



EDUCATION, EMPLOYMENT AND TRAINING COMMITTEE

Members present:

Ms KE Richards MP—Chair

Mr MA Boothman MP

Mr JP Lister MP (virtual)

Mr BL O'Rourke MP (virtual)

Mr JA Sullivan MP

Staff present:

Mr R Hansen—Committee Secretary

Ms R Duncan—Assistant Committee Secretary

PUBLIC BRIEFING—INQUIRY INTO THE TRADING (ALLOWABLE HOURS) AND OTHER LEGISLATION AMENDMENT BILL 2022

TRANSCRIPT OF PROCEEDINGS

MONDAY, 6 JUNE 2022

Brisbane

MONDAY, 6 JUNE 2022

The committee met at 9.30 am.

CHAIR: Good morning. I declare open this public briefing for the committee's inquiry into the Trading (Allowable Hours) and Other Legislation Amendment Bill 2022. My name is Kim Richards. I am the member for Redlands and chair of the Education, Employment and Training Committee.

I would like to acknowledge the traditional owners of the land upon which we meet and pay my respects to elders past, present and emerging. We are very fortunate in this country to live with two of the world's oldest continuous living cultures in Aboriginal and Torres Strait Islander people.

With me here today from the committee are Mr Mark Boothman, the member for Theodore, and Mr Jimmy Sullivan, the member for Stafford. Via teleconference we have the deputy chair, Mr James Lister, the member for Southern Downs; and Mr Barry O'Rourke, the member for Rockhampton. Mr Nick Dametto, the member for Hinchinbrook, is an apology for today.

On Wednesday, 25 May 2022 the Hon. Grace Grace MP, Minister for Education, Minister for Industrial Relations and Minister for Racing, introduced the Trading (Allowable Hours) and Other Legislation Amendment Bill 2022 into the Queensland parliament. The bill was referred to the Education, Employment and Training Committee for detailed consideration and report. The briefing today by the Department of Education is to explain the objects and key provisions of the bill.

The committee's proceedings today are proceedings of the Queensland parliament and are subject to the parliament's standing orders. Witnesses will not be required to give evidence under oath, but I remind everyone that intentionally misleading the committee is a serious offence.

MOXHAM, Mr Rhett, Acting Director, Industrial Relations Strategic Policy, Office of Industrial Relations, Department of Education

NICOLSON, Mr Stephen, Principal Adviser, Legislative Services Unit, Department of Education

SHOSTAKOWSKI, Mr Tony, Acting Executive Director, Industrial Relations, Office of Industrial Relations, Department of Education

CHAIR: Good morning. Would you like to make an opening statement before the committee has some questions for you?

Mr Schostakowski: Thank you, Chair. I would firstly like to thank the committee for the opportunity to brief you all on the Trading (Allowable Hours) and Other Legislation Amendment Bill 2022. My name is Tony Schostakowski. I am the Acting Executive Director, Industrial Relations in the Office of Industrial Relations. Joining me to assist with the briefing on the bill this morning, also from the Office of Industrial Relations, is Mr Rhett Moxham, Director of Industrial Relations, Strategic Policy. Also joining us this morning is Mr Stephen Nicolson from the Department of Education. Mr Nicolson will speak to the education portfolio amendments included in the bill.

Last week the Office of Industrial Relations and the Department of Education provided detailed briefing material to the committee on the amendments in the bill. We trust this has been of assistance to the committee. I am conscious of the time, so I will get into further details in the opening statement on the bill and its components and then allow time for any questions. Certainly we can try to help.

Firstly, the primary purpose of the bill is to implement the recommendations of this committee following the recent completion of your inquiry into the operation of the Trading (Allowable Hours) Act 1990. This review was undertaken as a consequence of the requirement in the Trading (Allowable Hours) Act at section 46B. Again, I would like to thank the committee for its assistance with this review. The insights of the committee have been invaluable in understanding the benefits of trading hours reforms made by the Queensland government in 2017 and to understand the views of our stakeholders throughout Queensland.

I note that one of the key findings of the inquiry is that the Trading (Allowable Hours) Act is operating well and the committee did not identify the need for any wholesale changes or significant deregulation of Queensland's trading hours arrangements. However, the committee did identify Brisbane

nine key areas where further improvements could be made to reduce the regulatory burden and fine-tune trading hours arrangements. The Queensland government agreed with all nine of the committee's recommendations, with its response to the parliament tabled by the Minister for Education, Minister for Industrial Relations and Minister for Racing on 14 April 2022. This bill actions the government's commitment to ensuring the committee's recommendations are implemented into Queensland's trading hours framework.

