

South Australia



**SHOP TRADING HOURS (MISCELLANEOUS) AMENDMENT ACT 1995**

**No. 48 of 1995**

**SUMMARY OF PROVISIONS**

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A.D. 1995

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No. 48 of 1995

**An Act to amend the Shop Trading Hours Act 1977.**

[Assented to 22 June 1995]

The Parliament of South Australia enacts as follows:

**Short title**

1. (1) This Act may be cited as the *Shop Trading Hours (Miscellaneous) Amendment Act 1995*.

(2) The *Shop Trading Hours Act 1977* is referred to in this Act as "the principal Act".

**Amendment of long title**

2. The long title to the principal Act is amended by striking out "closing times" and substituting "opening and closing times".

**Amendment of s. 4—Interpretation**

3. Section 4 of the principal Act is amended—

- (a) by striking out "(not being a hairdresser's shop)" from paragraph (a) of the definition of "exempt shop" in subsection (1);
- (b) by striking out "three persons are physically present at any one time" from subparagraph (iii) of paragraph (a) of the definition of "exempt shop" in subsection (1) and substituting "four persons are physically present at any time outside normal trading hours";
- (c) by striking out subparagraph (ix) of paragraph (b) of the definition of "exempt shop" in subsection (1) and substituting the following subparagraph:

(ix) garden supplies; or;

(d) by striking out paragraph (c) of the definition of "exempt shop" in subsection (1) and substituting the following paragraph:

(c) a hairdresser's shop; or;

(e) by striking out "three persons are physically present at any one time" from subparagraph (B) of subparagraph (ii) of paragraph (d) of the definition of "exempt shop" in subsection (1) and substituting "four persons are physically present at any time outside normal trading hours";

(f) by inserting after paragraph (f) of the definition of "exempt shop" in subsection (1) the following paragraph:

(g) a garden shop of the kind referred to in subsection (3),;

(g) by inserting after the definition of "floor area" in subsection (1) the following definition:

"garden supplies" means seeds, plants, fertilisers, pesticides, weedicides, fungicides, flower or shrub pots, garden stakes, garden tools, machinery or equipment or garden ornaments or accessories;;

(h) by inserting after the definition of "motor spirit" in subsection (1) the following definition:

"normal trading hours" in relation to an exempt shop means the hours during which the shopkeeper would be entitled to open the shop under section 13 or under a proclamation made under that section if the shop were not an exempt shop;;

(i) by striking out the definition of "public holiday" in subsection (1) and substituting the following definition:

"public holiday" means a day that is designated as a public holiday by or under the *Holidays Act 1910* but does not include a Sunday;;

(j) by inserting after the definition of "shopping district" in subsection (1) the following definition:

"trading day" in relation to a shop means a day on which the public has access to the shop for the purpose of purchasing goods;;

(k) by striking out subsection (3) and substituting the following subsection:

(3) If the business carried on at a shop that is not an exempt shop includes the retail sale of garden supplies that are displayed in a separate area of the shop (the "garden shop"), that area of the shop (but not any other part of the shop) will be taken to be an exempt shop if the following requirements are satisfied:

(a) the aggregate price of all garden supplies selected from goods displayed at the garden shop and purchased during the immediately preceding period of seven consecutive trading days of the garden shop must be 80 per cent or more of the aggregate price of all goods selected from goods displayed at the garden shop and purchased during that period; and

(b) the public must not have access to any other part of the shop at any time at which that part of the shop must be closed under this Act.

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**Amendment of s. 5—Certificate as to exempt shop**

4. Section 5 of the principal Act is amended—

(a) by inserting after subsection (2) the following subsection:

(2a) Without limiting subsection (2), a certificate may be issued subject to a restriction or condition specifying the hours during which the shop to which it relates must be closed.;

(b) by inserting after subsection (3) the following subsection:

(4) A shopkeeper who contravenes or fails to comply with a restriction or condition attached to a certificate issued under this section is guilty of an offence.

Penalty: \$10 000.

**Amendment of s. 13—Hours during which shops may be open**

5. Section 13 of the principal Act is amended—

(a) by striking out subsections (1), (2), (3) and (3a) and substituting the following subsections:

(1) Subject to this section and to any proclamation under this section, the shopkeeper of a shop situated in the Central Shopping District may open the shop—

- (a) until 6.00 p.m. on every weekday other than a Friday; and
- (b) until 9.00 p.m. on a Friday; and
- (c) until 5.00 p.m. on a Saturday; and
- (d) from 11.00 a.m. until 5.00 p.m. on a Sunday.

(2) Subject to subsections (3) and (4) and to any proclamation under subsection (12), a shop that is not an exempt shop and that is situated in the Central Shopping District may remain open in accordance with this section for a limited number of hours (to be prescribed by regulation) during any week (being the period from midnight on a Saturday to midnight on the following Saturday) and must then be closed for the rest of that week.

(3) Subsection (2) does not apply to a shop referred to in subsection (5e).

(4) If a shopkeeper of a shop referred to in subsection (2) is entitled to open the shop by virtue of a proclamation under subsection (9) during a period when it would otherwise be unlawful to open the shop, the hours that the shop is open during that period will not be counted for the purposes of subsection (2).

(5) Subject to this section and to any proclamation under this section, the shopkeeper of a shop situated in a shopping district other than the Central Shopping District may open the shop—

- (a) until 6.00 p.m. on every weekday other than a Thursday; and
- (b) until 9.00 p.m. on a Thursday; and

(c) until 5.00 p.m. on a Saturday.

