

Passed by both Houses



New South Wales

Shop Trading Bill 2008

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2008*



New South Wales

Shop Trading Bill 2008

Act No , 2008

An Act with respect to the de-regulation of shop opening hours and restricted trading days, to repeal the *Shops and Industries Act 1962* and to make consequential amendments to other Acts.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

Clause 1 Shop Trading Bill 2008

Part 1 Preliminary

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Shop Trading Act 2008*.

2 Commencement

This Act commences on 1 July 2008.

3 Definitions

(1) In this Act:

Director-General means the Director-General of the Department of Commerce.

exercise a function includes perform a duty.

function includes a power, authority or duty.

inspector means an inspector within the meaning of the *Industrial Relations Act 1996*.

occupier of a shop includes:

- (a) a person entitled to occupy the shop, and
- (b) a person managing or controlling, or apparently managing or controlling, a business carried on in the shop, and
- (c) a person who is, or appears to be, the employer of a person or persons working in a business carried on in the shop.

premises means any land, structure (fixed or movable), vessel or other vehicle.

restricted trading day means Good Friday, Easter Sunday, Anzac Day (but only before 1pm), Christmas Day or Boxing Day.

shop means premises:

- (a) that are used wholly or predominantly for the retail sale of goods, and
- (b) in or at which goods are sold or exposed or offered for sale by retail on one or more occasions.

(2) Notes included in this Act do not form part of this Act.

Part 2 Restricted trading days

4 Shops to be closed on restricted trading days

- (1) All shops must be kept closed at the following times:
 - (a) at all times on Good Friday,
 - (b) at all times on Easter Sunday,
 - (c) at all times before 1pm on Anzac Day,
 - (d) at all times on Christmas Day,
 - (e) at all times on Boxing Day.
- (2) This section is subject to any exemption of a shop from the requirements of this Act under Part 3.

5 Offence of trading on restricted trading day

- (1) An occupier of a shop must keep the shop closed on a restricted trading day in accordance with section 4.
Maximum penalty: 100 penalty units.
- (2) It is a defence to a prosecution for an offence under this section if a shop is kept open at a time that is 30 minutes or less after the commencement of a restricted trading day for the purposes of serving a customer:
 - (a) who was in the shop before the commencement of that day, and
 - (b) to whom goods had been sold or offered for sale in the shop before that commencement.

6 Advertising of trading on restricted trading day

A person must not publish, or cause to be published, (by any means) an express or implied statement that, at any time at which a shop is required to be kept closed under this Act, the shop will be open for business.
Maximum penalty: 50 penalty units.

Part 3 Exemptions

Division 1 General exemptions

7 Businesses of certain kinds exempt from trading restrictions

A shop is exempted from a requirement under this Act to be kept closed if its predominant business is a business of a kind specified in Schedule 1.

8 Small shops exemption

- (1) A shop is exempted from a requirement under this Act to be kept closed at a particular time if it complies with the requirements of this section.
- (2) The occupier or occupiers of the shop must be:
 - (a) natural persons not exceeding 2 in number (whether or not carrying on the business of the shop in partnership) or 1 corporation, and
 - (b) the owner or owners of the business of the shop and entitled to the profits of that business.
- (3) The number of persons engaged in the shop as employees or otherwise in the conduct of the business of the shop on any day (either at the same time or at different times) is not to exceed 4.
- (4) The number of persons permitted to be engaged in a small shop as referred to in subsection (3) does not include:
 - (a) the occupier or occupiers or, if the occupier is a corporation, not more than 2 natural persons who are shareholders of the corporation, or
 - (b) any person so engaged in an emergency during the absence from the shop for part of a day of a person who is so engaged in the shop on that day, or
 - (c) any person so engaged outside the normal working hours of any person so engaged on a full-time basis.
- (5) An occupier of the shop must not be acting as the employee of or acting directly or indirectly as the agent of another person in the conduct of the business of the shop.
- (6) A shop does not comply with the requirements of this section if a direct or indirect interest in the business of the shop is held by:
 - (a) a corporation that is engaged in a business of another shop or a hairdresser, or

- (b) a director of a corporation that is engaged in a business of another shop or a hairdresser, or
 - (c) any other person who is engaged, as an employee or otherwise, in a business of another shop or a hairdresser, or
 - (d) any corporation (whether or not engaged in a business) that for the purposes of section 50 of the *Corporations Act 2001* of the Commonwealth is to be taken to be related to a corporation referred to in paragraph (a) or (b).
- (7) A reference in any other Act, award or instrument to a small shop as defined in this Act is to be read as a reference to a shop that meets the requirements of this section.
- (8) In this section:
shareholder, in relation to a corporation, means a person having a relevant interest in a share in that corporation for the purposes of Part 6C.1 of the *Corporations Act 2001* of the Commonwealth.

