



New South Wales Government

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BETTER REGULATION OFFICE REPORT

REFORM OF SHOP TRADING HOURS IN NEW SOUTH WALES

Part 4 of the *Shops and Industries Act 1962*



November 2007

BACKGROUND AND RECOMMENDATIONS

On 5 October 2006, the Independent Pricing and Regulatory Tribunal (IPART) provided its final report on its *Investigation into the Burden of Regulation and Improving Regulatory Efficiency*. A copy of that report can be downloaded from the IPART website at www.ipart.nsw.gov.au.

In its report, IPART made a number of recommendations, including that consideration be given to reforming shop trading hour restrictions:

“Recommendation 70: That the Government consider simplifying the current regime governing trading hours for General Shops in NSW in relation to Sunday trading exemptions and clarifying the definition of ‘General Shops’ to ensure small businesses are not unintentionally caught up in the regulations”.

In response to IPART’s recommendation and the issues raised in submissions, the Better Regulation Office released an Issues Paper on options for the reform of shop trading hours.

The issues paper examined the regulation of shop trading hours in New South Wales, both in theory and in practice, and sought stakeholders’ views on potential reforms to streamline and simplify the regulation of Sunday trading, public holiday trading, and the coverage of the arrangements.

Fifteen submissions were received. A full list of the submissions received is at Appendix A.

After consideration of the issues raised in the submissions, and a detailed examination of the regulatory arrangements currently in place in New South Wales and other jurisdictions, the Office’s recommendations for the reform of shop trading hours are as follows:

Recommendation 1

The current prohibition on Sunday trading by General Shops under the *Shops and Industries Act 1962* should be repealed.

Recommendation 2

Where the Act prohibits trading on a ‘public holiday’, the restriction should apply only to the day of actual significance, rather than to the day on which the public holiday is observed (if different).

Recommendation 3

Only the following days should be prescribed as restricted trading days:

- ANZAC Day before 1pm;
- Good Friday;
- Easter Sunday; and
- Christmas Day.

Recommendation 4

To the extent possible, the exclusions for “Small Shops” from the trading hours prohibitions under the New South Wales legislation should be harmonised with the exclusions under the Victorian legislation.

Recommendation 5

Those shops which are currently “Scheduled Shops” should continue to be exempt from the trading restrictions, together with those shops described in sections 88, 88A, 89A, 89C, 89D or 101. For clarity, those shops should be consolidated into a single list of exempt shops.

The current provisions relating to mixed shops and partitioning of shops should be repealed and, in harmony with the Victorian approach, the question of whether a particular shop falls within a category of exempt shop should be determined simply by reference to the “predominant business” carried on by that shop.

Recommendation 6

The existing powers to grant exemptions should be replaced with a single power of the Director General to grant an exemption to a specified shop or a specified class of shops (including all shops operated by a particular company, all shops within a particular shopping centre, or all shops in a specified area).

The criteria for granting an exemption should be specified in the Act and should include:

- Where the application is in respect of a particular shop, the nature of the shop and the goods offered for sale;
- The public need for such shop(s) to be open on the relevant day;
- The impact on the local community and economy;
- The impact on tourists and on tourism;
- The impact on other businesses in the vicinity; and
- The impact on employees.

Applications for exemptions should be able to be made by individual shops, business associations, shopping centres (in respect of shops operating in that centre) or a local council (in respect of shops within specified areas).

Existing exemptions under the current legislation should be grandfathered.

Recommendation 7

Any exemption allowing a shop to trade on a non-trading day should be made subject to a condition that the shop be staffed only with persons who have voluntarily agreed to make themselves available to work on that day.

1. THE CURRENT REGULATIONS

Some retail shops in New South Wales are prohibited from opening on certain days and at certain times by the *Shops and Industries Act 1962* (NSW) (the Act) and the *Shops and Industries Regulation 2007* (NSW) (the Regulation).

The restrictions apply only to “General Shops”. General Shops are those which are neither “Small Shops” nor “Scheduled Shops”.