(5a) Subject to subsection (5g) and to any proclamation under this section, the shopkeeper of a shop situated in a shopping district the business of which is solely or predominantly the retail sale of caravans, trailers or boats may open the shop—

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

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

(c) until 5.00 p.m. on a Saturday.

(5b) Subject to subsection (5g) and to any proclamation under this section, the shopkeeper of a shop situated in a shopping district the business of which is solely or predominantly the retail sale of motor vehicles (other than caravans and trailers) may open the shop—

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

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

(c) until 1.00 p.m. on a Saturday or such later time on a Saturday (not being later than 5.00 p.m.) as is fixed by proclamation made by the Governor under this subsection.

(5c) A proclamation under subsection (5b)(c) must apply to all shops of the class referred to in subsection (5b) and may be revoked by subsequent proclamation made by the Governor.

(5d) Subsection (1)(d) does not entitle the shopkeeper of a shop referred to in subsection (5a) or (5b) that is situated in the Central Shopping District to open the shop on a Sunday.

(5e) Subject to subsection (5f) and to any proclamation under this section, the shopkeeper of a shop situated in a shopping district the business of which is the retail sale of—

(a) hardware and building materials; or

(b) furniture; or

(c) floor coverings; or

(d) motor vehicle parts and accessories,

may, in addition to the hours prescribed by subsection (1) or (5) (depending on the shopping district in which the shop is situated), open the shop from 9.00 a.m. until 5.00 p.m. on a Sunday or public holiday (but not on Good Friday or Christmas Day).

(5f) Subsection (5e) only applies to a shop if, during the period of seven consecutive trading days of the shop occurring immediately before the application of subsection (5e) is determined—

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- (a) the aggregate price of all goods sold at the shop that fall within any one or more of the classes of goods referred to in paragraphs (a), (b), (c) and (d) of that subsection is 80 per cent or more of the aggregate price of all goods sold at the shop during that period; and
- (b) the aggregate price of all hardware and building materials of a kind prescribed by regulation for the purposes of this paragraph sold at the shop during that period does not exceed the percentage (prescribed by regulation) of the aggregate price of all hardware and building materials sold at the shop during that period.

(5g) Subject to subsection (5e) and to any proclamation under this section, shops situated in shopping districts must be closed on public holidays.;

- (b) by striking out from subsection (6) "the closing times specified in subsection (1) or such other closing time as are" and substituting "the opening or closing times";
- (c) by striking out from subsection (6) "closing times" thirdly occurring and substituting - "opening or closing times".;
- (d) by inserting after paragraph (b) of subsection (10) the following paragraph:

(ba) is subject to such restrictions and conditions as are specified in the proclamation; and.

**Substitution of s. 13A**

6. Section 13A of the principal Act is repealed and the following section is substituted:

**Restrictions relating to Sunday trading in the City**

13A. (1) Subject to subsection (2), a term of a retail shop lease or collateral agreement in respect of a shop situated in the Central Shopping district that requires the shop to be open on a Sunday is void to the extent of that requirement.

(2) Subsection (1) does not apply to a term of a retail shop lease or collateral agreement that has been authorised by an exemption granted under the *Landlord and Tenant Act 1936* or the *Retail Shop Leases Act 1995*.

(3) Subject to an industrial agreement or an enterprise agreement to the contrary, a person who is employed in the business of a shop situated in the Central Shopping District is entitled to refuse to work at the shop on a particular Sunday unless he or she has agreed with the shopkeeper to work on that Sunday.

(4) In this section—

"collateral agreement" includes a guarantee under which the guarantor guarantees the performance of the obligations of a lessee under a retail shop lease;

"retail shop lease" has the same meaning as in the *Retail Shop Leases Act 1995*.

**Amendment of s. 14—Offences**

7. Section 14 of the principal Act is amended—

- (a) by striking out subsections (1), (3), (5) and (6) and substituting the following subsections:

(1) A shopkeeper must cause his or her shop to be closed and fastened against the admission of the public at all times except those at which he or she is entitled to open the shop under this Act.

Penalty: \$10 000.

(2) Subject to this section, a person must not sell, or cause or permit to be sold, any goods in or about a shop at a time when the shop is required by subsection (1) to be closed.

Penalty: \$10 000.;

(b) by striking out subsection (8) and substituting the following subsection:

(8) Subject to this section a person must not carry on the business of pawnbroking, or cause or permit that business to be carried on, in or about a shop at a time when the shop is required by subsection (1) to be closed.

Penalty: \$10 000.;

(c) by striking out paragraph (b) of subsection (9);

(d) by striking out subsection (10).

**Amendment of s. 17—Licence to sell motor spirit and lubricants**

**8. Section 17 of the principal Act is amended—**

(a) by striking out from subsection (1) "other";

(b) by striking out subsection (4) and substituting the following subsections:

(4) A shopkeeper who holds a licence granted under subsection (1) may open the shop to which the licence relates during the hours specified in the licence for the purpose of selling and delivering motor spirit and lubricants in accordance with the licence.

(4a) During those hours a shopkeeper referred to in subsection (4) may also sell in accordance with the licence any other goods that are normally sold at the shop subject to the following restrictions:

- (a) the aggregate price of motor spirit and lubricants sold at the shop during the immediately preceding period of seven consecutive trading days of the shop must be equal to or greater than the percentage (prescribed by regulation) of the aggregate price of all goods sold at the shop during that period; and
- (b) the shop must be a shop that would fall within the definition of "exempt shop" in section 4 if the business carried on at the shop did not include the retail sale of motor spirit and lubricants.

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

B. S. HETZEL, Lieutenant-Governor