



Queensland

# Trading (Allowable Hours) and Other Legislation Amendment Act 2022

**Act No. 17 of 2022**

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**An Act to amend the Education (General Provisions) Act 2006, the Education (Queensland College of Teachers) Act 2005 and the Trading (Allowable Hours) Act 1990 for particular purposes**

**[Assented to 29 August 2022]**





Queensland

# Trading (Allowable Hours) and Other Legislation Amendment Act 2022

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The Parliament of Queensland enacts—

## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Trading (Allowable Hours) and Other Legislation Amendment Act 2022*.

## Part 2 Amendment of Education (General Provisions) Act 2006

### 2 Act amended

This part amends the *Education (General Provisions) Act 2006*.

### 3 Insertion of new s 129A

After section 129—

*insert—*

#### **129A Attendance at meetings**

- (1) This section applies in relation to an association meeting if a provision of this Act requires or permits a person to physically attend the meeting.
- (2) A person who is required or permitted to attend the association meeting may do so by using any technology allowing reasonably contemporaneous and continuous communication between persons taking part in the meeting.

*Examples of use of technology—*

teleconferencing, videoconferencing

[s 4]

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- (3) A person who attends an association meeting under subsection (2) is taken to be present at the meeting.

## **Part 3**

# **Amendment of Education (Queensland College of Teachers) Act 2005**

### **4 Act amended**

This part amends the *Education (Queensland College of Teachers) Act 2005*.

### **5 Amendment of s 181 (Power to require information or attendance)**

- (1) Section 181(b)—

*omit, insert—*

- (b) to attend before the investigator to answer questions by—
- (i) attending in person at a stated reasonable time and place; or
  - (ii) attending by audio link or audio visual link at a stated reasonable time; or
- (c) to produce a stated thing to the investigator by—
- (i) attending before the investigator at a stated reasonable time and place to produce the thing in person; or
  - (ii) producing the thing at or before a stated reasonable time in another stated way that does not involve physically attending before the investigator.



[s 8]

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- (3) Section 5(4) and (5)—  
*renumber* as section 5(2) and (3).

## **8 Amendment of s 16A (Definitions for division)**

Section 16A, definitions *south-east Queensland area* and *tourist area*—  
*omit*.

## **9 Insertion of new s 16AA**

After section 16A—  
*insert*—

### **16AA References to particular areas**

- (1) This section applies to a reference in this division to any of the following areas—
- (a) Area of New Farm of Inner City of Brisbane;
  - (b) Gold Coast Coastal Tourist Area;
  - (c) Hamilton North Shore Area;
  - (d) Mossman and Port Douglas Tourist Area;
  - (e) South-East Queensland Area;
  - (f) The Cairns CBD Area;
  - (g) The Great Barrier Reef Wonderland Tourist Complex;
  - (h) Townsville Tourist Area.
- (2) Also, this section applies to a reference in schedule 1AB to an area.
- (3) The reference is a reference to the area within the meaning of the 2017 trading hours order.
- (4) However, to the extent the area is the subject of a trading area order that is inconsistent with the

2017 trading hours order—

- (a) the trading area order prevails; and
- (b) the reference to the area must, to the extent the context permits, be interpreted consistently with the trading area order.

**10 Amendment of s 16B (Shops to be closed other than during permitted trading hours)**

Section 16B(1)—

*omit, insert—*

- (1) A non-exempt shop must be closed on a particular day other than during the shop's core trading hours under subdivision 2 for the day or, if relevant, the extended trading hours under subdivision 3.