1.1 *Shops which may open at any time*

The Act does not impose any restrictions on opening hours on “Small Shops” and “Scheduled Shops”. Under the Act, a shop which falls into one or other of those categories (or both) is free to operate 24 hours a day, 365 days a year.¹

A “Small Shop” is defined, briefly, to be a shop which has no more than four working staff at any one time (excluding the shopkeeper) and in respect of which the shopkeeper is not an employee or agent of another person or corporation (s.78B, see Appendix B).

“Scheduled Shops” are listed in Schedule 3 to the Act. These include chemists, restaurants, take away food shops, fruit and vegetable shops, newsagencies, vehicle service shops and video shops. A full list of Scheduled Shops is set out in Appendix C.

If a General Shop sells a variety of goods, including those which are sold in a Scheduled Shop, the General Shop may open on non-trading days provided it sells only those “Scheduled Shop” goods and partitions off all of its other goods. For example, a supermarket could elect to open on a non-trading day as a scheduled “fruit and vegetable shop”, provided that it partitions off the remainder of its store.

Other exempt shops

The Act exempts: ferry bookstalls (s.88); art and craft galleries (s.88A); medicinal or surgical goods required urgently or by prescription (s.89A); goods for on-premises sport (s.89D); railway or tramway refreshment rooms and bookstores, premises with a liquor licence, bazaars or fairs for religious, charitable or public purposes and certain agricultural, pastoral or horticultural society shows or exhibitions (s.101). The Act also provides that the Minister can exempt hairdressers located at transport terminals (s.89C).

1.2 *Trading restrictions for General Shops*

In its terms, the Act prohibits General Shops from opening on Sundays (other than the two Sundays before Christmas) and on the days on which the following public holidays are observed:

- (a) New Year’s Day;
- (b) Australia Day;
- (c) Good Friday;
- (d) Easter Sunday;
- (e) ANZAC Day;
- (f) Christmas Day; and
- (g) Boxing Day.

¹ Other restrictions may apply to those shops, for example, under the conditions of a development consent imposed by the local council or other environmental and planning instruments which restrict opening times.

In practice, the above trading restrictions have been substantially relaxed through the use of various powers to grant exemptions. These exemptions are discussed further below.

It is important to note that the Act is not the vehicle through which public holidays are declared. Public holidays are defined under the *Banks and Bank Holidays Act 1912* (NSW) and may otherwise be declared by special legislation (such as the *Industrial and Other Legislation Amendment (APEC Public Holiday) Act 2007* (NSW)).

Already, there are a number of public holidays established under the Banks and Bank Holidays Act on which General Shops are permitted to trade. These include Easter Saturday, Easter Monday, the Queen's Birthday, Labour Day and, where applicable, an annual Bank Holiday.

Any change to the shop trading hour restrictions under the Act will not affect the status of the relevant day as a public holiday. Nor will it affect any penalty or other employment entitlements which apply on public holidays under industrial instruments or agreements.

1.3 Exemptions on application

As discussed above, Small Shops, Scheduled Shops and a number of other shops are completely exempt from the trading restrictions under the Act. The Act also provides for various exemptions to be granted, on application, to permit General Shops to trade on Sundays and on public holidays.

Director General's exemption for individual shops

The Director General of the Department of Commerce may, on application, grant an exemption to a particular shop from the prohibitions on Sunday trading (s.78A of the Act). The application fee is \$100. There are no legislated criteria to guide the Director General's decision. The exemption may be granted on such conditions as the Director General thinks fit (including as to permissible opening hours and the kinds of goods which may be offered for sale)².

Minister's exemption for holiday resorts

On the application of a local council, the Minister may exempt General Shops from the trading restrictions for a period of up to fifteen weeks each year in a "holiday resort" area (s.89B). Such an exemption cannot be granted in Sydney, Newcastle and Wollongong. Holiday resort exemptions are granted in perpetuity and can be subject to conditions (including as to permissible opening hours and the kinds of goods which may be offered for sale).

1.4 Minister's suspension of public holiday trading prohibition

The Act empowers the Minister, by Order, to suspend the prohibition on trading for a specified public holiday for all or part of New South Wales (s.85).

