

**Legislative Council—No 121**

As introduced and read a first time, 13 May 2021

South Australia

**Retail Trading Bill 2021**

A BILL FOR

An Act to provide for the closing of retail shops in the metropolitan area of Adelaide on certain days, to repeal the *Shop Trading Hours Act 1977*, and for other purposes.

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## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

This Act may be cited as the *Retail Trading Act 2021*.

#### 5 2—Commencement

The commencement and operation of this Act is subject to the operation of the *Referendum (Retail Trading) Act 2021*.

#### 3—Interpretation

- 10 (1) In this Act, unless the contrary intention appears—  
*council* means a municipal or district council;

**exempt shop**—the following are exempt shops:

- (a) licensed premises within the meaning of the *Liquor Licensing Act 1997*;
- (b) a shop that has no more than 20 persons employed and working in the shop, provided that the total number of persons employed and working in the same shopkeeper's shops in South Australia during the immediately preceding period of 7 consecutive trading days did not exceed 100 (when calculated in accordance with subsection (2)(b));
- (c) subject to subsection (3)—
  - (i) chemists;
  - (ii) petrol stations (including any parts of a petrol station that consist of a shop, or shops, selling goods by retail);
  - (iii) cafes, restaurants and take away food outlets;
  - (iv) shops that primarily offer goods on hire and that only sell goods by retail as an incidental activity;
- (d) a shop of a class prescribed by the regulations;

**inspector**—see section 9;

**metropolitan area** means that part of the State comprising the areas, or the parts of the areas, of the councils referred to in Schedule 1;

**premises** includes a building, yard, place, structure, stall, tent or vehicle;

**retail sale** means a sale of goods in the reasonable expectation that the goods will be used or consumed and not resold and includes sale by auction;

**sell** includes offer or expose for sale and **sale** and **sold** have corresponding meanings;

**shop** means the whole or any portion of premises in which retail sales occur;

**shopkeeper** means the person, or body of persons, whether corporate or unincorporate, that carries on the business of a shop, or acts or apparently acts in the general management or control of the business of a shop;

**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.

- (2) The total number of persons employed and working in a shopkeeper's shops in South Australia for the purposes of paragraph (b) of the definition of **exempt shop** in subsection (1)—
  - (a) if the shopkeeper is a body corporate, is to include the persons—
    - (i) employed in shops of any kind in South Australia by a body corporate that is, by reason of the *Corporations Act 2001* of the Commonwealth, related to that body corporate; and
    - (ii) working in any business carried on in those shops; and
  - (b) is to be calculated by dividing the total number of the hours worked by all persons employed and working in the shopkeeper's shops during the relevant period of 7 consecutive trading days by 38.

- (3) A shop is only an *exempt shop* in accordance with a subparagraph of paragraph (c) of the definition in subsection (1) if the shop is used predominantly for selling goods by retail of a kind that a reasonable person would expect to be sold or supplied in a shop of a kind described in that subparagraph (and such a shop is only an exempt shop under paragraph (c) of the definition in subsection (1) to the extent that it is not an exempt shop under another paragraph of the definition).

## Part 2—Shop trading hours

### 4—Hours during which shops must be closed

- (1) Shops situated in the metropolitan area must be closed on Good Friday, 25 December and until 12 noon on 25 April.
- (2) Nothing in this section affects any restriction on the hours during which a shop may be open that is imposed by or under another law.

### 5—Lease or agreement terms relating to Sunday trading

- (1) Subject to subsection (2), a term of a retail shop lease or collateral agreement in respect of a shop situated in the metropolitan area 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 and Commercial Leases Act 1995*.
- (3) 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 and Commercial Leases Act 1995*.

### 6—Staffing on Sundays

- (1) A person who is employed to work in a shop in the metropolitan area is not required to work on a Sunday unless the person has freely elected to work on that day.
- (2) For the purposes of this section, a person has not freely elected to work in a shop on a day—
- (a) if the person works on the day because the person has been coerced, harassed, threatened or intimidated by or on behalf of the shopkeeper; or
- (b) merely because the person is rostered, or required by the terms of an industrial instrument, to work on that day.

**Note—**

The National Employment Standards under the *Fair Work Act 2009* of the Commonwealth also provide (in accordance with section 114 of that Act) an entitlement for employees to be absent from work on a day or part-day that is a public holiday.

## Part 3—Offences

### 7—Offences

- (1) A shopkeeper must ensure the shop is closed and fastened against the admission of the public at all times during which the shop is required to be closed under this Act.  
5           Maximum penalty: \$100 000.
- (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 this Act to be closed.  
          Maximum penalty: \$100 000.
- (3) Where, at a time when a shop is required by this Act to be closed, a person (other than  
10           the shopkeeper or an employee or agent of the shopkeeper) is in the shop for the purpose of—
- (a) purchasing goods; or
  - (b) inspecting goods; or
  - (c) taking delivery of goods purchased,
- 15           the shopkeeper is guilty of an offence.  
          Maximum penalty: \$100 000.
- (4) In proceedings for an offence under subsection (3), an allegation in the complaint that a person was in a shop for the purpose of—
- (a) purchasing goods; or
  - 20           (b) inspecting goods; or
  - (c) taking delivery of goods purchased,
- will be accepted as proved in the absence of proof to the contrary.
- (5) It is a defence to a charge of an offence under subsection (3) to prove that the  
25           defendant did not know, and could not reasonably be expected to have known, that a person was in the shop for the purpose of—
- (a) purchasing goods; or
  - (b) inspecting goods; or
  - (c) taking delivery of goods purchased.
- (6) Where a court imposes a penalty for an offence against this section it may fix, by way  
30           of additional penalty, an amount determined or estimated by the court as the amount by which the convicted defendant benefited from trading that was, by virtue of this Act, unlawful on the day on which the offence was committed.
- (7) No offence is committed under this section by reason only of the fact that a  
35           shopkeeper, or a person employed or engaged in the shop, is engaged within a period of 30 minutes after closing time in serving customers who were in the shop at closing time.

