

Shop Trading Bill

EXPLANATORY MEMORANDUM

Clause 1 cites the purpose of the Act which is to provide for the regulation of shop trading hours and for the registration and classification of shops.

Clause 2 provides that the Act is to come into operation on a day or days to be proclaimed.

Clause 3 (1) provides definitions which are to apply in the Act.

(2) provides that this Act does not apply to hawkers and pedlers.

Clause 4 shows the objectives of the Act.

Clause 5 (1) provides the days which are ordinary closing days for shops which are not exempt shops under clause 6 and Schedule 1 of the Act.

(2) provides that the Governor in Council may substitute another day as a public holiday for any of the ordinary closing days listed in this clause and that the substituted day is to be considered a reference to the listed day.

Clause 6 (1) provides that a shop is an exempt shop if the business carried on in the shop is of a kind that a reasonable person would expect to be carried on in a shop listed in Schedule 1.

(2) provides that a shop is not exempt if twenty or more persons are employed in the shop or in shops conducted by the management of the shop.

(3) provides the definition of a body corporate or related body corporate for the purposes of establishing whether a shop is an exempt shop under sub-clause (1) and meets the employment criteria of sub-clause (2).

Clause 7 (1) provides the times at which butchers' shops must be closed.

(2) provides the times at which shops for the sale of motor cars must be closed.

(3) provides the times that all other shops which are not exempt shops must be closed.

Clause 8 (1) provides that a council of a municipality may apply to the Minister for an order to allow butchers' shops in the municipality to open until 9 p.m. on one day from Monday to Thursday instead of Friday.

(2) provides that a council or municipality may apply to the Minister for an order exempting—

(a) shops; or

(b) shops on market sites; or

(c) shops during the period of a festival in its municipal district—

from the provisions of clause 7.

(3) provides that a person may apply to the Minister for an order exempting shops which are part of a bazaar or fair for benevolent or charitable purposes or part of an exhibition of works of art or industry from the provisions of clause 7 except the requirement to close on Good Friday and Anzac Day.

(4) provides that the Minister may grant applications made under sub-clause (2) or (3) either wholly or in part and on such conditions as the Minister thinks fit.

(5) provides that a person may apply to the Minister for an order declaring that clause 6 (2) does not apply to a shop or class of shops.

(6) provides that the Minister may grant or refuse an application under sub-clause (5) and may fix conditions which are to apply if the order is made.

(7) provides that an order of exemption for a festival, bazaar, fair or exhibition applies for the period specified on the order and for any other order applies until revoked.

(8) provides that the Governor in Council may make an order exempting shops from the provisions of clause 7.

(9) provides that no more than four days in any one year may be exempted under sub-clause 7.

(10) provides that a person who does not comply with a condition of an order is guilty of an offence.

Clause 9 (1) provides that a person who occupies or manages a shop may apply for the registration or renewal of registration of the shop to the relevant officer in the prescribed form.

(2) provides that applications under sub-clause (1) are to be accompanied by the prescribed fee.

(3) provides that sub-clause (2) does not apply to premises licensed under the *Business Franchise (Petroleum Products) Act 1979* and the prescribed fee in that case is under \$100.00.

Clause 10 provides that the relevant person must register and issue a Certificate of Registration if the application is in accordance with clause 9.

Clause 11 (1) provides that a person applying for the registration or renewal of registration of a shop may at the same time apply for the registration or renewal of registration of the shop as an exempt shop.

(2) provides that applications under sub-clause (1) must be accompanied by the prescribed fee.

(3) provides that the relevant officer must if he or she is satisfied that the shop is a shop of the class or kind mentioned in Schedule 1 register the shop as an exempt shop. If the relevant person is not satisfied that the shop is an exempt shop the relevant officer must notify the applicant and give the applicant the opportunity to be heard.

(4) provides that if after giving the applicant the opportunity to be heard the relevant officer is still not satisfied that the shop is an exempt shop the relevant officer must notify the applicant of the refusal to register the shop as an exempt shop.

(5) provides that a person aggrieved by a decision of the relevant officer under sub-clause (4) may apply to the Administrative Appeals Tribunal for review of the decision.

Clause 12 (1) provides that if the Minister considers that a shop registered as an exempt shop should not be so registered he or she may direct that the registration of the shop as an exempt shop be revoked.

(2) provides that unless an application has been made under sub-clause (3) to the Administrative Appeals Tribunal then the registration of the shop as an exempt shop expires twenty-eight days after the Minister gives notice to the relevant officer.

(3) provides that a person aggrieved by a direction of the Minister under sub-clause (1) may apply to the Administrative Appeals Tribunal for review of the Minister's decision.

(4) provides that if the Administrative Appeals Tribunal determines that the registration of the shop as an exempt shop should be revoked then such registration is revoked when the determination is made.

Clause 13 (1) provides that a person may apply in the prescribed form for registration of a market site to the relevant officer.

