



ANNO VICESIMO SEXTO

ELIZABETHAE II REGINAE

A.D. 1977

No. 35 of 1977

An Act to provide for and regulate the closing times for shops, to amend the Industrial Code, 1967-1972, and for other purposes.

[Assented to 1st December, 1977]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PRELIMINARY

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| Short title. | 1. This Act may be cited as the "Shop Trading Hours Act, 1977". |
| Commencement. | 2. This Act shall come into operation on the first day of December, 1977. |
| Amendment of Industrial Code, 1967-1972. | 3. (1) The Industrial Code, 1967-1972, is amended in the manner set out in the schedule to this Act.
(2) The Industrial Code, 1967-1972, as amended by this Act, may be cited as the "Industrial Code, 1967-1977". |
| Interpretation. | 4. In this Act, unless the contrary intention appears—
"the Central Shopping District" means the portion of the municipality of the Corporation of the City of Adelaide that lies within the Hundred of Adelaide:
"closing time" in relation to a shop, means the time provided for by section 13 of this Act as the closing time for that shop:
"council" means a district council or a municipal council as defined for the purposes of the Local Government Act, 1934-1977:
"declared shop" means a shop that is, for the time being, a declared shop under section 5 of this Act:
"exempt shop" means—
(a) a shop (not being a hairdresser's shop) in which not more than three persons are physically present at any one time for the purpose of carrying on, or assisting in carrying on the business of the shop; |

- (b) a shop the business of which is mainly or predominantly the retail sale of all or any of the goods set out in any one of the following subparagraphs:—
- (i) antiques, not being coins or stamps;
 - (ii) live fish, fish food, aquariums or accessories for aquariums;
 - (iii) paintings, reproductions, drawings, etchings, pottery, sculptures, artifacts, wood carving, leatherware, weavings or hand-made goods of glass, iron, copper or silver;
 - (iv) newspapers, books, periodicals, greeting cards, posters, wrapping paper or stationery;
 - (v) pharmaceutical preparations, cosmetic and toilet requisites, first aid requisites or medical and surgical appliances;
 - (vi) fresh flowers, living plants, floral arrangements or wreaths;
 - (vii) non-alcoholic drinks, ice-cream, confectionery or light refreshments;
 - (viii) animals or birds as household pets, pet foods or pet's accessories;
 - (ix) seeds, seedlings, shrubs, trees, fertilizers, pesticides, weedicides, fungicides, flower or shrub pots or garden stakes;
 - (x) food for consumption on the premises of the shop or food prepared on the premises of the shop for consumption off those premises;
 - (xi) souvenirs, being goods which are a memento of a time, place or occasion and are identified as such by inscription, stamping or marking;
- or
- (xii) cigarettes, cigars, tobacco or smoker's requisites;
- (c) a hairdresser's shop of which one natural person is the sole proprietor and in which no person other than the proprietor is employed or engaged in or about the business of that shop;
- (d) a shop which has a total floor area of or less than two hundred square metres and the business of which is mainly or predominantly the retail sale of foodstuffs;
- (e) a declared shop;
- or
- (f) a shop which is situated within the premises of a squash centre, ten pin bowling alley or golf club and the business of which is mainly or predominantly the retail sale of sporting goods of a kind used in the sport carried on in or about those premises,

but does not include any shop the business of which is mainly or predominantly the retail sale of—

(g) meat;

(h) motor vehicles or boats;

or

(i) motor spirit, lubricants or spare parts or accessories for motor vehicles:

“Inspector” means an Inspector appointed under section 7 of this Act:

“meat” means the flesh of a slaughtered animal intended for human consumption but does not include bacon, cooked meat, frozen meat, fish, poultry, rabbits, sausages and other small goods or any other prescribed meat or prescribed product derived from meat:

“the metropolitan area” means the part of the State comprised of—

(a) the municipalities of Adelaide, Brighton, Burnside, Campbelltown, Elizabeth, Enfield, Gawler, Glenelg, Henley and Grange, Hindmarsh, Kensington and Norwood, Marion, Mitcham, Noarlunga, Payneham, Port Adelaide, Prospect, St. Peters, Salisbury, Tea Tree Gully, Thebarton, Unley, Walkerville, West Torrens and Woodville;

(b) the district council districts of Munno Para, East Torrens, and Stirling;