9 Certain licensed premises exempt

This Act does not apply to premises in respect of which a hotel licence is in force, by reason only of the sale or exposing or offering for sale, in or on those premises, of liquor as defined by the *Liquor Act 2007* or of meals or refreshments.

Division 2 Exemptions by Director-General

10 Director-General may exempt shops from trading restrictions

- (1) The Director-General may, by order published in the Gazette, on application by any person or at the Director-General's discretion, exempt a shop from a requirement under this Act to be kept closed.
- (2) An exemption may:
 - (a) apply in respect of one or more specified restricted trading days, or all restricted trading days, or
 - (b) apply in respect of specified times on a restricted trading day, or
 - (c) apply in respect of a specified shop or shops, or
 - (d) apply in respect of a specified area or areas, or
 - (e) be for a specified period or be indefinite.
- (3) In determining whether to grant an exemption for a shop, the Director-General must take into account the following:
 - (a) the nature of the shop and the kinds of goods sold by the shop,
 - (b) the need for the shop to be kept open on the day concerned,

- (c) the likely effect of the proposed exemption on the local economy, tourism and other businesses in the area,
 - (d) the likely effect of the proposed exemption on employees of, or persons working in, the shop,
 - (e) if the application for the exemption is not made by the occupier of the shop, the likely effect of the proposed exemption on the occupier,
 - (f) any other matters the Director-General considers to be relevant.
- (4) An exemption may be subject to conditions.

11 Applications for exemptions

An application for an exemption is to be made in the manner approved by the Director-General and to be accompanied by an application fee of \$100 or such other fee as may be prescribed by the regulations.

12 Reviews by Administrative Decisions Tribunal

Any person who has applied for an exemption and is aggrieved by any of the following decisions may apply to the Administrative Decisions Tribunal for a review of the decision:

- (a) a determination of the Director-General to refuse to grant or to revoke an exemption,
- (b) a determination of the Director-General as to the conditions subject to which, or the period for which, an exemption is granted.

13 Staffing on restricted trading days

- (1) Any exemption granted by the Director-General under this Part is subject to the condition that, on a restricted trading day, the exempted shop is 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.
- (2) For the purposes of subsection (1), a person is not taken to have freely elected to work on a restricted trading day merely because the person is rostered to work on that day.
- (3) This section has effect despite any other law.

14 Offence—failure to comply with exemption condition

An occupier of a shop must not fail to comply with a condition of an exemption imposed under this Division.

Maximum penalty: 50 penalty units.

Part 4 Enforcement

15 Powers of inspectors

This Act is taken to be industrial relations legislation for the purposes of Part 4 of Chapter 7 of the *Industrial Relations Act 1996*.

Note. The effect of this provision is to confer on inspectors powers under that Part to inspect premises and require the production of records. It is an offence to hinder or obstruct, or fail to comply with a requirement by, an inspector under that Part.

16 Proceedings for offences

Proceedings for an offence under this Act or the regulations may be dealt with summarily.

17 Authority to prosecute

- (1) Proceedings for an offence against this Act or the regulations may be instituted only:
 - (a) by the Minister or by a person with the written consent of the Minister, or
 - (b) by an inspector, or
 - (c) by a person, or a person of a class, prescribed by the regulations.
- (2) In any such proceedings, a consent to institute the proceedings, purporting to have been signed by a person authorised to give a consent under this section is evidence of that consent without proof of the signature or authority of the person.
- (3) Any such proceedings instituted by a member of staff of a Division of the Government Service may be prosecuted on his or her behalf by any member of staff of that Division.

