



New South Wales

# Shop Trading Amendment Bill 2009

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Shop Trading Act 2008* (the *Principal Act*) and the *Shop Trading Regulation 2009* as follows:

- (a) to limit the circumstances in which exemptions to enable trading on restricted trading days (such as Christmas Day) may be granted and to restrict the right to apply for such an exemption to occupiers of shops,
- (b) to make other amendments relating to applications for such exemptions,
- (c) to enable third parties to appeal to the Administrative Decisions Tribunal for reviews of decisions relating to such exemptions,
- (d) to enable inspectors to require records relating to shop employees and business receipts to be produced for enforcement purposes,
- (e) to render void any provision of a lease (or related agreement or arrangement) that requires an occupier of a shop to keep the shop open on a restricted trading day,
- (f) to make other amendments of a minor or consequential nature and to enact savings and transitional provisions consequent on the enactment of the proposed Act.

## Outline of provisions

**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 the date of assent to the proposed Act.

### **Schedule 1      Amendment of Shop Trading Act 2008 No 49**

**Schedule 1 [1]** amends the long title of the Principal Act to change the reference to de-regulation of shop opening hours and restricted trading days to fair regulation of shop opening hours and restricted trading days.

**Schedule 1 [2]** amends section 3 of the Principal Act to update a definition and inserts a definition of *Departmental website*.

**Schedule 1 [3]** substitutes sections 10 and 11 of the Principal Act and inserts new sections 11A–11C. Proposed section 10 re-enacts the current provision relating to exemptions from shop trading restrictions given by the Director-General of the Department of Services, Technology and Administration (the *Director-General*) with some changes. The new section requires the Director-General not to grant an exemption unless satisfied that it is, in the exceptional circumstances of the case in the public interest to do so, after considering specified matters. It removes the discretion of the Director-General to consider any other matters he or she thinks fit and to grant an exemption without an application being made. An application may now only be made by the occupier of a shop. It also expressly requires the Director-General to consider the likely effect of the exemption on small businesses. Proposed section 11 requires applications for exemptions to be made no later than 28 days before the day of the exemption. Proposed section 11A requires the Director-General to publish exemption orders and reasons for decisions on exemption applications on the website of the Department of Services, Technology and Administration. Proposed section 11B deems applications to be refused (for the purpose of applying for a review) if a decision has not been made after 40 days. Proposed section 11C applies the provisions relating to applications for exemptions to applications to amend or revoke exemption orders.

**Schedule 1 [4]** amends section 12 of the Principal Act to provide for the review by the Administrative Decisions Tribunal of a determination by the Director-General to refuse to amend an exemption.

**Schedule 1 [5]** amends section 12 of the Principal Act to allow third parties, having sufficient interest in a matter, to appeal to the Administrative Decisions Tribunal for a review of a determination by the Director-General to refuse to grant, amend or revoke an exemption or as to the conditions of an exemption.

**Schedule 1 [6]** amends section 15 of the Principal Act to confer on inspectors additional powers to require documents to be produced for the purposes of investigating possible contraventions of that Act or the regulations under that Act.

**Schedule 1 [7]** amends section 20 of the Principal Act to update a reference.

**Schedule 1 [8]** inserts proposed section 22A into the Principal Act. The proposed section makes a provision of a lease void to the extent to which it requires the occupier of a shop to keep the shop open on a restricted trading day. The proposed section also extends to provisions in other arrangements or agreements between occupiers and owners or lessees of shop premises.

**Schedule 1 [9]** amends Schedule 2 to the Principal Act to enable regulations containing savings or transitional provisions to be made as a consequence of the enactment of the proposed Act.

**Schedule 1 [10]** amends Schedule 2 to the Principal Act to make it clear that the provision preventing employees from being coerced into working on restricted trading days applies to previous exemptions continued under that Act. The amendment also enables occupiers of shops subject to such an exemption to apply for an order amending the exemption.