(c) the wards known as the Happy Valley, Coromandel, Clarendon and Kangarilla wards of the district council of Meadows;

and

(d) the portion of the Hundred of Willunga that lies within the district council district of Willunga:

“the Metropolitan Shopping District” means the portion of the metropolitan area that is not comprised in the Central Shopping District:

“motor vehicle” means a motor vehicle as defined for the purposes of the Motor Vehicles Act, 1959-1976:

“Proclaimed Shopping District” means an area of the State for the time being declared by proclamation under section 11 of this Act to be a proclaimed shopping district:

“public holiday” means a day that is a public holiday pursuant to the Holidays Act, 1910-1975:

“retail sale” means a sale in the reasonable expectation that the goods sold will be used or consumed and not resold:

“sell” includes offer or expose for sale and “sale” and “sold” have corresponding meanings:

“shop” means the whole or any portion of a building, yard, place, structure, stall, tent or vehicle—

(a) in which goods are sold by retail (including sale by auction);

or

(b) in which the business of a hairdresser or pawnbroker is carried on:

“shopkeeper” means the person, or body of persons, whether corporate or unincorporate, who or which carries on the business of a shop, or acts or apparently acts in the general management or control of the business of a shop:

“shopping district” means—

- (a) the Central Shopping District;
- (b) the Metropolitan Shopping District;
- or
- (c) any Proclaimed Shopping District:

“weekday” means a Monday, Tuesday, Wednesday, Thursday or Friday.

5. (1) Subject to this section where the Minister is satisfied that—

Declared Shops.

- (a) the business of a shop, being a business that is mainly or predominantly the retail sale of foodstuffs, was being carried on on or before the commencement of this Act;
 - (b) after the commencement of this Act the business of that shop continued to be the same as or substantially similar to the business of that shop before that commencement;
- and
- (c) by reason of the operation of this Act, the number of hours in a week during which the business of that shop was carried on during the period of one month immediately before that commencement was more than the number of hours in a week during which the business of that shop may lawfully be carried on after that commencement,

the Minister may, by notice in writing served on the shopkeeper of that shop, declare that shop to be a declared shop for the purposes of this Act.

(2) A declaration under subsection (1) of this section may be expressed to have effect subject to such conditions, limitations or restrictions as are specified in the notice.

(3) Where the Minister is satisfied that a condition, limitation or restriction specified in a notice under subsection (1) of this section has not been complied with or has been contravened the Minister may by notice in writing served on the shopkeeper of the shop concerned revoke the declaration and upon that service the declaration shall have no further force or effect.

(4) A declaration under this section shall not have any force or effect on and from the 31st day of March, 1979.

6. (1) Subject to this section, this Act shall apply to and in relation to—

Application of Act.

- (a) any shop the business of which is mainly or predominantly the retail sale of meat;
- and
- (b) any shop situated within a shopping district.

(2) This Act shall not apply to or in relation to—

- (a) any shop conducted at any agricultural or horticultural exhibition or show;
 - (b) any shop conducted at any exhibition or show approved of by the Minister;
- or
- (c) any shop conducted for a period not exceeding one week, if the proceeds from sales made from that shop are devoted to a charitable, religious or benevolent purpose.

Inspectors.

7. (1) For the purposes of this Act the Governor may appoint so many Inspectors as may appear necessary or desirable.

(2) Every Inspector shall be furnished by the Minister with a certificate of his appointment which he shall produce on request by any person.

Powers of Inspectors.

8. (1) For the purposes of ascertaining whether or not any provision of this Act has been complied with, an Inspector may—

(a) at any time enter into or on any building, yard, place, structure, stall or tent;

(b) if the Inspector suspects on reasonable grounds that a vehicle is used as a shop or in connection with the business of a shop—require the driver of the vehicle to stop the vehicle, and enter and inspect the vehicle or anything drawn by the vehicle;

(c) inspect or take copies of any book, paper, document or record of any description whatsoever;

or

(d) require any person to answer any question put to him by the Inspector, whether that question is put to that person directly or through an interpreter.

(2) In the exercise of his powers under subsection (1) of this section, an Inspector may be accompanied by such other persons as to him seem necessary or desirable in the circumstances.

(3) A person shall not refuse or fail to do all things necessary to facilitate the exercise by an Inspector of the powers conferred on him by this section.

