



New South Wales

Retail Trading Amendment Bill 2012

Explanatory note

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

Overview of Bill

The object of this Bill is to make various amendments to the *Retail Trading Act 2008* (**the Principal Act**). In general, the Principal Act provides that shops are to be kept closed on Good Friday, Easter Sunday, Anzac Day (before 1pm), Christmas Day and Boxing Day (**the restricted trading days**). That Act also provides that, in general, banks must not be open for retail banking business on specified bank close days, including the first Monday in August (**the August Bank Holiday**).

This Bill makes amendments to the Principal Act as follows:

- (a) to modify and clarify the operation of the existing exemption that permits small shops to open on restricted trading days,
- (b) to provide for a new exemption to allow certain medium sized shops to open on a restricted trading day if those shops are staffed only by persons who have freely elected to work on that day,
- (c) to provide that the Principal Act does not prevent a shop being opened on a restricted trading day if the only business activities carried on at the shop during the restricted trading day are the reception, unpacking or preparation of

- goods for sale at the shop after the conclusion of a restricted trading day and the shop is staffed only by persons who have freely elected to work on that day,
- (d) to provide for a new exemption to allow a shop to open on Boxing Day if the shop is staffed only by persons who have freely elected to work on that day,
 - (e) to enable the Director-General of the Department of Finance and Services (*the Director-General*) to grant exemptions to shops in certain tourist areas to allow those shops to open on restricted trading days,
 - (f) to provide that a bank may open for retail business on the August Bank Holiday if the bank is staffed only by persons who have freely elected to work on that day,
 - (g) to make other amendments of a consequential or savings and transitional nature.

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 on the date of assent to the proposed Act, other than Schedule 1 [1], [7]–[18] and [20] to the proposed Act which are to commence on 1 July 2013.

Schedule 1 Amendment of Retail Trading Act 2008 No 49

Amendments consolidating provisions relating to meaning of “freely elected to work” to single location

Schedule 1 [2], [4], [19] and [22] consolidate into one location current provisions of the Principal Act relating to the meaning of “freely elected to work”. **Proposed section 3A** provides that a person, for the purposes of that Act:

- (a) has not freely elected to work at a shop or a bank on a day if the person has been coerced, harassed, threatened or intimidated to work on that day by or on behalf of the occupier of the shop or the bank, and
- (b) is not taken to have freely elected to work on a day merely because the person is rostered, or required by the terms of an industrial instrument, to work on that day.

Amendments relating to general exemptions

Schedule 1 [5] substitutes section 8 and also inserts proposed sections 8A and 8B into the Principal Act to give effect to the objectives set out in paragraphs (a)–(d) of the Overview.

Currently section 8 (Small shops exemption) of the Principal Act provides that shops with 4 or less employees (not including the occupier or occupiers of the shop or, if

the occupier of the shop is a corporation, not including more than 2 natural persons who are shareholders of the corporation) are not required to be kept closed on restricted trading days.

Instead **proposed section 8 (1)** provides that a shop is exempted from the requirement under the Principal Act to be kept closed on a restricted trading day if:

- (a) the number of persons employed and working in a business carried on in the shop on that day (whether for the full day or a part of the day) is less than 5, and
- (b) at any time within the period of 7 days before that day, the number of persons employed by the occupier of the shop and working in any business carried on in shops of any kind in the State is less than 5. This number is to be calculated by dividing the total number of the hours worked by all persons employed and working in the business carried on in those shops during the relevant period by 38 (also known as the number of full time equivalent positions).

Proposed section 8 (2) provides for a new exemption for medium sized shops. Under the new provision a shop is exempted from the requirement under the Principal Act to be kept closed on a restricted trading day if:

- (a) the number of persons employed and working in a business carried on in the shop on that day (whether for the full day or a part of the day) does not exceed 20, and
- (b) at any time within the period of 7 days before that day, the number of persons employed by the occupier of the shop and working in any business carried on in shops of any kind in the State does not exceed 100.

This exemption for medium sized shops is subject to the condition that, on the restricted trading day, the exempted shop is staffed only by persons who have freely elected to work on that day.