**11 Amendment of s 16D (Shops other than hardware shops and shops selling motor vehicles or caravans)**

- (1) Section 16D(2), table—

*omit, insert—*

[s 11]

Day	Opening time	Closing time	Description of trading areas
<b>In type 1 trading areas</b>			
Monday to Friday	6a.m.	10p.m.	<ul style="list-style-type: none"> <li>• Area of New Farm of Inner City of Brisbane</li> </ul>
Saturday	7a.m.	10p.m.	<ul style="list-style-type: none"> <li>• Gold Coast Coastal Tourist Area</li> </ul>
Sunday and public holidays, other than closed days	7a.m.	9p.m.	<ul style="list-style-type: none"> <li>• Hamilton North Shore Area</li> <li>• Mossman and Port Douglas Tourist Area</li> <li><i>Note—</i> See, however, section 65.</li> <li>• The Cairns CBD Area</li> <li>• The Great Barrier Reef Wonderland Tourist Complex</li> <li>• the Pacific Fair Shopping Centre located at Broadbeach Waters on the corner of Hooker Boulevard and Sunshine Boulevard</li> <li>• any other area declared in a trading area order to be a type 1 trading area</li> </ul>

Day	Opening time	Closing time	Description of trading areas
<b>In type 2 trading areas</b>			
Monday to Friday	7a.m.	9p.m.	<ul style="list-style-type: none"> <li>the South-East Queensland Area, other than a part of the area that is a type 1 trading area</li> <li>any other area declared in a trading area order to be a type 2 trading area</li> </ul>
Saturday	7a.m.	9p.m.	
Sunday and public holidays, other than closed days	9a.m.	6p.m.	
<b>In type 3 trading areas</b>			
Monday to Friday	(a) if the shop is in the Townsville Tourist Area— 7a.m. (b) otherwise— 8a.m.	9p.m.	<ul style="list-style-type: none"> <li>an area mentioned in schedule 1AB</li> <li>any other area declared in a trading area order to be a type 3 trading area</li> </ul>
Saturday	8a.m.	6p.m.	
Sunday and public holidays, other than closed days	9a.m.	6p.m.	

[s 12]

Day	Opening time	Closing time	Description of trading areas
<b>In type 4 trading areas</b>			
Monday to Friday	8a.m.	9p.m.	<ul style="list-style-type: none"> <li>any other area that is not a type 1, 2 or 3 trading area</li> </ul>
Saturday	8a.m.	6p.m.	
Sunday	n/a	n/a	
Public holidays, other than closed days	9a.m.	6p.m.	

(2) Section 16D(3), definitions *schedule 1AB area* and *seaside resort*—

*omit.*

(3) Section 16D(3)—

*insert—*

*Note—*

See also section 16AA in relation to the meaning of references to particular areas in this section and schedule 1AB.

## 12 Amendment of s 16E (Hardware shops)

Section 16E(2), table—

*omit, insert—*

Day	Opening time	Closing time	Description of trading areas
<b>In type 1 trading areas</b>			
Monday to Friday	6a.m.	10p.m.	a type 1 trading area mentioned in section 16D
Saturday	6a.m.	10p.m.	
Sunday and public holidays, other than closed days	6a.m.	9p.m.	
<b>In type 2 trading areas</b>			
Monday to Friday	6a.m.	9p.m.	a type 2 trading area mentioned in section 16D
Saturday	6a.m.	9p.m.	
Sunday and public holidays, other than closed days	6a.m.	6p.m.	
<b>In types 3 and 4 trading areas</b>			
Monday to Friday	6a.m.	9p.m.	a type 3 or 4 trading area mentioned in section 16D
Saturday	6a.m.	6p.m.	
Sunday and public holidays, other than closed days	6a.m.	6p.m.	

### 13 Amendment of s 20A (Allowable trading hours for Retail Shop Leases Act 1994)

Section 20A—

[s 14]

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*insert—*

(2) In this section—

*south-east Queensland area* means the south-east Queensland area within the meaning of section 16A, as it was in force immediately before the commencement of the *Trading (Allowable Hours) and Other Legislation Amendment Act 2022*.

**14 Replacement of pt 5, hdg (Orders concerning non-exempt shops)**

Part 5, heading—

*omit, insert—*

**Part 5                      Orders and  
   declarations by  
   commission**

**15 Insertion of new pt 5, div 1, hdg**

Before section 21—

*insert—*

**Division 1                      Making trading area orders**

**16 Replacement of s 21 (Trading hours orders on non-exempt shops)**

Section 21—

*omit, insert—*

**21 Industrial commission may make trading area order**

(1) The industrial commission may make an order (a *trading area order*)—

- 
- (a) to declare that an area mentioned in section 16AA(1) or (2) is a type 1 or 2 trading area; or
  - (b) to change the external boundaries of a trading area that is an area mentioned in section 16AA(1) or (2); or
  - (c) to declare that an area not mentioned in section 16AA(1) or (2) is a type 1, 2 or 3 trading area.

