

TRADING (ALLOWABLE HOURS) AND OTHER LEGISLATION AMENDMENT BILL 2022

Submission to the Education, Employment and Training Committee

June 2022

Introduction

The Chamber of Commerce and Industry Queensland ('CCIQ') welcomes the opportunity to make a submission to the *Trading (Allowable Hours) and Other Legislation Amendment Bill 2022* (Qld). CCIQ acknowledges the importance of this piece of legislation and how changes to this piece of legislation will affect businesses throughout Queensland.

CCIQ is Queensland's peak industry representative organisation for Queensland businesses. We represent over 460,000 Queensland businesses, of which 99.8% are small or medium enterprises (SMEs) employing 66% of Queenslanders working in the private sector.¹ CCIQ works with 114 regional chambers across Queensland, including through the CCIQ Policy Advisory Board and Regional Policy Committees, to develop and advocate for policies that are in the best interests of Queensland businesses, economy, and community.

Queensland has complicated regulations around retail shop trading hours. CCIQ has long advocated on behalf of Queensland businesses for competitive and fair retail trading hours. Often the argument put forward is one of small business versus large business, whereas CCIQ advocates that **the focus should be on the overall compliance burden of the regulation on the economy and business and the extent to which growth is supported or constrained.**

CCIQ's October 2021 submission to the inquiry into the operation of the *Trading (Allowable Hours) Act 1990* assessed the impact of the 2017 reforms as well as the effects of regulated trading hours on the Queensland economy.

Consultation with business stakeholders across Queensland on this topic validated that:

1. Trading hour restrictions limit the attractiveness of the regions to tourists
2. Large retailers opening attracts customer foot traffic and contribute greatly to employment opportunities
3. All businesses should be able to decide when and for how long they wish to open so long as employees are freely willing to work
4. The legislation in its current form is far too complex and is not competitive

In the 8 months since CCIQ's last submission, the environment Queensland businesses are operating in has changed although businesses are still navigating lasting impacts of the pandemic. While lockdowns have ceased and interstate borders have reopened, businesses are still facing a series of ongoing challenges: international tourism has not started to recover, labour and skills shortages persist, and business operating costs continue to rise. Business and consumer confidence has been challenged as a result of the uncertain and challenging operating conditions.

¹ Australian Bureau of Statistics, August 2021, *Counts of Australian Businesses, including Entries and Exits*.
www.abs.gov.au/statistics/economy/business-indicators/counts-australian-businesses-including-entries-and-exits/latest-release

CCIQ Response to Recommendations

Recommendation 1: s5 – Applications made for relaxations (special events)

The committee recommends the Act be amended to refine the process for consideration of ‘special event’ applications by the Queensland Industrial Relations Commission, to ensure the requirement under section 5(1)(c) of the Trading (Allowable Hours) Act 1990 that an event declared a ‘special event’ is, in fact, ‘a unique or infrequent event of local, State or national significance’. The list of considerations in section 5(3)(a) of the Act should be expanded to include the following additional considerations the Commission is required to examine when deciding whether to declare an event to be a ‘special event’:

- *additional factors which indicate the significance of the event, such as attendance numbers, size of the event, media coverage, contribution to Queensland’s national and international reputation, and its unique or infrequent nature,*
- *whether there is a necessity for non-exempt shops to trade as exempt shops during the period of the special event.*

CCIQ does not support recommendation 1.

Several chambers and businesses consulted in 2021 on this topic found that allowing for applications to be made during special events was very important for businesses in the area. By allowing **greater flexibility to trade during events**, businesses were able to open their doors when they chose and capitalise on increased economic activity. Expanding the list of factors and considerations that the industrial commission is required to examine to declare an event significant **creates additional barriers for applications to be successful**.

Recommendation 2: s16D – Shops other than hardware shops and shops selling motor vehicles or caravans

The committee recommends the categories for non-exempt shops core trading hours (which are defined by their location, under section 16D) be reduced to 4 categories:

- *South-east Queensland area (unchanged)*
- *Tourist area (amended to include the Mossman and Port Douglas Tourist Area)*
- *Regional area (renaming the category ‘Schedule 1AB areas’)*
- *Other area (combining ‘Seaside resorts’ as defined in the 2017 Trading Hours Order, and ‘Any other area’, with the core trading hours for this new category being as currently prescribed for ‘Seaside resorts’).*

CCIQ supports recommendation 2.

There is support from business to improve regulation to achieve **greater simplicity and consistency**.

This could further be achieved **by simplifying retail trading regulation areas** and consolidating to a single set of trading hours across weekdays, Saturdays, Sundays, and public holidays. Non-exempt shops are the most heavily regulated with complex legislation dictating opening and closing hours depending on the area and type of good being sold for opening hours during weekdays, Saturday, Sunday, and

Public Holidays. At times, these hours will differ by only a few hours (area-to-area) and may also stop non-exempt businesses from opening on Sundays.

Several chambers and businesses consulted in 2021 on this topic discussed irritation in trading hour discrepancies along boundaries of differing areas. This has improved a great deal as the number of areas has shrunk significantly since 2016, however businesses are still experiencing difficulties. For example, shops on the side of a road may be considered a ‘tourist area’ and able to trade on a Sunday, whilst a shop on the other side may be categorised as ‘all other areas’ and not be able to open. This results in all foot traffic being diverted to areas that can open and creates market opportunities for shops nearby to trade.

