



**CHAMBER OF COMMERCE AND INDUSTRY
QUEENSLAND SUBMISSION**

▼ *Trading (Allowable Hours) Amendment Bill 2017*

March 2017

Overview

1. The Chamber of Commerce and Industry Queensland (CCIQ) welcomes the opportunity to provide a submission to the Finance and Administration Committee on the *Trading (Allowable Hours) Amendment Bill 2017*.
2. At the outset, the Chamber wishes to acknowledge the work of the Trading Hours Review Reference Group, chaired by Mr John Mickel, in delivering a *Review of Queensland's Trading (Allowable Hours) Act 1990*.
3. CCIQ was pleased to be appointed a member of Trading Hours Review Reference Group to examine and report on the trading hours' framework for the regulation of trading hours in Queensland and provide advice and recommendations on alternative models.
4. CCIQ notes the objectives of the Bill are to amend the *Trading (Allowable Hours) Act 1990* to reduce restrictions on trading hours in Queensland, and acknowledge the key reforms proposed in the Bill.
5. CCIQ is encouraged by the prospect of jobs created by retail trading hours' reform. A simplification of the previous system of complex boundaries will be beneficial in the long-term.
6. The proposed reforms as contained in the Bill will remove the anomaly of many different opening and closing times for different retailers in the same locale.
7. Further, CCIQ analysis of South-East Queensland harmonisation will no doubt deliver a economic benefit and increase job opportunities across Gold Coast, Logan, Brisbane, Moreton Bay and the Sunshine Coast.
8. Nevertheless, despite the positives to reform in this space, **CCIQ remains concerned about the impact of the majors' market dominance over small businesses** because of the proposed reforms as contained in the Bill currently being considered by the Committee.
9. Queensland's 414,000 small businesses are concerned about the monopoly of major market players and their dominance of the home hardware market.
10. Throughout the consultation process CCIQ, alongside Master Grocers Australia (MGA), strongly opposed full deregulation of trading hours as evidence suggests it remains a much-needed tool to support small business competitiveness.
11. Queensland's shop trading laws were designed to protect small business and assist them when competing against major retailers.
12. Overall, CCIQ believes the reforms as contained in the Bill could have been more carefully targeted to help ease the compliance burden and reduce regulatory inconsistencies, but ensure the objectives of the legislation are current and reflect the need to support small business competitiveness.
13. We welcome the Government's commitment to ensure full deregulation of Queensland's shop trading hours does not take, however believe more could have been done to ensure the completeness of smaller retailers.

Market Dominance

14. Significant changes will be required to rectify the imbalance in market dominance of the national chains in Queensland and avoid the widespread devaluation of independent community retailers across the State.
15. While the current legislative framework and previous decisions of the QIRC have significantly harmed the independent retail sector and provided the National Chains with

the unfettered capacity to harm the retail industry, a number of measures can be taken to ensure the independent retail sector can remain vibrant across the state.

16. These changes include:
 - Amendments to the Liquor Act to allow independent retailers to participate in the packaged liquor market;
 - A five year moratorium on the extension of trading hours for non-exempt stores' trading hours;
 - Altering the definition of a non-exempt shop and combining the newly defined independent retail shops with and exempt shops; and
 - Only allowing government and not the QIRC to alter retail trading hours across the state.
17. Such changes will reinvigorate business confidence, create incentives for further investment, drive innovation, employment growth and inspire independent retailers to compete on a level playing field.

Support for independent businesses

18. While small businesses may see the current changes as a win for the national retailers, there are many ways in which they believe Government could equally assist the smaller, independent retailers moving forward.

Liquor Licensing

19. In a previous submission on Shop Trading Hours, MGA and CCIQ have raised the subject of the legislative constraints that exist in the Queensland which prevent independent supermarkets from participating in the liquor industry.
20. In Queensland unlike other states, independent retail stores are excluded from acquiring a liquor license, many stores are highly reliant on sales that they make when non-exempt stores are closed due to current trading hours regulations.
21. Countless stores experience a peak in trade later in the day and this can form a significant part of their sales. In regional areas, stores often turn a profit only as a result of the opportunity to trade on Sunday when non-exempt stores are required to remain closed.
22. In several other states, independent stores have the option of mitigating or overcoming such losses through the sale of liquor however this option remains unavailable in Queensland.
23. Based on the dominance of Coles and Woolworths liquor outlets there is conclusive evidence that the liquor licensing laws in Queensland are currently discriminatory and anti-competitive and are a distinct barrier to the entry of independent supermarket competitors to the packaged liquor sales market.
24. The rules protect larger businesses which have been able to establish themselves as the main retail distributors of packaged liquor in Queensland and who are often heard promoting the deregulation of trading hours while stringently opposing any further liberalisation of liquor licensing laws.
25. CCIQ urge the Queensland Government to amend the legislation so as to open up a new opportunity for independent supermarkets to participate in the liquor industry and the