*Example for paragraph (c)—*

an order declaring the town of Kingaroy, identified by reference to its external boundaries, is a type 2 trading area

- (2) However, the industrial commission must not make a trading area order if the effect of the order would be to reduce the core trading hours for a day, under section 16D or 16E, of a non-exempt shop situated in the area the subject of the order.
- (3) If the area the subject of a trading area order is an area not mentioned in section 16AA(1) or (2), the trading area order must identify the area by reference to its external boundaries.
- (4) A trading area order has effect for the purpose of—
  - (a) section 16D; and
  - (b) to the extent the context permits—section 16E.

## **17 Insertion of new s 22**

After section 21—

*insert—*

### **22 Criteria for making trading area order**

Before making a trading area order, the industrial commission must have regard to the following

[s 18]

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matters—

- (a) the location and external boundaries of the area the subject of the order;
- (b) the needs of industry in the area, including the tourist industry;
- (c) the effect of the order on the core trading hours of non-exempt shops in the area;
- (d) the needs of the population of the area, including the rate of population growth;
- (e) the likely impact of the order on employees and employment;
- (f) the interests of business and consumers;
- (g) the public interest;
- (h) the view of a local government that—
  - (i) is an applicant for the order; or
  - (ii) has been granted leave to appear and be heard under section 23(5);
- (i) any other matter the commission considers relevant to the making of the order.

**18 Insertion of new pt 5, div 2, hdg**

Before section 23—

*insert—*

**Division 2                      Powers and procedures for  
trading area orders**

**19 Amendment of s 23 (Powers and procedures relevant to proceedings under s 21)**

- (1) Section 23, heading, ‘relevant to proceedings under s 21’—

*omit, insert—*

---

**for making trading area order**

(2) Section 23(2) and (3)—

*omit, insert—*

(2) The industrial commission must fix a day, time and place for a meeting of the commission to consider making a trading area order.

(2A) The industrial commission must give written notice of the meeting to the industrial organisations, other organisations and local governments the commission considers appropriate.

(3) A copy of the notice must be published on the QIRC website and in any other way the industrial commission considers appropriate.

(3) Section 23(4), from ‘Every’ to ‘specify’—

*omit, insert—*

The notice must state

(4) Section 23(5)—

*omit, insert—*

(5) The industrial registrar must grant an application for leave made in accordance with the notice under subsection (5) if the registrar is satisfied the applicant is, or is likely to be, concerned in the making of the order.

(6) Otherwise, the industrial registrar must refuse to grant the application for leave.

(5) Section 23(2A) to (6)—

*renumber* as section 23(3) to (7).

**20 Omission of s 26 (Matters relevant to s 21 order)**

Section 26—

*omit.*

[s 21]

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## 21 Insertion of new pt 5, div 3

After section 31—

*insert—*

### **Division 3            Special event declarations**

#### **31A Industrial commission may make declaration of special event**

- (1) On an application by a chief executive, local government, organisation or any other person, the industrial commission may declare an event to be a special event.
- (2) A declaration for subsection (1) (a *special event declaration*) must state the following matters—
  - (a) details of the event the subject of the declaration;
  - (b) the period for which the declaration applies;
  - (c) the area to which the declaration applies;
  - (d) that section 36BA applies in relation to an employee of particular shops in the area to which the declaration applies.

*Note—*

A shop in the area to which the declaration applies is an exempt shop.

- (3) A special event declaration must be published on the QIRC website.

#### **31B Deciding application for special event declaration**

- (1) In deciding whether to declare an event to be a special event, the industrial commission must consider—

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

*Examples—*

- the 2032 Olympic and Paralympic Games
- the Weipa Fishing Classic event

- (b) the cultural, religious or sporting significance of the event; and

- (c) the significance of the event to the economy and the tourism industry; and

- (d) whether there is a need for a non-exempt shop, or a class of non-exempt shops, to trade for hours greater than the core trading hours for the shop or class of shops under this Act for the period of the event.

