



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

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- 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.