

## **Explanatory note**

This explanatory note relates to this Bill as introduced into Parliament.

The *Public Holidays Bill 2010* is cognate with this Bill.

### Overview of Bill

The object of this Bill is to amend the *Shop Trading Act 2008* (the **Principal Act**):

(a) to exempt shops within a certain precinct (the **Sydney Trading Precinct**) from the requirement to be kept closed on Boxing Day, and

(b) to clarify that nothing in the *Liquor Act 2007*, or in a packaged liquor licence under that Act, operates to exempt a shop from a requirement in the Principal Act to be kept closed, and

(c) to allow certain industrial organisations of employees to apply to the Administrative Decisions Tribunal for reviews of decisions relating to exemptions granted under the Principal Act, and

(d) to specify further circumstances in which shops are taken not to be closed, and

(e) to provide that the exemption for certain specified shops to open on a restricted trading day is subject to a condition that they be staffed by persons who have freely elected to work, and

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(f) to provide that compensation is not payable by or on behalf of the State arising from certain matters relating to the operation of the Principal Act, and

(g) to include provisions for bank trading days as a consequence of the proposed repeal of the *Banks and Bank Holidays Act 1912* by the *Public Holidays Bill 2010*, and

(h) to extend Bank Holiday (the first Monday in August) to certain other financial institutions so as to require them to be closed for retail business on that day, and

(i) to make other amendments of a minor or consequential nature.

The Bill also amends the *Shop Trading Regulation 2009* (the **Principal Regulation**) to prescribe the Sydney Trading Precinct.

### Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act.

## **Schedule 1 Amendment of Shop Trading Act 2008**

### **No 49**

#### **Amendments relating to shop trading**

**Schedule 1 [5]** amends section 4 of the Principal Act so as to exempt shops located in the Sydney Trading Precinct from the requirement to be kept closed on Boxing Day.

**Schedule 1 [6]** inserts proposed section 6A into the Principal Act. The proposed section clarifies that nothing in the *Liquor Act 2007*, or in any packaged liquor licence under that Act, operates to exempt a shop from a requirement in the Principal Act to be kept closed.

**Schedule 1 [8]** amends section 7 of the Principal Act to make it a condition of an exemption for a shop carrying on business specified in Schedule 1 to the Principal Act to open on a restricted trading day that the shop must be staffed on that day only by persons who have freely elected to work on that day.

**Schedule 1 [10]** amends section 12 of the Principal Act to allow certain industrial organisations of employees to apply to the Administrative Decisions Tribunal for reviews of certain decisions of the Director-General of the Department of Services, Technology and Administration (the **Director-General**) relating to exemptions under the Principal Act, including decisions to grant exemptions.

**Schedule 1 [11]** amends section 13 of the Principal Act to provide that a person is

not taken to have freely elected to work on a restricted trading day merely because the person is required to do so by the terms of an industrial instrument. Currently, that section makes it a condition of an exemption from the requirement to close a shop on Explanatory note page 3

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a restricted trading day that the shop must be staffed on that day only by persons who have freely elected to work on that day.

**Schedule 1 [14]** amends section 18 of the Principal Act so as to provide that, in proceedings for an offence against that Act, a shop will be taken not to be closed if goods are being received, or unpacked or otherwise prepared, for sale at the shop, or if stocktaking is being carried out in respect of goods offered or exposed for sale at the shop.

**Schedule 1 [16]** inserts proposed section 22B into the Principal Act. The proposed section provides that the State is not liable to pay compensation arising from the enactment or operation of the Principal Act or the proposed Act, the exercise by any person of a function under Part 2 or 3 of the Principal Act (or failure to exercise such a function) or any statement or conduct relating to the regulation of shop opening hours or restricted trading days.

**Schedule 1 [9]** makes a consequential amendment.

#### **Amendments relating to bank trading**

**Schedule 1 [2]** amends the name of the Principal Act by changing it from *Shop Trading Act 2008* to *Retail Trading Act 2008* to encompass provisions relating to retail bank trading.

**Schedule 1 [12]** inserts proposed Part 3A into the Principal Act which contains the following sections:

**Proposed section 14A** defines **bank** and **financial institution** for the purposes of proposed Part 3A.

**Proposed section 14B** provides that public holidays, Saturdays, Sundays and Bank Holiday (first Monday in August) are **bank close days**. Good Friday, Easter Sunday, Anzac Day, Christmas Day and Boxing Day are also bank close days whether or not they are public holidays in a particular year. Proposed section 14B also provides that bank close days are bank holidays for the purposes of the *Bills of Exchange Act 1909* of the Commonwealth.

**Proposed section 14C** requires a bank to be kept closed for retail banking business on a bank close day unless the bank has an approval under proposed Part 3A to open and complies with any conditions of the approval.

**Proposed section 14D** extends Bank Holiday to certain financial institutions so as to require them to be kept closed for retail business on that day (subject to exceptions where 5 employees or less are employed or where there are alternative arrangements for employees to have a day off in lieu of Bank Holiday). Proposed section 14D also provides for the granting of approval for financial institutions to open on Bank Holiday and for that purpose applies the other provisions of proposed Part 3A to approvals for banks to open on Bank Holiday.

**Proposed section 14E** restricts the granting of approvals for banks to open on bank close days. An approval cannot be granted for a bank to open on Good Friday, Easter Sunday, Anzac Day before 1pm, Christmas Day or Boxing Day.

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**Proposed section 14F** makes it a condition of an approval to open a bank on a bank close day that the bank must be staffed on that day only by persons who have freely elected to work on that day.

**Proposed section 14G** provides for the making of an application to the

Director-General for an approval to open a bank on a bank close day.

**Proposed section 14H** provides for the matters to be considered by the Director-General in determining whether to approve the opening of a bank on a bank close day.

**Proposed section 14I** provides for the procedure for determining an application for an approval under proposed Part 3A.

**Proposed section 14J** provides for the duration of an approval under proposed Part 3A.

**Proposed section 14K** provides for the suspension or cancellation of an approval under proposed Part 3A and for the variation of the conditions of an approval.

**Proposed section 14L** provides for the review by the Administrative Decisions Tribunal of decisions of the Director-General under proposed Part 3A.

**Schedule 1 [13]** amends section 15 of the Principal Act to allow inspectors to require banks and financial institutions to produce records of the hours worked by their employees, business receipts and other information concerning the operation of the banks and financial institutions.

**Schedule 1 [15]** amends section 19 of the Principal Act to provide that certificates of the Director-General relating to approvals under proposed Part 3A are admissible as evidence of the matters so certified.

**Schedule 1 [1], [3], [4] and [7]** make consequential amendments.

#### **Savings and transitional provisions**

**Schedule 1 [17]** amends Schedule 2 to the Principal Act so as to allow regulations of a savings or transitional nature to be made consequent on the enactment of the proposed Act.

**Schedule 1 [18]** amends Schedule 2 to the Principal Act to insert transitional provisions consequent on the enactment of the proposed Act.

#### **Schedule 2 Amendment of Shop Trading Regulation 2009**

**Schedule 2 [1]** amends the name of the Principal Regulation by changing it from *Shop Trading Regulation 2009* to *Retail Trading Regulation 2009* consequent on the enactment of the proposed Act.

**Schedule 2 [3]** inserts proposed clause 3A into the Principal Regulation. The proposed clause prescribes the Sydney Trading Precinct, so as to exempt shops located in that precinct from the requirement to be kept closed on Boxing Day.

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**Schedule 2 [2] and [5]** make consequential amendments.

**Schedule 2 [4] and [6]** omit spent provisions.