**Schedule 1 [11]** amends Schedule 2 to the Principal Act to insert savings and transitional provisions consequent on the enactment of the proposed Act.

## **Schedule 2      Amendment of Shop Trading Regulation 2009**

**Schedule 2** amends the *Shop Trading Regulation 2009* to require the Director-General to publicly exhibit applications to exempt shops from the prohibition on trading on restricted trading days for 21 days and to consider any public comment received during the exhibition period. The Schedule also prescribes the form for an exemption application.



First print



New South Wales

# Shop Trading Amendment Bill 2009

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New South Wales

# Shop Trading Amendment Bill 2009

No. , 2009

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## A Bill for

An Act to amend the *Shop Trading Act 2008* and the *Shop Trading Regulation 2009* with respect to exemptions from trading restrictions.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Shop Trading Amendment Act 2009</i> .	3
<b>2 Commencement</b>	4
This Act commences on the date of assent to this Act.	5



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<b>Schedule 1</b>	<b>Amendment of Shop Trading Act 2008</b>	1
	<b>No 49</b>	2
<b>[1] Long title</b>		3
	Omit “de-regulation”. Insert instead “fair regulation”.	4
<b>[2] Section 3 Definitions</b>		5
	Omit the definition of <i>Director-General</i> from section 3 (1). Insert instead:	6
	<i>Departmental website</i> means the Internet website used for the	7
	time being by the Department of Services, Technology and	8
	Administration to provide public access to information for the	9
	purposes of this Act.	10
	<i>Director-General</i> means the Director-General of the Department	11
	of Services, Technology and Administration.	12
<b>[3] Sections 10–11C</b>		13
	Omit sections 10 and 11. Insert instead:	14
<b>10 Director-General may exempt shops from trading restrictions</b>		15
(1)	The Director-General may by order, on application by the	16
	occupier of a shop, exempt the shop from a requirement under	17
	this Act to be kept closed.	18
(2)	The Director-General must not grant an exemption for a shop	19
	unless the Director-General is satisfied that it is in the exceptional	20
	circumstances of the case in the public interest to do so, having	21
	regard to the following matters:	22
(a)	the nature of the shop and the kinds of goods sold by the	23
	shop,	24
(b)	the need for the shop to be kept open on the day or days	25
	concerned,	26
(c)	the likely effect of the proposed exemption on the local	27
	economy, tourism and small businesses and other	28
	businesses in the area,	29
(d)	the likely effect of the proposed exemption on employees	30
	of, or persons working in, the shop.	31
(3)	An application for an exemption under this Division may not be	32
	made in respect of a shop that is not in existence when the	33
	application is made.	34

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(4)	An exemption may:	1
(a)	apply in respect of one or more specified restricted trading days or all restricted trading days, or	2
		3
(b)	apply in respect of specified times on a restricted trading day.	4
		5
(5)	An exemption has effect for the period, not exceeding 3 years, specified by the Director-General in the order.	6
		7
(6)	The period of the exemption may not be extended by an amendment to the order.	8
		9
(7)	An exemption may be subject to conditions.	10
<b>11</b>	<b>Applications for exemptions</b>	11
(1)	An application for an exemption by the Director-General is to be:	12
(a)	made in the manner and the form prescribed by the regulations, and	13
		14
(b)	made not later than 28 days before the first day for which the exemption is sought, and	15
		16
(c)	accompanied by the application fee, if any, prescribed by the regulations.	17
		18
(2)	An application may be made in respect of more than one shop.	19
(3)	An applicant must, if required to do so, provide the Director-General with such additional information and documents in relation to an application as the Director-General may request.	20
		21
		22
		23
<b>11A</b>	<b>Publication of orders and reasons for decisions</b>	24
(1)	The Director-General must publish on the Departmental website an order granting an exemption and the reasons for any decision made by the Director-General to grant or not to grant an exemption.	25
		26
		27
		28
(2)	An order and reasons must be published as soon as practicable after the relevant decision is made.	29
		30
<b>11B</b>	<b>Deemed refusal of application</b>	31
	If the Director-General has not determined an application for an exemption before the end of the period of 40 days after the application was made to the Director-General (or such longer period as the Director-General determines with the consent in	32
		33
		34
		35