The bill, if passed, will amend the Trading (Allowable Hours) Act to further simplify core trading hours for non-exempt shops as recommended by this committee. Those particular amendments will reduce the number of categories of core trading hours for non-exempt shops from five to four. This has been done by combining the former Seaside Resort and any other area categories as recommended by the committee. This amendment also ensures that locations within these areas can now trade on public holidays excepting for closed days. The bill also recategorises the Mossman and Port Douglas tourist area to benefit from the same trading hours as other tourist areas. The bill, however, includes a 12-month moratorium on this change. This was recommended by the committee. Until this moratorium ends on 31 August 2023 there will be no trading hours restrictions for any shops in the Mossman and Port Douglas tourist area.

I would like to address an important change in presentation of the trading area categories in the bill which was not specifically recommended but is considered to best address the need for simplicity and clarity identified by the committee. The bill has renamed the trading area categories for non-exempt shops and hardware stores. For example, tourist area categories will now be known as type 1 trading areas. Whilst stakeholders will need time to adjust to the renamed categories, the change is considered beneficial in the longer term, particularly as the needs of consumers or the community change over time in a location. It will also provide more flexibility for the Queensland Industrial Relations Commission to recognise these changes within a location than what is provided in the current framework. It is important to note that the bill does not make any changes to core trading hours or locations already prescribed in the act or which have been recommended by the committee. Shops will continue to open and close when businesses and their customers already expect them to.

In addition to these changes, the bill also actions the committee's recommendations regarding clarifying the role of the Queensland Industrial Relations Commission. The first of these amendments relates to the QIRC declaring special events. The bill includes the committee's recommended additional considerations and a clear and specific list of the matters the QIRC must have regard to when deciding applications for special events. There is also a requirement that all special event declarations made by the QIRC must explicitly state that voluntary work protections apply to employees. This will ensure employees are able to freely elect to work or not work extended hours as a result of these declarations.

The bill also clarifies the QIRC's powers to make orders about non-exempt shops. Specifically, the bill ensures that core trading hours prescribed only by the legislation and the QIRC can no longer make orders which vary trading hours. This will ensure ongoing stability and certainty for stakeholders. The QIRC will retain its important role in making trading area orders. The amendments in the bill empower the QIRC to make orders which can: shift a trading area to a more beneficial trading area category if a need is identified; change the boundaries of an already defined trading area, like those set out in the QIRC's 2017 trading hours order; and identify and declare a new trading area.

Consistent with the committee's recommendation, the bill ensures there is a 12-month moratorium on the QIRC making trading area orders. This will allow sufficient time for the QIRC and stakeholders to adjust to the amendments in the bill. Applications and orders will be able to be made once the moratorium ends on 31 August 2023.

The Office of Industrial Relations also commits to ensuring that a list of the new trading area types and any orders made by the QIRC to add or change areas is maintained. This will be available on the government website and will assist stakeholders and provide them with a quick and easy access point to check on their trading hours requirements.

The Office of Industrial Relations also notes the emphasis the committee placed on ensuring that employees who work during extended trading hours do so voluntarily. The bill has introduced a new voluntary work protection for employees. This protection is an offence similar to those already in the Trading (Allowable Hours) Act and prohibits employers from requiring their employees to work extended hours unless they freely choose to do so. Penalties of 16 penalty units for a first offence and 20 penalty units thereafter apply if the requirement is contravened. This protection also confirms that an employee does not freely choose to work extended hours if they are coerced, harassed, Brisbane

threatened or intimidated by or for their employer or if they are simply rostered on or required to work by an industrial instrument. Due to complexities in the drafting process, it was necessary to include a new protection rather than amend the existing protection. This will ensure complete coverage for all cohorts of employees over time.

The committee's recommendation to ensure voluntary work protections apply irrespective of any industrial instrument will also be enacted by the bill. References to this exemption in the three existing events provisions have now been omitted.

I thank the committee for the opportunity to brief further on the bill. I will now hand over to my colleague Mr Nicolson to speak on the education portfolio amendments.

