

Passed by both Houses



New South Wales

Retail Trading Amendment Bill 2015

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

Legislative Council
2015

Clerk of the Parliaments



New South Wales

Retail Trading Amendment Bill 2015

Act No , 2015

An Act to amend the *Retail Trading Act 2008* to make further provision with respect to restricted trading days and bank trading days; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Retail Trading Amendment Act 2015*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Retail Trading Act 2008 No 49

[1] Section 3A

Insert after section 3:

3A Meaning of “freely elected to work”

For the purposes of this Act, a person has not freely elected to work on a day:

- (a) if the person works on the day because the person has been coerced, harassed, threatened or intimidated by or on behalf of the occupier of the shop or on behalf of the bank, or
- (b) merely because the person is rostered, or required by the terms of an industrial instrument, to work on that day.

[2] Section 4 Shops to be closed on restricted trading days

Omit section 4 (3).

[3] Section 5 Offence of trading on restricted trading day

Insert after section 5 (2):

- (3) A person commits an offence against this subsection if the person commits an offence under subsection (1) in circumstances of aggravation.
Maximum penalty: 100 penalty units for each person who did not freely elect to work on the restricted trading day.
- (4) In subsection (3), *circumstances of aggravation* means circumstances in which the shop was staffed by any person who did not freely elect to work on the restricted trading day concerned.
- (5) If on the trial of a person charged with an offence against subsection (3) the trier of fact is not satisfied that the offence is proven but is satisfied that the person has committed an offence against subsection (1), the trier of fact may acquit the person of the offence charged and find the person guilty of an offence against subsection (1), and the person is liable to punishment accordingly.

[4] Section 7 Businesses of certain kinds exempt from trading restrictions

Omit “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” from section 7 (2).

Insert instead “have freely elected to work on that day”.

[5] Section 7 (3)

Omit section 7 (3) and (4). Insert instead:

- (3) This section has effect despite any other Act or law.

[6] Section 8A

Insert after section 8:

8A Shop not required to be closed on Boxing Day if staff freely elect to work

- (1) A shop is not required to be kept closed on Boxing Day if the shop is staffed only by persons who have freely elected to work on that day.
- (2) This section has effect despite any other provision of this Act and any other Act or law.

[7] Section 13 Staffing on restricted trading days

Omit “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” from section 13 (1).

Insert instead “have freely elected to work on that day”.

[8] Section 13 (2)

Omit the subsection.

[9] Section 14C Banks not to be open for retail banking business on bank close days

Insert after section 14C (2):

(2A) A person commits an offence against this subsection if the person commits an offence under subsection (1) in circumstances of aggravation.

Maximum penalty: 100 penalty units for each person who did not freely elect to work on the bank close day.

(2B) In subsection (2A), *circumstances of aggravation* means circumstances in which the bank was staffed by any person who did not freely elect to work on the bank close day concerned.

(2C) If on the trial of a person charged with an offence against subsection (2A) the trier of fact is not satisfied that the offence is proven but is satisfied that the person has committed an offence against subsection (1), the trier of fact may acquit the person of the offence charged and find the person guilty of an offence against subsection (1), and the person is liable to punishment accordingly.

[10] Section 14CA

Insert after section 14C:

14CA Banks may be open on certain bank close days if staff freely elect to work

Despite section 14C, a bank may be open for retail banking business on Bank Holiday or a public holiday (other than a public holiday referred to in section 14E (1)), if the bank is staffed only by persons who have freely elected to work on that day.

[11] Section 14D Extension of Bank Holiday to other financial institutions

Omit section 14D (3) (a). Insert instead:

(a) the financial institution (or the branch) is staffed only by persons who have freely elected to work on that day, or

[12] Section 14D (4) and (5)

Omit the subsections.

[13] Section 14E Restrictions on granting approval for banks to open

Omit “, on Christmas Day or on Boxing Day” from section 14E (1).

Insert instead “or on Christmas Day”.

[14] Section 14F Staffing on bank close days

Omit “have freely elected to work on that day, without any coercion, harassment, threat or intimidation by or on behalf of the bank” from section 14F (1).

Insert instead “have freely elected to work on that day”.

[15] Section 14F (2)

Omit the subsection.

[16] Section 16

Omit the section. Insert instead:

16 Nature of proceedings for offences

- (1) Proceedings for an offence under this Act or the regulations may be dealt with:
 - (a) summarily before a Local Court, or
 - (b) summarily before the Supreme Court in its summary jurisdiction.
- (2) If proceedings are brought in a Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 100 penalty units, despite any higher maximum monetary penalty provided in respect of the offence.

[17] Section 22A Provisions relating to shops in leased premises

Insert after section 22A (3):

- (4) An owner or lessor of premises, or a person acting for an owner or lessor of premises, must not require an occupier of a shop located in the premises that is the subject of a lease to keep the shop open at any time on a restricted trading day.
Maximum penalty: 200 penalty units.

