide that the only decision that can be substituted is a decision prescribing trading hours of 9am to 6pm on Sundays and most public holidays.

Amendment 28 amends clause 31 section 61(6) which deals with existing appeals against a decision by the QIRC at the commencement of the Bill, to provide that appeal proceedings end on commencement if the appeal is refused and any of the shops to which the order would have applied is a not a prescribed section 16D shop.

Amendment 29 amends clause 31 section 62 which restricts appeals on decisions made before commencement of the Bill, to prohibit appeals other than an appeal against a refusal to make a decision that would have permitted prescribed section 16D shops to trade from 9am to 6pm on Sundays and most public holidays.

Amendment 30 amends clause 31 to insert a new section 62A which provides that any order made by the QIRC as allowed by the Bill during the moratorium does not take effect until it is approved by regulation.

Amendment 31 amends clause 32 by omitting reference to s 58(1) from the title of schedule 1AB and replacing it with s 16D and by omitting 'Tourist and/or Seaside Resorts' from the schedule.

Amendment 32 amends clause 32 by omitting from schedule 1AB 'The Cairns CBD Area' and inserting '22 The Warwick Area' and '22A The Stanthorpe Area'.