

Act No. 38, 1899.

An Act for the early closing of shops and to regulate the hours of employment in shops. EARLY CLOSING.
[22nd December, 1899.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

THE CLOSING OF SHOPS.

Shops not mentioned in Schedule One.

(a) Metropolitan and Newcastle districts.

1. (1) The closing times for all shops (except those mentioned in Schedule One) situate within the metropolitan or the Newcastle shopping district shall in every week be as follow—

on Monday and Tuesday, six o'clock ;

on Wednesday, one o'clock or six o'clock, whichever of these times is chosen by the shopkeeper in pursuance of this Act ;

on Thursday, six o'clock ;

on Friday—

(a) six o'clock where the closing time on the preceding Wednesday was one o'clock ;

(b) ten o'clock where the closing time on the preceding Wednesday was six o'clock ;

on Saturday—

(a) one o'clock where the closing time on the preceding Wednesday was six o'clock ;

(b) ten o'clock where the closing time on the preceding Wednesday was one o'clock ;

and all such shops shall close on those days not later than the hours above-mentioned, which shall be hours after the hour of noon on each day :

Provided that this subsection shall not apply in so far as it fixes the closing time before ten o'clock to the day immediately preceding Christmas or New Year's Day, or where Christmas or New Year's Day is a Monday to the next preceding Saturday.

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Option of
shopkeeper.

(2) The choice of the shopkeeper as to the closing time on the Wednesday may be made in respect of any shop occupied by him, and shall be made by sending to the Minister or to any person authorised by the Minister in that behalf a notice in the form prescribed, and affixing a copy of the notice in a conspicuous place in the shop. And until he makes such choice in the manner aforesaid the shopkeeper shall be deemed to have chosen one o'clock as the closing time for his shop on Wednesday.

When a shopkeeper has made any such choice he shall not make another choice until after the expiration of three months from the day when the former choice was made.

Any shopkeeper who, having made any such choice, fails to keep the copy of the notice affixed as hereinbefore directed shall be guilty of an offence against this Act.

(b) Country districts.

Municipality outside
Metropolitan and
Newcastle shopping
districts shall be a
country shopping
district.

2. Every municipality, outside the Metropolitan and Newcastle shopping districts, shall be a country shopping district, and the Governor may by proclamation constitute any other area a country shopping district, and shall in such proclamation define the boundaries thereof.

Closing of shops.

3. The closing times for all shops (except those mentioned in Schedule One) situate within a country shopping district shall be

on one week-day one o'clock ;

on one week-day ten o'clock ;

such days (until altered in pursuance of this Act) to be those respectively proclaimed by the Governor ; and

on the four other week-days six o'clock ;

and all such shops shall close on those days not later than the hours above-mentioned, which shall be hours after the hour of noon on each day :

Provided that this section shall not apply in so far as it fixes the closing time before ten p.m. to the day immediately preceding Christmas or New Year's Day, or, where Christmas or New Year's Day is a Monday, to the next preceding Saturday.

Memorial for
alteration of days.

4. (1) When this Act has been in force in any country shopping district for a period of not less than twelve months any ten shopkeepers of shops (not being shops mentioned in Schedule One) situate within that shopping district, may present to the Minister a memorial under their hands in the form of Schedule Two, asking that a poll be taken on the question whether any of the days appointed for such shops in pursuance of this Act should be altered to the days specified in the memorial.

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On receipt of the memorial the Minister shall notify in the Gazette and in two issues of a newspaper circulating in the district that on a day therein named (not being less than twenty-eight nor more than thirty-five days after the notification in the Gazette) a poll will be taken as to the alteration proposed.

(2) On the day so notified a poll shall be taken as prescribed ^{Poll.} by the regulations, and at such poll each shopkeeper of a shop (not being a shop mentioned in Schedule One) situate within the district shall, subject to the regulations, have one vote.

If a majority of the shopkeepers voting at the poll vote that the said days or any of them be so altered, the Minister shall so notify in the Gazette, and the closing days for such shops in the district shall be so altered accordingly.

(3) Where a poll has been taken in pursuance of this section, ^{When second poll may be taken.} no other such poll shall be taken within the period of two years from the taking of the first-mentioned poll.

Shops mentioned in Schedule One.

5. (1) The closing times for shops mentioned in Part I of Schedule ^{Shops mentioned in Part I of Schedule One.} One, and situate within any shopping district, shall be ten o'clock on Friday or Saturday, whichever of those days is chosen by the shopkeeper, and half-past seven o'clock on the other week-days. And all such shops shall close on those days not later than the hours above-mentioned.