importance of such a development is now heightened with the further erosion of trading hours regulations that have previously balanced competing grocery market interests.

Business Impact Statement

26. In light of the recent changes by State Government to the way businesses operate, CCIQ strongly recommends the process of undertaking a Business Impact Statement (BIS) to be attached to cabinet-elevated legislation.
27. A BIS will provide a comprehensive statement that includes all of the direct and indirect consequences of new or changed legislations so that Parliament and the public can be made fully aware of how it may impact on the State economy.
28. This process will provide greater balance between government and industry on how to shape the operating environment for small business moving forward.

Retail Shop Lease

29. Queensland's retail industry, which employs over 250,000 people reflecting 11 per cent of state employment, will see increased competition with the arrival of more international retail brands across 2017 and beyond, which includes giant e-commerce company Amazon. It is certain that the next twelve months will be an interesting period for many retailers.
30. The State's brick-and-mortar retailers, particularly small businesses, will require greater flexibility, a more suitable operating environment and less red tape to move forward with more certainty.
31. Queensland has the opportunity to improve fairness in the marketplace and create a more competitive operating environment for businesses, by implementing genuine reform to our Retail Shop Leases Act 1994 (QLD) similar to that undertaken in NSW in late 2016.
32. Led by the Minister for Small Business, a Bill was passed by the NSW Parliament incorporating several significant changes were made to benefit the retail industry in NSW. Some of the more significant changes implemented in NSW include:
 - **No minimum term** | the requirement for a minimum term of 5 years will be removed.
 - **Undisclosed outgoings** | tenants will not be liable to pay outgoings that were not disclosed in the disclosure statement.
 - **Exclusion from turnover rent** | revenue from online transactions will be excluded from turnover rent payable by tenants except where the goods or services are delivered or provided from the retail shop or where the transaction takes place while the customer is at the retail shop. Tenants will not be required to disclose information about online transactions to landlords except in those circumstances.
 - **Right to compensation** | tenants who terminate in the first 6 months of the lease term because the landlord failed to give a disclosure statement or the disclosure statement was defective will be entitled to recover compensation from landlords for reasonable costs incurred in entering into the lease including fitout costs.

- **Excluded uses** | leases of premises used only for certain uses will be excluded from the operation of the Act including ATMs, vending machines, communication towers, public telephones, children's ride machines, signage displays, internet booths, private post boxes and certain storage uses.
 - **Registration and return of documents** | retail leases for a term of more than 3 years must be registered by the landlord and landlords will be obliged to provide a signed lease to tenants within 3 months of it being returned to them (subject to certain permitted delays e.g. mortgagee consent).
 - **Return of bank guarantees** | landlords will be required to return any bank guarantee within 2 months after the tenant completes performance of its obligations under the lease.
 - **Demolition** | clarification will be included that:
 - the demolition provisions under the Act apply if only part of the building is proposed to be demolished; and
 - termination on the grounds of proposed demolition is only permissible when demolition requires vacant possession of the shop.
 - **Mortgagee consent fees** | landlords will not be entitled to recover mortgagee consent fees from tenants.
 - **Increased jurisdiction of Tribunal** | the monetary limit on the jurisdiction of the Civil and Administrative Tribunal will be increased from \$400,000 to \$750,000 resulting in a greater number of claims that may be heard by the Tribunal.
33. While these are seemingly significant changes to the Act, those in the industry would see these more common sense amendments which address several issues that regularly come up during lease negotiations or centre redevelopment.
34. Queensland should look to adopt some of these changes to assist our small, independent retailers and protect themselves from predatory landlord practices.

Further enquiries

35. We thank the Committee for the opportunity to provide comment and welcome any feedback you may have. Please contact Kate Whittle, General Manager - Advocacy, at kwhittle@cciq.com.au for matters relating to this submission.