Proposed section 8A provides for a new exemption to enable a shop to open on a restricted trading day if the only business activities carried on at the shop during the restricted trading day are the reception, unpacking or preparation of goods for sale at the shop after the conclusion of a restricted trading day. This exemption is subject to the condition that, on the restricted trading day, the shop is staffed only by persons who have freely elected to work on that day.

Proposed section 8B provides for a new exemption from the requirement to keep a shop closed on Boxing Day if the exempted shop is staffed only by persons who have freely elected to work on that day. **Schedule 1 [3]** omits section 4 (3) of the Principal Act that provides for a Boxing Day exemption for shops located in a prescribed Sydney Trading Precinct.

Schedule 1 [6] provides that it is an offence carrying a maximum penalty of 50 penalty units (currently \$5,500) for an occupier of a shop to fail to comply with a condition of an exemption imposed under Division 1 of Part 3 of the Principal Act (General exemptions).

Amendments relating to tourist trading precinct exemptions

Schedule 1 [10] inserts proposed section 10A into the Principal Act to give effect to the objective set out in paragraph (e) of the Overview.

Proposed section 10A enables the Director-General, on application by a local council, to grant an exemption to allow shops in a specified location to open on restricted trading days (*a tourist trading precinct exemption*). The Director-General must not grant a tourist trading precinct exemption unless he or she is satisfied that the location that is to be the subject of the exemption is, or is within, a tourist area (that is, an area that during a period or periods of the year has a tourist population that is greater than its normal resident population). Section 13 of the Principal Act (as amended by **Schedule 1 [19]**) will provide that a shop that is opened on a restricted trading day under such an exemption is staffed only by persons who have freely elected to work on that day.

Schedule 1 [1], [7]–[9], [11]–[18] and [20] make consequential amendments.

Amendments relating to August Bank Holiday

Schedule 1 [21] provides that a bank may open for retail banking business on the August Bank Holiday if the bank is staffed only by persons who have freely elected to work on that day.

Savings or transitional amendments

Schedule 1 [23] provides for the making of regulations containing provisions of a savings or transitional nature consequent on the enactment of the Principal Act or any Act that amends the Principal Act.

Schedule 1 [24] provides that certain exemptions granted under section 89B of the *Shops and Industries Act 1962* (being exemptions for certain holiday resort areas) that were saved on the commencement of the Principal Act (formerly the *Shop Trading Act 2008*) cease to have effect on 30 June 2013. This will coincide with the commencement of the amendments relating to the proposed tourist trading precinct exemptions referred to above—see clause 2 (2) of the proposed Act providing that those amendments are to commence on 1 July 2013.

First print



New South Wales

Retail Trading Amendment Bill 2012

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New South Wales

Retail Trading Amendment Bill 2012

No. , 2012

A Bill for

An Act to amend the *Retail Trading Act 2008* to make further provision with respect to the regulation of shop opening hours, restricted trading days and bank trading days; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Retail Trading Amendment Act 2012*.

2 Commencement

- (1) Except as provided by subsection (2), this Act commences on the date
of assent to this Act.
- (2) Schedule 1 [1], [7]–[18] and [20] commence on 1 July 2013.

Schedule 1 Amendment of Retail Trading Act 2008 No 49

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

shop exemption—see section 10.

tourist trading precinct exemption—see section 10A.

[2] Section 3A

Insert after section 3:

3A Meaning of “freely elected to work”

For the purposes of this Act, a person:

- (a) has not freely elected to work at a shop or a bank on a day if the person has been coerced, harassed, threatened or intimidated to work on that day by or on behalf of the occupier of the shop or the bank, and
- (b) is not taken to have freely elected to work on a day merely because the person is rostered, or required by the terms of an industrial instrument, to work on that day.

[3] Section 4 Shops to be closed on restricted trading days

Omit section 4 (3).

[4] Section 7 Businesses of certain kinds exempt from trading restrictions

Omit section 7 (2)–(4). Insert instead:

- (2) An exemption under this section 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. This subsection has effect despite any other law.

