

# Retail Trading Act 2008 No 49

[2008-49]



New South Wales

## Status Information

### Currency of version

Historical version for 1 January 2014 to 18 November 2015 (accessed 23 November 2024 at 4:59)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Previously named**  
Shop Trading Act 2008
- **Does not include amendments by**  
[Industrial Relations Amendment \(Jurisdiction of Industrial Relations Commission\) Act 2009 No 32](#)  
(amended by [Statute Law \(Miscellaneous Provisions\) Act 2015 No 15](#)) (not commenced)
- **See also**  
[Retail Trading Amendment Bill 2015](#)

### 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](#).

File last modified 21 October 2015

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# Retail 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 provide for bank 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 *Retail Trading Act 2008*.

### 2 Commencement

This Act commences on 1 July 2008.

### 3 Definitions

(1) In this Act:

**bank**—see section 14A.

**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 shop 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.

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

### **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.

## **6A Relationship to Liquor Act 2007**

- (1) For the avoidance of doubt, nothing in the [Liquor Act 2007](#), or in a packaged liquor licence under that Act, operates to exempt any licensed premises from a requirement under this Act to be kept closed.
- (2) In this section:

***licensed premises*** means premises to which a packaged liquor licence under the [Liquor Act 2007](#) relates.

## **Part 3 Exemptions for shop trading**

### **Division 1 General exemptions**

#### **7 Businesses of certain kinds exempt from trading restrictions**

- (1) 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.
- (2) An exemption under subsection (1) 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.
- (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.

#### **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 or small bar 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 Administrative reviews by Civil and Administrative Tribunal**

- (1) Any person who has applied for an exemption and is aggrieved by any of the following decisions may apply to the Civil and Administrative Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) 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 Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of any such decision.
- (3) The Civil and Administrative Tribunal is not required to conduct an administrative review of a decision on the application of a person referred to in subsection (2) if it is not satisfied that the person has a sufficient interest in the application for exemption.
- (4) A representative of an industrial organisation of which persons employed or engaged in shops are entitled or eligible to become members may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of any of the following decisions:
  - (a) a determination of the Director-General to grant or to amend 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.

(5) In this section:

***industrial organisation*** means:

- (a) an industrial organisation of employees within the meaning of the *Industrial Relations Act 1996*, or
- (b) an association of employees registered as an organisation under the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth.

### **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, or required by the terms of an industrial instrument, 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 3A Bank trading days

### 14A Definitions

(1) In this Part:

**bank** means an authorised deposit-taking institution (within the meaning of the [Banking Act 1959](#) of the Commonwealth) that is authorised under that Act to use in its name:

- (a) the word “bank”, or
- (b) any other word or expression (whether or not in English) that is of like import to the word “bank”.

**financial institution** means a body (other than a bank) that is a body regulated by the Australian Prudential Regulation Authority pursuant to section 3 (2) (a)–(e) of the [Australian Prudential Regulation Authority Act 1998](#) of the Commonwealth.

(2) The regulations can exclude an authorised deposit-taking institution from the definition of **bank** for the purposes of this Part.

### 14B Bank close days

(1) The following days are **bank close days** for the purposes of this Part:

- (a) public holidays (within the meaning of the [Public Holidays Act 2010](#)),
- (b) Good Friday, Easter Sunday, Anzac Day, Christmas Day and Boxing Day (whether or not they are public holidays in a particular year),
- (c) Saturdays and Sundays,
- (d) the first Monday in August (**Bank Holiday**).

(2) A day that is a public holiday only in a part of the State is a bank close day only for banks in that part of the State.

(3) Each bank close day is declared to be a bank holiday or bank half-holiday (as appropriate) for the purposes of the [Bills of Exchange Act 1909](#) of the Commonwealth.

### 14C Banks not to be open for retail banking business on bank close days

(1) A bank must not be open for retail banking business on a bank close day.

Maximum penalty: 100 penalty units.

(2) The **retail banking business** of a bank is banking business (within the meaning of

the *Banking Act 1959* of the Commonwealth) that is conducted with customers in person at the bank or a branch of the bank.

- (3) This section does not prevent a bank (or one or more of its branches) from opening in accordance with an approval granted under this Part.
- (4) A bank must not fail to comply with a condition of an approval granted under this Part.  
Maximum penalty: 50 penalty units.

#### **14D Extension of Bank Holiday to other financial institutions**

- (1) A financial institution must not be open for retail business on Bank Holiday.  
Maximum penalty: 100 penalty units.
- (2) The **retail business** of a financial institution is business of the financial institution that is conducted with customers in person at the financial institution or a branch of the financial institution.
- (3) This section does not prevent a financial institution (or one or more of its branches) from opening on Bank Holiday if:
  - (a) the financial institution (or the branch) opens in accordance with an approval granted under this Part, or
  - (b) an industrial instrument provides for employees employed in the retail business of the financial institution to receive a substituted day off in lieu of Bank Holiday for working on Bank Holiday, or
  - (c) the financial institution has no more than 5 employees.
- (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.

#### **14E Restrictions on granting approval for banks to open**

- (1) Approval cannot be granted under this Part for a bank to open on Good Friday, on Easter Sunday, before 1 pm on Anzac Day, on Christmas Day or on Boxing Day.
- (2) An approval for a bank to open on a Saturday or Sunday does not constitute approval for the bank to open on a day that is a bank close day for a reason other than being a Saturday or Sunday.

