



# Trading (Allowable Hours) Act 1990

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## Queensland

# Trading (Allowable Hours) Act 1990

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# Trading (Allowable Hours) Act 1990

**An Act to decide the trading hours of shops and for related purposes**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Trading (Allowable Hours) Act 1990*.

### **2 Commencement**

- (1) Section 1 and this section commence on the day this Act is assented to for and on behalf of Her Majesty.
- (2) Except as provided by subsection (1), the provisions of this Act, commence on a day appointed by proclamation.

### **3 Objects of Act**

The objects of this Act include—

- (a) to decide the allowable trading hours of non-exempt shops and independent retail shops throughout Queensland;
- (b) to require employees be given a holiday for, and to decide when certain places must close on, Anzac Day;
- (c) to provide for closure of banks and insurance companies on bank holidays;
- (d) to prohibit soliciting in any publication for business to be transacted outside allowable trading hours at any factory or shop;

- (e) to facilitate trading in tourist areas.

## Part 2 Interpretation

### 4 Dictionary

The dictionary in schedule 1 defines particular words used in this Act.

### 5 Exempt shops

(1) An *exempt shop* is—

- (a) a shop of a description mentioned in schedule 1AA used predominantly for selling goods by retail, or for supplying services, a reasonable person would expect to be sold or supplied in that shop; or
- (b) an independent retail shop; or
- (c) a shop operating in a stated area for an event—
  - (i) that is a unique or infrequent event of local, State or national significance; and

*Examples—*

- the 2018 Commonwealth Games
- the Weipa Fishing Classic event

(ii) declared by the industrial commission to be a special event for this paragraph.

(2) A declaration for subsection (1)(c)—

- (a) may be made by the industrial commission on an application by an organisation, chief executive, local government or any other person; and
- (b) must state the following—
  - (i) details of the event the subject of the declaration;
  - (ii) the period for which the declaration applies;

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- (iii) the area to which the declaration applies; and
  - (c) must be published on the QIRC website.
- (3) In deciding whether to declare an event to be a special event for subsection (1)(c), the industrial commission—
- (a) must consider—
    - (i) the cultural, religious or sporting significance of the event; and
    - (ii) the significance of the event to the economy and the tourism industry; and
  - (b) may consider a submission made by a local government for an area in which the declaration is likely to have an impact.
- (4) A class of shop may be declared for the purposes of schedule 1AA, item 23 by reference to—
- (a) the business conducted in shops of the class; or
  - (b) the location of shops within any area or areas of the State defined in the relevant regulation; or
  - (c) such other criteria as the Governor in Council thinks fit.
- (5) In respect of the sale of goods wholesale in an exempt shop the provisions of this Act apply to the shop and a reference in this Act to an exempt shop does not include the shop.

## **6 Independent retail shops**

- (1) Subject to subsections (2) and (3), an independent retail shop is a shop where—
- (a) the business for which the shop is maintained is wholly owned by a person, or by persons in partnership, or by a proprietary company within the meaning of the Corporations Act, section 9, that is not a related body corporate under the Corporations Act, section 50; and
  - (b) the number of persons engaged at any one time in the shop (including an owner of the business) does not exceed 30; and

- (c) the number of persons at any one time engaged by the owner of the business (including an owner of the business) in that and any other shop or shops (exempt or non-exempt) in the State does not exceed 100; and
  - (d) the business for which the shop is maintained is not conducted in a shop, or part thereof, used for the conduct of business of a non-exempt shop at a time when the non-exempt shop is required by or under this Act to be closed.
- (2) A shop is not an independent retail shop if—
- (a) it is an exempt shop mentioned in section 5(1)(a) or (c);
  - (b) it is an office;
  - (c) the business of the shop is, wholly or partly—
    - (i) the selling of goods wholesale;
    - (ii) the selling of motor vehicles or caravans;
  - (d) it is a stall in a market.
- (3) If business is conducted in 2 or more areas within a building in such circumstances that it would be reasonable to believe that the business in each such area is part of 1 business conducted by any 1 person, or persons in partnership, none of such areas is an independent retail shop unless all areas together would constitute an independent retail shop as defined by subsection (1) if such belief were correct.
- (4) Each of the following circumstances is evidence of the reasonableness of a belief such as is referred to in subsection (3)—
- (a) the absence of walls, or fixed partitions, from floor to ceiling, defining the limits of one area used for trade in relation to another area used for trade;
  - (b) the availability of access from one area used for trade to another area used for trade, without the need to pass through common area;
  - (c) the availability of access from one area used for trade to another area used for trade through common area,

- without the need to pass through a structurally defined exit or entrance;
- (d) the making of financial arrangements in relation to trade in any area at a location used for making such arrangements in relation to—
    - (i) trade in that area; and
    - (ii) trade in any other area;
  - (e) the use of a common accounting system in respect of 2 or more areas;
  - (f) the use of any advertising device, or means of advertising, that does not indicate that business conducted in each of 2 or more areas is conducted by a different proprietor.
- (5) For the purpose of applying subsection (3) in a particular case—
- (a) it is not necessary that any person has formed a belief, such as is referred to in that subsection;
  - (b) subsection (4) is not to be construed as exhaustive of circumstances evidencing reasonableness of a belief, such as is referred to in subsection (3), which could be formed.

## **Part 3 Administration**

### **7 Confidentiality**

An industrial inspector or officer appointed for the purposes of this Act is not to disclose to any person information that the inspector or officer has acquired in exercise of powers or performance of duties under this Act or by virtue of holding any appointment unless—

- (a) the disclosure is for the purposes of this Act and in the proper performance of the duties of office; or

- (b) the disclosure is made with the Minister's permission first obtained; or
- (c) the disclosure is in accordance with an order of a court for the purposes of proceedings before that or another court or before a tribunal constituted according to law.

## **8 Industrial inspector's powers of investigation and enforcement**

- (1) An industrial inspector is authorised—
  - (a) subject to section 9, to enter, inspect and examine at any time any place—
    - (i) used or intended to be used, or which the inspector reasonably suspects to be used or intended to be used, as a shop; or
    - (ii) in which, or in respect of which, the inspector reasonably suspects that a person is contravening or failing to comply with any provision of this Act or of an industrial commission order;and therein to carry out such investigation as the inspector considers necessary for the purposes of this Act;
  - (c) to question with respect to matters relevant to this Act any person found in any place entered, or any person whom the inspector reasonably believes to be an occupier of such place, or to be or to have been an employee of such an occupier and to require such person to answer truthfully the questions put and to sign a declaration of the truth of the answers given;
  - (d) to make such investigations, inquiries and examinations as the inspector considers to be necessary to ascertain whether the provisions of this Act, or of an industrial commission order, are being complied with;
  - (e) at any time during the hours when business is, or may be, conducted in any place subject to an industrial commission order to require an occupier of the place to

produce for the inspector's examination all or any time sheets, pay sheets or other records relating to persons employed by the occupier, and to examine and to make copies of or extracts from time sheets, pay sheets or other records;

- (f) to require a person whom the inspector reasonably suspects to have possession or control of records relating to—
  - (i) conferral of entitlements to occupy, or to conduct business in, any areas within a building;
  - (ii) the identity of the proprietors of businesses conducted in any areas within a building;
  - (iii) financial arrangements suspected to exist between proprietors of businesses conducted in any areas within a building, or between such proprietors and—
    - (A) the owner of the building;
    - (B) the occupier of the whole building;
    - (C) the person by whom such entitlements were conferred;

to produce for the inspector's examination such records, which the inspector is authorised to examine and make copies or extracts thereof as the inspector thinks fit;

- (g) to require a person whom the inspector finds committing, or whom the inspector reasonably suspects to have committed, an offence against this Act, or whom the inspector is authorised to question, or whose name and address is, in the inspector's opinion, reasonably required for the purposes of this Act, to state the person's name and address and, if the inspector reasonably suspects the name or address stated to be false, to require evidence of the correctness thereof;
- (h) to institute and conduct proceedings in the industrial court, industrial commission or an Industrial Magistrates Court for the purposes of this Act.

