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ELIZABETHAE II REGINAE

A.D. 1990

No. 50 of 1990

An Act to amend the Shop Trading Hours Act, 1977, and the
Landlord and Tenant Act, 1936.

[Assented to 22 November 1990]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Statutes Amendment (Shop Trading Hours and Landlord and Tenant) Act, 1990*.

Commencement

2. (1) Subject to subsection (2), this Act will come into operation on a day to be fixed by proclamation.

(2) Section 11 will come into operation at the expiration of three years after section 10 comes into operation.

Interpretation

3. A reference in this Act to "the principal Act" is a reference to the Act referred to in the heading to the Part in which the reference occurs.

PART I

AMENDMENT OF SHOP TRADING HOURS ACT, 1977

Interpretation

4. Section 4 of the principal Act is amended—

(a) by inserting after the definition of "building" in subsection (1) the following definition:

"caravan" means a caravan as defined for the purposes of the *Motor Vehicles Act, 1959*;

(b) by inserting after the definition of "motor vehicle" in subsection (1) the following definition:

"motor spirit" means—

- (a) a distillate of crude oil commonly used as fuel for motor vehicles;
- (b) liquid petroleum gas or compressed natural gas that is sold, or is intended to be sold, as fuel for motor vehicles;;
- (c) by inserting after the definition of "shopping district" in subsection (1) the following definition:
 - "trailer" means a trailer as defined for the purposes of the *Motor Vehicles Act, 1959*;;
- (d) by inserting after subsection (2) the following subsections—
 - (2a) the floor area of a shop from which motor spirit is sold does not include—
 - (a) areas in which the only goods displayed for inspection by the public are motor spirit or lubricants;
 - (b) areas to which the public has access for the purpose of inspecting or purchasing motor spirit or lubricants but not any other class or classes of goods.
 - (2b) When determining whether a shop from which motor spirit is sold is an exempt shop, any area used for the storage of motor spirit will not be taken into account.

Variation of proclaimed shopping district

5. Section 12 of the principal Act is amended by striking out subsections (5) and (6) and substituting the following subsection:

- (6) A council must not make an application to the Minister under this section unless it has first given interested persons an opportunity to express their views to the council on the proposal and has had regard to the views expressed to it by interested persons.

Closing times for shops

6. Section 13 of the principal Act is amended—

- (a) by striking out paragraph (c) of subsection (1) and substituting the following paragraph:
 - (c) 5.00 p.m. on a Saturday.;
- (b) by striking out paragraph (c) of subsection (2) and substituting the following paragraph:
 - (c) 5.00 p.m. on a Saturday.;
- (c) by striking out subsection (3) and substituting the following subsections:
 - (3) Notwithstanding any other provision of this section the closing time of a shop the business of which is solely or predominantly the sale of caravans, trailers or boats is, if the shop is situated in a shopping district—
 - (a) 6.00 p.m. on a Monday, Tuesday and Wednesday;
 - (b) 9.00 p.m. on a Thursday and Friday;
 - and
 - (c) 5.00 p.m. on a Saturday.
 - (3a) Notwithstanding any other provision of this section the closing time of a shop the business of which is solely or predominantly the sale of motor

vehicles (other than caravans and trailers) is, if the shop is situated in a shopping district—

(a) 6.00 p.m. on a Monday, Tuesday and Wednesday;

(b) 9.00 p.m. on a Thursday and Friday;

and

(c) 1.00 p.m. on a Saturday or such later time (not being later than 5.00 p.m.) as is fixed by proclamation.;

(d) by striking out subparagraph (iii) from paragraphs (a), (b) and (c) of subsection (4) and substituting, in each case, the following subparagraph:

(iii) 5.00 p.m. on a Saturday.;

(e) by inserting in subsection (6) after “the closing times specified in subsection (1)” “or such other closing times as are specified in the proclamation”.

Permit for certain hardware shops

7. Section 13a of the principal Act is amended by striking out paragraph (d) of subsection (1) and the word “and” immediately following that paragraph.

Repeal of s. 15a

8. Section 15a of the principal Act is repealed.

Repeal of s. 15b

9. Section 15b of the principal Act is repealed.

PART II

AMENDMENT OF LANDLORD AND TENANT ACT, 1936

Substitution of s. 65

10. Section 65 of the principal Act is repealed and the following section is substituted:

Hours of business, etc.