#### **14F Staffing on bank close days**

- (1) Any approval granted by the Director-General under this Part is subject to the condition that, on a bank close day, the bank authorised to open in accordance with the approval 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 bank.
- (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.
- (3) This section has effect despite any other law.
- (4) The condition imposed by this section cannot be varied by the Director-General under this Part.

#### **14G Application for approval to open bank on bank close day**

- (1) A bank may apply to the Director-General for approval to open the bank, or one or more branches of the bank, on a bank close day.
- (2) An application is to be in writing in a form determined by the Director-General and be accompanied by any fee prescribed by the regulations.
- (3) The Director-General may require the applicant to provide such further information as the Director-General considers relevant to the determination of the application. The Director-General may refuse to grant the approval if the applicant fails to provide the further information required.
- (4) The Director-General may consult with the banking industry, and prepare guidelines, about the type of information that may be required in connection with an application for approval under this Part.

#### **14H Matters to be considered in determining application for approval**

- (1) 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:
  - (a) customers of the bank concerned in any particular area (whether or not an area the subject of the application), and
  - (b) persons employed or engaged (whether or not by the bank) to perform services for the bank.
- (2) This section does not limit the matters that the Director-General may consider in determining an application for approval.

#### **14I Determination of application**

- (1) 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. An approval may be granted unconditionally or subject to conditions.
- (2) If the Director-General refuses to grant an approval, the Director-General must give notice of the refusal in writing to the applicant setting out the reasons for the refusal.
- (3) If the Director-General has not determined an application for approval within 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.

#### **14J Duration of approval**

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

#### **14K Variation, suspension or cancellation of approval**

- (1) The Director-General may vary the conditions of, or suspend or cancel, an approval under this Part as provided by this section.
- (2) The Director-General may suspend or cancel an approval 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 vary the conditions of, or suspend or cancel, an approval only if the Director-General has:
  - (a) given the bank concerned written reasons for the Director-General's intention to vary the conditions of, or suspend or cancel, the approval and an opportunity to make submissions, and
  - (b) considered any submissions duly made by the bank within a period required by the Director-General.
- (4) Subsection (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 when the notice is served or at a later time specified in the notice.

- (6) Before determining to take action under this section in relation to an approval, the Director-General may (but need not) determine that the approval will be subject to a period of review. The Director-General is to give written notice of such a determination to the bank concerned and is to include in the notice written reasons for the determination.

#### **14L Administrative reviews of decisions by Civil and Administrative Tribunal**

- (1) A bank that is the applicant for or the holder of an approval under this Part may apply to the Civil and Administrative Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) of any of the following decisions under this Part:

- (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 Civil and Administrative Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) of any of the following decisions under this Part:

- (a) a decision of the Director-General to grant an approval under this Part 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 Part.

- (3) In this section:

**industrial organisation** means:

- (a) an industrial organisation of employees within the meaning of the [Industrial Relations Act 1996](#), or
- (b) an association of employees registered as an organisation under the [Fair Work \(Registered Organisations\) Act 2009](#) of the Commonwealth.



## 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.
- (2A) An inspector may, for the purpose of investigating a possible contravention of this Act or the regulations, require a bank or a financial institution within the meaning of Part 3A 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 bank or financial institution, business receipts and other information concerning the operation of the bank or financial institution 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, or
- (e) goods were received, or unpacked or otherwise prepared, at the shop for sale at the shop, or
- (f) stocktaking was carried out at the shop in respect of goods offered or exposed for sale at the shop.

## **19 Evidence as to exemptions**

(1) 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.

(2) 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 bank or a financial institution under Part 3A was or was not the holder of an approval under Part 3A, or
- (b) a specified approval under Part 3A 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.

## **22B Compensation not payable**

(1) Compensation is not payable by or on behalf of the State arising directly or indirectly from any of the following matters occurring before or after the commencement of this section:

- (a) the enactment or operation of this Act or the [Shop Trading Amendment Act 2010](#),
- (b) the exercise by any person of a function under Part 2 or 3 of this Act or a failure to exercise any such function,
- (c) any statement or conduct relating to the regulation of shop opening hours or restricted trading days.

(2) In this section:

**compensation** includes damages or any other form of monetary compensation.

**conduct** includes any act or omission, whether unconscionable, misleading, deceptive or otherwise.

**statement** includes a representation of any kind:

- (a) whether made verbally or in writing, and
- (b) whether negligent, false or misleading or otherwise.

**the State** means the Crown within the meaning of the [Crown Proceedings Act 1988](#), and includes an officer, employee or agent of the Crown and an inspector.

**this Act** includes the regulations and any order made under this Act.

## **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*

*Shop Trading Amendment Act 2010*

- (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.

## Part 4 Provisions consequent on enactment of *Shop Trading Amendment Act 2010*

### 9 Existing approvals for banks to open

- (1) An approval in force under Schedule 6 to the former Act immediately before the repeal of that Act is taken to have been granted under Part 3A of this Act as inserted by Schedule 1 [12] to the *Shop Trading Amendment Act 2010*.
- (2) This clause extends to an approval in force under Schedule 6 to the former Act as a result of the operation of clause 5 of that Schedule (which relates to approvals 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 Schedule 6 to the former Act).



(3) In this clause:

**former Act** means the *Banks and Bank Holidays Act 1912*.

#### **10 References to Act**

On and from the commencement of Schedule 1 [2] to the *Shop Trading Amendment Act 2010*, a reference in any other Act, or in any instrument, to the *Shop Trading Act 2008* is taken to be a reference to the *Retail Trading Act 2008*.

#### **Schedule 3 (Repealed)**