- (2) In considering the matters mentioned in subsection (1), the industrial commission must also have regard to the following—

- (a) the size of a place where the event will be held;

- (b) whether the event will be held at multiple places;

- (c) the predicted attendance numbers;

- (d) any expected media coverage;

- (e) any contribution the event may make to Queensland's national or international reputation;

- (f) a submission made by—

- (i) a local government for an area where the special event declaration is likely to have an impact; or

[s 22]

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- (ii) an industrial organisation in relation to the likely impact of the special event declaration on employees.

**22 Amendment of s 36A (Protection for employees—extended hours under Trading (Allowable Hours) Amendment Act 2002)**

- (1) Section 36A(2)—  
*omit.*
- (2) Section 36A(3), definition *industrial instrument*—  
*omit.*
- (3) Section 36A(3)—  
*renumber* as section 36A(2).

**23 Amendment of s 36AA (Protection for employees—Liquor and Other Legislation Amendment Act 2017)**

- (1) Section 36AA(2)—  
*omit.*
- (2) Section 36AA(4), definition *industrial instrument*—  
*omit.*
- (3) Section 36AA(4)—  
*insert—*

*south-east Queensland area* means the south-east Queensland area within the meaning of section 16A, as it was in force immediately before the commencement of the *Trading (Allowable Hours) and Other Legislation Amendment Act 2022*.

- (4) Section 36AA(3) and (4)—  
*renumber* as section 36AA(2) and (3).

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**24 Amendment of s 36B (Protection for employees—extended hours under Trading (Allowable Hours) Amendment Act 2017)**

- (1) Section 36B(2)—  
*omit.*
- (2) Section 36B(4), definition *industrial instrument*—  
*omit.*
- (3) Section 36B(3) and (4)—  
*renumber* as section 36B(2) and (3).

**25 Insertion of new s 36BA**

After section 36B—

*insert—*

**36BA Protection for employees—other extended hours**

- (1) This section applies if—
  - (a) the core trading hours under this Act for a non-exempt shop are increased because—
    - (i) an amendment of this Act commences;  
or
    - (ii) a trading area order takes effect; or
  - (b) a shop becomes an exempt shop because a special event declaration takes effect.
- (2) An employer of an employee employed in the shop must not require the 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.

- (3) For subsection (2), 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—

***allowable trading hours*** means the shop's core trading hours under part 4, division 2, subdivision 2 and, if relevant, the shop's extended trading hours under part 4, division 2, subdivision 3.

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

***extended hours*** means—

- (a) for a non-exempt shop mentioned in subsection (1)(a)—the core trading hours under this Act for the shop on any day (other than a closed day), but only to the extent the hours are greater than the shop's core trading hours immediately before—
  - (i) the commencement of the amendment mentioned in subsection (1)(a)(i); or
  - (ii) the trading area order mentioned in subsection (1)(a)(ii) taking effect; or
- (b) for a shop mentioned in subsection (1)(b)—the trading hours for the shop during the period of the special event stated in the special event declaration, but only to the extent the hours are greater than what the shop's allowable trading hours would be if the declaration had not taken effect.

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**26 Insertion of new pt 8, div 7**

Part 8—

*insert—*

**Division 7 Transitional provisions for  
Trading (Allowable Hours)  
and Other Legislation  
Amendment Act 2022**

**Subdivision 1 Preliminary**

**64 Definitions for division**

In this division—

*amended Act* means this Act as amended by the amending Act.

*amending Act* means the *Trading (Allowable Hours) and Other Legislation Amendment Act 2022*.

*former*, for a provision of this Act, means the provision as in force from time to time before the commencement.

*moratorium period* means the period starting on the commencement and ending on 31 August 2023.

*new*, for a provision of this Act, means the provision as in force from the commencement.