[18] Section 26

Omit the section. Insert instead:

26 Review of Retail Trading Amendment Act 2015

- (1) The Minister is, as soon as possible after 1 February 2017, to appoint an independent person to review this Act to determine whether the policy objectives of the *Retail Trading Amendment Act 2015* (the **amendment Act**) remain valid and whether the terms of this Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after 1 February 2017.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament on or before 1 September 2017.

27 Sunset of amendments made by Retail Trading Amendment Act 2015

- (1) This Act is amended on 1 December 2017 as set out in Schedule 3.
- (2) The *Retail Trading Regulation 2014* is amended on 1 December 2017 as set out in Schedule 4.

[19] Schedules 3 and 4

Insert after Schedule 2:

Schedule 3 Repeal on 1 December 2017 of amendments to Act made by Retail Trading Amendment Act 2015

(Section 27 (1))

[1] Section 3A Meaning of “freely elected to work”

Omit the section.

[2] Section 4 Shops to be closed on restricted trading days

Insert after section 4 (2):

- (3) Subsection (1) (e) does not apply to a shop located in the precinct prescribed by the regulations as the Sydney Trading Precinct.

[3] Section 5 Offence of trading on restricted trading day

Omit section 5 (3)–(5).

[4] Section 7 Businesses of certain kinds exempt from trading restrictions

Omit “have freely elected to work on that day” from section 7 (2).

Insert instead “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”.

[5] Section 7 (3) and (4)

Omit section 7 (3).

Insert instead:

- (3) For the purposes of subsection (2), a person is not taken to have freely elected to work on a restricted trading day merely because the person is rostered, or required by the terms of an industrial instrument, to work on that day.
- (4) Subsections (2) and (3) have effect despite any other law.

[6] Section 8A Shop not required to be closed on Boxing Day if staff freely elect to work

Omit the section.

[7] Section 13 Staffing on restricted trading days

Omit “have freely elected to work on that day” from section 13 (1).

Insert instead “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”.

[8] Section 13 (2)

Insert after section 13 (1):

- (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, or required by the terms of an industrial instrument, to work on that day.

[9] Section 14C Banks not to be open for retail banking business on bank close days

Omit section 14C (2A)–(2C).

[10] Section 14CA Banks may be open on certain bank close days if staff freely elect to work

Omit the section.

[11] Section 14D Extension of Bank Holiday to other financial institutions

Omit section 14D (3) (a). Insert instead:

- (a) the financial institution (or the branch) opens in accordance with an approval granted under this Part, or

[12] Section 14D (4) and (5)

Insert after section 14D (3):

- (4) An approval for a financial institution to open on Bank Holiday may be granted under this Part as if a financial institution were a bank. For that purpose, a reference in this Part to a bank includes a reference to a financial institution.
- (5) A financial institution must not fail to comply with a condition of an approval granted under this Part.
Maximum penalty: 50 penalty units.

[13] Section 14E Restrictions on granting approval for banks to open

Omit “or on Christmas Day” from section 14E (1).

Insert instead “, on Christmas Day or on Boxing Day”.

[14] Section 14F Staffing on bank close days

Omit “have freely elected to work on that day” from section 14F (1).

Insert instead “have freely elected to work on that day, without any coercion, harassment, threat or intimidation by or on behalf of the bank”.

[15] Section 14F (2)

Insert after section 14F (1):

- (2) For the purposes of subsection (1), a person is not taken to have freely elected to work on a bank close day merely because the person is rostered, or required by the terms of an industrial instrument, to work on that day.

[16] Section 16

Omit the section. Insert instead:

16 Proceedings for offences

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

[17] Section 22A Certain lease provisions of no effect

Omit section 22A (4).

[18] Section 26 Review of Retail Trading Amendment Act 2015

Omit the section.

**Schedule 4 Repeal on 1 December 2017 of amendment to
Retail Trading Regulation 2014 made by
Retail Trading Amendment Act 2015**

(Section 27 (2))

Clause 4

Insert after clause 3:

4 Sydney Trading Precinct

For the purpose of section 4 (3) of the Act, the Sydney Trading Precinct is the precinct described as:

- (a) having a northern boundary composed by the southern shoreline of Port Jackson Harbour, extending from Rushcutters Bay to Jubilee Park at Blackwattle Bay, and
- (b) having a western boundary extending from Jubilee Park at Blackwattle Bay, along the western side of Glebe Point Road to Parramatta Road, and then in a direct line to the corner of City Road and Cleveland Street, Chippendale, and
- (c) having a south-western boundary extending from the corner of City Road and Cleveland Street, Chippendale, proceeding in a direct line to the corner of South Dowling Street and Todman Avenue, Kensington, and
- (d) having a south-eastern boundary from the corner of South Dowling Street and Todman Avenue, Kensington, proceeding in a direct line to the corner of Council Street and Bondi Road, Bondi Junction, and
- (e) having a north-eastern boundary from the corner of Council Street and Bondi Road, Bondi Junction, proceeding in a direct line to the corner of New South Head Road and Neild Avenue, Rushcutters Bay, and then in a direct line due north to the southern shoreline of Port Jackson Harbour.

Schedule 2 Amendment of Retail Trading Regulation 2014

Clause 4 Sydney Trading Precinct

Omit the clause.