The Minister can only suspend the prohibition on public holiday trading if satisfied that it will be of benefit to the public for General Shops to be allowed to trade on that day.

² The principles to be applied to the granting of exemptions are published on the Department's website – www.industrialrelations.nsw.gov.au/about/services/licensing/retail.html.

2. THE REGULATIONS IN PRACTICE

In practice, the exemptions referred to above have been utilised extensively and have resulted in a significant relaxation of trading restrictions, particularly on Sundays. The Minister also routinely suspends the prohibitions on certain public holidays and in specified areas of New South Wales for parts of the year.

2.1 *Sunday trading*

Shop trading in New South Wales on Sundays is, in practice, essentially deregulated.

The trading restrictions under the Act do not apply to any Small Shops or Scheduled Shops. It has been estimated that Scheduled Shops alone account for 60 per cent of the 65,000 retail employers in New South Wales.

Furthermore, Director General's exemptions permitting individual General Shops to trade on Sundays are very common.

Over 1,700 General Shops have been granted an exemption to trade on Sundays across 370 localities, including 176 outside of the Sydney metropolitan region (Appendix D).

While the Office of Industrial Relations undertakes a detailed examination and public consultation on each application, as noted by IPART, once an exemption is granted to a General Shop in a particular locality, subsequent applications from that locality are effectively "rubber-stamped".

IPART reported that almost 70 per cent of Local Government Areas currently have one or more localities where Sunday trading is permitted, and that the localities where exemptions allowing Sunday trading have not been utilised appear to be "relatively remote regional areas with insufficient population to make Sunday trading economically viable".

2.2 *Public holiday trading*

Since 1995, retail trading on public holidays has effectively been regulated on a year-by-year basis by the Minister, using a Ministerial Order to wholly or partially lift the prohibition on specified public holidays.

Recent practice (see Appendix E) is generally to:

- prohibit retailing by General Shops only on the actual day of New Year's Day, Good Friday, Easter Sunday, ANZAC Day prior to 1:00pm, Christmas Day and Boxing Day;
- to allow trading on Australia Day and after 1pm on ANZAC Day; and
- to allow General Shops in the Sydney CBD, Cabramatta and Newcastle to trade on Boxing Day and New Year's Day.

The Act prohibits General Shops from trading on the days *observed* as the public holidays for New Year's Day, Australia Day, Good Friday, Easter Sunday, ANZAC Day, Christmas Day and Boxing Day, rather than on the actual days. The days observed as public holidays are set out in the Banks and Bank Holidays Act.

Where a public holiday falls on a Sunday and is publicly observed on the following Monday, General Shops are required to close on the Monday (the public holiday) but can trade on the Sunday (the actual day of significance).

In recent years, it has been necessary to enact special legislation to address these anomalies:

- In 2004, Christmas Day fell on a Saturday and Boxing Day fell on a Sunday. The *Shops and Industries Amendment (Special Shop Closures) Act 2004* (NSW) was enacted to require shops to be kept closed on Saturday 25 December 2004 (Christmas Day) and Sunday 26 December 2004 (Boxing Day). The Act prevented existing exemptions from having effect on those days. Shops were permitted to open on Boxing Day if subject to an existing Ministerial holiday resort exemption and staffed by persons who freely elected to work on that day.
- In 2005, both Christmas Day and New Year's Day fell on Sundays. The *Shops and Industries Amendment (Special Shop Closures) Act 2005* (NSW) was introduced to require shops to be kept closed on Sunday 25 December 2005 (Christmas Day), Monday 26 December 2005 (Boxing Day), and Sunday 1 January 2006 (New Year's Day). Shops covered by a holiday resort exemption, or in an identified 'exempt area' were permitted to open on Boxing Day if staffed by persons who freely elected to work. Shops covered by a holiday resort exemption or individual shop exemption were permitted to open on New Years Day if staffed by persons who freely elected to work.

Even if a shopkeeper normally traded on Boxing Day under an existing exemption for the Boxing Day public holiday, they would have been prohibited from trading on Boxing Day in 2004 and 2005.