(2) The choice of the shopkeeper as to the day on which the closing time of ten o'clock shall apply may be made in respect of any shop occupied by him, and shall be made by sending to the Minister, or to any person authorised by the Minister in that behalf, a notice in the form prescribed, and affixing a copy of the notice in a conspicuous place in the shop. And until he makes such choice in the manner aforesaid, the shopkeeper shall be deemed to have chosen Saturday as the day for closing at ten o'clock.

When a shopkeeper has made any such choice, he shall not make another choice until after the expiration of three months from the day when the former choice was made.

Any shopkeeper who, having made any such choice, fails to keep the copy of the notice affixed as hereinbefore directed shall be guilty of an offence against this Act.

6. The closing time for shops mentioned in Part II of Schedule ^{Shops mentioned in Part II of Schedule One.} One, and situate within any shopping district, shall be nine o'clock on five week-days, and eleven o'clock on Saturdays. And all such shops shall close on all week-days not later than the hour above-mentioned. The closing time for shops mentioned in Part III of Schedule One, and situated within any shopping district, shall be

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eleven o'clock on each week-day, and all such shops shall close on all week-days not later than the hour above-mentioned. The closing time for all shops mentioned in Part IV of Schedule One situate within any shopping district, shall be twelve o'clock midnight on all week-days, and all such shops shall close on all week-days not later than the hour mentioned.

General penalties.

Penalties for not closing shops.

7. If any shop situate within any shopping district is not closed and kept closed for the remainder of the day at and after the closing time fixed, chosen, or deemed to be chosen, for such day in respect of such shop by or under this Part, or if in any such shop any goods are offered for sale after the said time, the shopkeeper of the shop and any person acting or apparently acting in the management of the shop shall be guilty of an offence against this Act:

Provided that no such shopkeeper or person shall be guilty of the said offence by reason only that within one half-hour after the said closing time goods have been offered or sold to a customer who, at the said closing time, was in the shop being served or waiting to be served:

Provided also that no registered pharmacist within the meaning of the Pharmacy Act, 1897, shall be guilty of the said offence by reason only that he has, on request, supplied any drugs or patent or proprietary medicines for medicinal purposes or any surgical appliances after the said closing time.

PART II.

SHOP-ASSISTANTS AND CARTERS.

Employment of assistants in shops not mentioned in Schedule One.

8. (1) No shop assistant shall be employed in any shop (not being a shop mentioned in Schedule One) situate within any shopping district for more than one-half hour after any closing time fixed, appointed, chosen, or deemed to be chosen in pursuance of this Act for such shop:

Provided that the shopkeeper of any shop may employ any shop assistant on any twelve week-days in any half year (not being days on which the shop closes at one or ten o'clock or any public or bank holiday allowed within the district as a holiday) for a period not exceeding three hours (exclusive of the hour to be allowed for refreshment under this section) after the closing hour on the said days; but during any such period the shop shall be closed and the assistants so employed shall be allowed by the shopkeeper one hour for refreshment.

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There shall be kept by the shopkeeper a record of the extra hours worked under this section, and such record shall be exposed in some position visible and accessible to all his shop-assistants, shall bear the certificate of each such assistant as to its correctness as regards himself, and shall be produced to the inspector when demanded by him.

(2) If the shopkeeper of the shop, or any person acting or apparently acting in the management of the shop, employs any shop-assistant in breach of this section, or otherwise contravenes the provisions of this section, he shall be guilty of an offence against this Act. Penalty.

9. (1) No shop-assistant shall be employed in any shop mentioned in Schedule One situate within any shopping district after the closing time fixed, chosen, or deemed to be chosen, in pursuance of this Act for such shop, nor for more than sixty hours in any week, exclusive of the hours allowed for refreshment. Except that in hairdressers' shops any customer who, at the said closing time, is in the shop being attended to, or waiting to be attended to, may be attended to by the shop assistants within one half hour after the said closing time. Employment of assistants in shops in Schedule One.

(2) All shop-assistants employed in any such shop shall be allowed a half-holiday from one o'clock in the afternoon on some one week-day of every week, except a week in which there is a public or bank holiday allowed to such assistants as a holiday. Half-holidays.

(3) If the shopkeeper, or person acting, or apparently acting, in the management of the shop— Penalties.

(a) employs in his shop any shop-assistant after such closing time, except as aforesaid, or for more than sixty hours in any week, or

(b) does not arrange for and allow to each such assistant the half-holiday, as required by this section to be allowed,

he shall be guilty of an offence against this Act:

Provided that subsection (1) and subsection (3) (a) of this section shall not apply to persons in the shops of registered pharmacists.

10. (1) Every butcher and every milkvender whose place of business is situated in any shopping district shall permit every person employed by him in delivering meat or milk (as the case may be) to have and take a half-holiday from the hour of one o'clock in the afternoon on some week-day in each week. Half-holiday every week for fresh meat and milk carters, and monthly holiday for bakers' employees.