65. (1) In this section—

“closing time” in relation to a shop means the time at which shops generally in the shopping district, or part of the shopping district, in which the shop is situated must close under the *Shop Trading Hours Act, 1977*, notwithstanding that under that Act the shop concerned is not required to close at all or is required to close at some time other than the general closing time:

“core trading hours” means—

(a) in relation to a shop in an enclosed shopping complex—

(i) the hours specified in a resolution passed by tenants of the shopping complex pursuant to subsection (5) as being the hours that the shopping complex should be open for business;

or

(ii) if no such resolution has been passed—standard trading hours;

(b) in relation to a shop in any other shopping complex—standard trading hours:

“enclosed shopping complex” means three or more shop premises that comprise the whole or part of a shopping complex and that share a common area

that is locked when they are closed for business so as to prevent public access to any of them through that area:

“opening costs” in relation to a shopping complex means the cost of airconditioning, lighting, security and any other cost incurred in opening the shopping complex to the public:

“standard trading hours” in relation to a shop means—

- (a) 8.30 a.m. to closing time on a Monday, Tuesday, Wednesday, Thursday or Friday but not if the day is a public holiday;
- (b) 8.30 a.m. to 12.30 p.m. on a Saturday, but not if the Saturday is a public holiday.

(2) Subject to this section, a term of a commercial tenancy agreement that purports to impose on the tenant an obligation to keep the premises open for business at particular times or during particular periods is void.

(3) A commercial tenancy agreement in relation to premises in an enclosed shopping complex may include a term requiring the tenant to keep the premises open for business at particular times, or during particular periods, that fall within core trading hours if it is lawful for those premises to be open at those times or during those periods.

(4) A term of a commercial tenancy agreement in relation to premises in an enclosed shopping complex that was in force immediately before the commencement of the *Statutes Amendment (Shop Trading Hours and Landlord and Tenant) Act, 1990*, will only be void by virtue of subsection (2) to the extent that it requires the tenant to keep the premises open for business outside core trading hours.

(5) A resolution of tenants is passed in pursuance of this subsection if the following conditions are satisfied:

- (a) the resolution must be put to a meeting of tenants by one or more of the tenants of the relevant shopping complex;
- (b) all tenants occupying shop premises in the shopping complex must have received at least seven days notice of the meeting;
- (c) the notice must be in writing and must state:
 - (i) the time and place at which the meeting will be held;
 - and
 - (ii) the resolution that is to be put to the meeting;
- (d) the resolution must not reduce the core trading hours to less than 50 hours per week;
- (e) the tenants present at the meeting must appoint one of their number to preside at the meeting;
- (f) only a tenant occupying shop premises in the enclosed shopping complex, or his or her proxy, is allowed to cast a vote at the meeting;
- (g) voting on the resolution must be by secret ballot on the basis of one vote per tenancy;
- (h) the resolution must be supported by a number of votes equal to, or exceeding, two-thirds of the total number of tenancies in the enclosed shopping complex;

and

(i) every person who cast a vote is entitled to scrutinize the counting of votes.

(6) A resolution pursuant to subsection (5) may be varied or revoked by a subsequent resolution of tenants passed pursuant to that subsection.

(7) A term of a commercial tenancy agreement in respect of premises situated in a shopping complex that purports to impose on the tenant an obligation to pay for, or contribute to, opening costs is void to the extent that it relates to—

(a) a time or period outside core trading hours when the tenant's premises are not open for trading;

or

(b) a time or period during core trading hours when it is unlawful for the tenant to open his or her premises for trading.

Substitution of s. 65

11. Section 65 of the principal Act is repealed and the following section is substituted:

Hours of business

65. (1) Subject to subsection (2), any provision of a commercial tenancy agreement that purports to impose on a tenant an obligation to have his or her premises open for business at particular times, or during particular periods, is void.

(2) This section does not apply where the premises to which the commercial tenancy agreement relates form part of a group of premises constructed or adapted to accommodate six or more separate businesses.

(3) A commercial tenancy agreement to which section 65 (4) (as inserted by the *Statutes Amendment (Shop Trading Hours and Landlord and Tenant) Act, 1990*) applied will, on the commencement of this section be reinstated to the form in which it applied immediately before the commencement of section 10 of the *Statutes Amendment (Shop Trading Hours and Landlord and Tenant) Act, 1990*.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor