

Passed by both Houses



New South Wales

Shop Trading Amendment Bill 2010

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2010*



New South Wales

Shop Trading Amendment Bill 2010

Act No , 2010

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.

See also the *Public Holidays Act 2010*.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

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] Section 1 Name of Act

Omit “*Shop Trading Act 2008*”. Insert instead “*Retail Trading Act 2008*”.

[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] Section 4 (3)

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.

[6] Section 6A

Insert after section 6:

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.

[7] Part 3, heading

Insert “for shop trading” after “Exemptions”.

[8] Section 7 Business of certain kinds exempt from trading restrictions

Insert at the end of section 7:

- (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.

[9] Section 12 Reviews by Administrative Decisions Tribunal

Omit “(other than the person who applied for the exemption)” from section 12 (3).

Insert instead “referred to in subsection (2)”.

[10] Section 12 (4) and (5)

Insert after section 12 (3):

- (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 Administrative Decisions Tribunal for a review 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.

[11] Section 13 Staffing on restricted trading days

Insert “, or required by the terms of an industrial instrument,” after “rostered” in section 13 (2).

[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] Section 18 Evidence that shop is not closed

Insert at the end of section 18 (d):

- , 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.

[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] Section 22B

Insert after section 22A:

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.

[17] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Shop Trading Amendment Act 2010

[18] Schedule 2, Part 4

Insert after Part 3:

**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 2 Amendment of Shop Trading Regulation 2009

[1] Clause 1 Name of Regulation

Omit “*Shop Trading Regulation 2009*”.

Insert instead “*Retail Trading Regulation 2009*”.

[2] Clause 3 Definition

Omit “*Shop Trading Act 2008*”. Insert instead “*Retail Trading Act 2008*”.

[3] Clause 3A

Insert after clause 3:

3A Sydney Trading Precinct

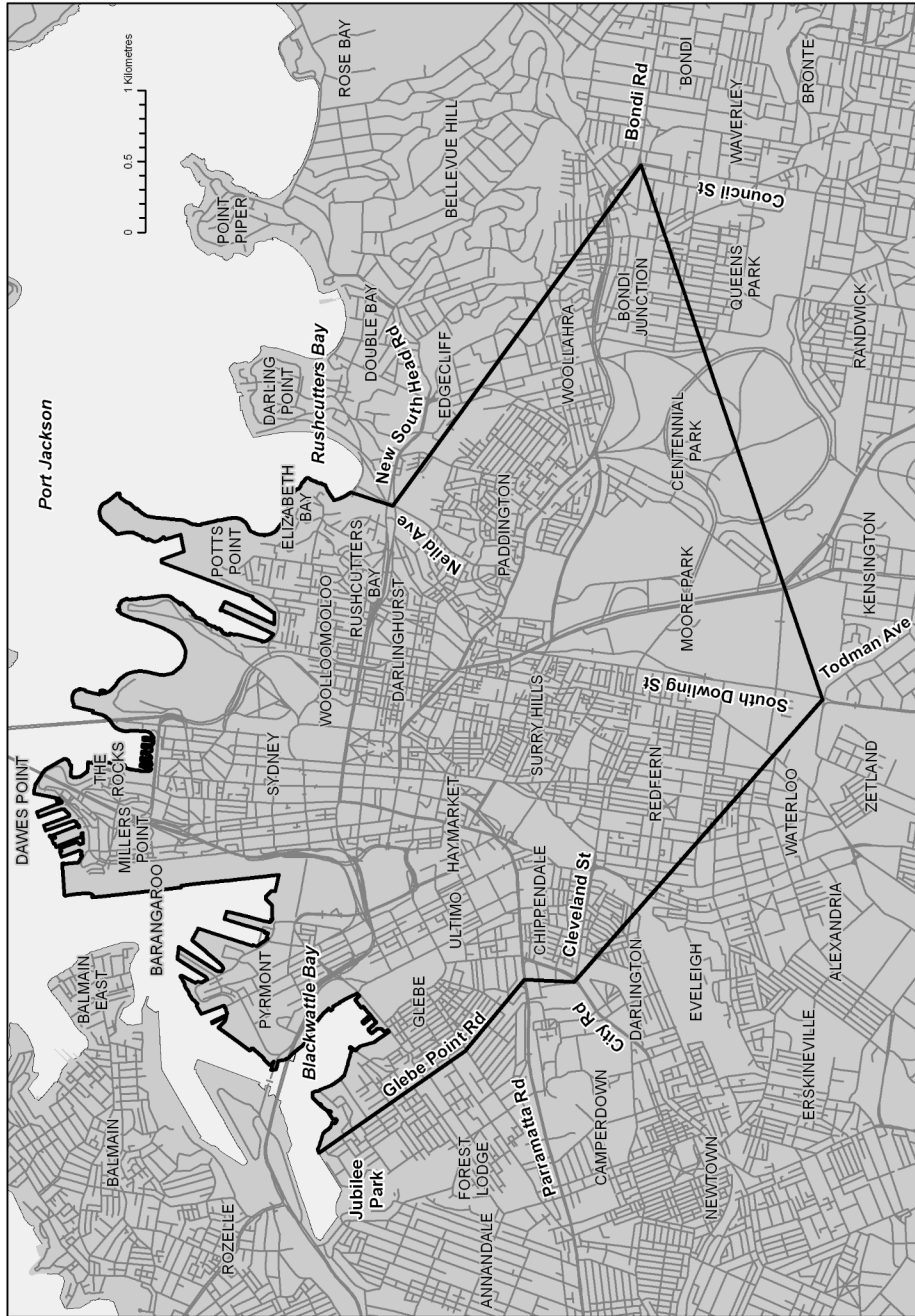
For the purpose of section 4 (3) of the Act, the Sydney Trading Precinct is the precinct described as:

- (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.

Note. An illustration of the above description is as follows:

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Schedule 2 Amendment of Shop Trading Regulation 2009



[4] Clause 6 Additional transitional arrangements

Omit the clause.

[5] Schedule 1 Application form

Omit “*Shop Trading Act 2008*”. Insert instead “*Retail Trading Act 2008*”.

[6] Schedule 2 Sydney commercial business district

Omit the Schedule.