(2) Every baker whose place of business is situated in any shopping district shall permit every person employed by him in delivering bread to have and take a holiday on one week-day in each month:

Provided that this subsection shall not apply where such Wednesday falls in the same week as Christmas Day or Good Friday.

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(3) If any person engaged in delivering meat, or milk, or bread has not in any week or month (as the case may be) been permitted by his employer to have and take a half-holiday or a holiday pursuant to this section, such employer shall be deemed in regard to each such person to have been guilty of an offence against this Act.

PART III.

SUPPLEMENTAL.

Governor may alter boundaries of any shopping district.

Appointment of inspectors.

Powers of inspectors.

Obstruction of inspectors.

Penalty for offence against this Act.

Primâ facie evidence of employment in a shop.

Exemption of shop-keeper from penalty upon proof of another being the real offender.

11. The Governor may by proclamation alter the boundaries of any shopping district.

12. The Minister may appoint members of the police force or other persons to be inspectors to carry out the provisions of this Act, and shall supply each inspector with a certificate of his appointment.

13. An inspector, on producing the certificate of his appointment, may—

- (a) enter at any reasonable hour any shop or any place which he has reason to believe is used as a shop;
- (b) make such inquiries as he thinks necessary to ascertain whether the provisions of this Act have been complied with; and for that purpose ask questions of any shopkeeper or any person acting, or apparently acting, in the management of a shop, or employed in or about a shop, and require him to truthfully answer such questions; and
- (c) exercise such powers as may be necessary for carrying out the provisions of this Act.

14. Any person who wilfully obstructs an inspector in the exercise of any power conferred by this Act, or who fails to comply with a lawful requirement made by an inspector shall be guilty of an offence against this Act.

15. Any person who is guilty of an offence against this Act shall for the first offence be liable to a penalty not exceeding two pounds, and for any subsequent offence to a penalty not less than two pounds nor more than ten pounds.

16. In any prosecution of a shopkeeper or person acting, or apparently acting, in the management of a shop for an offence against this Act, proof that at any time a shop-assistant is in a shop shall be primâ facie evidence that at the said time he was employed in the shop by such shopkeeper or person.

17. Where any act or default constituting an offence against this Act for which any shopkeeper or person acting or apparently acting in

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in the management of a shop is by this Act liable to a penalty has in fact been done or committed by some other person, such other person shall be liable to the penalties imposed by section fifteen.

Where such shopkeeper or person is charged with any such act or default so done or committed by some other person, the said shopkeeper or person shall be exempt from any penalty upon proving that he had supplied proper means and issued proper orders for the observance and used due diligence to enforce the observance of this Act, and that the said act or default was actually done or committed by some other person without his connivance.

Where an inspector is satisfied before instituting a proceeding for any such offence against the said shopkeeper or person that such shopkeeper or person if such proceedings were instituted against him would, under the foregoing provisions of this section, be exempt from any penalty, and the said shopkeeper or person gives all facilities in his power for proceeding against and convicting the person whom the inspector believes actually to have been guilty of the act or default constituting the offence, the inspector shall proceed against that person in the first instance without first proceeding against the said shopkeeper or person.

18. The Governor may at any time after the passing of this Regulations.
Act make regulations to take effect after the commencement of this Act—

- (a) providing for the making of lists and rolls of shopkeepers entitled to vote at a poll ;
- (b) determining, where a partnership or corporation is a shopkeeper, the person by whom the vote of such partnership or corporation shall be given ;
- (c) providing for the appointment and prescribing the duties of officers conducting or assisting at conducting the taking of polls ;
- (d) providing for the manner in which polls shall be taken, and the conditions on which shopkeepers shall be entitled to vote at a poll ;
- (e) providing for making returns of the result of any poll ;
- (f) prescribing the forms to be used for the purposes of this Act ; and
- (g) generally for carrying out the provisions of this Act in the above and in other matters ;

and may in those regulations authorise any penalty not exceeding five pounds to be imposed for any breach of the same.

All such regulations shall be published in the Gazette and shall be laid before both Houses of Parliament within fourteen days after such publication if Parliament is sitting, but if Parliament is not sitting then within fourteen days after the next meeting of Parliament.

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Informations for offences.

19. Informations for offences against this Act or for breaches of any regulations shall be laid within one month from the committing of the offence or breach, and shall be heard and determined in a summary way by a Court of Petty Sessions.

An appeal shall lie from any conviction for any such offence or breach.

Shops mentioned in Schedule One carrying on other trades subject to hours of last-mentioned classes of trade.