Penalty: Five hundred dollars.

(4) A person to whom a question is put pursuant to paragraph (d) of subsection (1) of this section shall not refuse or fail to answer that question to the best of his knowledge, information and belief.

Penalty: Five hundred dollars.

Inspector not to have interest, etc.

9. An Inspector shall disclose to the Minister any direct or indirect financial interest that he has in any shop that is or may be subject to his inspection.

Penalty: Five hundred dollars.

Protection for Inspectors.

10. No criminal liability shall attach to an Inspector for any act or omission by him in good faith and in the exercise or purported exercise of his powers or functions, or in the discharge or purported discharge of his duties, under this Act.

Proclaimed Shopping District.

11. (1) For the purposes of this Act, each area of the State (other than the metropolitan area) that was, immediately before the commencement of this Act, a shopping district for the purposes of Part XV of the Industrial Code, 1967-1972, shall be deemed to have been declared by proclamation under this section to be a Proclaimed Shopping District.

(2) Subject to subsection (3) of this section, the Governor may from time to time by proclamation—

(a) abolish a Proclaimed Shopping District;

(b) vary the area comprising any Proclaimed Shopping District;

or

(c) declare any area other than the area comprised in the Central Shopping District or the Metropolitan Shopping District to be a Proclaimed Shopping District.

(3) A proclamation under subsection (2) of this section shall not be made except to give effect to an application made under and in accordance with section 11 of this Act in relation to which the Minister has given a certificate under subsection (6) of that section.

12. (1) Subject to this section, a council may, by instrument in writing under its common seal, make application to the Minister that—

Variation of Proclaimed Shopping District.

(a) a Proclaimed Shopping District comprising the whole or a part of the area of the council be abolished;

(b) the area of any Proclaimed Shopping District be varied so that it includes or ceases to include the whole or any part of the area of the council;

or

(c) the whole or any part of the area of the council be declared to be a Proclaimed Shopping District.

(2) An application to vary the area of any Proclaimed Shopping District shall not be made unless the area of the proposed Proclaimed Shopping District would comprise—

(a) a municipality;

or

(b) an area of not less than ninety square kilometres.

(3) An application in respect of an area referred to in paragraph (c) of subsection (1) of this section shall not be made unless the proposed Proclaimed Shopping District would comprise—

(a) a municipality;

or

(b) an area of not less than ninety square kilometres.

(4) An application under this section may only be made in pursuance of a resolution of the council.

(5) The council must advise the Minister of the views it has ascertained, upon the subject of the application, of persons resident in its area and of shopkeepers and shop assistants affected by the application wherever resident.

(6) If the Minister is satisfied that the application is supported by a majority of interested persons he shall give a certificate under his hand to that effect.

(7) In subsection (6) of this section—

“interested persons” means persons resident in the area of the Council and shopkeepers and shop assistants resident outside the area of the Council but employed or engaged in shops within that area.

(8) If an unsuccessful application is made to the Minister under this section a period of one year must elapse before the same, or a substantially similar, application is made to the Minister.

13. (1) Subject to this section, the closing time for a shop situated within the Central Shopping District shall be 6 p.m. on every weekday other than a Friday, 9 p.m. on a Friday and 12.30 p.m. on a Saturday.

Closing times for shops.

(2) Subject to this section, the closing time for a shop situated in each shopping district other than the Central Shopping District shall be 6 p.m. on every weekday other than a Thursday, 9 p.m. on a Thursday and 12.30 p.m. on a Saturday.

(3) During any period in relation to which South Australian summertime is to be observed pursuant to the Daylight Saving Act, 1971-1972, and notwithstanding anything in subsections (1) or (2) of this section, the closing time for any shop the business of which is mainly or predominantly the sale by retail of motor vehicles or boats shall be 9 p.m. on every weekday and 12.30 p.m. on a Saturday.

(4) Notwithstanding anything in subsection (1) or (2) of this section, the closing time for any shop the business of which is mainly or predominantly the retail sale of meat shall be 5.30 p.m. on every weekday and 12.30 p.m. on a Saturday.

(5) The Governor may, by proclamation, alter or suspend temporarily, subject to such conditions as may be specified in the proclamation, any of the closing times prescribed by this section—

(a) in respect of such shopping districts as may be specified in the proclamation;

and

(b) in respect of such shops or shops of a class or kind as may be specified in the proclamation,

and this section shall apply and have effect accordingly.