[5] Sections 8, 8A and 8B

Omit section 8. Insert instead:

8 Exemption based on size of workforce**(1) Small shops**

A shop is exempted from a requirement under this Act to be kept closed on a restricted trading day if:

- (a) the number of persons employed and working in a business carried on in the shop on the restricted trading day

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| | (whether for the full day or a part of the day) is less than 5, | 1 |
| | and | 2 |
| (b) | at any time within the period of 7 days before that | 3 |
| | restricted trading day, the number of persons employed by | 4 |
| | the occupier of the shop and working in any business | 5 |
| | carried on in shops of any kind in the State is less than 5. | 6 |
| (2) | Medium sized shops | 7 |
| | A shop (other than a shop to which subsection (1) applies) is | 8 |
| | exempted from a requirement under this Act to be kept closed on | 9 |
| | a restricted trading day if: | 10 |
| (a) | the number of persons employed and working in a business | 11 |
| | carried on in the shop on the restricted trading day | 12 |
| | (whether for the full day or a part of the day) does not | 13 |
| | exceed 20, and | 14 |
| (b) | at any time within the period of 7 days before that | 15 |
| | restricted trading day, the number of persons employed by | 16 |
| | the occupier of the shop and working in any business | 17 |
| | carried on in shops of any kind in the State does not exceed | 18 |
| | 100. | 19 |
| (3) | The number of persons employed for the purposes of | 20 |
| | subsections (1) (b) and (2) (b): | 21 |
| (a) | if the occupier of the shop is a body corporate, is to include | 22 |
| | the persons: | 23 |
| (i) | employed in shops of any kind in the State by a body | 24 |
| | corporate that is related to that body corporate | 25 |
| | (within the meaning of the <i>Corporations Act 2001</i> | 26 |
| | of the Commonwealth), and | 27 |
| (ii) | working in any business carried on in those shops, | 28 |
| | and | 29 |
| (b) | is to be calculated by dividing the total number of the hours | 30 |
| | worked by all persons employed and working in the | 31 |
| | business carried on in those shops during the relevant | 32 |
| | period by 38. | 33 |
| (4) | An exemption under subsection (2) is subject to the condition | 34 |
| | that, on a restricted trading day, the exempted shop is staffed only | 35 |
| | by persons who have freely elected to work on that day. This | 36 |
| | subsection has effect despite any other law. | 37 |

8A	Exemption for receiving, unpacking or preparing goods for sale after restricted trading day	1
		2
(1)	A shop is exempted from a requirement under this Act to be kept closed on a restricted trading day if the only business activities carried on at the shop during the restricted trading day are the reception, unpacking or preparation of goods for sale at the shop after the conclusion of a restricted trading day.	3
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(2)	An exemption under this section 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. This subsection has effect despite any other law.	8
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8B	Exemption from Boxing Day trading restrictions	12
(1)	A shop is exempted from a requirement under this Act to be kept closed on Boxing Day, subject to the condition that, on Boxing Day, the exempted shop is staffed only by persons who have freely elected to work on that day.	13
		14
		15
		16
(2)	This section has effect despite any other law.	17
[6]	Section 9A	18
	Insert after section 9:	19
9A	Offence—failure to comply with exemption condition	20
	An occupier of a shop must not fail to comply with a condition of an exemption imposed under this Division.	21
		22
	Maximum penalty: 50 penalty units.	23
[7]	Section 10 Director-General may exempt shops from trading restrictions	24
	Insert “(a <i>shop exemption</i>)” after “closed” in section 10 (1).	25
[8]	Section 10 (3)	26
	Omit “an exemption under this Division”.	27
	Insert instead “a shop exemption”.	28
[9]	Section 10 (4), (5) and (7)	29
	Omit “An exemption” wherever occurring.	30
	Insert instead “A shop exemption”.	31

