

South Australia

Shop Trading Hours (Miscellaneous) Amendment Act 2003

An Act to amend the *Shop Trading Hours Act 1977* and to make related amendments to the *Retail and Commercial Leases Act 1995*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Shop Trading Hours Act 1977*

- 4 Amendment of section 4—Interpretation
- 5 Substitution of section 5
 - 5 Exemptions
 - 5A Requirement to close shops
- 6 Amendment of section 6—Application of Act
- 7 Amendment of section 8—Powers of Inspectors
- 8 Amendment of section 9—Inspector not to have an interest etc
- 9 Substitution of section 10
 - 10 Protection for Inspectors
- 10 Amendment of section 11—Proclaimed Shopping Districts
- 11 Amendment of section 13—Hours during which shops may be open
- 12 Amendment of section 13A—Restrictions relating to Sunday trading
- 13 Amendment of section 14—Offences
- 14 Amendment of section 14A—Advertising
- 15 Amendment of section 15—Certain sales lawful
- 16 Amendment of section 16—Prescribed goods
- 17 Insertion of sections 17A and 17B
 - 17A Prohibition notices
 - 17B Power of delegation
- 18 Amendment of section 18—Procedures
- 19 Amendment of section 19—Regulations

Schedule—Related amendment and transitional and review provisions

Part 1—Preliminary

- 1 Amendment provisions

Part 2—Amendment of *Retail and Commercial Leases Act 1995*

- 2 Amendment of section 61—Trading hours

Part 3—Transitional and review provisions

- 3 Transitional provision
 - 4 Review of Act
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Shop Trading Hours (Miscellaneous) Amendment Act 2003*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Shop Trading Hours Act 1977*

4—Amendment of section 4—Interpretation

- (1) Section 4(1), definition of *exempt shop*, (a)(iii)—delete subparagraph (iii)
- (2) Section 4(1), definition of *exempt shop*, (d)(ii)—delete subparagraph (ii) and substitute:
 - (ii) which has a floor area that does not exceed 400 square metres; and
- (3) Section 4(1), definition of *exempt shop*, (e)—delete paragraph (e)
- (4) Section 4(1)—after the definition of *Glenelg Tourist Precinct* insert:

Greater Adelaide Shopping District means—

 - (a) the Central Shopping District; and
 - (b) the Metropolitan Shopping District; and
 - (c) the Glenelg Tourist Precinct;
- (5) Section 4(1), definition of *normal trading hours*—delete the definition

5—Substitution of section 5

Section 5—delete the section and substitute:

5—Exemptions

- (1) The Minister may grant or declare exemptions from the operation of this Act, or specified provisions of this Act.

- (2) The Minister may grant or declare an exemption on application to the Minister in a manner and form determined by the Minister, or on the Minister's own initiative.
- (3) An exemption under this section—
 - (a) may relate to—
 - (i) a specified shop or class of shops; or
 - (ii) shops generally; and
 - (b) may apply—
 - (i) generally throughout the State (to the extent that this Act applies across the State); or
 - (ii) in specified shopping districts; or
 - (iii) in a specified part of a shopping district; or
 - (iv) in other parts of the State; and
 - (c) may apply with respect to—
 - (i) specified hours; or
 - (ii) a specified day or days; or
 - (iii) trading days generally.
- (4) However, an exemption—
 - (a) that relates to—
 - (i) a specified class of shops; or
 - (ii) shops generally; or
 - (b) that applies—
 - (i) generally throughout the State (to the extent that this Act applies across the State); or
 - (ii) to shops (or a specified class of shops) in a specified shopping district or part of a specified shopping district,cannot operate in respect of a period greater than 14 days.
- (5) Subsection (4)(b)(ii)—
 - (a) does not apply if—
 - (i) the Minister is satisfied (in such manner as the Minister thinks fit) that a majority of interested persons desire the exemption to be declared for a period greater than 14 days (or indefinitely); and
 - (ii) the Minister gives a certificate to that effect; and
 - (b) does not apply if the exemption relates to a group of individual shops where each shopkeeper has made a separate application to the Minister under this section; and