18 Evidence that shop is not closed

In any proceedings for an offence against this Act, a shop is taken not to have been closed at a time at which it is proved that:

- (a) goods were sold or offered or exposed for sale at the shop, or
- (b) goods were available for inspection by persons within the shop, or
- (c) goods that had previously been sold or ordered were delivered or were available for delivery at the shop to the person who bought or ordered them or to some other person on behalf of that person, or
- (d) orders for goods were received by a person in attendance at the shop.

19 Evidence as to exemptions

In any proceedings for an offence against this Act, a certificate signed by the Director-General and that certifies that, on a specified date or during a specified period:

- (a) a shop was or was not exempted from a specified requirement under this Act, or
- (b) that a specified exemption under this Act was or was not subject to a specified condition,

is admissible and is evidence of the matters so certified.

Part 5 Miscellaneous

20 Delegation

The Director-General may delegate the exercise of any function of the Director-General under this Act (other than this power of delegation) to:

- (a) any member of staff of the Department of Commerce, or
- (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.

21 Service of documents

- (1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by:

- (a) in the case of a natural person:
 - (i) delivering it to the person personally, or
 - (ii) sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or
 - (iii) sending it by facsimile transmission to the facsimile number of the person, or
- (b) in the case of a body corporate:
 - (i) leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or
 - (ii) sending it by facsimile transmission to the facsimile number of the body corporate.

- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.

22 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Clause 23 Shop Trading Bill 2008

Part 5 Miscellaneous

- (2) Without limiting subsection (1), regulations may be made for or with respect to the publication or advertising of applications for exemptions under this Act or of information relating to any such applications or exemptions.
- (3) The regulations may create offences punishable by a penalty not exceeding 50 penalty units.

23 Savings, transitional and other provisions

Schedule 2 has effect.

24 Repeal of Shops and Industries Act 1962 No 43

The *Shops and Industries Act 1962* is repealed.

25 Amendment of Acts

The Acts specified in Schedule 3 are amended as set out in that Schedule.

26 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Exempt shops

(Section 7)

Bazaars, fairs or markets if the bazaars, fairs or markets are conducted for charitable or public fundraising purposes

Book shops

Cake and pastry shops

Chemists shops

Cooked provision shops

Florists shops

Fruit and vegetable shops

Newsagencies

Nurseries

Pet shops

Recorded music, video or dvd shops

Restaurants, cafes or kiosks

Seafood shops

Shops ancillary to venues for playing sport or physical recreation

Souvenir shops

Take-away food and drink shops

Tobacconists shops

Vehicle shops, vehicle service centres or petrol stations

Schedule 2 Savings, transitional and other provisions

(Section 23)

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 Exemptions under Shops and Industries Act 1962

- (1) This clause applies to a shop:
 - (a) for which an exemption (an *existing exemption*) was in force, immediately before the repeal of the *Shops and Industries Act 1962*, that permitted the shop to be kept open on a restricted trading day, and
 - (b) that is not exempt from the requirement under this Act to be kept closed on a restricted trading day.
- (2) A shop to which this clause applies is taken to be exempted by the Director-General under section 10, subject to any conditions applicable to the existing exemption, from the requirement to be kept closed on any restricted trading day to which the existing exemption applied.
- (3) The Director-General may amend or revoke an exemption referred to in subclause (2).

3 Exemptions for fairs and shows

- (1) This clause applies to a shop associated with an agricultural, pastoral or horticultural show or trade exhibition or trade fair:
 - (a) for which an approval (an *existing approval*) was in force, immediately before the repeal of section 101 of the *Shops and Industries Act 1962*, that permitted the show or fair to be kept open on a restricted trading day, and
 - (b) that is not exempt from the requirement under this Act to be kept closed on a restricted trading day.
- (2) A shop to which this clause applies is taken to be exempted by the Director-General under section 10, subject to any conditions applicable to the existing approval, from the requirement to be kept closed on any restricted trading day to which the existing approval applied.
- (3) The Director-General may amend or revoke an exemption referred to in subclause (2).

4 References to shops under the Shops and Industries Act 1962

Except as provided by the regulations, a reference in any industrial instrument within the meaning of the *Industrial Relations Act 1996* to a shop, general shop, special shop, small shop or other shop within the meaning of the *Shops and Industries Act 1962* or the *Shops and Industries Regulation 2007*, or within the meaning of a provision of that Act or Regulation, is a reference to that expression as in force immediately before the repeal of that Act or Regulation.

