

## Legislative Council Hansard – 20 September 2017 – Proof

**RETAIL TRADING AMENDMENT (BOXING DAY) BILL 2017***Second Reading***Mr SCOT MacDONALD ( 15:33 ):** On behalf of the Hon. Don Harwin: I move:

That this bill be now read a second time.

I seek leave to incorporate the second reading speech in *Hansard*.

**Leave granted.**

In 2015, the Government committed to reform retail trading laws to provide more certainty and choice for consumers, retailers and employees. The reforms were necessary because of the constraints and disadvantages built into the legislation at that time, which discriminated against businesses, consumers and workers, depending on their location. While shops in the central business district, Bondi and on Broadway could open, shops in Western Sydney could not. Shops in Wyong could trade, but not those in Newcastle. Shops in Narromine were open, but 30 minutes drive away in Dubbo, the shops were shut. Shellharbour was open for business, but 20 minutes down the road, Wollongong mall was closed. Local businesses were missing out on local dollars, and local workers were missing out on extra income.

Through the support of this Parliament, the Retail Trading Amendment Act 2015 amended the Retail Trading Act to permit statewide Boxing Day trading for 2015 and 2016. The 2015 amendments allowed all shops and bank branches to open on Boxing Day on the condition that staff freely elected to work without being coerced, harassed, threatened or intimidated. Those reforms gave all parties more choice. They gave retailers greater choice to open on Boxing Day and take advantage of one of the busiest trading days of the year if they wished. They gave consumers more choice to visit their local shops on Boxing Day and they gave retail employees more choice to earn extra income at higher rates of pay if they freely elected to work on Boxing Day. The 2015 legislation also introduced fines of up to \$11,000 for any retailer or bank that coerced any employee to work on a restricted trading day, including Boxing Day.

The legislation also introduced fines of up to \$22,000 for any landlord who forced a retailer to open on Boxing Day or any other restricted trading day. In this way, the 2015 amendments not only gave consumers, retailers and employees more choice but strengthened protections for employees and retailers as well. The 2015 legislation included a review mechanism to determine whether the policy objectives remained valid and whether the terms of the legislation remained appropriate for securing those objectives.

The legislation required the review to take place after 1 February 2017. Professor Percy Allan, AM, the former secretary of the Treasury from 1986 to 1994, was appointed to conduct the review in February this year. Professor Allan has broad expertise in public policy, economics and finance, and is a visiting professor at the Macquarie Graduate School of Management.

As part of his review, Professor Allan consulted with and received submissions from major retailers and their representative organisations, unions and other industry stakeholders. Surveys of both retailers and workers were undertaken to gauge their experience of Boxing Day trading in 2015 and 2016. I again congratulate Professor Allan on producing an excellent report, and I was very pleased to be able to meet with him and discuss the findings of the report. I am pleased to advise members that Professor Allan found the extension of Boxing Day trading in 2015 and 2016 was a success.

Professor Allan's key findings included: Boxing Day in 2015 and 2016 was one of the most popular shopping days of the Christmas–New Year period; Boxing Day trading did not detract from retailing activity on other trading days following Christmas; more than half of retail employees want trading on Boxing Day to continue—outnumbering those who were against it by two to one; only a small number of retail workers formally complained to NSW Industrial Relations [NSWIR] of being coerced or pressured to work on Boxing Day; and of all employees surveyed, only 2 per cent experienced negative repercussions after indicating a preference not to work.

Professor Allan's primary recommendation was to retain the amendments made in 2015 to permit trading on Boxing Day, provided that staff freely elected to work. The Government also has agreed to Professor Allan's recommendation that NSW Industrial Relations use print, broadcast and social media to widely publicise that: no-one is obliged to open or work in a shop or bank branch on Boxing Day and that pressuring someone to do so is subject to heavy penalties, and it is an offence to interfere with the free will of someone to choose whether to work or not work on Boxing Day. This will include the department assisting businesses to prepare for Boxing Day by prominently displaying on its website a high-level best practice process for planning, notifying and rostering staff without resorting to coercion.

The department also will seek to convene a meeting with unions and retail organisations to review how best to inform retail owners and managers of their obligations under the legislation and meet again after Boxing Day to review the extent of compliance with both the letter and the spirit of the law. Professor Allan also recommended the introduction of minimum penalties for the offences of coercing an employee to work or coercing a retailer to open. While the Government remains committed to ensuring employees are protected, the Government has declined to implement minimum penalties on the basis that mandatory minimum penalties are reserved for very serious offences, such as the murder of a police officer, and mandatory minimum penalties restrict the courts' discretion to tailor penalties to particular circumstances.

Professor Allan also recommended that the Government give NSWIR authority to fine offenders without having to mount prosecutions in court. The Government has determined that while such a scheme may be appropriate for strict liability offences, such as speeding, it would not be appropriate for the offences set out in the retail trading legislation.

I now turn to the details of the bill. The object of this bill is to amend the Retail Trading Act 2008 to permanently allow shops and banks to be open on Boxing Day and to allow banks to be open on the Bank Holiday and certain public holidays aside from restricted trading days, provided that staff freely have elected to work. The bill would give effect to this object by repealing the sunset provisions at section 27, which would have ended statewide Boxing Day trading, from 1 December 2017.

The bill also removes a redundant provision at section 26 that required a review of the Retail Trading Amendment Act 2015 to be undertaken because that review has now been completed. This bill will allow the continuation of extended Boxing Day trading in New South Wales following a successful two-year trial. The Shopping Centre Council submitted to the review that more than 1.25 million people visited their sample set of Sydney shopping centres on Boxing Day in both 2015 and 2016, making that day one of the most popular shopping days of December. The Shopping Centre Council also submitted that upwards of 78 per cent of the retail shops chose to open for those customers.

The independent research commissioned by Professor Allan also found that more than half of retail workers are in favour of shops opening on Boxing Day while only a quarter are against it. The bill protects the freedom of choice for workers because retailers face substantial fines if they open their shop with staff that have not freely chosen to work. This bill protects freedom of choice for retail business owners because shopping centre landlords face substantial fines if they make their tenants open on Boxing Day. The New South Wales Government was re-elected in 2015 with a commitment to liberalise Boxing Day trade.

When we introduced our reforms to make Boxing Day trade available to all retailers in New South Wales, we did it on the premise of providing opportunity and choice. Business owners can now choose to open and reap the benefits of their trade, or they can choose to keep their store closed and spend Boxing Day with family and friends. The onus is now on the Parliament to continue these Boxing Day trading arrangements into the future. I commend the bill to the House.