

Shop Trading Act 2008 No 49

[2008-49]



New South Wales

Status Information

Currency of version

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[Industrial Relations Amendment \(Jurisdiction of Industrial Relations Commission\) Act 2009 No 32](#) (not commenced)
- **See also**
[Shop Trading Amendment Bill 2010](#)

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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Shop Trading Act 2008 No 49



New South Wales

An Act with respect to the fair 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.

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:

Departmental website means the Internet website used for the time being by the Department of Services, Technology and Administration to provide public access to information for the purposes of this Act.

Director-General means the Director-General of the Department of Services, Technology and Administration.

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, on application by the occupier of a shop, exempt the shop from a requirement under this Act to be kept closed.
- (2) The Director-General must not grant an exemption for a shop unless the Director-General is satisfied that it is in the exceptional circumstances of the case in the public interest to do so, having regard to the following matters:
 - (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 or days concerned,
 - (c) the likely effect of the proposed exemption on the local economy, tourism and small businesses and other businesses in the area,
 - (d) the likely effect of the proposed exemption on employees of, or persons working in, the shop.

- (3) An application for an exemption under this Division may not be made in respect of a shop that is not in existence when the application is made.
- (4) 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.
- (5) An exemption has effect for the period, not exceeding 3 years, specified by the Director-General in the order.
- (6) The period of the exemption may not be extended by an amendment to the order.
- (7) An exemption may be subject to conditions.

11 Applications for exemptions

- (1) An application for an exemption by the Director-General is to be:
 - (a) made in the manner and the form prescribed by the regulations, and
 - (b) made not later than 28 days before the first day for which the exemption is sought, and
 - (c) accompanied by the application fee, if any, prescribed by the regulations.
- (2) An application may be made in respect of more than one shop.
- (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.

11A Publication of orders and reasons for decisions

- (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.
- (2) An order and reasons must be published as soon as practicable after the relevant decision is made.

11B Deemed refusal of application

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 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.

11C Application of Division to applications for amendment or revocation of exemption orders

- (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.
- (2) This Division applies to any such application in the same way as it applies to an application for an exemption.

12 Reviews by Administrative Decisions Tribunal

- (1) 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 amend or 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.
- (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.
- (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.

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

- (1) 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.

- (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.
- (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 *Industrial Relations Act 1996*.

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 Services, Technology and Administration, 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.

(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.

22A Certain lease provisions of no effect

(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.

(2) This section has effect whether or not the shop is the subject of an exemption under this Act.

(3) In this section:

lease 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.

23 Savings, transitional and other provisions

Schedule 2 has effect.

24, 25 (Repealed)

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

Shop Trading Amendment Act 2009

- (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).
- (4) Without limiting subclause (2):

- (a) section 13 applies to an exemption referred to in that subclause, and
- (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.

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*.

Part 3 Provisions consequent on enactment of *Shop Trading Amendment Act 2009*

6 Definition

In this Part:

2009 amending Act means the *Shop Trading Amendment Act 2009*.

7 Existing applications

- (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.
- (2) Sections 10, 11 (2) and (3) and 11A-11C, as inserted by that Act, extend to any such application.

8 Existing exemptions

- (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 **existing Departmental exemption**).
- (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.
- (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.
- (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.

Schedule 3 (Repealed)