- (2) The authority conferred on an industrial inspector to question an employee of any person includes authority to question the employee out of the presence and hearing of the employer or of any supervisor, deputy, manager or superior officer, or any other employee with respect to any matter.

## 9 Limitation on authority to enter

- (1) The authority conferred by section 8 on an industrial inspector to enter a place does not include authority to enter premises used as a private dwelling house unless—
  - (a) the person apparently in charge of the premises consents to the inspector's entry; or
  - (b) the inspector has the prescribed warrant to enter the premises, which is in force, and, if requested to do so, produces the warrant for examination by the person apparently in charge of the premises.
- (2) Any justice who is satisfied on the complaint in writing of an industrial inspector that the inspector reasonably believes premises to be such that, but for the absence of a warrant to enter, an industrial inspector is authorised by this Act to enter therein may issue a warrant directed to the inspector to enter the premises for the purpose of exercising authority conferred on an industrial inspector by this Act.
- (3) A warrant issued under subsection (2) remains in force for a period of 1 month following the date of its issue, and is lawful authority—
  - (a) to the inspector to whom it is directed and anyone helping the inspector to enter the premises specified in the warrant; and
  - (b) to the inspector to whom it is directed to exercise in respect of the premises specified in the warrant the authorities conferred on an industrial inspector by this Act.
- (4) In this section—

*private dwelling house* does not include—

- (a) any part of premises that is not used exclusively for the purpose of private residence; or
- (b) the curtilage of any premises.

## **10 Duty of industrial inspector**

- (1) It is the duty of every industrial inspector to secure compliance with the provisions of this Act or of any industrial commission order.
- (2) An industrial inspector, other than the chief industrial inspector, is to report to the chief industrial inspector any breach of a provision of this Act or of an industrial commission order that comes to the inspector's knowledge.

## **11 Duty of occupier etc. to assist industrial inspector**

A person who is an occupier of a factory, shop or place of public amusement, or is entitled to immediate possession thereof, and an agent or employee of any such person, is to furnish to an industrial inspector—

- (a) such reasonable assistance;
- (b) such information that is within the person's, agent's or employee's capacity to furnish;

as the inspector lawfully requires to assist the inspector in the exercise of the powers of an industrial inspector or the performance of the duties of an industrial inspector under this Act.

## **12 Protection from self-incrimination**

Notwithstanding any other provision of this Act, a person is not required to answer a question put by an industrial inspector, or other person, for the purposes of this Act, if the answer would incriminate the person to whom the question is put in any offence.

### **13 Protection from liability**

- (1) In this section—  
*official* means—
  - (a) the Minister; or
  - (b) an industrial inspector.
- (2) An official is not civilly liable for an act or omission done honestly and without negligence under this Act.
- (3) If subsection (2) prevents civil liability attaching to an official, the liability attaches to the State instead.

## **Part 4 Trading hours in shops**

### **Division 1 Application of part**

#### **16 Cases where this part not applicable**

- (1) The provisions of this part do not apply in respect of a place that is a shop only because it is an office and a reference in this part to employment in or in connection with the business of a shop does not include reference to employment in an office although the office premises may be part of the shop premises.
- (2) The provisions of this part do not apply so as to prohibit or restrict the selling by auction in a shop on a day, other than a Sunday or public holiday, at any time after closing time on that day fixed by or under this Act in relation to a shop of the description of that shop, of wool or tobacco leaf by reference to catalogues after inspection of the wool or tobacco leaf.

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## Division 2            Non-exempt shops

### Subdivision 1        Preliminary

#### 16A    Definitions for division

In this division—

**2017 trading hours order** means the order titled ‘Trading Hours—Non-exempt Shops Trading by Retail—State’ made by the industrial commission under section 21 on 27 November 1992, as it was in effect immediately before the commencement of the *Trading (Allowable Hours) Amendment Act 2017*.

*Notes—*

- 1 The 2017 trading hours order was repealed on the commencement of the *Trading (Allowable Hours) Amendment Act 2017*—see section 57.
- 2 The 2017 trading hours order can be viewed on the QIRC website—see section 46A.

**closed day** means any of the following days—

- (a) Good Friday;
- (b) Anzac Day (25 April);
- (c) Labour Day (the first Monday in May);
- (d) Christmas Day (25 December).

**hardware shop** means a shop the business of which is, wholly or partly, the supply of—

- (a) construction materials, tools, fittings and other appropriate products and equipment to—
  - (i) builders, associated tradespeople, contractors or sub-contractors engaged in the building industry; or
  - (ii) the general public; or

[s 16B]

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- (b) similar products appropriate for home improvement purposes to the general public.

*south-east Queensland area* means the South-East Queensland Area within the meaning of the 2017 trading hours order, but does not include a tourist area.

*tourist area* means—

- (a) any of the following areas under the 2017 trading hours order—
  - (i) Area of New Farm of Inner City of Brisbane;
  - (ii) Gold Coast Coastal Tourist Area;
  - (iii) Hamilton North Shore Area;
  - (iv) The Cairns CBD Area;
  - (v) The Great Barrier Reef Wonderland Tourist Complex; or
- (b) the town of Port Douglas; or
- (c) the Pacific Fair Shopping Centre located at Broadbeach Waters on the corner of Hooker Boulevard and Sunshine Boulevard.

*Note—*

See, however, section 56.

## **16B Shops to be closed other than during permitted trading hours**

- (1) A non-exempt shop must be closed on a particular day other than during—
  - (a) the shop's core trading hours under subdivision 2 for the day or, if applicable, the extended trading hours under subdivision 3; or
  - (b) if an order made by the industrial commission under section 21 prescribes trading hours for the shop for the day—the prescribed trading hours for the day.

*Note—*

Under section 21(2), the industrial commission can not permit trading on a closed day or, for a day other than a closed day, decide trading hours that are shorter than the hours under subdivision 2 or 3.

- (2) The occupier of a non-exempt shop must ensure subsection (1) is complied with for the shop.

Maximum penalty—40 penalty units.

## **Subdivision 2      Core trading hours**

### **16C      Application of subdivision**

- (1) This subdivision applies subject to subdivision 3, to the extent subdivision 3 provides for an earlier opening time, or a later closing time, on a particular day for a non-exempt shop.
- (2) However, if subdivision 3 applies to a non-exempt shop, the shop's closing time for 24 December is the closing time provided for under subdivision 3.

### **16D      Shops other than hardware shops and shops selling motor vehicles or caravans**

- (1) This section applies to a non-exempt shop, other than—
  - (a) a hardware shop; and
  - (b) a shop engaged in selling motor vehicles or caravans.
- (2) The shop's core trading hours are—

<b>Day</b>	<b>Opening time</b>	<b>Closing time</b>
<b>In the south-east Queensland area</b>		
Monday to Friday	7a.m.	9p.m.
Saturday	7a.m.	9p.m.

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Part 4 Trading hours in shops

[s 16D]

<b>Day</b>	<b>Opening time</b>	<b>Closing time</b>
Sunday and public holidays, other than closed days	9a.m.	6p.m.
<b>In a tourist area</b>		
Monday to Friday	6a.m.	10p.m.
Saturday	7a.m.	10p.m.
Sunday and public holidays, other than closed days	7a.m.	9p.m.
<b>In a schedule 1AB area</b>		
Monday to Friday	(a) if the shop is in the Townsville Tourist Area— 7a.m. (b) otherwise—8a.m.	9p.m.
Saturday	8a.m.	6p.m.
Sunday and public holidays, other than closed days	9a.m.	6p.m.
<b>In a seaside resort</b>		
Monday to Friday	8a.m.	9p.m.
Saturday	8a.m.	6p.m.
Sunday	n/a	n/a
Public holidays, other than closed days	9a.m.	6p.m.
<b>In any other area</b>		
Monday to Friday	8a.m.	9p.m.

