



SHOP TRADING HOURS AMENDMENT ACT 1994

No. 76 of 1994

TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Principal Act
4. Section 3 amended (Interpretation)
5. Section 5 amended (Certain shops prohibited from opening on certain occasions)
6. Section 5A inserted
5A—Extended shop trading days
7. Section 5B amended (Minister may extend shop trading hours)
8. Section 8 amended (Person not to be required to work at certain times on certain days contrary to an award or industrial agreement)
9. *Shop Trading Hours Amendment (Extension of Trading) Act 1993* repealed
10. Section 10 inserted (Provisions in certain agreements unenforceable, &c.)



SHOP TRADING HOURS AMENDMENT ACT 1994

No. 76 of 1994

AN ACT to amend the *Shop Trading Hours Act 1984* and to repeal the *Shop Trading Hours Amendment (Extension of Trading) Act 1993*

[Royal Assent 25 November 1994]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

Short title

1—This Act may be cited as the *Shop Trading Hours Amendment Act 1994*.

Commencement

2—(1) This Act, except sections 4, 5, 8, 9 and 10, commences on the day on which it receives the Royal Assent.

(2) Sections 4, 5, 8, 9 and 10 commence on 31 March 1995.

Principal Act

3—In this Act, the *Shop Trading Hours Act 1984** is referred to as the Principal Act.

Section 3 amended (Interpretation)

4—Section 3 (1) of the Principal Act is amended by omitting the definition of “prescribed Saturday”.

Section 5 amended (Certain shops prohibited from opening on certain occasions)

5—Section 5 (1) of the Principal Act is amended as follows:—

- (a) by omitting from paragraph (b) “noon” and substituting “6 p.m.”;
- (b) by omitting subparagraph (i) from paragraph (b);
- (c) by omitting paragraph (c).

Section 5A inserted

6—After section 5 of the Principal Act, the following section is inserted:—

Extended shop trading days

5A—Notwithstanding section 5, a shop to which that section applies may be kept open between 8 a.m. and 6 p.m., or for any period of time between 8 a.m. and 6 p.m., on either or both of the following days:—

- (a) 26 November 1994;
- (b) 31 December 1994.

Section 5B amended (Minister may extend shop trading hours)

7—Section 5B of the Principal Act is amended as follows:—

- (a) by inserting the following subsection before subsection (1):—

(1AA) In this section, “berthed” includes anchored.

* No. 61 of 1984. Amended by No. 62 of 1984, No. 51 of 1985, No. 110 of 1986, Nos. 113 and 114 of 1987, No. 51 of 1988, No. 40 of 1989, Nos. 5, 24 and 44 of 1990, No. 29 of 1991, Nos. 2, 24 and 25 of 1992, No. 112 of 1993, No. 68 of 1994 and S.R. 1987, No. 167, S.R. 1992, No. 208, S.R. 1993, No. 237 and S.R. 1994, No. 12.

- (b) by omitting from subsection (1) (b) “a municipality” and substituting “a municipal area”;
- (c) by omitting from subsection (1) (b) “any municipality” and substituting “any or all of the municipal areas”;
- (d) by inserting in subsection (1) the following paragraph after paragraph (b):—

(ba) any day on which a warship having more than 500 personnel on board is scheduled to be berthed—

- (i) at, or within 20 kilometres of, a port in a particular city; or
- (ii) at, or within 20 kilometres of, a port in a municipal area adjoining a particular city—

to be an extended shop trading day in that city and in any or all of the municipal areas adjoining that city; or

- (e) by omitting from subsection (1) (c) “any municipality” and substituting “any or all of the municipal areas”;
- (f) by omitting from subsection (1) (d) “State.” and substituting “State; or”;
- (g) by inserting in subsection (1) the following paragraphs after paragraph (d):—
 - (e) any day on which an event or occasion occurs that, in the reasonable opinion of the Minister, has major cultural, historical or other significance for the people of Tasmania, whether as Tasmanians or Australians, to be an extended shop trading day in the whole of the State; or
 - (f) any day on which an event or occasion occurs that, in the reasonable opinion of the Minister, has major cultural, historical or other significance to a particular city or municipal area to be an extended shop trading day in that city or municipal area; or