20. In every shopping district—

- (1) Every shop mentioned in Schedule One, in which is carried on any class of trade not usually carried on in shops mentioned in the Schedule, shall be closed at the closing time fixed by or under this Act for shops not mentioned in the Schedule.
- (2) Every shop mentioned in Part II, III, or IV of Schedule One, in which is carried on any class of trade usually carried on in shops mentioned in an earlier part of the Schedule, shall be closed at the closing time fixed by or under this Act for shops mentioned in such earlier part of the Schedule.

Definitions.

21. In this Act, unless the context otherwise requires,—

“Close” means close to the admission of the public for purposes of trade.

“Employ” means employ in any way or in any kind of work.

“Metropolitan shopping district” means area included in the city and municipalities mentioned in Schedule Three.

“Newcastle shopping district” means area included in the municipalities mentioned in Schedule Four.

“Shop” means building, stall, tent, vehicle, or boat, or pack in which goods are offered or exposed for sale or in which the business of a hairdresser, pawnbroker, or undertaker is carried on, or portion of a building separated from the rest of the building by a substantial partition and in which goods are offered or exposed as aforesaid, or in which any such business as aforesaid is carried on.

“Shop-assistant” means person employed in or in connection with the sale of goods in a shop, not being a carter, and includes any clerk employed in a shop, but does not include any person who is employed by the shopkeeper when the shop is closed only.

“Shopkeeper” means person, partnership, or corporation occupying a shop, directly or indirectly, as principal, and shall include hawkers.

“Week-day” means any day of the week except Sunday.

22. Within the municipal district of Broken Hill and within the electoral district of Sturt the time mentioned in this Act shall be taken to mean the mean time of the one hundred and thirty-fifth meridian of longitude east of Greenwich in England.

Time for Broken Hill and Sturt.

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23. Except as to the provisions with regard to hours of employment contained in section nine, nothing in this Act shall apply to railway refreshment-rooms, railway bookstalls, public-houses, and hotels. Exemption of certain establishments.

24. Nothing in this Act shall affect the operation of the Savings. Factories and Shops Act of 1896.

25. This Act shall take effect from the first day of January, one thousand nine hundred (in this Act referred to as the commencement of this Act), and may be cited as the "Early Closing Act, 1899." Commencement and short title.

SCHEDULES.

SCHEDULE ONE.

Schedule One.

PART I.

Hairdressers' shops.

PART II.

Chemists' shops.

Druggists' shops.

Private dispensaries.

Public dispensaries.

Flower shops.

PART III.

Fruit shops.

Vegetable shops.

Tobacconists's shops.

Confectioners' shops.

Newspaper and Newsagents' shops.

Public-houses, hotels, and wine shops.

Undertakers' shops.

PART IV.

Restaurants.

Refreshment shops.

Eating-houses.

Fish shops.

Oyster shops.

Cooked provision shops.

SCHEDULE TWO.

Schedule Two.

Petition for alteration of days to which closing times apply in a country shopping district.

To The Honorable the Minister for Labour and Industry,—

We, the undersigned shopkeepers in the country shopping district, respectfully ask that a poll be taken for an alteration of the days to which the closing times appointed in pursuance of the Early Closing Act, 1899, apply to shops (not being shops

Infants' Custody and Settlements.

shops mentioned in Schedule One of the said Act), situate within the said district as follows :—

Closing time.	Proposed alteration of days to which closing times apply.
One o'clock ...	To be altered from [<i>state the present day for closing at one o'clock</i>] to [<i>state the proposed day</i>].
Ten o'clock ...	To be altered from [<i>state the present day for closing at ten o'clock</i>] to [<i>state the proposed day</i>].

Dated this day of , 19 .
(*Signatures and addresses of shopkeepers.*)

Schedule Three.

SCHEDULE THREE.

Description of metropolitan shopping district.

The city of Sydney and the municipalities of Alexandria, Annandale, Ashfield, Auburn, Balmain, Bankstown, Botany, North Botany, Burwood, Camperdown, Canterbury, Concord, Darlington, Drummoyne, Dundas, Enfield, Ermington and Rydalmere, Erskineville, Fivedock, The Glebe, Granville, Hunter's Hill, Hurstville, Kogarah, Lane Cove, Leichhardt, Manly, Marrickville, Mosman, Newtown, North Sydney, Paddington, Parramatta, Petersham, Randwick, Redfern, Rockdale, Rookwood, Ryde, Saint Peter's, Strathfield, Vacluse, Waterloo, Waverley, Willoughby, and Woollahra.

SCHEDULE FOUR.

Description of Newcastle shopping district.

The municipalities of Newcastle, Adamstown, Carrington, Hamilton, Lambton, Merewether, New Lambton, Plattsburg, Stockton, Wallsend, Waratah, and Wickham.