Day	Opening time	Closing time
Saturday, including Easter Saturday (the day after Good Friday)	8a.m.	6p.m.
Sunday and public holidays, other than closed days and Easter Saturday (the day after Good Friday)	n/a	n/a

(3) In this section—

*n/a* means the shop is not permitted to open.

*schedule 1AB area* means an area, within the meaning of the 2017 trading hours order, mentioned in schedule 1AB.

*seaside resort* means a Tourist and/or Seaside Resort within the meaning of the 2017 trading hours order.

## 16E Hardware shops

(1) This section applies to a non-exempt shop that is a hardware shop.

(2) The shop's core trading hours are—

Day	Opening time	Closing time
<b>In the south-east Queensland area</b>		
Monday to Friday	6a.m.	9p.m.
Saturday	6a.m.	9p.m.
Sunday and public holidays, other than closed days	6a.m.	6p.m.
<b>In a tourist area</b>		
Monday to Friday	6a.m.	10p.m.

[s 16EA]

Day	Opening time	Closing time
Saturday	6a.m.	10p.m.
Sunday and public holidays, other than closed days	6a.m.	9p.m.
<b>In any other area</b>		
Monday to Friday	6a.m.	9p.m.
Saturday	6a.m.	6p.m.
Sunday and public holidays, other than closed days	6a.m.	6p.m.

### 16EA Shops selling motor vehicles or caravans

- (1) This section applies to a non-exempt shop engaged in selling motor vehicles or caravans.
- (2) The shop's core trading hours are—

Day	Opening time	Closing time
<b>If the shop sells motor vehicles but not caravans</b>		
Monday to Friday	8a.m.	9p.m.
Saturday	8a.m.	(a) if the shop is in a prescribed area— 6p.m. (b) otherwise—5p.m.
Sunday	n/a	n/a
Public holidays, other than closed days	(a) if the shop is in a prescribed area— 8a.m. (b) otherwise—n/a	(a) if the shop is in a prescribed area— 6p.m. (b) otherwise—n/a
<b>If the shop sells both caravans and motor vehicles</b>		

Day	Opening time	Closing time
Monday to Friday	8a.m.	9p.m.
Saturday	8a.m.	5p.m.
Sunday and public holidays, other than closed days	n/a	n/a
<b>If the shop sells caravans but not motor vehicles</b>		
Monday to Friday	8a.m.	9p.m.
Saturday	8a.m.	6p.m.
Sunday and public holidays, other than closed days	n/a	n/a

(3) In this section—

*n/a* means the shop is not permitted to open.

*prescribed area* means any of the following areas within the meaning of the repealed car yards order—

- (a) The Gold Coast Area;
- (b) Redcliffe Peninsula;
- (c) City of Brisbane Area;
- (d) City of Logan Area;
- (e) Town of Beenleigh Area;
- (f) Near North Coast Area;
- (g) Shire of Pine Rivers Area;
- (h) Redland Shire Area;
- (i) City of Ipswich.

*repealed car yards order* means the order titled ‘Trading Hours—Non-exempt Shops Selling Motor Vehicles—State’ made by the industrial commission under section 21 on 8 December 1989, as it was in effect immediately before the

[s 16EB]

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commencement of the *Trading (Allowable Hours) Amendment Act 2017*.

*Notes—*

- 1 The repealed car yards order was repealed on the commencement of the *Trading (Allowable Hours) Amendment Act 2017*—see section 57.
- 2 The repealed car yards order can be viewed on the QIRC website—see section 46A.

### **Subdivision 3      Extended trading hours**

#### **16EB Application of subdivision**

This subdivision does not apply to a non-exempt shop engaged in selling motor vehicles or caravans.

#### **16F Christmas trading hours—general**

- (1) The extended trading hours for a non-exempt shop for Christmas are—

<b>Day</b>	<b>Opening time</b>	<b>Closing time</b>
the 3 Sundays before 18 December	8a.m.	6p.m.
18 to 23 December	the shop's opening time under subdivision 2	midnight
24 December	the shop's opening time under subdivision 2	6p.m.

- (2) This section does not apply to a non-exempt shop for a particular day if section 16G applies to the shop for that day.
- (3) If a non-exempt shop is not permitted to trade on a Sunday, a reference in subsection (1) to the shop's opening time under subdivision 2 is, if the day in question is a Sunday, taken to be a reference to 9a.m.

## 16G 24-hour Christmas trading for particular shops

- (1) This section applies to a shop in—
  - (a) the Westfield Chermside shopping complex; or
  - (b) the Westfield Garden City shopping complex.
- (2) The shop's extended trading hours for 23 and 24 December are—

Day	Opening time	Closing time
23 December	8a.m.	midnight
24 December	12a.m.	6p.m

- (3) In this section—

*Westfield Chermside shopping complex* means the shopping complex located on the corner of Gympie Road and Hamilton Road, Chermside, Brisbane.

*Westfield Garden City shopping complex* means the shopping complex located on the corner of Logan Road and Kessels Road, Upper Mount Gravatt, Brisbane.

## Division 3 Independent retail shops

### 17 Closure of independent retail shops

- (1) There is no prescribed opening time or prescribed closing time in relation to an independent retail shop except as prescribed by subsection (2).
- (2) The occupier of an independent retail shop, other than one used predominantly for the sale of food or groceries or both, is to cause the shop to be closed—
  - (a) throughout the whole of 25 December in each year (Christmas Day) and Good Friday;
  - (c) on 25 April in each year (Anzac Day) until 1p.m.

- (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.

## **Division 4                      Other provisions**

### **19                      Closure of non-exempt shops not to confer advantage**

- (1) A person must not—
- (a) hawk goods; or
  - (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
  - (c) sell goods by auction;
- at a locality on a day or during hours when a non-exempt shop in which the goods are sold at the locality would be required under this Act to be closed.
- (2) This section does not apply to—
- (a) the conduct of a bazaar or fair, or the sale of work, for a religious, charitable, educational or other purpose from which no private profit is to be derived; or
  - (b) the normal conduct of business of an exempt shop.

### **20                      Closure on bank holidays**

- (1) The occupier of a banking or insurance office must close the office on the bank holidays prescribed under the *Holidays Act 1983*.

*Note—*

- 1 Section 98 of the *Bills of Exchange Act 1909* (Cwlth) regulates the times within which certain dealings with a bill of exchange, cheque or promissory note may be conducted (e.g. payment and presentment).

- 2 Under section 98, if a dealing mentioned in the section falls due on Christmas Day, Good Friday, a Sunday, or a day prescribed by either Commonwealth or State legislation to be a bank holiday, the dealing may be conducted on the next business day.
  - 3 Section 5 of the *Holidays Act 1983* declares every Saturday a bank holiday in Queensland.
  - 4 The effect of section 20 of this Act is to allow a bank to open for business on most Saturdays but, because Saturday remains a bank holiday, a bank is able to choose whether or not it will conduct the dealings mentioned in section 98 of the *Bills of Exchange Act 1909* (Cwlth) on a Saturday.
- (2) If any banking office or insurance office is not closed on a bank holiday prescribed by the *Holidays Act 1983*, any person who authorised, directed or, except as an employee required by the person's employer to do so, otherwise aided the failure to close is taken to have committed an offence against this Act and is liable to the prescribed penalty.
- (3) Subsections (1) and (2) do not apply to—
- (a) a bank in relation to a Saturday unless the Saturday—
    - (i) is a public holiday; or
    - (ii) falls on 1 January, 26 January, 25 December or 26 December, regardless of whether another day has been substituted as a public holiday for the public holiday that ordinarily falls on the particular day; or
  - (b) a bank operating at an annual agricultural, horticultural or industrial show if a bank holiday occurs during the show.
- (4) If a bank holiday is declared for a particular district, subsection (1) only applies to a banking or insurance office in the district on the bank holiday.