[10] Section 10A	1
Insert after section 10:	2
10A Director-General may exempt shops in a tourist trading precinct from trading restrictions	3
	4
(1) The Director-General may by order, on application by a local council, exempt the shops in a specified location from a requirement under this Act to be kept closed (a <i>tourist trading precinct exemption</i>).	5
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(2) The Director-General must not grant a tourist trading precinct exemption unless the Director-General is satisfied that the location that is to be the subject of the exemption is, or is within, a tourist area (that is, an area that during a period or periods of the year has a tourist population that is greater than its normal resident population).	9
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(3) Before granting a tourist trading precinct exemption, the Director-General is to have regard to such matters as may be prescribed by the regulations for the purposes of this section.	15
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(4) A tourist trading precinct exemption may:	18
(a) apply in respect of one or more specified restricted trading days or all restricted trading days, or	19
	20
(b) apply in respect of specified times on a restricted trading day.	21
	22
(5) A tourist trading precinct exemption has effect for the period, not exceeding 5 years, specified by the Director-General in the order.	23
	24
(6) The period of the exemption may not be extended by an amendment to the order.	25
	26
(7) A tourist trading precinct exemption may be subject to conditions.	27
	28
[11] Section 11 Applications for exemptions	29
Insert “(in the case of a shop exemption)” after “sought” in section 11 (1) (b).	30
[12] Section 11 (1) (b1)	31
Insert after section 11 (1) (b):	32
(b1) made at least 3 months (or such other period as may be prescribed by the regulations) before the first day for which the exemption is sought (in the case of a tourist trading precinct exemption), and	33
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[13] Section 11 (2)	1
Insert “for a shop exemption” after “application”.	2
[14] Section 11A Publication of orders and reasons for decisions	3
Insert “(including any conditions to which the exemption is subject)” after “granting an exemption” in section 11A (1).	4
	5
[15] Section 11B Deemed refusal of application	6
Omit “an exemption”. Insert instead “a shop exemption”.	7
[16] Section 11B (2)	8
Insert at the end of section 11B:	9
(2) If the Director-General has not determined an application for a tourist trading precinct exemption within 3 months (or such other period as the regulations may provide) 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.	10
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[17] Section 11C Application of Division to applications for amendment or revocation of exemption orders	18
	19
Omit “an exemption” from section 11C (1).	20
Insert instead “a shop exemption”.	21
[18] Section 11C (1A)	22
Insert after section 11C (1):	23
(1A) A local council that has been granted a tourist trading precinct exemption under this Division may apply for the amendment or revocation of the exemption order.	24
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[19] Section 13 Staffing on restricted trading days	27
Omit section 13 (1) and (2). Insert instead:	28
(1) An exemption granted by the Director-General under this Part is subject to the condition that each exempted shop that is opened on a restricted trading day to which the exemption applies is staffed only by persons who have freely elected to work on that day.	29
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[20] Section 14 Offence—failure to comply with exemption condition	1
Omit “An occupier of a shop must not fail to comply with a condition of an exemption imposed under this Division”.	2
	3
Insert instead “An occupier of a shop that is opened on a restricted trading day to which a shop exemption or tourist trading precinct exemption applies must not fail to comply with a condition of the exemption”.	4
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[21] Section 14CA	7
Insert after section 14C:	8
14CA Exemption for Bank Holiday	9
(1) Despite section 14C, a bank may open for retail banking business on Bank Holiday, subject to the condition that it is staffed only by persons who have freely elected to work on that day.	10
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(2) Subsection (1) has effect despite any other law.	13
(3) A bank to which this section applies must not fail to comply with the condition specified in subsection (1).	14
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Maximum penalty: 50 penalty units.	16
[22] Section 14F Staffing on bank close days	17
Omit section 14F (1) and (2). Insert instead:	18
(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.	19
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[23] Schedule 2 Savings, transitional and other provisions	23
Omit clause 1 of the Schedule. Insert instead:	24
1 Regulations	25
(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.	26
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(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.	29
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(3)	To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:	1
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(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	4
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(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.	7
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[24]	Schedule 2, clause 2	10
	Insert after clause 2 (4):	11
(5)	An existing exemption that was granted under section 89B of the <i>Shops and Industries Act 1962</i> ceases to have effect on 30 June 2013.	12
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		14