Mr Nicolson: Firstly, I would like to acknowledge the traditional owners and custodians of the land on which we meet today and pay my respects to elders past, present and emerging. I would also like to thank the committee for the opportunity to speak to the amendments to the Education (Queensland College of Teachers) Act 2005 and the Education (General Provisions) Act 2006. These amendments in the bill give permanent effect to provisions that were temporarily in place for two years during the COVID-19 health emergency, through an extraordinary regulation, the Education Legislation (COVID-19 Emergency Response) Regulation 2020, which was made under the COVID-19 Emergency Response Act 2020.

The extraordinary regulation expired on 30 April this year. The amendments allow for investigation means by the Queensland College of Teachers, conducted under the Education (Queensland College of Teachers) Act, and particular P&C meetings, including the annual general meeting, required by the Education (General Provisions) Regulation 2017, to be conducted via communication technology, as they were during the public health emergency.

Prior to the expiration of the extraordinary regulation, the Department of Education consulted with interested stakeholders as to whether there was value in implementing elements of the extraordinary regulation on a permanent basis. These two amendments were identified as having value on an ongoing basis as Queenslanders increasingly use technology for communication purposes. Also in such a large state, where distance, natural disasters or other events such as health emergencies can impact on a person's ability to attend a meeting, the flexibility to use communication technology is very valuable as it allows the colleges and P&Cs to continue to meet their statutory requirements under those circumstances.

The purpose of the amended provisions will remain unchanged. Section 181 of the Education (Queensland College of Teachers) Act enables an investigator to require a person to attend a meeting to answer questions or produce a document as part of an investigation under that act, and sections 44 and 45 of the Education (General Provisions) Regulation require P&Cs to have an annual general meeting as well as a certain number of other general meetings. The only changes now are that there will be an ability for persons to attend these meetings or produce a stated thing via communication technology, as well as face to face.

I thank you for the opportunity to brief the committee on the education amendments in the bill. I will be happy to assist by taking questions on those amendments.

CHAIR: Thank you very much, Mr Nicolson. Can I say: it has been very useful to do P&C meetings via Zoom. I think many MPs would have found that quite useful. Deputy Chair, would you like to ask the first question?

Mr LISTER: Thank you very much. I am sure that we are all most grateful that the department officials have come to brief us today. I have a question regarding the amendments under clause 9 of the bill which do away with the necessity to advertise alterations to the allowable hours in local publications and so forth. Could you please give us a bit of background on the necessity for that and what, if any, feedback you have had regarding stakeholders in that connection?

Mr Schostakowski: I presume that question relates to the previous requirement for the commission to advertise applications in the local media. I think that requirement, through drafting processes being updated now for more electronic process through the commission to advertise, notify stakeholders and the relevant parties of any applications for hearing and be determined through that more up-to-date method. I know that the commission does notify parties of directions orders and hearings through specific notification to the parties directly, which includes local government authorities, the relevant organisations, the employer and employee associations and any other interested parties.

Mr LISTER: Thank you for that. I asked that question because, as an example, in my electorate of the Southern Downs we have a fairly vibrant local newspaper scene. First, I suppose they may miss the revenue from having the opportunity to take ads from the department. Also, I think it would be fair to say that some of the small businesses that might have an interest in this may get that information from local publications as well.

Mr Schostakowski: I am happy to take that point and have the department look at that a little further, just to see if we can clarify further. There is the current requirement in the act: 'A copy of the notice must be published on the QIRC website and in any other way the industrial commission considers appropriate'. That is in the current act and it is also in amended section 23, which is the powers and procedures relevant to proceedings. It does actually allow, as part of the powers of the commission, for a copy of the notice to be published on the QIRC website and in any other way that the industrial commission considers appropriate. I think we have that covered there.

Mr LISTER: Thank you for clarifying that.

Mr BOOTHMAN: My question relates to section 16AA of the act. You have included the Townsville tourism area. What changes will be made to the Townsville tourism area?

Mr Schostakowski: Section 16AA specifically references the areas that are already identified in the 2017 trading hours order. There will be no changes to the Townsville tourist area—no changes. They will actually remain in the existing category they are in. There will be no changes to their trading hours. That section is really just identifying all the tourist areas that are named in the 2017 order. That is all that section is doing.

Mr BOOTHMAN: Obviously during the committee process we have heard from some business owners—IGAs et cetera—expressing some concerns about competition from the bigger businesses. Will this have some direct ramifications for them in that they will have continued competition on those trading days such as Sunday?