## **20A Allowable trading hours for Retail Shop Leases Act 1994**

For the south-east Queensland area, the permissible trading hours on a Sunday or public holiday are not allowable trading

hours for the definition *core trading hours* in the *Retail Shop Leases Act 1994*, section 51.

## Part 5 Orders concerning non-exempt shops

### 21 Trading hours orders on non-exempt shops

- (1) The industrial commission may decide trading hours for non-exempt shops.
- (2) However, the industrial commission must not decide trading hours for non-exempt shops for a particular day that—
  - (a) for a closed day—permit trading on the closed day; or
  - (b) for another day—are shorter than the trading hours under part 4, division 2, subdivision 2 or 3 for the shops for that day.
- (3) The industrial commission may make any order it considers necessary or convenient to give effect to a decision made under subsection (1), including, for example, an order specifying—
  - (a) the earliest time when non-exempt shops may open on any day and the latest time when non-exempt shops must close on any day; or
  - (b) hours for trading wholesale different from the hours fixed for trading retail; or
  - (c) different trading hours by reference to—
    - (i) classes of non-exempt shops; or
    - (ii) localities, or parts of localities, where non-exempt shops are situated.
- (4) In this section—

*public holiday* includes, if another day is substituted for a public holiday under the *Holidays Act 1983*, section 3, the day

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that would have been the public holiday if the substitution had not happened.

## **23 Powers and procedures relevant to proceedings under s 21**

- (1) The industrial commission may make an order under section 21—
  - (a) of its own motion; or
  - (b) on an application made by or for an industrial organisation, another organisation or a local government.
- (2) The industrial commission may, by its order made under section 21, delegate to the chief industrial inspector authority necessary to the working out of that, or any other, order of the industrial commission made under the relevant section, including issuing requisitions, giving directions and preparing rosters and schedules.
- (3) The industrial commission is to fix a date, time and place at which it will proceed with a view to making an order under section 21 and, if so required by the commission, notification thereof—
  - (a) is to be published on the QIRC website;
  - (b) is to be served on such industrial organisations, other organisations and local governments as the industrial commission directs;
  - (c) is to be advertised in such newspapers and periodicals as the industrial commission directs to ensure that all industrial organisations, other organisations and local governments that are, or are likely to be, concerned in the making of the order are notified of the proceedings and of the time and place thereof.
- (4) Every such notification must specify a time before which any industrial organisation, another organisation or a local government that claims to be concerned in the making of the

order may apply to the industrial registrar for leave to appear and be heard on the matter.

- (5) If, upon application made to the industrial registrar before the time specified for the purpose in such notification, the industrial registrar is satisfied that the applicant is, or is likely to be, concerned in the making of the order, the registrar is to grant the leave applied for, but otherwise the registrar is to refuse the leave.

### **23A Reference to full bench**

- (1) This section applies to the matter of an order under section 21.
- (2) The president may refer the matter to the full bench of the industrial commission.
- (3) The referral may be made—
  - (a) at any stage of the proceedings for the matter, including before the hearing of the matter starts; and
  - (b) on the terms the president considers appropriate.
- (4) The full bench may hear and decide the matter referred to it and make the decision it considers appropriate.
- (5) This section does not limit the *Industrial Relations Act 2016*, section 486.

### **24 Industrial commission hearings**

When dealing with an application under section 21, 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.

### **25 Leave may be granted by industrial commission**

- (1) Where the industrial registrar refuses an application for leave under section 23 the applicant may, within 7 days after being notified by the registrar of the refusal, require the registrar to

refer the matter of the application to the industrial commission and the registrar is to make the reference.

- (2) Upon such a reference the industrial commission may grant or refuse the application.
- (3) The industrial commission may at any time grant to any industrial organisation, another organisation or a local government leave to appear and be heard on the matter of the making of an order under section 21, if it is satisfied that there is good reason for granting the leave, notwithstanding that an application for such leave has not been duly made under section 23 to the industrial registrar.

## **26 Matters relevant to s 21 order**

In relation to making an order under section 21 the industrial commission must have regard to—

- (a) the locality, or part thereof, in which the non-exempt shop or class of non-exempt shop is situated;
- (b) the needs of the tourist industry or other industry in such locality or part;
- (c) the needs of an expanding tourist industry;
- (d) the needs of an expanding population;
- (e) the public interest, consumers' interest, and business interest (whether small, medium or large);
- (f) the alleviation of traffic congestion;
- (g) the likely impact of the order on employment;
- (h) the likely impact of the order on employees;
- (i) the view of any local government in whose area the order is likely to have an impact;
- (j) such other matters as the industrial commission considers relevant.

## **27 Summary dismissal of application**

If the industrial commission is of opinion that—

- (a) a decision has previously been made upon an application similar to that before it, and there is insufficient reason to warrant reconsideration of the matter; and
- (b) having regard to the interests of the industrial organisations, other organisations or local governments immediately concerned, and of the community as a whole, further proceedings are not necessary or desirable;

the industrial commission may dismiss, or refrain from further hearing or determining, an application made for an order under section 21.

## **31 Cancellation of obsolete orders**

- (1) If after such inquiry as the industrial registrar considers sufficient the registrar is of opinion that an industrial commission order is obsolete the registrar may publish on the QIRC website notification of an intention to declare the order identified in the notification to be obsolete.
- (2) Any industrial organisation, another organisation or a local government may, within the time, and in the manner prescribed, lodge with the industrial registrar notice of objection to the proposed declaration.
- (3) The industrial registrar is to refer each such objection to the industrial commission, which is to hear and determine the question at issue.
- (4) If no objection to a proposed declaration is duly lodged as prescribed, or all objections so lodged are dismissed, the industrial registrar, by notification published on the QIRC website, may declare the order identified in the notification of intention referred to in subsection (1) to be obsolete, whereupon the order is no longer of any force or effect.

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## Part 6 Anzac Day provisions

### 32 Meaning of *Anzac Day*

In this part—

*Anzac Day* means 25 April in each year, which day is required by the *Anzac Day Act 1995* to be observed throughout Queensland as a holiday.

### 33 Anzac Day a holiday for all employees

- (1) An employee in a factory or shop must be given a holiday for the whole of Anzac Day.
- (2) However, subsection (1) does not apply to employment—
  - (a) in a factory or shop of a person employed solely in guarding the factory or shop; or
  - (b) at a licensed venue under the *Racing Act 2002* where a race meeting under that Act is held; or
  - (c) at an office or agency of a holder of a race wagering licence under the *Wagering Act 1998*; or
  - (d) on licensed premises under the *Liquor Act 1992* or the *Wine Industry Act 1994*; or
  - (e) in or on a place of public amusement, that is lawfully used for public amusement or entertainment, of a person employed solely for the purpose of the use; or
  - (f) in an exempt shop; or
  - (g) in an office where—
    - (i) the usual activities conducted include renting or leasing accommodation; and
    - (ii) the only activities being conducted are renting or leasing accommodation and related activities; or
  - (h) in a factory or shop in employment solely for 1 or more of the following activities—

[s 34]

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- (i) printing, publishing or distributing newspapers;
- (ii) manufacturing, distributing or supplying electricity, gas or water;
- (iii) a necessarily continuous process of manufacturing or mining;
- (iv) essential services;
- (v) milk supply;
- (vi) bread manufacturing;
- (vii) preparing food in restaurants, cafes, pastry-cook and hot takeaway food kitchens;
- (viii) an activity prescribed by regulation.

#### **34 Real estate sales prohibited**

A person must not conduct the business of selling real estate on Anzac Day.