2.3 Holiday resort exemptions

There are currently 49 holiday resort exemption orders in place allowing General Shops to trade unrestricted in those areas for periods of up to 15 weeks in specified times of the year (Appendix F). The majority of these exemptions cover the period from Christmas to Easter, which is also the period when most public holidays fall.

Together these exemptions cover local council areas representing around 70 per cent of the population of New South Wales, outside of Sydney, Newcastle and Wollongong.

2.4 Enforcement

The extent of inadvertent or deliberate non-compliance with the legislation is unclear.

There have only been five prosecutions brought under the Act since 2001. These are set out in Appendix G. In each case the penalties imposed appear to be disproportionately low compared with the prosecutorial costs and potential incentives to unlawfully trade. The highest penalty imposed was a \$300 fine (plus a \$600 order to pay costs).

3. COMPARISON WITH OTHER STATES

3.1 Monday to Saturday Trading

Along with New South Wales, Victoria, Tasmania, the Australian Capital Territory and the Northern Territory allow unrestricted trading, 24 hours a day, Monday to Saturday.

South Australia, Queensland and Western Australia restrict trading hours on these days, with exemptions for different shop types:

- South Australia restricts trading by shops in proclaimed districts after 6pm or 9pm Monday to Friday, and after 5pm on Saturday.
- Queensland restricts trading outside the hours of 8am to 9pm Monday to Friday, and 8am to 5-6pm on Saturday (or otherwise in accordance with relevant Industrial Commission orders).
- Western Australia restricts trading outside the hours of 8am to 6-9pm Monday to Friday, and 8am to 5pm on Saturdays. Further restrictions apply to motor vehicle shops. Trading by Special and Small Shops is restricted outside the hours of 6am to 11.30pm on all days.

3.2 Sunday Trading

Victoria, Tasmania, the Australian Capital Territory and the Northern Territory have unrestricted Sunday trading.

South Australia, Queensland and Western Australia permit restricted Sunday trading. South Australia allows restricted trading in Greater Adelaide and for shops selling specified products, but prohibits trading in proclaimed districts. Queensland restricts Sunday trading outside the hours of 9am to 6pm in south-east Queensland, or as in accordance with particular Industrial Commission orders. Western Australia only allows General Shops to trade on Sunday between midday and 6pm in Perth and Fremantle, but allows Special and Small Shops to trade between 6am and 11.30pm.

The table below summarises Sunday trading regulations in each State and Territory.

NSW	Vic, Tas, ACT and NT	SA ³	Qld	WA ⁴
Prohibition on trading for General Shops, subject to exemptions Unrestricted trading for Small Shops and Scheduled Shops	Unrestricted trading	Prohibition on trading in Proclaimed Districts Trading 11am-5pm in Greater Adelaide Trading 9am-5pm for shops that sell hardware and building materials, furniture, floor coverings, or motor vehicle parts Unrestricted trading for exempt shops	Trading in accordance with Qld Industrial Relations Commission (QIRC) orders For south-east Qld, trading 9am - 6pm, or greater in accordance with QIRC orders Unrestricted trading for exempt and independent shops	Prohibition on trading for general and motor vehicle shops Trading 12noon-6pm for General Shops in Perth/Fremantle tourism precincts Trading 6am-11:30pm for special and Small Shops

Table 1: Regulation of Sunday Trading

³ Restrictions do not apply outside of 'shopping districts'.

⁴ Restrictions apply south of the 26th parallel. An exemption appears to be in place allowing exempted Small Shops to trade unrestricted.

3.3 Public Holiday Trading

Most jurisdictions prohibit trading on Christmas Day, Good Friday, either Easter Sunday or Easter Monday and ANZAC Day. However, only some jurisdictions prohibit trading on New Year's Day, Australia Day, and Boxing Day.

The table below summarises public holiday trading restrictions in each State and Territory.