Mr Schostakowski: That is right. The only change in the bill is that those areas that do not currently have Sunday and public holiday trading—and those are areas like Mount Isa, Longreach, Kingaroy; there are about 21 towns—will have public holiday trading, except for the closed days, but they will not have Sunday trading. To answer your question, the IGAs and the independent retail shops are obviously not restricted in their trading hours if they are predominantly food and grocery. The core trading hours changes have only been with that type 4 arrangement, where those regional towns will pick up public holiday trading excluding closed days.

Mr BOOTHMAN: I notice Pacific Fair is not included.

Mr Schostakowski: Pacific Fair was not identified in the 2017 trading hours order. It is not named there because it is not named in the 2017 trading hours order. However, when you get over into the actual trading hours arrangements it is named in the description of the area, so it is picked up there. It is not named in 16AA because it was not defined in the previous 2017 trading hours order.

Mr BOOTHMAN: When it comes to businesses on, say, the Gold Coast or in Townsville, are any maps available to show exactly where those tourism areas are? That could be a way to remove some confusion.

Mr Schostakowski: That is a good question. The previous order did have descriptions of the tourist areas and any area that was identified as part of an order. It gets quite confusing when you read through all the descriptions. To answer your question, there is no current map that shows that. However, the Office of Industrial Relations, obviously through the committee recommendations, has committed to making sure that any changes are made known on the government department website. A map is obviously a very good way of showing people the coverage of their particular trading hours area.

CHAIR: I think the orders document lists, street by street, the boundaries of those particular geographical areas.

Mr Schostakowski: That is right.

CHAIR: Hopefully that is something the office can consider in terms of making it more easily digestible.

Mr BOOTHMAN: Especially if you are not too sure what side of the street you could be on.

Mr Schostakowski: Yes. I think what the bill tried to do with the type 1, 2, 3 and 4 is put in a description of what that applies to. Obviously that will be updated as time goes on, to try to make it easier for the public to work out what area is in what type and what category.

Mr BOOTHMAN: If we had a map it would make it so much easier.

Mr Schostakowski: We can certainly look at some sort of simplification of having a map when we get the website with the proposed arrangements, when the bill is passed. We can certainly look at that.

CHAIR: It is useful from an electorate point of view to have maps.

Mr Schostakowski: It makes sense.

Mr SULLIVAN: Thank you to both departments for coming along today. I will ask the officials from IR to forgive me, but we are very well versed in this area, I think it is very consistent with our previous inquiry and we are very comfortable with what you have produced, so I might direct my questions to Mr Nicolson. I have a couple of practical questions around the changes to attendance and communication for P&Cs. Is there any retrospectivity in the proposed changes in terms of any meetings that may have been held since, I think you said, 30 April this year? Is there a need for that?

Mr Nicolson: No, there is no retrospectivity. P&Cs said that this is very useful. One of the reasons we have included it in this bill is to move it through as quickly as possible. They managed prior to the pandemic without these provisions. The thought was that we would not go down the retrospectivity path; we would just try to get this passed as quickly as possible. The annual general meeting was the main reason we originally did the amendments in 2020. They need to be done by 31 March. There is a bit of a time imperative for them. We had to make these amendments quite quickly and ensure they could do that. Because the extraordinary regulation went to 30 April, they were able to use the provisions to make sure they could do that. Once this is passed they will be able to do it again.

Mr SULLIVAN: Do we need to give advice to P&Cs? I personally know there is the continued and very extensive use of either online or a mixture of communication. I assume this will also go to the issue of quorum; is that correct?

Mr Nicolson: Ultimately, the advice is that technically they cannot use it until this is passed. As we said, they should have had their annual general meeting by now anyway.

Mr SULLIVAN: P&Cs make significant contributions to our community more broadly and obviously to their specific schools, including financial decisions. Most of their constitutions require a quorum for expenditure over a certain amount, for example. That is just one example of their decision-making. Do they need to make sure they have quorum in the room?

Mr Nicolson: Yes, I would say—obviously when we did these amendments it was to remove any ambiguity. You could probably argue, and some people did argue, that maybe it would still have been okay.

Mr SULLIVAN: But it is just to make it clearer?

Mr Nicolson: This provides the clarity. Without this clarity I would suggest that they ensure there is personal presence for those, until this is passed.