(8) In any proceedings for an offence against this section relating to a shop, it is a defence for the defendant to prove that, at the time of the alleged offence—

- (a) the shop was an exempt shop; or
- (b) the defendant was acting within the ambit of an exemption under section 11.

5 (9) In this section—

*closing time* in relation to a shop, means the time at which the shop is required to be closed under this Act.

## 8—Advertising

10 (1) Subject to this section, a person who publishes, or causes to be published, an advertisement that a shop will be open during any period when the shop is required by this Act to be closed is guilty of an offence.

Maximum penalty: \$100 000.

15 (2) Subsection (1) does not apply to the proprietor or publisher of a newspaper or magazine or to the holder of a licence under the *Broadcasting and Television Act 1942* of the Commonwealth.

## Part 4—Inspectors

### 9—Inspectors

(1) The following persons are inspectors for the purposes of this Act:

- 20
- (a) a person appointed as an inspector under the *Fair Work Act 1994* by the Minister (within the meaning of that Act);
  - (b) a person appointed by the Minister under this Act.

(2) Each inspector appointed by the Minister under this Act must be furnished by the Minister with an identity card.

25 (3) An inspector must produce the inspector's identity card for inspection by a person who questions the inspector's authority to exercise powers under this Act.

### 10—Powers of inspectors

(1) For the purposes of determining whether a provision of this Act has been complied with, an inspector may—

- 30
- (a) enter and inspect at any time any building, yard, place, structure, stall or tent; or
  - (b) require the driver of a vehicle, suspected by the inspector, on reasonable grounds, to be used as a shop or in connection with the business of a shop to stop the vehicle, and enter and inspect the vehicle or anything drawn by it; or
  - (c) require a person to produce any book, paper, document or record; or
  - 35 (d) inspect or take copies of any book, paper, document or record or, for that purpose, remove any book, paper, document or record; or
  - (e) take measurements, or make notes and records; or
  - (f) take photographs, films or video or audio recordings; or

- (g) require any person to answer any question put by the inspector (whether directly or through an interpreter); or
  - (h) give such directions as are reasonably necessary for, or incidental to, the effective exercise of a power under this section.
- 5 (2) In the exercise of powers under subsection (1), an inspector may be accompanied by such other persons as seem necessary or desirable in the circumstances.
- (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
  - 10 (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)(g); or
  - 15 (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)(g) if to do so might tend to incriminate the person or make the person liable to a penalty.
- 20 (5) A person is not obliged to provide information under this section that is privileged on the ground of legal professional privilege.

## Part 5—Miscellaneous

### 11—Exemptions

- (1) The Minister may grant or declare exemptions from the operation of this Act, or specified provisions of this Act.
- 25 (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
    - 30 (ii) shops in a specified part or parts of the metropolitan area; and
  - (b) may apply with respect to—
    - (i) specified hours; or
    - (ii) a specified day or days.
- 35 (4) 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—

- 5
- (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; and
- (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); and
- 10 (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; and
- (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;
- 15 (b) in any case—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.
- (5) 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
- 20 (b) by notice in the Gazette.
- (6) An exemption may be granted or declared by the Minister subject to such restrictions or conditions as the Minister thinks fit.
- (7) Without limiting subsection (6), an exemption may be granted or declared subject to a restriction or condition specifying the hours during which, or the day or days on
- 25 which, the shop or shops to which it relates must be closed.
- (8) 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.
- 30 (9) 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.
- (10) An exemption under this section cannot operate with respect to section 5 or section 6.
- 35 (11) Subject to this section, an exemption will have effect according to its terms and despite the other provisions of this Act.

## 12—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.
- 40 (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.

### 13—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.
- (2) The regulations may—
- (a) be of general or limited application; and
  - (b) make different provision according to the persons, things or circumstances to which they are expressed to apply; and
  - (c) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister or another person.
- (3) Without limiting the generality of subsection (1), the regulations may—
- (a) prescribe the manner in which a notice or other document under this Act may be given, issued or served; and
  - (b) prescribe penalties (not exceeding \$10 000) for a breach of, or non-compliance with, any regulation; and
  - (c) prescribe expiation fees (not exceeding \$315) for a breach of, or non-compliance with, any regulation.

### Schedule 1—Metropolitan area

The Corporation of the City of Adelaide  
That part of the area of the Adelaide Hills Council formerly comprising the areas of the District Council of East Torrens and the District Council of Stirling  
City of Burnside  
The Corporation of the City of Campbelltown  
City of Charles Sturt  
Town of Gawler  
City of Holdfast Bay  
The Corporation of the City of Marion  
City of Mitcham  
The Corporation of the City of Norwood, Payneham and St. Peters  
City of Onkaparinga  
City of Playford  
City of Port Adelaide Enfield  
City of Prospect  
City of Salisbury  
City of Tea Tree Gully  
The Corporation of the City of Unley  
The Corporation of the Town of Walkerville  
City of West Torrens

## **Schedule 2—Repeal and transitional provision**

### **1—Repeal**

The *Shop Trading Hours Act 1977* is repealed.

### **2—Inspectors**

- 5           A person who was, immediately before the commencement of this Act, appointed as an Inspector under the *Shop Trading Hours Act 1977* will be taken to have been appointed as an inspector under this Act.