	NSW	Vic	Qld ⁵	WA	SA	Tas	ACT	NT
<i>New Year's Day</i>	Trading prohibited	Unrestricted	Unrestricted	Trading prohibited	Trading prohibited	Unrestricted	Unrestricted	Unrestricted
<i>Australia Day</i>	Trading prohibited ⁶	Unrestricted	Unrestricted	Trading prohibited	Trading prohibited	Unrestricted	Unrestricted	Unrestricted
<i>Good Friday</i>	Trading prohibited	Trading prohibited	Trading prohibited	Trading prohibited	Trading prohibited	Trading prohibited	Unrestricted	Unrestricted
<i>Easter Saturday</i>	Unrestricted	Unrestricted	Unrestricted	Unrestricted	Trading prohibited	Unrestricted	Unrestricted	Unrestricted
<i>Easter Sunday</i>	Trading prohibited	Trading prohibited	Trading prohibited	Sunday Trading prohibited	Unrestricted	Unrestricted	Unrestricted	Unrestricted
<i>Easter Monday</i>	Unrestricted	Unrestricted	Trading prohibited	Trading prohibited	Trading prohibited	Unrestricted	Unrestricted	Unrestricted
<i>Labour Day</i>	Unrestricted	Unrestricted	Trading prohibited	Trading prohibited	Trading prohibited	Unrestricted	Unrestricted	Unrestricted
<i>ANZAC Day</i>	Trading prohibited ⁷	Morning trading prohibited	Trading prohibited	Trading prohibited	Unrestricted ⁸	Morning trading prohibited	Unrestricted	Unrestricted
<i>Queen's Birthday</i>	Unrestricted	Unrestricted	Unrestricted	Trading prohibited	Trading prohibited	Unrestricted	Unrestricted	Unrestricted
<i>Christmas Day</i>	Trading prohibited	Trading prohibited	Trading prohibited	Trading prohibited	Trading prohibited	Trading prohibited	Unrestricted	Unrestricted
<i>Boxing Day</i>	Trading prohibited	Unrestricted	Unrestricted	Trading prohibited	Trading prohibited ⁹	Unrestricted	Unrestricted	Unrestricted

Table 2: Regulation of Public Holiday Trading

⁵ Where public holiday days have no legislative prohibition on trading, the Queensland Industrial Commission can still prohibit or restrict trading.

⁶ While New South Wales prohibits trading on Australia Day, the Minister has suspended the prohibition in recent years.

⁷ While New South Wales prohibits trading on ANZAC Day, the Minister has suspended the prohibition after 1pm in recent years.

⁸ For ANZAC Day 2006, the Minister issued a notice requiring shops that sell hardware and building materials, furniture, floor coverings, or motor vehicle parts and accessories in a shopping district to remain closed until 12 noon. Exempt shops were requested to close voluntarily.

⁹ South Australia has declared a public holiday for Proclamation Day on 26 December.

4. ISSUES AND RECOMMENDATIONS

4.1 Background

Total retail turnover in New South Wales in the year to May 2007 was around \$73.1 billion. While many retailers operate without employees (i.e. as sole traders), there are over 65,000 employers in the New South Wales retail industry, employing approximately 470,000 workers, which equates to 15 per cent of the State's total workforce.

Restrictions on trading hours have a long history and in England can be traced back at least to the *Fairs and Markets Act* of 1448.

The regulation of trading hours in New South Wales has been progressively reformed over the last half century.

The first major reform was the enactment of the *Shops and Industries Act 1962* (originally entitled the *Factories, Shops and Industries Act*), which relaxed the previous approach to Sunday trading (which dates from the British *Sunday Observance Act 1677* (Imperial)) by permitting Small Shops and Scheduled Shops to open on Sundays.

Then, in the early 1970s, the previous restrictions on weekday trading were amended to allow General Shops to trade till 9.00pm one night a week.

Saturday afternoon retail trading commenced in 1984, and trading to 9 pm was allowed on a second night each week. At that time, New South Wales was the only State to permit general Saturday afternoon trading.

All Monday to Saturday trading restrictions were removed in 1988. Since then, all shops in New South Wales have been able to trade 24 hours a day Monday to Saturday. Since 1990, all shops have also been allowed to trade on the two Sundays before Christmas.

In the early 1990's, exemptions to trade on Sundays on an unrestricted basis were granted to shops in the Sydney CBD, Cabramatta and Newcastle CBD.