- (c) does not apply in any case prescribed by the regulations.
- (6) In subsection (5)—
 - interested persons* means—
 - (a) persons resident in the relevant shopping district, or part of a shopping district; and
 - (b) shopkeepers and shop assistants who work in shops within that shopping district or part of a shopping district.
- (7) The Minister must not grant or declare an exemption under this section that enables all shops, or a majority of shops, in the Metropolitan Shopping District to open pursuant to that exemption.
- (8) In deciding whether to grant or declare an exemption, the Minister may have regard to such matters as the Minister considers relevant and is to have regard to the following:
 - (a) in the case of an application made to the Minister under this section—
 - (i) the extent to which there has been consultation within the community, or the relevant part of the community, on the proposed application, and the outcome of that consultation;
 - (ii) whether the application is being made to enable a shop or shops to be open at an exhibition or show, to facilitate or support a local or special event, or to conduct a special trade event (on the basis that an exemption is more likely to be appropriate in such a case);
 - (iii) insofar as may be relevant, the extent to which the application, if granted, would meet the requirements of tourists and other visitors to the area where the relevant shop, or shops, are located;
 - (iv) insofar as may be relevant, the amount and extent of notice that would be given to the community if the application were to be granted;
 - (b) in any case—except where an exemption is being granted in the circumstances described in subsection (5)(a), the policy that exemptions under this section should not be so extensive as to undermine, to any significant degree, the controls on shop trading hours set out in this Act.
- (9) An exemption may be granted or declared—
 - (a) by notice in writing given to the shopkeeper, or each of the shopkeepers, to whom the exemption relates; or
 - (b) by notice in the Gazette.
- (10) An exemption may be granted or declared by the Minister subject to such restrictions or conditions as the Minister thinks fit.

- (11) Without limiting subsection (10), an exemption may be granted or declared subject to a restriction or condition specifying the hours during which, or the day or days on which, the shop or shops to which it relates must be closed.
- (12) The Minister may, at any time, by further notice given in the same manner as notice of the exemption was given—
 - (a) vary or revoke an exemption; or
 - (b) vary or revoke a restriction or condition to which an exemption is subject.
- (13) A shopkeeper who contravenes or fails to comply with a restriction or condition to which an exemption is subject is guilty of an offence.
Maximum penalty: \$100 000.
- (14) Unless specific provision is made in a notice under section 5A, an exemption under this section cannot operate in a manner contrary to a notice of the Minister under that section.
- (15) An exemption under this section cannot operate with respect to section 13A.
- (16) Subject to this section, an exemption will have effect according to its terms and despite the other provisions of this Act.

5A—Requirement to close shops

- (1) The Minister may, by notice in the Gazette, require shops to be closed at times when it would otherwise be lawful to open those shops.
- (2) A notice under this section—
 - (a) must stipulate the times during which shops must be closed; and
 - (b) may relate to—
 - (i) a specified shop or class of shops; or
 - (ii) shops generally; and
 - (c) may apply—
 - (i) generally throughout the State; or
 - (ii) in specified shopping districts; or
 - (iii) in a specified part of a shopping district; or
 - (iv) in other parts of the State; and
 - (d) may apply with respect to—
 - (i) specified hours; or
 - (ii) a specified day or days.
- (3) A requirement under this section cannot operate in respect of a period greater than 14 days.

- (4) The Minister may, by further notice in the Gazette, vary or revoke a requirement under this section.
- (5) Subject to this section, a requirement under this section will have effect according to its terms and despite the other provisions of this Act.
- (6) A shopkeeper who contravenes a requirement under this section is guilty of an offence.
Maximum penalty: \$100 000.

6—Amendment of section 6—Application of Act

Section 6(2)(b)—delete paragraph (b)

7—Amendment of section 8—Powers of Inspectors

- (1) Section 8(1)(a)—after "enter" insert:
and inspect
- (2) Section 8(1)(c)—delete paragraph (c) and substitute:
 - (c) require a person to produce any book, paper, document or record; or
 - (ca) inspect or take copies of any book, paper, document or record or, for that purpose, remove any book, paper, document or record; or
 - (cb) take measurements, or make notes and records; or
 - (cc) take photographs, films or video or audio recordings; or
- (3) Section 8(1)—after paragraph (d) insert:
 - (e) give such directions as are reasonably necessary for, or incidental to, the effective exercise of a power under this section.
- (4) Section 8(3) and (4)—delete subsections (3) and (4) and substitute:
 - (3) A person must not—
 - (a) hinder or obstruct an Inspector, or a person assisting an Inspector, in the exercise of a power under this section; or
 - (b) use abusive or threatening language to an Inspector, or a person assisting an Inspector, in the exercise of a power under this section; or
 - (c) refuse or fail to answer, to the best of that person's knowledge, information and belief, a question put to the person under subsection (1)(d); or
 - (d) refuse or fail to comply with any other requirement or direction under this section.