Maximum penalty—40 penalty units.

#### **35 Closure of places of public amusement**

- (1) The occupier of a place of public amusement is to cause the place to be closed on Anzac Day until 1.30p.m., except if the Minister has given permission in writing to the occupier to keep the place open on that day before that time.
- (2) It is an implied condition of a licence granted by a local government in relation to a place of public amusement that the holder of the licence must not contravene the provisions of subsection (1).
- (3) A breach of such implied condition is a matter to be taken into account in the exercise of an authority under law to cancel or suspend the licence for a breach of a condition thereof.

### **36 Closure of other places**

- (1) Factories and shops must be closed for the whole of Anzac Day.
- (2) Subsection (1) does not apply to a place mentioned in section 33(2)(b) to (h).

## **Part 7 Offences and proceedings**

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

- (1) An employer must not require a current employee to work during extended hours unless the employee agrees, in writing, to work during extended hours.

Maximum penalty—

- (a) for a first offence—16 penalty units; or
  - (b) for a second or subsequent offence—20 penalty units.
- (2) However, subsection (1) does not apply in relation to a current employee if—
    - (a) an industrial instrument provides arrangements under which the employee may refuse or agree to work during extended hours; and
    - (b) a regulation prescribes the industrial instrument as an approved industrial instrument for this subsection.
  - (3) In this section—

*agree* means agree for a stated period or for an indefinite period.

*current employee* means an employee who is employed in a non-exempt shop immediately before 1 August 2002, other than in a non-exempt shop for which the permissible trading hours immediately before 1 August 2002 include trading hours on a Sunday or public holiday, other than a closed day.

**employer** means an employer of an employee employed in a non-exempt shop.

**extended hours** means the permissible trading hours on a Sunday or public holiday, other than a closed day.

**industrial instrument** means an award or certified agreement within the meaning of the *Industrial Relations Act 2016*.

**non-exempt shop** means a non-exempt shop in the south-east Queensland area.

**permissible trading hours** means the permissible trading hours under—

- (a) while the trading hours order was in effect—the order; or
- (b) from the commencement of the *Trading (Allowable Hours) Amendment Act 2017*—section 16B.

**south-east Queensland area** has the meaning given by section 31B as it was in force on 1 August 2002.

**trading hours order** has the meaning given by section 31B as in force from time to time before its repeal.

### **36AA Protection for employees—Liquor and Other Legislation Amendment Act 2017**

- (1) An employer must not require an 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.
- (2) However, subsection (1) does not apply in relation to an employee if an industrial instrument provides arrangements under which the employee may refuse or agree to work during extended hours.
  - (3) For subsection (1), an employee has not freely elected to work during extended hours—

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- (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—

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

*employer* means an employer of an employee in a non-exempt shop in the south-east Queensland area.

*extended hours* means the permitted trading hours under this Act on Easter Sunday for a non-exempt shop in the south-east Queensland area.

*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.

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

(1) An employer must not require an 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.
- (2) However, subsection (1) does not apply in relation to an employee if an industrial instrument provides arrangements under which the employee may refuse or agree to work during extended hours.
- (3) For subsection (1), 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—

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

*employer* means an employer of an employee in a non-exempt shop.

*extended hours* means the permitted trading hours under this Act for a non-exempt shop on any day (other than a closed day), but only to the extent the hours are greater than the shop's permitted trading hours immediately before the commencement.

*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.

### **36C Injunction to enforce observance of trading hours**

- (1) Upon application made to it—
  - (a) by an industrial inspector; or
  - (b) by or on behalf of any industrial organisation, another organisation or a local government aggrieved;

the industrial commission may make such orders in the nature of mandatory or restrictive injunctions, or otherwise, as it thinks fit—

- (c) to enforce compliance with the trading hours provided for under part 4, division 2 or an order of a kind referred to in section 21; or

- (d) to restrain a breach or the continuance of a breach of the trading hours provided for under part 4, division 2 or an order of a kind referred to in section 21.
- (2) The form of notice to a person in relation to an application for an order under subsection (1), and the mode of service of such notice, is in the discretion of the industrial commission, which may order substituted service, by advertisement or otherwise, as it thinks fit.

### **37 Soliciting business to be transacted outside trading hours**

- (1) If there is published a statement that is calculated, or apparently calculated, to promote business conducted in a factory or shop, which statement states, suggests or implies that, at a time when the factory or shop is required by a provision of this Act or by an industrial commission order to be closed—
  - (a) the factory or shop will be open to the public for any purpose of trade or inspection of goods; or
  - (b) goods will be sold, or offered or exposed for sale, in the factory or shop; or
  - (c) a person will be in attendance at the factory or shop, or at any other place, for receipt of—
    - (i) orders for goods;
    - (ii) requests for demonstration of goods, or delivery of goods on approval;

the following persons thereby commit an offence against this Act—

- (d) a person who publishes the statement, or causes or permits the statement to be published;
- (e) the occupier of the factory or shop, the business of which is calculated, or apparently calculated, to be promoted by publication of the statement.

- (2) The occupier of a factory is not to be taken to have committed an offence defined in subsection (1) only because goods manufactured wholly or partially at the factory are mentioned by a trade or other name in the statement.
- (3) A statement is taken to have been published if it is communicated to any person by action, or by way of the spoken or written word, or by way of pictorial or other visual representation.
- (4) A person is not to be prosecuted for publishing, or causing to be published, a statement referred to in subsection (1) unless—
  - (a) the person had been warned by an industrial inspector that publication of the statement, or of one substantially similar, is, or would be, an offence against this Act; and
  - (b) the person published, or caused or permitted to be published, the statement after receipt of the warning; and
  - (c) the Minister's consent to the prosecution is first obtained.
- (5) Subsection (4) does not apply where the person to be prosecuted is the occupier of the factory or shop, the business of which is calculated, or apparently calculated, to be promoted by publication of the statement in question.

### **38 Certain persons not to be employed as watchpersons**

A person who is an occupier of a shop is not to employ, as a watchperson therein, a person who is also employed as a salesperson or clerk in, or in connection with—

- (a) the business of that shop; or
- (b) the business of any other shop of which the firstmentioned person is also an occupier.

### **39 Obstruction of industrial inspector**

A person is not—

- (a) to assault, resist, impede, delay or otherwise obstruct or attempt to obstruct an inspector in exercise of powers or performance of duties under this Act;
- (b) to fail to answer any question put to the person by an inspector for the purposes of this Act, or give a false or misleading answer to any such question;
- (c) to fail to sign a declaration that the person is required by or under this Act, or by an inspector for the purposes of this Act, to sign;
- (d) to fail to comply in all respects with a lawful request, requisition or direction of an inspector;
- (e) when required by or under this Act to furnish—
  - (i) assistance to an inspector; or
  - (ii) information to an inspector—
    - (A) to fail to furnish the assistance or information; or
    - (B) to furnish information that the person knows to be false or misleading, or does not believe to be true;
- (f) to fail—
  - (i) to produce to an inspector any permit, certificate or authority had, or claimed to be had, by the person under or for the purposes of this Act, when required by the inspector to produce the same;
  - (ii) to produce to an inspector any time sheet, pay sheet or other records required by law to be kept or had by the person, when required by the inspector to produce the same;
  - (iii) to produce to an inspector records referred to in section 8(1)(f) in the possession or control of the person, when required by the inspector to produce the same;
  - (iv) to allow an inspector to whom anything has been produced to examine the thing and to make copies

of, or take extracts from the thing, any part thereof  
or any entries therein;

- (g) to prevent, or attempt to prevent, directly or indirectly, any person from appearing before, or being questioned by, an inspector;
- (h) to use threatening, abusive or insulting language to an inspector, or to any employee, in respect of any inspection, examination or questioning;
- (i) to impersonate an inspector.

