



New South Wales

Shop Trading Bill 2008

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

- (a) to de-regulate shop trading hours while restricting trading on Good Friday, Easter Sunday, Anzac Day (but only in the morning), Christmas Day and Boxing Day (*restricted trading days*),
 - (b) to enable small shops and specified other shops to trade on restricted trading days and to provide for the exemption by the Director-General of the Department of Commerce (the *Director-General*) of other shops from trading restrictions,
 - (c) to repeal the *Shops and Industries Act 1962* and to transfer provisions relating to weekend trading by banks and day baking to other Acts,
 - (d) to enact savings and transitional provisions as a consequence of the enactment of the proposed Act and to make other consequential amendments.
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Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on 1 July 2008.

Clause 3 defines certain words and expressions used in the proposed Act.

Part 2 Restricted trading days

Clause 4 requires all shops to be kept closed at all times on Good Friday, Easter Sunday, Anzac Day (before 1 pm), Christmas Day and Boxing Day. The proposed section will not apply to shops exempted from it under Part 3 of the proposed Act.

Clause 5 makes it an offence to fail to keep a shop closed in accordance with proposed section 4. It will be a defence if a shop is kept open for less than 30 minutes after the commencement of a restricted trading day for the purpose of serving a customer who was in the shop before that commencement and to whom goods were sold or offered for sale before that commencement.

Clause 6 makes it an offence to publish, or cause to be published, (by any means) an express or implied statement that a shop will be open for business at a time it is required to be kept closed under the proposed Act.

Part 3 Exemptions

Division 1 General exemptions

Clause 7 exempts shops specified in proposed Schedule 1 from the requirement to be kept closed on a restricted trading day. Businesses specified in proposed Schedule 1 include shops in bazaars, fairs and markets conducted for charitable or public fundraising purposes, book shops, chemist shops, newsagencies, recorded music shops, souvenir shops and shops ancillary to venues for playing sport or other physical recreation.

Clause 8 exempts small shops from the requirement to be kept closed on a restricted trading day. The shops exempted are essentially the same as those shops currently designated as small shops under the *Shops and Industries Act 1962*.

Clause 9 provides that the proposed Act does not apply to certain licensed premises.

Division 2 Exemptions by Director-General

Clause 10 enables the Director-General to exempt shops from a requirement to be kept closed on a restricted trading day, on application by any person or at the Director-General's discretion. Exemptions may apply to one or more days, to particular times, to a specified shop or shops or to specified areas.

Clause 11 requires an application for an exemption to be made in the manner approved by the Director-General and to be accompanied by the application fee under the proposed Act.

Clause 12 confers a right to apply to the Administrative Decisions Tribunal for a review of a decision to refuse or revoke an exemption or as to the conditions of an exemption.

Clause 13 makes all exemptions granted by the Director-General subject to the condition that, on a restricted trading day, an exempted shop must be staffed only by persons who have freely elected to work on that day, without any coercion, harassment, threat or intimidation by or on behalf of the occupier of the shop.

Clause 14 makes it an offence to fail to comply with a condition of an exemption.

Part 4 Enforcement

Clause 15 has the effect of conferring on inspectors under the proposed Act powers under Part 4 of Chapter 7 of the *Industrial Relations Act 1996*, including powers to inspect premises and require the production of records, for the purpose of investigating possible contraventions of the proposed Act.

Clause 16 provides for proceedings for offences under the proposed Act to be dealt with summarily.

Clause 17 sets out the persons who may prosecute offences under the proposed Act.

Clause 18 contains an evidentiary provision providing for circumstances when a shop will be taken not to have been closed for the purposes of proceedings for offences under the proposed Act.

Clause 19 enables the Director-General to issue evidentiary certificates as to exemptions for the purposes of proceedings for offences under the proposed Act.

Part 5 Miscellaneous

Clause 20 enables the Director-General to delegate his or her functions under the proposed Act (other than the power of delegation).

Clause 21 makes provision for the service of documents under the proposed Act.

Clause 22 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 23 is a formal provision that gives effect to the savings, transitional and other provisions set out in Schedule 2.

Clause 24 repeals the *Shops and Industries Act 1962*.

Clause 25 is a formal provision that gives effect to the amendments to the Acts set out in Schedule 3.

Clause 26 provides for the review of the proposed Act in 5 years.

Schedule 1 Exempt shops

Schedule 1 lists kinds of shops that are exempt from the requirement to close on restricted trading days.

Schedule 2 Savings, transitional and other provisions

Schedule 2 contains savings, transitional and other provisions consequent on the enactment of the proposed Act. The Schedule continues in force exemptions and approvals applying to shops, agricultural, pastoral or horticultural shows, trade exhibitions and trade fairs that, immediately before the commencement of the proposed Act, were exempt from the requirement to stay closed on restricted trading days. The Schedule also continues in force references to expressions in the *Shops and Industries Act 1962* and the *Shops and Industries Regulation 2007* for the purpose of giving effect to references in industrial instruments to types of shops under that Act or Regulation, as well as making provision with respect to a reference to the *Liquor Act 2007*.

Schedule 3 Amendment of Acts

Schedule 3.1 amends the *Banks and Bank Holidays Act 1912* to transfer provisions enabling the opening of banks on weekends to that Act from the *Shops and Industries Act 1962* (which is to be repealed by the proposed Act) and the *Shops and Industries Regulation 2007*. Existing approvals for banks will be taken to have been given under the new provisions.

Schedule 3.2 amends the *Industrial Relations Act 1996* to transfer provisions regulating day baking to that Act from the *Shops and Industries Act 1962* (which is to be repealed by the proposed Act). The transfer of the provisions does not affect the operation or meaning of the provisions by virtue of section 30A of the *Interpretation Act 1987*.

Schedule 3.3 amends the *Landlord and Tenant Act 1899* to make an amendment consequential on the enactment of the proposed Act.

Schedule 3.4 amends the *Landlord and Tenant (Amendment) Act 1948* to make an amendment consequential on the enactment of the proposed Act.