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	writing of the applicant), the Director-General is taken, for the purposes of section 12, to have made a decision to refuse to grant the exemption.	1 2 3
<b>11C</b>	<b>Application of Division to applications for amendment or revocation of exemption orders</b>	4 5
(1)	An occupier of a shop that is subject to an exemption under this Division may apply for the amendment or revocation of the exemption order.	6 7 8
(2)	This Division applies to any such application in the same way as it applies to an application for an exemption.	9 10
<b>[4]</b>	<b>Section 12 Reviews by Administrative Decisions Tribunal</b>	11
	Insert “amend or” before “revoke” in section 12 (a).	12
<b>[5]</b>	<b>Section 12 (2) and (3)</b>	13
	Insert at the end of section 12:	14
(2)	Any other person who considers himself or herself to have a sufficient interest in an application for an exemption under this Division may apply to the Administrative Decisions Tribunal for a review of any such decision.	15 16 17 18
(3)	The Administrative Decisions Tribunal is not required to review a decision on the application of a person (other than the person who applied for the exemption) if it is not satisfied that the person has a sufficient interest in the application for exemption.	19 20 21 22
<b>[6]</b>	<b>Section 15 Powers of inspectors</b>	23
	Insert after the note to the section:	24
(2)	An inspector may, for the purpose of investigating a possible contravention of this Act or the regulations, require an occupier of a shop to produce for the inspector’s examination, at such time and place as the inspector may specify, specified records indicating hours worked by employees in the shop, business receipts and other information concerning the operation of the shop at particular times.	25 26 27 28 29 30 31
(3)	A requirement duly made under this section by an inspector is taken to be a requirement made under Part 4 of Chapter 7 of the <i>Industrial Relations Act 1996</i> .	32 33 34

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<b>[7] Section 20 Delegation</b>	1
Omit “Department of Commerce” from section 20 (a).	2
Insert instead “Department of Services, Technology and Administration”.	3
<b>[8] Section 22A</b>	4
Insert after section 22:	5
<b>22A Certain lease provisions of no effect</b>	6
(1) A provision of a lease is void to the extent that it requires the occupier of a shop to keep the shop open at any time on a restricted trading day.	7 8 9
(2) This section has effect whether or not the shop is the subject of an exemption under this Act.	10 11
(3) In this section: <i>lease</i> includes an agreement or arrangement between the occupier of a shop and the owner of the premises in which the shop is located or, if the occupier is a sub-lessee of those premises, between the occupier and the lessee of those premises.	12 13 14 15 16
<b>[9] Schedule 2 Savings, transitional and other provisions</b>	17
Insert at the end of clause 1 (1): <i>Shop Trading Amendment Act 2009</i>	18 19
<b>[10] Schedule 2, clause 2</b>	20
Insert after clause 2 (3):	21
(4) Without limiting subclause (2):	22
(a) section 13 applies to an exemption referred to in that subclause, and	23 24
(b) the occupier of a shop that is subject to an existing exemption may apply under Part 3 of this Act for an order amending the exemption.	25 26 27