#### **40 Forgery etc.**

A person is not—

- (a) to counterfeit, forge or fraudulently alter any permit, notice or other document that the Minister or chief industrial inspector is authorised to grant or issue under this Act;
- (b) to use, or attempt to use, any such permit, notice or other document knowing it to be counterfeit, forged or fraudulently altered;
- (c) to grant, issue, use or attempt to use any such permit, notice or other document knowing it to be false in a material particular;
- (d) to make an entry in any time sheet or pay sheet or in other records, knowing the entry to be false.

#### **41 General offence**

A person who contravenes or fails to comply with—

- (a) a provision of this Act;
- (b) a term of an industrial commission order, including an order by way of injunction;
- (c) a term of a permit issued under this Act;

commits an offence against this Act.

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## 42 Quantum of pecuniary penalty

A person guilty of an offence against this Act is liable—

- (a) if the person is a body corporate—to a penalty of 200 penalty units;
- (b) if the person is an individual—to a penalty of 40 penalty units.

## 43 Manner of proceedings under Act

- (1) A prosecution in respect of an offence against this Act that consists in a contravention or failure to comply with a term of an industrial commission order by way of injunction is to be taken in the industrial court.
- (2) A person aggrieved by a decision of the industrial court upon such a prosecution may appeal against the decision to the Court of Appeal.
- (3) Except as prescribed by subsection (1), a prosecution in respect of an offence against this Act is to be taken in a summary way in a court constituted by an industrial magistrate.
- (4) The provisions of the *Industrial Relations Act 2016*, and of the rules of court having force and effect under that Act, that govern—
  - (a) proceedings in the industrial court, the industrial commission or an Industrial Magistrates Court;
  - (b) representation of parties in such proceedings;
  - (c) the powers of the industrial court, industrial commission or an Industrial Magistrates Court in relation to such proceedings;
  - (d) appeals from decisions of the industrial commission or an Industrial Magistrates Court;
  - (e) entitlement of the Crown and the Minister to intervene in proceedings before the industrial court, the industrial commission, an Industrial Magistrates Court or the industrial registrar;

apply, as far as may be (with any necessary adaptations), and subject to the provisions of this Act, in relation to the exercise of jurisdiction under this Act, and proceedings taken for that purpose, and decisions made therein.

- (5) Jurisdiction is conferred on the industrial court, the industrial commission, and every industrial magistrate to hear and determine all proceedings duly brought before the court, commission or magistrate under this Act.

#### **44 Parties to offences**

- (1) This section applies and is to be given effect—
  - (a) without prejudice to the application of the Criminal Code, section 7; and
  - (b) notwithstanding the provisions of the Criminal Code, section 23.
- (2) Where an offence against this Act is committed in relation to a factory or shop or place of public amusement, of which there is more than 1 occupier (as defined by this Act), each such occupier is liable to be punished for the offence.
  - (a) the members of the governing body of the body corporate, by whatever name called;
  - (b) persons who manage or participate in the management or control of the body corporate's business in the State.
- (3) Notwithstanding the provisions of subsection (2), a person is not liable to be punished for an offence for which the person would otherwise be liable to be punished if it is shown that the person committed the contravention or failure to comply as an employee acting under the express direction of the person's employer.

#### **45 Liability for offence committed by employee**

- (1) This section applies and is to be given effect, notwithstanding the Criminal Code, section 23.

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- (2) Where an offence against this Act is committed by a person acting therein as an agent or employee of another, the principal or employer of that person is taken to have committed the offence and may be charged with the offence, in addition to the person who actually committed the offence.
  - (3) It is immaterial that the offence was committed without the authority of, or contrary to the instructions of, the principal or employer.
  - (4) It is a defence to a charge of an offence made pursuant to subsection (2) that the defendant had no knowledge of the commission of the offence and could not, by the exercise of reasonable diligence, have prevented commission of the offence by the defendant's agent or employee.

## 46 Evidentiary provisions

In proceedings under or for the purposes of this Act (whether for an offence or not)—

- (a) the allegation or averment in a complaint that the defendant therein was, at the time of commission of an offence, occupier of the factory or shop or place of public amusement in question is sufficient proof of the matter alleged or averred until the contrary is proved;
- (b) the due appointment as industrial inspector of any person claiming to be, or stated to be, an industrial inspector is to be presumed in the absence of evidence to the contrary;
- (c) the authority of an industrial inspector to take a proceeding, or do any action, is to be presumed in the absence of evidence to the contrary;
- (d) a signature purporting to be that of the Minister or an industrial inspector is to be taken as the signature of that person in the absence of evidence to the contrary;
- (e) a document purporting to be a duplicate or copy of a notice or permit given or issued under this Act, upon its production in the proceedings, is admissible therein as

- evidence and, in the absence of evidence to the contrary, conclusive evidence of the original thereof;
- (f) the limits of any district or part of the State, or of any road or other place, and the situation of premises in or outside a particular district or part of the State are, or is, to be presumed in the absence of evidence to the contrary;
  - (g) a document, or a copy of a document, purporting to be an extract from the QIRC website purporting to contain notification of a decision, declaration or order of the industrial court or industrial commission is admissible as evidence of the lawful making of the decision or order, and as conclusive evidence of the matters contained in the notification;
  - (h) a certificate purporting to be that of the chief industrial inspector that an article or class of article specified therein is such that a reasonable person would expect the article, or an article of that class, to be sold in a shop of a description specified therein is evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein.

## **Part 7A                      Miscellaneous provisions**

### **46A      Publication of particular repealed orders**

The industrial registrar must ensure the following orders are published on the QIRC website—

- (a) the 2017 trading hours order;
- (b) the repealed car yards order within the meaning of section 16EA.

### **46B      Review of Act**

- (1) The Minister must review the effectiveness of this Act within 5 years from the commencement.

- (1A) The review must be finished before the end of the moratorium period under part 8, division 6.
- (2) As soon as practicable after finishing the review, the Minister must table a report about its outcome in the Legislative Assembly.

#### **47 Regulations**

The Governor in Council may make regulations under this Act, including regulations imposing fees.

## **Part 8 Transitional provisions**

### **Division 1 Transitional provision for Act No. 23 of 1994**

#### **48 Extension of trading hours does not affect pay rates**

The extension of the trading hours of a non-exempt 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.

## **Division 2                      Transitional provision for Electrical Safety and Other Legislation Amendment Act 2009**

### **49            Notifications published in industrial gazette**

- (1) This section applies if, before the commencement, a notification was published in the industrial gazette as required or permitted by a provision of this Act (*relevant provision*) as in force before the commencement.
- (2) Despite the amendment of the relevant provision by the *Electrical Safety and Other Legislation Amendment Act 2009*, after the commencement—
  - (a) the notification continues to have been published for the relevant provision; and
  - (b) section 46, as in force immediately before the commencement, continues to apply to a copy of, or a document purporting to be an extract from, the industrial gazette.
- (3) In this section—

*commencement* means the commencement of this section.

*industrial gazette* means the Queensland Government Industrial Gazette.

## **Division 3                      Transitional provisions for Industrial Relations (Fair Work Act Harmonisation No. 2) and Other Legislation Amendment Act 2013**

### **50            Definitions for div 3**

In this division—

*commencement* means the commencement of this section.

*commissioner* see the *Industrial Relations Act 1999*, section 256(1)(b).

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

*previous*, for a provision of this Act, means the provision as in force immediately before the commencement.

## **51 Proceedings started before commencement**

- (1) This section applies to the matter of an order under previous section 21 or 22(1) if, before the commencement, a proceeding for the matter had been started but not decided or otherwise ended.
- (2) The full bench of the industrial commission must hear and decide, or continue to hear and decide, the matter under this Act as in force immediately before the commencement.
- (3) However, if immediately before the commencement the hearing of the matter had not started—
  - (a) the vice-president may reallocate the matter to an industrial commission constituted by a commissioner sitting alone; and
  - (b) the industrial commission must hear and decide the matter under this Act as in force immediately before the commencement.