Since then, the increasing use of ad hoc exemptions has contributed to the gradual relaxation of the restrictions on trading hours in New South Wales to the point where, in its 2002 assessment of New South Wales compliance with National Competition Policy, the National Competition Council considered that, in practice, trading hours in New South Wales were essentially deregulated.

In making its assessment, the National Competition Council commented that the pressures to deregulate trading hours arise from a range of sources, from retailers to consumer groups. A main driver of change is changing social and work patterns such as an increasing number of dual income households, more flexible and longer work hours, and an increase in single parent households. These changes are influencing how and when people seek to shop.

In submissions both to IPART's investigation and in response to the Better Regulation Office Issues Paper, several stakeholders indicated that continued regulation of trading hours of 'General Shops' is an unnecessary burden on business, increasing costs for retailers and imposing an "inconsistent and confusing patchwork of trading hours" for the shopping public.

The main concerns raised were:

- *Unnecessary administrative costs* – some stakeholders suggested that Sunday trading exemptions in particular are inefficient and unnecessary, as the exemption system is effectively a “rubber stamp”.
- *The regulations are complex and confusing* – the definition of “General Shops” and the exemptions for “Scheduled Shops” and “Small Shops” are perceived to be overly complex and difficult to apply. Rules concerning partitioning of mixed shops are also considered impractical. Some stakeholders also report that Ministerial Orders to allow trading on certain public holidays are often only gazetted weeks before the actual holiday, making it difficult to finalise staffing arrangements and necessitating advertising to inform customers of revised trading hours.
- *Competitive distortions and discriminatory impacts* – some stakeholders noted that the exemptions from the restrictions are discriminatory and confer an artificial competitive advantage which is economically inefficient.
- *Economic costs* – some stakeholders consider that restrictions on public holiday trading, where there is high consumer demand, impose an unacceptable economic cost and that permitting trade would reap benefits, including increased convenience and choice to consumers and potentially higher economic activity and employment.

4.2 Sunday Trading

On their face, Sunday trading restrictions in New South Wales appear more restrictive than in a number of other States and the Territories. In practice, however, Sunday trading is substantially deregulated throughout New South Wales due to the ready availability of exemptions.

Repealing the prohibition on Sunday trading would be the most effective way to reduce the regulatory burden. Given the current use of exemptions, doing so would not involve a substantial policy change.

The administrative costs to businesses associated with seeking an exemption for Sunday trading extend beyond the \$100 application fee. It includes the time and resources involved in preparing an application. A major national retailer has suggested that this cost, including attending Council meetings to garner local community support, can be in the thousands of dollars. Awaiting approval of the exemption can also add costly delays to new store openings.

The Office of Industrial Relations advises that it currently requires an application for an exemption to address the following assessment criteria:

- (a) Evidence of the demonstrated needs within the locality for Sunday trading. Typically, the applicant will be asked to provide a customer petition supporting Sunday trading.
- (b) The expected impact of the shop opening for the requested hours on a Sunday on the community or the locality. Here, the applicant will typically be asked to provide a letter from the relevant local council supporting the Sunday trading.
- (c) Evidence of any clear benefit to tourists and tourism.
- (d) Information on the potential effect on employment in the locality.
- (e) Information on any restriction on operating hours imposed by a current development consent issued by a local council.
- (f) The maximum Sunday trading span of hours sought.

Uncertainty as to whether a particular shop is or is not subject to the requirement to apply for an exemption is also an administrative cost to business. According to the submission of the National Retailers' Association:

"The current regime is the cause of enduring confusion and frustration for our membership and we are constantly asked by members to unravel and justify the current complex arrangements..."

"Membership confusion arises from legitimate concerns members have in ensuring that they comply with trading hours laws or regulations in a range of areas...The highest incidence of enquiry and the greatest level of confusion is related to the regime applicable to 'General Shops'."

In addition to the costs imposed on business, the requirement for an exemption for Sunday trading imposes costs on the NSW Government. The Office of Industrial Relations is responsible for assessing applications, monitoring compliance and enforcement.