(6) Subject to subsection (7) of this section, the Governor may, from time to time, by proclamation declare that in relation to a Proclaimed Shopping District specified in the proclamation, subsection (2) of this section shall apply and have effect as if for the passage "Thursday, 9 p.m. on a Thursday" there were substituted the passage "Friday, 9 p.m. on a Friday" and in relation to that Proclaimed Shopping District, that subsection shall apply and have effect accordingly and the Governor may by subsequent proclamation revoke that proclamation.

(7) A proclamation under subsection (6) of this section shall not be made unless the Minister has given a certificate under his hand to the effect that he is satisfied that a majority of interested persons desire that the proposed proclamation be made.

(8) In subsection (7) of this section "interested persons" means persons resident within the relevant Proclaimed Shopping District and shopkeepers and shop assistants resident outside that District employed or engaged in shops within that District.

Shops to be
closed at
closing time.

14. (1) Except as otherwise provided in this Act, every shopkeeper shall cause his shop to be closed and fastened against the admission of the public by no later than the closing time on each day and for the remainder of that day after that closing time.

(2) Any person who contravenes subsection (1) of this section is guilty of an offence and shall be liable—

(a) where that offence is a first offence under that subsection, to a penalty not exceeding two hundred and fifty dollars;

(b) where that offence is a second offence under that subsection, to a penalty not exceeding five hundred dollars;

or

(c) where that offence is a third or subsequent offence under that subsection, to a penalty not exceeding one thousand dollars.

(3) Except as otherwise provided in this Act, a shopkeeper shall keep his shop closed and fastened against the admission of the public for the whole of each Sunday and each other public holiday.

(4) Any person who contravenes subsection (3) of this section is guilty of an offence and shall be liable—

(a) where that offence is a first offence under that subsection, to a penalty not exceeding two hundred and fifty dollars;

(b) where that offence is a second offence under that subsection, to a penalty not exceeding five hundred dollars;

or

(c) where that offence is a third or subsequent offence under that subsection, to a penalty not exceeding one thousand dollars.

(5) Except as otherwise provided in this Act, a person shall not sell, or cause or permit to be sold, any goods in or about a shop on any day after the closing time or on any Sunday or other public holiday.

(6) Any person who contravenes subsection (5) of this section is guilty of an offence and shall be liable—

(a) where that offence is a first offence under that subsection, to a penalty not exceeding two hundred and fifty dollars;

(b) where that offence is a second offence under that subsection, to a penalty not exceeding five hundred dollars;

or

(c) where that offence is a third or subsequent offence under that subsection, to a penalty not exceeding one thousand dollars.

(7) Except as otherwise provided in this Act, if a person is inside a shop after the closing time on any day, or at any time on a Sunday or other public holiday for the purpose of buying or taking delivery of goods, the shopkeeper shall be guilty of an offence and liable—

(a) where that offence is a first offence under this subsection, to a penalty not exceeding two hundred and fifty dollars;

(b) where that offence is a second offence under this subsection, to a penalty not exceeding five hundred dollars;

or

(c) where that offence is a third or subsequent offence under this subsection, to a penalty not exceeding one thousand dollars.

(8) Except as otherwise provided in this Act, if the business of hairdressing or pawnbroking is carried on in a shop after the closing time on any day, or at any time on a Sunday or other public holiday, the shopkeeper shall be guilty of an offence and liable—

- (a) where that offence is a first offence under this subsection, to a penalty not exceeding two hundred and fifty dollars;
- (b) where that offence is a second offence under this subsection, to a penalty not exceeding five hundred dollars;
- or
- (c) where that offence is a third or subsequent offence under this subsection, to a penalty not exceeding one thousand dollars.
- (9) No offence is committed under this section by reason only of the fact that a shopkeeper, or a person employed or engaged in the shop, is engaged within a period of thirty minutes after closing time—
- (a) in serving customers who were in the shop at closing time;
- or
- (b) in completing the hairdressing of a customer who was in the shop at closing time.
- (10) In respect of a hairdresser's shop, the Saturday after Good Friday shall be deemed not to be a public holiday for the purposes of this section.
- (11) In any proceedings in respect of an offence under this section, it shall be a defence for the defendant to prove that at the time at which it is alleged the offence was committed, and—
- (a) throughout the period of seven days immediately preceding that time;
- or
- (b) in the case of a shop that was established within that period of seven days, throughout the period immediately preceding that time during which the business of that shop was carried on,
- the shop, in relation to which it is alleged the offence was committed, was an exempt shop.