## **52 Special exhibition orders**

- (1) This section applies to an order made under previous section 22 by the industrial commission constituted by the full bench or a commissioner sitting alone.
- (2) From the commencement, the order is taken to be an order of the industrial commission made under new section 22.

## **Division 4                      Transitional provision for Workers’ Compensation and Rehabilitation and Other Legislation Amendment Act 2015**

### **53            Referral by vice-president**

- (1) This section applies to a referral by the vice-president under section 23A in relation to a matter that immediately before the commencement had not been decided by the full bench.
- (2) The referral continues to have effect, and the full bench may hear and decide the matter referred to it, after the commencement as if the referral had been made by the president.

## **Division 5                      Transitional provision for Liquor and Other Legislation Amendment Act 2017**

### **54            Application of amended s 31B—Easter Sunday**

Section 31B(2), as it applies on the commencement, has effect despite any provision of the trading hours order in force immediately before the commencement.

*Note—*

The *Liquor and Other Legislation Amendment Act 2017*, section 30 amended section 31B of this Act to provide that Easter Sunday is not a closed day for the south-east Queensland area.

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## Division 6                      **Transitional provisions for Trading (Allowable Hours) Amendment Act 2017**

### 55            **Definitions for division**

In this division—

*amendment Act* means the *Trading (Allowable Hours) Amendment Act 2017*.

*former*, in relation to a provision of this Act, means the provision as in force before its amendment or repeal by the amendment Act.

*introduction* means the introduction into the Legislative Assembly of the Bill for the amendment Act.

*moratorium period* means the period starting on the introduction and ending 5 years after the day of the commencement.

*prescribed s 16D shop* means a non-exempt shop—

- (a) to which section 16D applies; and
- (b) that is not permitted under that section to open on Sunday and public holidays.

### 56            **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 period starting on the commencement and ending 5 years after the day of the commencement—
  - (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.

## **57 Repeal of existing orders**

On the commencement, the following orders are repealed—

- (a) an order made by the industrial commission under former section 21 or 22 that was in effect immediately before the commencement;
- (b) an order made by the industrial commission before the commencement under former section 21 or 22 that, immediately before the commencement, had not yet taken effect.

## **59 Moratorium on trading hours orders and restriction on making applications**

(1) During the moratorium period—

- (a) the industrial commission must not make an order under section 21, other than an order made on an application dealt with under section 60(2); and
- (b) an industrial organisation, another organisation or a local government must not make an application for an order under section 21.

(2) An application for an order under section 21 made or purportedly made during the moratorium period is of no effect.

## **60 Existing applications for orders under former s 21**

- (1) This section applies to an application for an order under former section 21 that was made, but not decided, before the introduction.
- (2) If the application relates only to prescribed s 16D shops, the industrial commission may, if it considers it appropriate and

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with the consent of the applicant, deal with the application as if it were an application for an order under section 21 prescribing the following trading hours for the shops for Sundays and public holidays (other than closed days)—

- (a) opening time—9a.m.;
  - (b) closing time—6p.m.
- (3) If the industrial commission does not deal with the application under subsection (2), the industrial commission must dismiss the application.
- (4) Subsection (3) applies despite part 5.

## **61 Existing appeals against decisions on applications for orders under former s 21**

- (1) This section applies to an appeal—
- (a) against a decision made, before the commencement, by the industrial commission on an application for an order under former section 21; and
  - (b) that was started, but not decided by the industrial court, before the commencement.
- (2) If the decision was to make an order under former section 21, the proceeding for the appeal ends on the commencement.

*Note—*

An order made under former section 21 before the commencement was repealed on the commencement—see section 57.

- (3) Subsections (4) and (5) apply if—
- (a) the decision was to refuse to make an order under former section 21; and
  - (b) on the commencement, all of the shops to which the order would have applied if it had been made are prescribed s 16D shops; and
  - (c) the industrial court decides to allow the appeal, set aside the decision of the industrial commission and substitute another decision.

- (4) The only decision that may be substituted by the industrial court is a decision to make an order under section 21 prescribing the following trading hours for the shops for Sundays and public holidays (other than closed days)—
- (a) opening time—9a.m.;
  - (b) closing time—6p.m.
- (5) Subsection (4)—
- (a) applies despite—
    - (i) the *Industrial Relations Act 2016*, section 558(1)(b); or
    - (ii) if the repealed *Industrial Relations Act 1999* continues to apply to the appeal proceeding—section 341(3)(b) of that Act; and
- Note—*
- See the *Industrial Relations Act 2016*, section 1023 for the continued application of the repealed Act in relation to particular proceedings.
- (b) does not otherwise limit the industrial court’s power to dismiss or allow the appeal.
- (6) The appeal proceeding ends on the commencement if—
- (a) the decision mentioned in subsection (1) was to refuse to make an order under former section 21; and
  - (b) on the commencement, any of the shops to which the order would have applied if it had been made are not prescribed s 16D shops.

## **62 Restriction on starting appeal if decision made before commencement**

From the commencement, a person can not start an appeal against any of the following decisions made by the industrial commission before the commencement—

- (a) a decision to make an order under former section 21;

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- (b) a decision to refuse to make an order under former section 21, other than an order that, if it had been made, would have prescribed the following trading hours for prescribed s 16D shops for Sundays and public holidays (other than closed days)—
- (i) opening time—9a.m.;
  - (ii) closing time—6p.m.

### **62A Particular orders required to be approved by regulation**

- (1) This section applies to an order made under section 21 during the moratorium period in accordance with this division.

*Example—*

an order made by the commission on an application mentioned in section 60(2)

- (2) The order does not take effect until it is approved by regulation.
- (3) The order takes effect—
- (a) on the day the regulation is notified; or
  - (b) if the regulation states a later day—the later day.
- (4) This section applies despite section 21.

### **63 Applications and appeals relating to orders under former s 22**

- (1) On the commencement—
- (a) a section 22 application that was not decided before the commencement is taken to have been withdrawn; and
  - (b) an appeal that was started, but not decided, before the commencement against a decision of the industrial commission on a section 22 application ends.
- (2) From the commencement, a person cannot start an appeal against a decision of the industrial commission on a section 22 application.

(3) In this section—

*section 22 application* means an application made before the commencement for an order under former section 22.

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## Schedule 1AA Exempt shops

### section 5

- 1 antique shop
- 2 art gallery or arts and crafts shop
- 3 aquarium, aquarium accessories or pet shop
- 4 bait and tackle or marine shop
- 5 bookseller's or newsagent's shop
- 6 bread, cake or pastry shop
- 7 butcher's shop
- 8 camping equipment shop
- 9 chemist shop
- 10 confectionery shop or ice-cream parlour
- 11 cooked provisions shop (where the provisions are cooked or heated on the premises immediately before sale), milk bar, restaurant, cafe or refreshment shop
- 12 delicatessen
- 13 fish shop
- 14 flower shop
- 15 fruit and vegetable shop
- 16 funeral director's premises
- 17 hairdresser's, beautician's or barber's shop
- 18 licensed premises under the *Liquor Act 1992* or the *Wine Industry Act 1994*
- 19 nursery (plant) shop for selling garden plants and shrubs, seeds, garden and landscaping supplies or equipment, and associated products
- 20 photographic shop

Schedule 1AA

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- 21 premises in relation to which a pawnbrokers licence under the *Second-hand Dealers and Pawnbrokers Act 2003* is in force
- 22 service station
- 23 subject to section 5(4), shop of a class declared by regulation to be a class of exempt shop
- 24 shop for selling motor vehicle spare parts or motorcycle spare parts, or both
- 25 shop in an international airport terminal, cruise terminal, casino, or tourist resort on an off-shore island
- 26 soap shop
- 27 souvenir shop
- 28 special exhibition or display of goods  
*Examples—*
  - an annual 3-day caravan, camping and fishing expo
  - a one-off launch of a new model of campervans held at a shopping centre
- 29 sporting goods shop
- 30 tobacconist's shop
- 31 toy shop
- 32 veterinary supplies shop