**Subdivision 2 Moratorium provisions**

**65 Shops in Mossman and Port Douglas Tourist Area**

(1) This section applies to a shop in the Mossman and

Port Douglas Tourist Area.

- (2) For the moratorium period—
  - (a) if the shop is a non-exempt shop—the shop is taken to be an exempt shop; or
  - (b) if the shop is an independent retail shop—section 17 does not apply to the shop.
- (3) This section applies despite any other provision of this Act.
- (4) In this section—

*Mossman and Port Douglas Tourist Area* has the meaning given by the 2017 trading hours order.

## **66 Moratorium on trading area orders and restriction on making applications**

- (1) During the moratorium period—
  - (a) the industrial commission must not make a trading area order; and
  - (b) an industrial organisation, another organisation or a local government must not make an application for a trading area order.
- (2) An application for a trading area order made or purportedly made during the moratorium period is of no effect.

## **Subdivision 3 Declarations of events**

### **67 Existing declarations of events**

- (1) This section applies if—
  - (a) before the commencement, a declaration of an event was made by the industrial

- 
- commission under former section 5(1)(c);  
and
- (b) immediately before the commencement, the period of the event—
    - (i) had not started; or
    - (ii) had started but not ended.
  - (2) If subsection (1)(b)(i) applies, from the commencement the declaration is taken to be a special event declaration under the amended Act.
  - (3) If subsection (1)(b)(ii) applies, this Act as in force immediately before the commencement continues to apply, as if the amending Act had not been enacted, in relation to the declaration.

#### **68 Existing application for declaration of event not heard before commencement**

- (1) This section applies if—
  - (a) an application for a declaration under former section 5(1)(c) was made, but not decided, before the commencement; and
  - (b) the industrial commission had not started to hear the application before the commencement.
- (2) New part 5, division 3 applies in relation to the application as if it were an application for a special event declaration.

#### **69 Existing application for event declaration heard but not decided before commencement**

- (1) This section applies if—
  - (a) an application for a declaration under former section 5(1)(c) was made, but not decided, before the commencement; and

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- (b) section 68 does not apply in relation to the application.
- (2) Former section 5 continues to apply, as if the amending Act had not been enacted, for hearing and deciding the application.
- (3) If the industrial commission makes the declaration the subject of the application, the declaration is taken to be a special event declaration for the amended Act.

**27 Amendment of sch 1AB (Areas for s 16D)**

- (1) Schedule 1AB, heading, ‘Areas for s 16D’—  
*omit, insert—*

**Type 3 trading areas**

- (2) Schedule 1AB, item 4—  
*omit.*

**28 Amendment of sch 1 (Dictionary)**

- (1) Schedule 1, definitions *south-east Queensland area* and *tourist area*—  
*omit.*

- (2) Schedule 1—  
*insert—*

***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.

***special event declaration*** see section 31A(2).

***trading area*** means an area described as a trading

area of a particular type in the table in section 16D(2), including the area as it applies under section 16E(2).

*trading area order* see section 21(1).

## **Part 5**

# **Minor and consequential amendments**

### **29 Legislation amended**

Schedule 1 amends the legislation it mentions.

## **Schedule 1      Minor and consequential amendments**

section 29

### **Trading (Allowable Hours) Act 1990**

**1      Section 4, heading, ‘Dictionary’—**

*omit, insert—*

**Definitions**

**2      Section 23A(1), from ‘an’—**

*omit, insert—*

a trading area order.

**3      Section 24, ‘under section 21’—**

*omit, insert—*

for a trading area order

**4      Section 25(3), ‘an order under section 21’—**

*omit, insert—*

a trading area order

**5      Section 27, ‘an order under section 21’—**

*omit, insert—*

a trading area order

**6 Section 36C(1)(c) and (d), ‘or an order of a kind referred to in section 21’—**

*omit.*

**7 Section 46B—**

*omit.*

**8 Schedule 1AA, item 23, ‘section 5(4)’—**

*omit, insert—*

section 5(2)

**9 Schedule 1AB, after item 25—**

*insert—*

*Note—*

See also section 16AA in relation to the meaning of references to particular areas in this schedule.

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