(2) provides that an application under this clause is to be accompanied by the prescribed fee.

(3) provides that if the relevant officer is satisfied that the application is in accordance with this clause he or she must register the market site.

Clause 14 provides that a Certificate of Registration of a shop or market site ceases to be in force at the expiration of one year or upon the person named in the certificate as the occupier or manager ceasing to be the occupier or manager.

Clause 15 provides that a Certificate of Registration of a shop or as an exempt shop ceases to be in force at the expiration of one year or upon the shop ceasing to be a shop of the class or kind in Schedule 1 or if a shop ceases to be an exempt shop under the provisions of clause 6.

Clause 16 provides that the person to whom a Certificate of Registration is issued under clause 10 or 11 must cause the Certificate to be publicly displayed.

Clause 17 provides that a person who occupies or manages a shop at a market site must cause a notice of the name and address of the occupier or manager to be publicly displayed.

Clause 18 (1) provides that an inspector may with such assistance as required enter, inspect and examine at all reasonable times any shop in the course of the administration of this Act.

(2) provides that an inspector must produce evidence of his or her appointment as an inspector to the occupier or manager of any shop on demand.

(3) provides that if an inspector uses the assistance of an interpreter any inquiry made by the interpreter is deemed to be an inquiry made by an inspector.

(4) provides that a person shall not be required to answer any question or give any evidence tending to incriminate himself or herself.

Clause 19 (1) provides that the occupier of a shop and the agents and employees of the occupier must provide the means for an inspector to enter, examine or exercise the powers of the inspector under this Act.

(2) provides that a person must not wilfully delay an inspector, fail to comply with a requisition of an inspector, prevent a person appearing before an inspector, obstruct, hinder, impede, resist or oppose an inspector or refuse admission to an inspector and prescribes a penalty for a breach of the section.

(3) provides that a person must not assault or intimidate an inspector.

Clause 20 provides that the Minister may appoint an officer of the public service employed in an administrative unit for which the Minister has responsibility to be an inspector for the purposes of this Act.

Clause 21 provides that second-hand dealers who hold a licence under the *Second-hand Dealers Act* 1958 can carry on business at registered market sites as well as the premises named in their Second-hand Dealers Licence.

Clause 22 provides that the occupier or manager of a shop must close the shop in accordance with this Act or in accordance with a direction of an inspector.

(2) provides that a person must not occupy or manage a shop if the person is not the holder of a current registration certificate for the shop.

(3) provides that a person must not, for profit or reward, other than for a charitable purpose engage in a business of promoting the use of a place or premises as a market site unless the person is the holder of a Certificate of Registration as a market site.

(4) provides that a person who holds a Certificate of Registration as a market site must not authorise or permit a shop at a market site to open at a time not authorised by this Act.

Clause 23 (1) provides that proceedings must not be taken under this Act unless with the direction of the Minister, the relevant officer if authorised by the Minister, any other officer authorised by the Minister or a person whose business is affected by or who is specially aggrieved by a contravention of this Act.

(2) provides that a direction given by the Minister or an authorised person may be revoked by the Minister.

(3) provides that any proceedings directed to be taken by the Minister or authorised officer may be taken by any member of the police force or any other inspector.

(4) provides that where proceedings have been directed to be taken and a court amends the information warrant or summons then the proceedings may still proceed.

(5) provides that all courts must take Judicial Notice of the signature of a person who is or has been the Minister or a relevant officer under this clause.

Clause 24 provides provisions with respect to onus of proof, serving of summons and the circumstances under which a shop is deemed not to be closed in proceedings under this Act.

Clause 25 (1) provides that any person or body of persons may be guilty of an offence under this Act.

(2) provides that where a body corporate is guilty of an offence against this Act an officer of the body corporate at the time of the offence is also guilty of the offence.

(3) provides that in proceedings where it is required to show the intention of a body corporate it is sufficient to show that an officer of the body corporate had that intention.

(4) provides the definition of officer as it refers to a body corporate under this Act.

Clause 26 (1) provides that the Governor in Council may make regulations prescribing any matter required by the Act.

(2) provides that regulations under this Act may be of general or limited application.

Clause 27 provides the transitional provisions for registration made under the *Labour and Industry Act 1958* as they apply to this Act.

Clause 28 provides the transitional provisions for orders made under the *Labour and Industry Act* as they are to apply to this Act.

Clause 29 provides the consequential amendments required to be made to the *Labour and Industry Act* on commencement of this Act.

Clause 30 provides the sections of the *Labour and Industry Act* which are to be repealed.

Clause 31 provides for the consequential amendment of the *Penalties and Sentences Act 1985*.

Clause 32 provides for the consequential amendment of the *Industrial Relations Act* 1979.

Clause 33 provides for the consequential amendment of the *Liquor Control Act* 1968.

Clause 34 provides for the repeal of the *Shop Trading (Temporary Provisions) Act* 1986.