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## Schedule 1AB Areas for s 16D

### section 16D

- 2 Cairns Tourist Area
- 3 Townsville Tourist Area
- 4 Mossman and Port Douglas Tourist Area
- 5 Whitsunday Shire Tourist Area
- 6 Fraser Coast Area
- 7 Townsville and Thuringowa Area (excluding the Townsville Tourist Area)
- 8 The Yeppoon Tourist Area
- 9 The Moranbah Area
- 10 The Cooloola Cove Area
- 11 The City of Rockhampton Area
- 12 The City of Toowoomba Area
- 13 The Mackay Area
- 14 The Innisfail Area
- 15 The Emerald Area
- 16 The Tablelands Area
- 17 The Gladstone Area
- 18 Bundaberg Area (which includes Elliott Heads, Bundaberg and Bargara)
- 19 The Gympie Area
- 20 The Biloela Area
- 21 The Marian Area
- 22 The Stanthorpe Area
- 22A The Warwick Area
- 23 Emu Park Tourist Area

24 The Dalby Area

25 The Ingham Area

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# Schedule 1      Dictionary

## section 4

**2017 trading hours order** see section 16A.

**chief industrial inspector** means the chief inspector under the *Industrial Relations Act 2016*.

**closed** means locked, or otherwise secured, to the complete exclusion of the public.

**closed day** see section 16A.

**closing time** means, in relation to a shop, the time at which the shop is required, by an industrial commission order relating to trading hours or by part 4, to be closed for business on any day.

**employee** means a person employed in any calling, whether on wages or piecework rates, or as a member of a buttygang, and includes—

- (a) a person whose usual occupation is that of an employee in a calling;
- (b) a person employed in any calling notwithstanding that—
  - (i) the person is working under a contract for labour only, or substantially for labour only;
  - (ii) the person is lessee of any tools or other implements of production, or of any vehicle used in delivery of goods;
  - (iii) the person is the owner, wholly or partially, of any vehicle used in transport of goods or passengers;if such factor is the only reason against holding the person to be an employee;
- (c) each person, being 1 of 4 or more persons who are, or claim to be, partners working in association in any calling or industry.

*exempt shop* see section 5.

*factory* means—

- (a) a place in which—
    - (i) 2 or more persons (whether the occupier or not) are engaged in a manufacturing process; or
    - (ii) steam, water, mechanical or other power is used in, or in aid of, a manufacturing process, or in packing goods for transport; or
    - (iii) electricity is generated or transformed for the supply of heat, light or power;
  - (b) any bakehouse, cafe or other place whatsoever in which food or drink for human consumption is prepared or manufactured for sale, trade or gain;
  - (c) a laundry in which 2 or more persons (whether the occupier or not) are engaged, or in which mechanical power is used, and in which laundry work is performed for hire or reward or other gain, or which is carried on as ancillary to another business;
  - (d) any boatbuilding yard, shipbuilding yard, dock, dockyard, ship-repairing yard or other place in which a boat or ship is constructed, reconstructed, repaired, fitted, refitted, finished or broken up;
  - (e) a shearing shed, woolscour or boiling-down works;
- and includes—
- (f) any place of a description referred to in paragraphs (a) to (e), although it is—
    - (i) in the open air; or
    - (ii) in a building only partly constructed or under construction;
  - (g) where the operations of a factory are carried on in 2 or more places that are adjacent, all of those places notwithstanding that any of those places are separated by any place or places not forming part of the factory in question;

but does not include any—

- (h) corrective services facility, reformatory or reformatory farm; or
- (i) industrial school.

**full bench**, of the industrial commission, see the *Industrial Relations Act 2016*, section 432.

**hardware shop** see section 16A.

**independent retail shop** means a shop prescribed by section 6 to be an independent retail shop.

**industrial commission order** means an order made by the industrial commission under part 5, and includes an order made under the *Industrial Conciliation and Arbitration Act 1961* that continues to have effect for the purposes of this Act.

**industrial inspector** or **inspector** means an inspector under the *Industrial Relations Act 2016*.

**industrial organisation** means a body registered as an industrial organisation, or a body whose registration was continued or preserved, under the *Industrial Relations Act 2016*.

**industrial registrar** means the person who is, for the time being, the industrial registrar within the meaning of the *Industrial Relations Act 2016*.

**manufacturing process** means any handicraft or process in or incidental to making, assembling, altering, repairing, renovating, preparing, ornamenting, finishing, cleaning, washing or adapting goods or any part thereof, for sale, trade or gain, or as ancillary to any business.

**market** means any place where persons occupy or have the use of stalls at which goods are sold, by retail.

**non-exempt shop** means a shop other than—

- (a) an exempt shop; or
- (b) an office; or
- (c) a stall.

**occupier** means, in relation to a factory, shop or other place—

- (a) a person in actual occupation of the factory, shop or place;
- (b) a person who employs another person in, or in connection with, the business conducted in the factory, shop or place;
- (c) a principal, agent, manager, supervisor or other person acting, or apparently acting, in the general management or control of the business conducted in the factory, shop or place.

**office** means a place where any person is employed, directly or indirectly—

- (a) to perform work of a clerical nature; or
- (b) to perform, or to assist in the performance of, work of a professional nature.

**open**, for a shop, means the shop is not closed.

**opening time** means, in relation to a shop, the time at which the shop may, as permitted by an industrial commission order relating to trading hours or by part 4, be lawfully opened to the public for business on any day.

**place** means any land, water, building, structure, vehicle, vessel, pontoon, carriage or aircraft, and includes any part thereof.

**place of public amusement** means a place, or part of a place, used or intended to be used—

- (a) as a cinema, theatre, dance hall or music hall; or
- (b) for a circus; or
- (c) for sporting entertainment; or
- (d) for any other public amusement or entertainment;

whether or not a charge is, or is to be, made for admission.

**president** means the president of the industrial commission under the *Industrial Relations Act 2016*.

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**records** means any collection of data in whatever form it is held, including on film, disc, tape, perforated roll or other device in which visual representations or sounds are embodied so as to be capable of reproduction therefrom, with or without the aid of another process or instrument.

**sell** includes—

- (a) offer or attempt to sell; or
- (b) supply or receive for sale; or
- (c) have in possession for sale; or
- (d) exhibit or expose for sale; or
- (e) send, forward or deliver for or on sale; or
- (f) cause or permit to be sold, offered for sale, exhibited or exposed for sale or sent, forwarded or delivered for or on sale; or
- (g) have in possession, exhibit or expose for any purpose of advertisement, trade or gain.

**shop** means—

- (a) any place, pack or storage in or from which goods are sold, by retail or wholesale;
- (b) any place, pack or storage in or from which goods ordinarily sold in shops are delivered or disposed of, or any document or thing evidencing title to such goods is delivered in accordance with any agreement, arrangement, condition, scheme, device or contrivance whereby property in such goods passes from any person to another;
- (c) any place occupied or used by a hairdresser, beautician or barber;
- (d) any office;
- (e) any place used for a purpose declared by regulation for the purposes of this definition;

but does not include the sample room of a commercial traveller.

***south-east Queensland area*** see section 16A.

***stall*** means—

- (a) any barrow, stand, table, platform or other structure at a market; or
- (b) any vehicle, vessel, pontoon, carriage or aircraft at a market; or
- (c) any space at a market;

on or in which are goods for selling at the market.

***tourist area*** see section 16A.

***vice-president*** means the vice-president of the industrial commission under the *Industrial Relations Act 2016*.