Maximum penalty: \$25 000.

- (4) A person is not obliged to answer a question as required under subsection (1)(d) if to do so might tend to incriminate the person or make the person liable to a penalty.

- (5) A person is not obliged to provide information under this section that is privileged on the ground of legal professional privilege.

8—Amendment of section 9—Inspector not to have an interest etc

Section 9, penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$5 000.

9—Substitution of section 10

Section 10—delete the section and substitute:

10—Protection for Inspectors

- (1) No personal liability attaches to an Inspector for an honest act or omission in the exercise or discharge, or purported exercise or discharge, of a power, function or duty under this Act.
- (2) A liability that would, but for subsection (1), lie against an Inspector lies instead against the Crown.

10—Amendment of section 11—Proclaimed Shopping Districts

Section 11(1)(a)—delete "the Central Shopping District, the Metropolitan Shopping District or the Glenelg Tourist Precinct" and substitute:

the Greater Adelaide Shopping District

11—Amendment of section 13—Hours during which shops may be open

- (1) Section 13(1), (2), (3), (4) and (4a)—delete subsections (1), (2), (3), (4) and (4a) and substitute:
 - (1) Subject to this section, the shopkeeper of a shop situated in the Central Shopping District or the Glenelg Tourist Precinct may open the shop—
 - (a) until 9.00 p.m. on every weekday; and
 - (b) until 5.00 p.m. on a Saturday; and
 - (c) from 11.00 a.m. to 5.00 p.m. on a Sunday.
 - (2) Subject to this section, the shopkeeper of a shop situated in the Metropolitan Shopping District may open the shop—
 - (a) until 9.00 p.m. on every weekday; and
 - (b) until 5.00 p.m. on a Saturday; and
 - (c) from the commencement of the period of South Australian summer time commencing in 2003 (being a period commencing on the last Sunday in October 2003 or, if a different date is prescribed for the commencement of the relevant period under the *Daylight Saving Act 1971*, commencing on the date so prescribed)—from 11.00 a.m. to 5.00 p.m. on any Sunday (whether or not occurring during a period of South Australian summer time).

- (2) Section 13(5)—delete "and to any proclamation under this section, the shopkeeper of a shop situated in a shopping district other than the Central Shopping District, the Metropolitan Shopping District or the Glenelg Tourist Precinct" and substitute:
- , the shopkeeper of a shop situated in a shopping district outside the Greater Adelaide Shopping District
- (3) Section 13(5a)—delete "subsection (5g) and to any proclamation under"
- (4) Section 13(5b)—delete "subsection (5g) and to any proclamation under"
- (5) Section 13(5b)(c)—delete paragraph (c) and substitute:
- (c) until 5.00 p.m. on a Saturday.
- (6) Section 13(5c)—delete subsection (5c)
- (7) Section 13(5d)—delete subsection (5d) and substitute:
- (5d) Nothing in subsections (1) or (2) entitles the shopkeeper of a shop referred to in subsection (5a) or (5b) that is situated in the Greater Adelaide Shopping District to open the shop for additional hours prescribed by those subsections, or on a Sunday.
- (8) Section 13(5e)—delete "subsection (5f) and to any proclamation under"
- (9) Section 13(5e)—delete "(4a)" and substitute:
- (2)
- (10) Section 13(5g) to (14)—delete subsections (5g) to (14) (inclusive) and substitute:
- (6) Subject to this section, shops in shopping districts (other than shops within the ambit of subsection (5e)) must be closed—
- (a) on 1 January, Easter Sunday, 25 December and 26 December in any year; and
- (b) on all other days that are public holidays in any year.
- (7) The shopkeeper of a shop in the Greater Adelaide Shopping District may open the shop until 5.00 p.m. on the day after Good Friday in each year.
- (8) For the purposes of this section, a reference to a period of South Australian summer time is a reference to the prescribed period within the meaning of the *Daylight Saving Act 1971*.

12—Amendment of section 13A—Restrictions relating to Sunday trading

- (1) Section 13A(1)—delete "the Central Shopping District, the Metropolitan Shopping District or the Glenelg Tourist Precinct" and substitute:
- a shopping district
- (2) Section 13A(3)—delete subsection (3) and substitute:
- (3) A person who is employed to work in a shop in any shopping district is entitled to refuse to work on Sundays unless he or she has agreed with the shopkeeper to work on a particular Sunday.