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<b>[11] Schedule 2, Part 3</b>	1
Insert after Part 2:	2
<b>Part 3 Provisions consequent on enactment of Shop Trading Amendment Act 2009</b>	3 4
<b>6 Definition</b>	5
In this Part:	6
<b>2009 amending Act</b> means the <i>Shop Trading Amendment Act 2009</i> .	7 8
<b>7 Existing applications</b>	9
(1) This clause applies to an application for an exemption under section 10 made, but not finally determined, before the commencement of the 2009 amending Act.	10 11 12
(2) Sections 10, 11 (2) and (3) and 11A–11C, as inserted by that Act, extend to any such application.	13 14
<b>8 Existing exemptions</b>	15
(1) The amendments made by the 2009 amending Act do not affect the operation of an exemption granted after the commencement of this Act under Division 2 of Part 3 of this Act, and in force immediately before the commencement of the 2009 amending Act (an <b>existing Departmental exemption</b> ).	16 17 18 19 20
(2) An existing Departmental exemption is taken to have been made, and may be revoked or amended, under Division 2 of Part 3 of this Act as amended by the 2009 amending Act.	21 22 23
(3) To avoid doubt, an existing Departmental exemption that applies in respect of a specified area or areas continues in force and may be so revoked or amended.	24 25 26
(4) An existing Departmental exemption ceases to have effect 3 years after the commencement of the 2009 amending Act, or on the date on which it would otherwise cease to have effect, whichever occurs first.	27 28 29 30

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<b>Schedule 2</b>	<b>Amendment of Shop Trading Regulation 2009</b>	1
		2
<b>[1] Clauses 4 and 5</b>		3
Omit clause 4. Insert instead:		4
<b>4 Public review period for exemption applications</b>		5
(1) Before determining an application for an exemption under Division 2 of Part 3 of the Act, the Director-General must:		6
		7
(a) cause the application to be publicly exhibited for a period of at least 21 days, and		8
		9
(b) seek public comment on the application during the period of public exhibition, and		10
		11
(c) have regard to any public comment received during that period.		12
		13
(2) This clause does not apply to an application for an exemption made before the commencement of this clause.		14
		15
<b>5 Application for exemption</b>		16
An application for exemption is to be in the form set out in Schedule 1.		17
		18
<b>[2] Schedule 1</b>		19
Insert at the end of the Regulation:		20
<b>Schedule 1 Application form</b>		21
	(Clause 5)	22
<b>Application for retail trading on restricted trading days</b>		23
Shop Trading Act 2008		24
<b>Applicant's details</b>		25
Applicant's name:		26
Business name:		27
Trading name:		28
ABN/ACN:		29
<b>Contact details</b>		30
Street address: <i>[include city/town and postcode]</i>		31
Postal address: <i>[if different from above]</i>		32

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Telephone number: [*include area code*] 1  
Fax number: 2  
Email address: 3  
Person making the application: 4  
Position title: 5

**Details of exemption being sought** 6

Please identify the restricted trading day/s for which you are seeking an exemption: 7

- Good Friday
- Easter Sunday
- Before 1pm on ANZAC Day
- Christmas Day
- Boxing Day

Is the exemption for: 8

- a specific day or days or period, being [*specify the date or dates or period*],  
or
- up to three years.

Please nominate the proposed trading hours: 9

Commencing at: AM/ PM 10

Closing at: AM/ PM 11

**Information required to support the application** 12

The Director-General of the NSW Department of Services, Technology and Administration may only grant an exemption if satisfied that it is, in the exceptional circumstances of the case, in the public interest to approve this application. 13  
14

What is the nature of the business and goods sold? ..... 16

.....  
.....

What is the need for the shop to be open on a restricted trading day/s? ..... 17

.....  
.....

What is the likely effect on the local economy, tourism, small businesses and other businesses in the area if the exemption is granted?..... 18  
19

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Shop Trading Amendment Bill 2009

Schedule 2      Amendment of Shop Trading Regulation 2009

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..... What is the likely effect on employees or persons working in the shop if the exemption is granted? .....	1 2
..... Employees working on restricted trading day/s will be employed under which industrial instrument/s? .....	3 4
..... Number of employees likely to work in the shop/s if the exemption is granted? [ <i>insert number</i> ]	5 6
This application will be put on public exhibition by the Director-General of the NSW Department of Services, Technology and Administration. It is an offence to fail to comply with any conditions imposed on an exemption by the Director-General or delegated officer.	7 8 9 10
[ <i>signature</i> ]	11
[ <i>date</i> ]	12