- (g) any day on which an event or occasion occurs that, in the reasonable opinion of the Minister, is likely to be of major benefit to the tourism industry to be an extended shop trading day in—
- (i) the whole of the State; or
 - (ii) if having regard to the nature of the event or occasion the Minister considers it appropriate to limit the extended trading—a particular city or municipal area.
- (h) by omitting from subsection (2) (a) “any such shop in the city or municipalities” and substituting “any or all such shops in the city or municipal areas”;
- (i) by inserting in subsection (2) (a) “ (e) or (g) (i),” after “subsection (1) (d),”;
- (j) by omitting from subsection (2) (b) “any such shop in the city or municipalities” and substituting “any or all such shops in the city or municipal areas”;
- (k) by inserting in subsection (2) (b) “ (e) or (g) (i),” after “subsection (1) (d),”;
- (l) by omitting from subsection (2) (c) “any such shop in the city or municipalities to which the notice relates” and substituting “any or all such shops in the city or municipal areas to which the notice relates, or the State in the case of a notice under subsection (1) (e) or (g) (i),”;
- (m) by omitting from subsection (3) “(a), (b) or (c)” and substituting “(a), (b), (ba), (c), (e), (f) or (g)”;
- (n) by inserting the following subsections after subsection (4):—

(4A) A notice under subsection (1) (e), (f) or (g) is of no effect unless a draft of the notice has been approved by each House of Parliament.

(4B) For the purposes of subsection (4A), a House of Parliament is taken to have approved the draft notice if the draft has been laid on the table of that House and—

- (a) the draft is approved by that House; or
- (b) at the expiration of 5 sitting days after the draft was laid on the table of that House, no notice has been given of a motion to disapprove the draft or if such a notice has been given, it has been withdrawn or the motion has been negated; or
- (c) any notice of motion to disallow the draft given during the period of 5 sitting days after the draft was laid on the table of that House is, subsequent to those 5 sitting days, withdrawn or the motion is negated.

Section 8 amended (Person not to be required to work at certain times on certain days contrary to an award or industrial agreement)

8—Section 8 (1) of the Principal Act is amended as follows:—

- (a) by omitting from paragraph (b) “noon” and substituting “6 p.m.”;
- (b) by omitting subparagraph (i) from paragraph (b);
- (c) by omitting paragraph (c).

***Shop Trading Hours Amendment (Extension of Trading) Act 1993* repealed**

9—The *Shop Trading Hours Amendment (Extension of Trading) Act 1993** is repealed.

Section 10 inserted (Provisions in certain agreements unenforceable, &c.)

10—(1) In this section “shopkeeper” means a person who carries on the business of selling goods by retail at a shop located in this State.

* No. 112 of 1993.

(2) A provision of a lease agreement, franchise agreement or other agreement is unenforceable if that provision purports to require a shopkeeper to keep a shop open for business between, or for any period of time between, noon and 6 p.m. on a Saturday.

(3) Subsection (2) has effect regardless of whether the lease agreement, franchise agreement or other agreement referred to in that subsection—

- (a) was entered into in this State or elsewhere; or
- (b) contains a provision generally to the effect that the agreement is to be construed, or that any dispute concerning the agreement is to be determined, in accordance with the law of a place outside this State.

(4) A person who has entered into a lease agreement, franchise agreement or other agreement with a shopkeeper must not, by means of any threat or offer of reward or otherwise, induce or attempt to induce that shopkeeper to keep a shop open for business between, or for any period of time between, noon and 6 p.m. on a Saturday, after that shopkeeper has, by words or writing, clearly expressed to that person an unwillingness to so open that shop.

Penalty:

- (a) in the case of a body corporate—a fine not exceeding 200 penalty units; or
- (b) in any other case—a fine not exceeding 150 penalty units.

(5) A person must not terminate or refuse to renew a lease agreement, franchise agreement or other agreement with a shopkeeper on the ground that the shopkeeper does not agree to keep a shop open for business between, or for any period of time between, noon and 6 p.m. on a Saturday.

Penalty:

- (a) in the case of a body corporate—a fine not exceeding 200 penalty units; or
- (b) in any other case—a fine not exceeding 150 penalty units.

(6) If a body corporate contravenes this section, each person who is a director of the body corporate or who is concerned in the management of the body corporate is taken to have contravened this section if the person knowingly authorized or permitted the contravention.

(7) A person may be proceeded against and convicted under this section in accordance with subsection (6) whether or not the body corporate has been proceeded against or convicted.

(8) This section does not apply to a lease agreement, franchise agreement or other agreement entered into after the commencement of the *Shop Trading Hours Amendment Act 1994*.

*[Second reading presentation speech made in:—
House of Assembly on 10 November 1994
Legislative Council on 1 November 1994]*