5 Reference to Liquor Act 2007

If this Act commences before the commencement of the *Liquor Act 2007* and until the commencement of that Act, the references in section 9 to:

- (a) a hotel licence is to be construed as a reference to a hotelier's licence within the meaning of the *Liquor Act 1982*, and
- (b) to the *Liquor Act 2007* is to be construed as a reference to the *Liquor Act 1982*.

Schedule 3 Amendment of Acts

(Section 25)

3.1 Banks and Bank Holidays Act 1912 No 43

[1] Section 15A Saturdays and Sundays to be bank holidays

Omit “Part 2 of the *Shops and Industries Act 1962*” from section 15A (2).

Insert instead “Schedule 6”.

[2] Schedule 5 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Shop Trading Act 2008

[3] Schedule 6

Insert after Schedule 5:

Schedule 6 Opening of banks on weekends

(Section 15A (2))

1 Banks may apply to open on weekends

- (1) A bank may apply to the Director-General of the Department of Commerce for approval to open the bank, or one or more branches of the bank, in New South Wales on Saturdays or Sundays, or both, that are declared to be bank holidays under section 15A.
- (2) An application is:
 - (a) to be made in writing to the Director-General, and
 - (b) to be accompanied by such information as the Director-General requires to determine the application, and
 - (c) to be accompanied by the fee set out in subclause (13) or such other fee as may be prescribed by the regulations.
- (3) The Director-General may:
 - (a) grant an approval unconditionally or subject to conditions, or
 - (b) refuse to grant an approval.

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- (4) In determining an application for an approval, the Director-General is to consider whether granting the approval would be in the interests of the public, taking into account the likely effect of granting the approval on particular sections of the public, including customers of the bank concerned in any particular area (whether or not an area the subject of the application) and persons employed or engaged (whether or not by the bank) to perform services for the bank.
 - (5) Nothing in subclause (4) limits the matters that the Director-General may consider in determining an application for approval.
 - (6) For the purposes of determining an application for approval, the Director-General may request the applicant to provide such further information as the Director-General considers relevant to the determination of the application.
 - (7) The Director-General may refuse to grant an approval if the applicant for approval does not comply with a request under subclause (6).
 - (8) The Director-General may prepare guidelines relating to the type of information that may be required in connection with an application under this Schedule.
 - (9) In preparing any such guidelines, the Director-General may consult with the banking industry.
 - (10) If the Director-General grants an approval, the Director-General must issue the applicant with a written approval that sets out any conditions to which the approval is subject.
 - (11) If the Director-General refuses an application for approval, the Director-General must give notice of the refusal in writing to the applicant setting out the reasons for the refusal.
 - (12) If the Director-General has not determined an application for approval before the expiration 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 writing of the applicant), the Director-General is taken to have made a decision to refuse to grant the approval.
 - (13) The fee to accompany an application by a bank under this clause is:
 - (a) if the application relates to specified branches of the bank—\$50 for each specified branch up to a maximum fee of \$2,500, or

- (b) if the application relates to all of the branches of the bank from time to time—\$2,500.

2 Duration of approval

Except during any period of suspension, an approval under this Schedule remains in force for the period specified in the approval or, if no period is so specified, until the approval is cancelled.

3 Variation, suspension or cancellation of approval

- (1) The Director-General of the Department of Commerce may, at the request of the bank that holds the approval or on the Director-General's own initiative, vary the conditions of, or suspend or cancel, an approval under this Schedule.
- (2) An approval may be suspended or cancelled only if:
 - (a) the bank that holds the approval has contravened a condition of the approval, or
 - (b) the Director-General considers that it is no longer in the interests of the public for the approval to remain in force, or
 - (c) the bank has requested the suspension or cancellation.
- (3) The Director-General may only vary the conditions of, or suspend or cancel, an approval under this Schedule:
 - (a) after having given the bank concerned written reasons for the Director-General's intention to vary, suspend or cancel and an opportunity to make submissions, and
 - (b) after having considered any submissions duly made by the bank.
- (4) Subclause (3) does not apply to a variation of a condition of, or the suspension or cancellation of, an approval at the request of the bank that holds the approval.
- (5) A variation of the conditions of, or a suspension or cancellation of, an approval:
 - (a) must be made by notice in writing served on the bank that holds the approval, and
 - (b) takes effect at the time at which the notice is served or at a later time specified in the notice.
- (6) Before determining to take action under this clause in relation to an approval, the Director-General may (but need not) determine that the approval will be subject to a period of review.