13—Amendment of section 14—Offences

- (1) Section 14(1), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$100 000.
- (2) Section 14(2), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$100 000.
- (3) Section 14(7), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$100 000.
- (4) Section 14(8), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$100 000.
- (5) Section 14—after subsection (11) insert:
 - (12) In any proceedings for an offence against this section, it is a defence for the defendant to prove that at the time of the alleged offence the defendant was acting within the ambit of an exemption under section 5.

14—Amendment of section 14A—Advertising

Section 14A(1), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$100 000.

15—Amendment of section 15—Certain sales lawful

Section 15(1) and (2)—delete subsections (1) and (2)

16—Amendment of section 16—Prescribed goods

Section 16(3), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$100 000.

17—Insertion of sections 17A and 17B

After section 17 insert:

17A—Prohibition notices

- (1) If the Minister has reason to believe, on reasonable grounds, that a person has contravened a provision of this Act in circumstances that make it likely that the contravention will be repeated, the Minister may issue a notice requiring the person to refrain from an act, or course of action, specified by the Minister.
- (2) A notice under subsection (1) must—
 - (a) state that the Minister is of the opinion that the person has contravened a provision of this Act in circumstances that make it likely that the contravention will be repeated; and
 - (b) state the grounds of the Minister's opinion.

- (3) A person who contravenes or fails to comply with a notice under this section is guilty of an offence.

Maximum penalty: \$100 000 plus \$20 000 for each day on which the offence is committed.

- (4) A person to whom a notice is directed may, within 14 days after service of the notice, appeal to the Administrative and Disciplinary Division of the District Court against the issuing of the notice.

17B—Power of delegation

- (1) The Minister may delegate to a person (including a person for the time being holding or acting in a specified office or position) a function or power of the Minister under this Act.
- (2) A delegation under this section—
- (a) must be by instrument in writing; and
 - (b) may be absolute or conditional; and
 - (c) does not derogate from the power of the Minister to act in any matter; and
 - (d) is revocable at will.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

18—Amendment of section 18—Procedures

Section 18(2)—delete subsection (2) and substitute:

- (2) In any proceedings for an offence against this Act, an allegation in the complaint that—
- (a) a specified shop is within a specified shopping district; or
 - (b) a specified shop has a floor area of a specified size,
- will be accepted as proof in the absence of proof to the contrary.

19—Amendment of section 19—Regulations

- (1) Section 19(2)—after paragraph (a) insert:
- (ab) prescribing the manner in which a notice or other document under this Act may be given, issued or served; and
- (2) Section 19(2)(b)—delete "\$500" and substitute:
- \$10 000

Schedule—Related amendment and transitional and review provisions

Part 1—Preliminary

1—Amendment provisions

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Retail and Commercial Leases Act 1995*

2—Amendment of section 61—Trading hours

- (1) Section 61(1)(c)(i)—delete subparagraph (i) and substitute:
 - (i) do not exceed 54 hours a week and do not include any time on a Sunday;
- (2) Section 61(4)—delete subsection (4) and substitute:
 - (4) A lessee may apply to the lessor for exemption from the provisions of the retail shop lease regulating trading hours.
- (3) Section 61—after subsection (5) insert:
 - (6) A provision in a retail shop lease, or in any determination as to core trading hours under this section, is void to the extent that it requires the lessee to open the shop on any Sunday.

Part 3—Transitional and review provisions

3—Transitional provision

Despite subsection (2)(a) of section 13 of the *Shop Trading Hours Act 1977*, as inserted into that Act by this Act, until a day fixed by the Governor by proclamation under this clause, the times at which the shopkeeper of a shop situated in the Metropolitan Shopping District under that Act may open the shop will remain as:

- (a) until 7.00 p.m. on every weekday other than a Thursday; and
- (b) until 9.00 p.m. on a Thursday.

4—Review of Act

- (1) The Minister must, as soon as practicable after the third anniversary of the commencement of section 11 of this Act, appoint an independent person to carry out an investigation and review concerning the operation of the *Shop Trading Hours Act 1977* (as amended by this Act).
- (2) The person appointed under subclause (1) must present to the Minister a report on the outcome of the investigation and review within 6 months after his or her appointment.
- (3) The Minister must, within 12 sitting days after receipt of a report under this clause, cause a copy of the report to be laid before both Houses of Parliament.