It is possible that there may be some General Shops which are currently dissuaded from trading on Sunday because of the administrative costs of seeking an exemption, but which might choose to open on Sundays if an exemption were no longer necessary. There may also be flow on effects, with a decision by a major retailer to open on a Sunday (or to open for longer hours on a Sunday) prompting other shops in the vicinity to open.

Given, however, that exemptions are almost always granted on application, it appears unlikely that the removal of the requirement to seek an exemption would produce any significant change in actual Sunday trading practices.

Submissions from retail industry stakeholders support the view that other factors, and in particular the level of consumer demand, are overwhelmingly more significant considerations in determining whether a shop will elect to open on a Sunday.

According to Coles, for example:

"Coles applies for the exemption for every new store because people now expect and want to shop on a Sunday. The company generally applies for the exemptions once a year, to cover new stores due to open in the following 12 months...Further, the exemptions are not required to be displayed at the retail store, and are simply stored in administrative files at a state office location. To our knowledge, no inspector or departmental official has ever requested to sight any exemptions in the past eight years"

Amending the Act to remove the requirement for an exemption would largely bring the law into line with current practice.

Any wider economic or social benefits or costs associated with deregulating Sunday trading are likely to have already been achieved or incurred. In those circumstances, the current exemption requirements amount to little more than a 'quasi-tax' on General Shops wishing to trade on a Sunday.

Recommendation 1:

The current prohibition on Sunday trading by General Shops under the *Shops and Industries Act 1962* should be repealed.

4.3 Public Holiday Trading

The Act, in its terms, also does not reflect current NSW Government policy or practice in respect of public holiday trading.

The Act imposes the trading prohibition on the day observed as a public holiday, rather than the actual day of significance. A difference arises most commonly when a day of significance, such as Christmas Day, falls on a Sunday but the public holiday is observed on the Monday. This approach may have been appropriate in circumstances where trading prohibitions also applied on Sundays, but it is anomalous in the context of generally unrestricted trading from Monday through to Sunday.

In recent years, where the day of significance has fallen on a Sunday and the public holiday has been observed on the following Monday, the Government has introduced special-purpose legislation to apply the trading prohibition to the actual day of significance (sometimes in addition to the public holiday itself).

The Government also lifted the prohibition on trading on the public holiday for New Year's Day in 2006 when the public holiday did not fall on 1 January.

Recommendation 2:

If the Act is to prohibit trading on a 'public holiday', the restriction should apply only to the day of actual significance, rather than to the day on which the public holiday is observed (if different).

At present, the Act prohibits trading by General Shops on the public holidays for New Year's Day, Australia Day, Good Friday, Easter Sunday, ANZAC Day, Christmas Day and Boxing Day. It has, however, been practice in recent years for the Government to allow unrestricted trading on Australia Day and after 1pm on ANZAC Day.

There are no criteria in the Act for when the Minister may suspend the prohibition on public holiday trading, other than that "the Minister is satisfied that it will be of the benefit to the public" (s.85).

Industry stakeholders have raised concerns about the ad hoc approach to allowing trading on certain public holidays, often only weeks before the actual holiday, which they say makes it difficult to finalise staffing arrangements and necessitates advertising to inform customers of revised trading hours. Coles notes that it also creates uncertainty for the scheduling of deliveries and supplier co-ordination and the pre-planning of promotional and marketing activities.

According to the submission of the Shopping Centre Council of Australia:

"The process of gazetting orders is confusing and time consuming and the policy rationale is far from clear. This creates uncertainty every year among retailers and shopping centre owners, and among consumers, about whether public holidays are trading days or not."

A major national retailing chain has indicated that managing the staffing and other administrative issues around opening on public holidays can cost up to \$10,000. This is in addition to ad hoc advertising expenses of over \$50,000 to inform the community of the new opening hours.

Given that the Minister now routinely suspends the trading prohibition on Australia Day and after 1 pm on ANZAC Day, certainty would be enhanced (and costs reduced) by now removing those from the trading prohibition under the Act.

Some industry stakeholders (AMP Capital Shopping Centres, Centro Properties Group, The GPT Group, The Property Council of Australia, QIC, Shopping Centre Council of Australia, and Stockland) have further advocated the complete deregulation of trading hours on public holidays.