Certain sales
lawful.

15. (1) It shall be lawful for the shopkeeper of a shop situated in a shopping district outside the metropolitan area at any time—
- (a) to sell or deliver goods, not being prescribed goods within the meaning of section 16 of this Act, to any person who resides at least eight kilometres from the shop;
- and
- (b) to keep his shop open for so long as is necessary to effect that sale or delivery.
- (2) The distance between the place at which the person is resident and the shop shall, for the purposes of this section, be calculated according to the shortest practicable route.
- (3) It shall be lawful for a shopkeeper at any time to sell or deliver spare parts for agricultural machinery and to keep his shop open for so long as is necessary to effect that sale or delivery.
- (4) It shall be lawful for a shopkeeper at any time to sell by auction, fine art on commission and deliver such fine art and to keep his shop open for so long as is necessary to effect such sale and delivery.

16. (1) In this section "prescribed goods" means—

Prescribed
goods.

- (a) meat;
- (b) motor vehicles and boats;
- and
- (c) motor spirit, lubricants and spare parts and accessories for motor vehicles.

(2) Notwithstanding anything in this Act contained, except as provided in section 16 of this Act, a shopkeeper shall not sell or cause or permit to be sold any prescribed goods in or about his shop at any time at which those goods could not lawfully be sold from that shop if the business of that shop were mainly or predominantly the retail sale of such goods.

(3) A person who is guilty of a contravention of subsection (2) of this section shall be liable—

- (a) where that offence is a first offence under that subsection, to a penalty not exceeding two hundred and fifty dollars;
- (b) where that offence is a second offence under that subsection, to a penalty not exceeding five hundred dollars;
- or
- (c) where that offence is a third or subsequent offence under that subsection, to a penalty not exceeding one thousand dollars.

17. (1) The Minister may, upon the application of a shopkeeper, grant a licence to that shopkeeper permitting him to sell and deliver motor spirit and lubricants, and spare parts and accessories for motor vehicles on any day after closing time and on Sundays and other public holidays.

Licence to
sell motor
spirit,
lubricants,
spare parts
and accessories.

(2) The licence may be subject to such limitations, restrictions and conditions as are prescribed.

(3) The licensee shall pay to the Minister such fees as may be prescribed.

(4) It shall be lawful for the holder of a licence under this section to sell and deliver the goods subject to the licence, to keep his shop open during the hours specified in the licence to effect such sale and delivery and to employ shop assistants during those hours in accordance with the conditions of the licence.

(5) If the Minister considers that a licence granted under this section has been abused in any way, he may, by notice in writing addressed to the holder of the licence, cancel the licence and the licence shall thereupon become void.

(6) A licence granted under the Industrial Code, 1967-1972, and in force immediately before the commencement of this Act, for the sale of motor spirit, lubricants, and spare parts and accessories for motor vehicles, shall be deemed to be a licence granted under this section and shall, subject to this section, continue in operation for the term for which it was granted.

18. Proceedings in respect of offences against this Act shall be disposed of summarily.

Summary
proceedings.

19. The Governor may make all such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act and, without limiting the generality of the foregoing, those regulations may prescribe penalties not exceeding five hundred dollars for a breach of, or non-compliance with, any regulation.

Regulations.

Section 3.

SCHEDULE

Provision of Code	How Amended
Section 3	Strike out "Division I—Exempted Shops" Strike out "Part XV—SHOP TRADING HOURS"
Section 5	Strike out "Schedules" Strike out the definition of "closing time" Strike out the definition of "council" Strike out the definition of "exempted goods" Strike out the definition of "exempted shop" Strike out the definition of "meat" Strike out the definition of "sell" Strike out the definition of "shop" Strike out the definition of "shop assistant" Strike out the definition of "shopkeeper" Strike out the definition of "shopping district"
Division I of Part XII being section 165a and the heading thereto	Strike out
Part XV being sections 220 to 227 inclusive and the heading thereto	Strike out
The Third Schedule	Strike out
The Fourth Schedule	Strike out

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

K. SEAMAN, Governor