

Shop Trading Amendment Act 2010 No 114

[2010-114]



New South Wales

Status Information

Currency of version

Repealed version for 30 November 2010 to 31 December 2010 (accessed 23 November 2024 at 5:40)

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—

- **Repeal**

The Act was repealed by sec 30C of the [Interpretation Act 1987 No 15](#) with effect from 1.1.2011.

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 Amendment Act 2010 No 114



New South Wales

An Act to amend the *Shop Trading Act 2008* with respect to restricted trading days, bank and financial institution trading days and exemptions; and for other purposes.

1 Name of Act

This Act is the *Shop Trading Amendment Act 2010*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Schedule 1 [1], [3], [4], [7], [12], [13] and [15] commence on 31 December 2010.

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

[1] Long title

Insert “to provide for bank trading days,” after “restricted trading days,”.

[2] (Repealed)

[3] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

bank—see section 14A.

[4] Part 2, heading

Insert “**shop**” after “**Restricted**”.

[5], [6] (Repealed)

[7] Part 3, heading

Insert “**for shop trading**” after “**Exemptions**”.

[8]-[11] (Repealed)

[12] Part 3A

Insert after Part 3:

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 Review of decisions by Administrative Decisions Tribunal

- (1) A bank that is the applicant for or the holder of an approval under this Part may apply to the Administrative Decisions Tribunal for a review 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 Administrative Decisions Tribunal for a review 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.

[13] Section 15 Powers of inspectors

Insert after section 15 (2):

- (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.

[14] (Repealed)

[15] Section 19 Evidence as to exemptions and approvals

Insert at the end of the section:

- (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.

[16]-[18] (Repealed)

Schedule 2 (Repealed)