Mr SULLIVAN: The explanatory notes talk about regional and people being cut off and that sort of thing, but I actually think it is far broader than that. There has been behavioural change. People are being more responsible and are staying at home if they are sick. COVID is still around and we have flu coming through so people are trying to do the right thing, plus parents are busy. I think it is across the board, in my experience, when it comes to the need for these changes. I want to make sure that, in trying to do the right thing, people do not set themselves up for future decisions to be overturned when it comes to what can often be, as I said, very significant investment. I think you mentioned it also goes to producing certain documents.

Mr Nicolson: Yes, that is with the QCT.

Mr SULLIVAN: Issues such as membership applications for P&Cs can be done electronically?

Mr Nicolson: I imagine they would, but the producing of things is related to section 181 of the QTC Act and the conducting of investigations by the college. Under section 181, the current provision says that they need to attend the meeting and at that meeting the person needs to produce particular things. Basically, we ensured they could produce those things via electronic means or post, obviously if they are not attending personally.

As for the production of things under the Education (General Provisions) Act, I do not think there is any issue with that anyway at this point. You can produce material electronically generally. We took advice around whether we actually even needed to amend the act here. We thought we might be able to amend the regulation. The committee may see that in the next few months we will possibly do a few more regulation amendments to clarify things around other particular meetings of Brisbane

the P&Cs, that they can be done with communication technology. The advice we received was that the act was the best thing to amend to remove any ambiguity around personal attendance at the general meeting and the special meetings.

Mr SULLIVAN: I hope you do not take my line of questioning as contradicting the purpose of it, because I think it is not a temporary thing anymore; it is the new way of operation. I want to make sure that our people who are the workhorses behind the scenes at a lot of our schools can get the advice they need to do the right thing.

Mr Nicolson: Absolutely. One of the reasons we included it in this bill was to get it done as quickly as possible.

CHAIR: Will there be guidance provided to P&Cs on the types of platforms they should consider using? You could be doing it via FaceTime, WhatsApp, Messenger, Zoom—there are so many platforms. I am wondering if there will be any assistance and guidance on the platforms.

Mr Nicolson: Yes. The state schools area of the Department of Education have advised us that they will provide guidance and they will work with P&Cs. Obviously, P&Cs Queensland, the representative group for P&Cs, are very keen for this. We work with them as well.

Mr SULLIVAN: They are based in the electorate of Stafford, I should say.

Mr Nicolson: One of the big things about this is that three years ago the usage of communication technology was nowhere near as broad. It just reflects a change in people's attitudes. Most people are pretty competent but the department will provide guidance on that, working with P&Cs Queensland.

CHAIR: That is good to know, because in my area the Redland City Council itself has limitations on what their councillors can use in terms of platforms. They are only allowed to use Teams as their format for any digital communication. Member for Rockhampton, do you have any questions?

Mr O'ROURKE: No, I do not.

Mr BOOTHMAN: I refer to section 36BA, where an employee has freely elected to work during extended hours. Can you explain the potential types of reporting processes if an employee is pushed to work on those extended days? Is there a way they can make a complaint to the department? How does this work?

Mr Schostakowski: The first point is that the proposed bill changes would be made clear on the OIR government website. The second point is that individual complaints can be made about any of the legislation that we administer, including trading hours. Complaints will be investigated by an inspector. The inspector is appointed under the Trading (Allowable Hours) Act and would look at things such as rostering arrangements and evidence from the employee as part of an investigation. The intent of that section is continuing on from the previous provisions in the act. We have not received any specific complaints about this recently that I know of, but definitely there is a mechanism for employees to lodge official complaints with the department. Those will be investigated according to any evidence the person provides.

Mr BOOTHMAN: How often over the years have complaints been made about forcing somebody to work those extended periods?

Mr Schostakowski: To my knowledge there have not been any complaints about that specific issue in relation to trading hours, but the provision is there as a protection. Obviously it has penalties built in. The important thing is that the protection is there for employees in case that does arise.

CHAIR: That concludes the questions for today. Thank you very much for your time. There were no questions taken on notice. Thank you to the departmental officers, Hansard reporters, the parliamentary broadcaster and our secretariat. A transcript of these proceedings will be available on the committee's inquiry webpage in due course. Finally, I remind anyone who wishes to contribute to the committee's examination of the bill that the closing date for written submissions is Monday, 13 June 2022 at 9 am. I declare this public briefing closed.

The committee adjourned at 10.02 am.