Recommendation 3: s16E and s16EA – Trading hours for industry specific categories

The committee recommends that the trading hours for the industry specific categories under section 16E – ‘Hardware shops’ and section 16EA – ‘Shops selling motor vehicles or caravans’ be retained in the Trading (Allowable Hours) Act 1990 without amendment.

CCIQ supports recommendation 3.

Recommendation 4: s6 – Independent retail shops

The committee recommends that the definitional criteria for independent retail shop at section 6(1)² of the Trading (Allowable Hours) Act 1990 be retained.

CCIQ does not support recommendation 4.

CCIQ propose that the current divisions between stores are simplified so that there are only two classes of stores, namely exempt stores and non-exempt stores.

Defining independent retail shops by their number of employees is not fit for purpose and limits the growth potential of independent retail stores. A new framework should be pursued that meets employment needs within the sector and does not categorise independent retailers as non-exempt simply for having a certain number of employees.

² **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.

Recommendation 5. s36B – Protection for employees—extended hours under Trading (Allowable Hours) Amendment Act 2017

The committee recommends that the Trading (Allowable Hours) Act 1990 be amended to remove section 36B(2), so that section 36B applies as a condition of any extension of retail trading hours, irrespective of any workplace agreement or industrial award.

CCIQ supports recommendation 5, although argues that section 36B should be removed in its entirety as the *Fair Work Act 2009* provides sufficient protection for employees³.

Under the *Fair Work Act's* (FW Act's) National Employment Standards (NES), an employer can request employees to work reasonable overtime hours paid at the normal rate. However, the employee has a right to refuse to work the additional hours if they are unreasonable.

See *Fair Work Act 2009*:

- s.62 *Maximum weekly hours*
- s145A *Consultation about changes to rosters or hours of work*
- s15A *Meaning of casual employee*

Recommendation 6: Powers of the Queensland Industrial Relations Commission

The committee recommends that the Trading (Allowable Hours) Act 1990 be amended to clarify that:

- *the Queensland Industrial Relations Commission has the power to make an order about voluntary work in accordance with section 36B of the Act, and*
- *a declaration of a 'special event' by the Queensland Industrial Relations Commission must include a condition about voluntary work which reflects that section 36B of the Act will apply to all employees of non-exempt shops covered by the declaration.*

CCIQ does not support recommendation 6, and argues that section 36B should be removed in its entirety as the *Fair Work Act 2009* provides sufficient direction.

As per CCIQ's response to recommendation 5, CCIQ does not support recommendation 6 and instead recommends that the *Trading (Allowable Hours) Act 1990* be amended to remove section 36B as the current federal legislation already provides the necessary direction.

³ **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.
- (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.

Recommendation 7: s21 – Trading hours orders on non-exempt shops

The committee recommends that section 21 (Orders concerning non-exempt shops) of the Trading (Allowable Hours) Act 1990 be amended to remove sections 21(3)(a) and 21(3)(c)(i) to prevent the situation where applications are made to the Queensland Industrial Relations Commission to make orders to vary core trading hours from the hours prescribed in the Act, once the moratorium has ended.

CCIQ does not support recommendation 7.

Under the current economic pressures largely prompted by the impacts of the COVID-19 pandemic, supply chain constraints, and high operating costs, **businesses should be afforded flexibility** to change trading hours. A lack of flexibility has been seen to be stifling to the liveability of communities and to exacerbate difficulties with job creation and economic prosperity.

Recommendation 8: s59 – Moratorium on trading hours orders and restriction on making applications

The committee recommends that the Trading (Allowable Hours) Act 1990 be amended to extend the section 59 moratorium for an additional 12 months to 31 August 2023.

CCIQ does not support recommendation 8.

After the 2016 review, a five-year moratorium was placed on accepting applications to extend the trading hours of non-exempt stores. Core trading hours were extended depending on the area the shop operated in. The moratorium was well received initially, as a means to allow for a benchmark which could measure the impacts and benefits of the already extended hours for non-exempt stores.

Under the current pressures largely prompted by the impacts of the COVID-19 pandemic, many regions consulted on this issue have stated that the moratorium has at times been a barrier. Not having the flexibility to change the hours of stores was stifling to the liveability of communities and has been seen to exacerbate difficulties with job creation and economic prosperity.

Recommendation 9: s56 – Extension of the Mossman and Port Douglas Tourist Area moratorium

The committee recommends that:

- *the section 56 moratorium for the Mossman and Port Douglas Tourist Area under the Trading (Allowable Hours) Act 1990 be extended to 31 August 2023*
- *section 16A of the Act be amended to add the ‘Mossman and Port Douglas Tourist Area’ to the section 16A definition of ‘tourist area’ in (a) and to remove from the definition ‘(b) the town of Port Douglas’, and for these changes to be effective from 31 August 2023.*

CCIQ supports recommendation 9.

The Port Douglas and Mossman areas, under s56 of the Act, had all retail stores in the tourist area treated as being in the exempt (unrestricted trading) category for the past five years. Port Douglas and Mossman’s economy has been primarily driven by tourism due to its proximity to the Wet Tropics World Heritage Area, National Park, and the Great Barrier Reef World Heritage Area.

Further Enquiries

CCIQ would like to thank the Education, Employment and Training Committee for the opportunity to make a submission on the inquiry into the operation of the *Trading (Allowable Hours) and Other Legislation Amendment Bill 2022*.

If there are any questions in relation to the submission, please contact the CCIQ Policy and Advocacy team via cciqadvocacy@cciq.com.au.