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- (7) The Director-General is to give written notice of a determination under subclause (6) to the bank that holds the approval concerned and is to include in the notice written reasons for the determination.

4 Review of decisions by Administrative Decisions Tribunal

- (1) A bank that is the applicant for an approval under this Schedule or the holder of such an approval may apply to the Administrative Decisions Tribunal for a review of any of the following decisions under this Schedule:
- (a) a decision of the Director-General to refuse to grant the approval,
 - (b) a decision of the Director-General to impose conditions on the approval,
 - (c) a decision of the Director-General to vary the conditions of the approval,
 - (d) a decision of the Director-General to suspend or cancel the approval.
- (2) A representative of an industrial organisation of which persons employed or engaged to perform services for a bank are entitled or eligible to belong may apply to the Administrative Decisions Tribunal for a review of any of the following decisions under this Schedule:
- (a) a decision of the Director-General to grant an approval under this Schedule to the bank (whether with or without conditions),
 - (b) a decision of the Director-General to vary the conditions of an approval granted to the bank under this Schedule.
- (3) In this clause, ***industrial organisation*** means an industrial organisation within the meaning of the *Industrial Relations Act 1996*, or an organisation registered under the *Workplace Relations Act 1996* of the Commonwealth.

5 Existing approvals

An approval in force under Part 2 of the *Shops and Industries Act 1962* and clause 4 of the *Shops and Industries Regulation 2007* immediately before the commencement of this Schedule is taken to have been granted under this Schedule.

3.2 Industrial Relations Act 1996 No 17

[1] Section 382 Jurisdiction of Chief and other Industrial Magistrates

Omit “*Shops and Industries Act 1962*”.

Insert instead “*Shop Trading Act 2008*”.

[2] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

Shop Trading Act 2008

[3] Schedule 4, Part 11

Insert after Part 10:

Part 11 Provisions consequent on repeal of Shops and Industries Act 1962

51 Day baking

- (1) Any person exercising the trade or calling of a pastrycook, whether an employer of labour or not, or any person employed in such a trade or calling, who in any area makes or bakes for trade or sale any pastry before the time that may be fixed by a State award for the time being in force in the area for the commencement of ordinary hours of work by employees engaged in the making or baking of pastry, or after the time that may be so fixed for the cessation of the ordinary hours of work by employees so engaged, is guilty of an offence.
Maximum penalty: 25 penalty units.
- (2) The Minister may, in the case of any emergency or unforeseen circumstances, or in order to meet the exigencies of the trade carried on in a particular bakehouse, exempt any person exercising or employed in the trade or calling of a pastrycook from the operation of all or any of the provisions of this clause for such periods and subject to such conditions as the Minister determines.
- (3) A person who contravenes a condition of an exemption under this clause is guilty of an offence.
Maximum penalty: 25 penalty units.
- (4) In this clause:
pastry includes cakes, biscuits, muffins and crumpets and any goods usually made by pastrycooks.

- (5) This clause (with minor modifications) re-enacts Division 5 of Part 4 of the *Shops and Industries Act 1962*. This clause is a transferred provision to which section 30A of the *Interpretation Act 1987* applies.

3.3 Landlord and Tenant Act 1899 No 18

Section 2AA No taking possession of dwelling-house without court sanction

Omit “as defined in section 9 (1) of the *Factories, Shops and Industries Act 1962*” from section 2AA (1) (c).

Insert instead “within the meaning of the *Shop Trading Act 2008*”.

3.4 Landlord and Tenant (Amendment) Act 1948 No 25

Section 8 Definitions

Omit “as defined in subsection (1) of section 9 of the *Factories, Shops and Industries Act 1962*, as subsequently amended,” from section 8 (1B) (b) (i).

Insert instead “within the meaning of the *Shop Trading Act 2008*”.