Arguments advanced in support of this approach include:

- The prohibition on public holiday trading by General Shops is discriminatory and may be anti-competitive. Given that most shops in New South Wales are not General Shops it is unclear what the policy objective is of requiring General Shops to be kept closed.
- Restrictions imposed on public holiday trading in New South Wales are out of line with those of other eastern States. In particular, New South Wales restricts trading on seven public holidays whereas Victoria restricts trading on only three and a half days.
- The use of ad hoc suspensions and 'holiday resort' exemptions is inconsistent and inequitable, with anti-competitive and distortionary economic consequences. It is noted, for example, that there appears to be no clear public policy justification as to why General Shops in Cabramatta are permitted to trade on Boxing Day and New Year's Day when shops in Parramatta are not.
- No other industry (e.g., transport, hospitality) is subject to similar restrictions on their ability to trade on public holidays.
- Where consumer demand exists for shops to be open on public holidays, then regulating to require shops to be closed imposes a cost on consumers.

The Australian National Retailers' Association and Coles advocate the reduction of shop trading prohibitions on public holidays to Good Friday, Christmas Day and the morning of ANZAC Day. The Australian Retailers' Association and the National Retail Association would also include Easter Sunday in the list of non-trading public holidays.

This would be consistent with the situation in Victoria, which imposes restrictions on these three and half public holidays, with exemptions potentially available for Easter Sunday trading. A number of municipalities in Victoria have successfully applied for an exemption from trading restrictions on Easter Sunday to reduce their non-trading days to two and a half.

Tasmania similarly imposes restrictions on two and a half days only (Good Friday, Christmas Day and the morning of ANZAC Day).

There appears to be a consensus that these two and a half days are days on which the community expects that general retail shopping will be unavailable, in favour of time spent with family and friends and in observance of the solemnity of the occasion.

In New South Wales, the Minister has never suspended the trading restrictions on those particular days. No other State permits general retail trading on these days, however, unrestricted trading applies in the Australian Capital Territory and the Northern Territory on Good Friday, Easter Sunday, Christmas Day and before 1 pm on ANZAC Day, yet the majority of stores in the Territories do not trade on those particular days.

While this may suggest that the restriction of trading on those days is unnecessary, it also indicates that the imposition of such restrictions is unlikely to impose a significant regulatory cost (as the shops would elect to close in any event).

It cannot, however, be necessarily assumed that the experience in the Territories would be reflected in New South Wales, given its much larger retail market. It must be assumed, therefore, that the restrictions on trading on those days may result in at least some shops being shut which would otherwise open.

Ultimately, the issue of whether restrictions should continue to apply on those three and a half days requires an analysis of perceived costs and benefits. Those costs and benefits are not susceptible to a straightforward comparison using a single (eg. economic) measure of value.

The economic benefits of permitting trading on Good Friday, Easter Sunday, Christmas Day and the morning of ANZAC Day are, however, expected to be relatively slight, given that there appears no indication of any strong desire by General Shops to open on those days, even if they were permitted to do so. As few other jurisdictions permit trading on those days, there are also few benefits likely to be gained by way of an enhanced ability to co-ordinate cross-border operations.

The benefit to consumers of removing the restrictions on those particular days in terms of convenience and choice is also expected to be relatively small. Again, this is because many General Shops may be expected to choose to close in any event.

Whatever these costs and benefits may be, they must be weighed against the desire to maintain the solemnity of these particular public holidays. In this regard, it is worth observing that, particularly in relation to Easter and Christmas, the continued community recognition of the significance of those days is the driver for the increased retail activity that occurs at those times of year.

In recent years, it has been the practice in New South Wales that when Boxing Day falls on a Sunday (as it did in 1999 and 2004), the Government has taken legislative action to ensure that general shops were closed on that day. Similar action was taken in 2005 when Boxing Day fell on the public holiday Monday.

This practice has created significant uncertainty for businesses, employees and the community. In 1999, the Christmas weekend trading restrictions were only assented to on 3 December, and in 2004, on 15 December; only weeks before Christmas. As mentioned above, this can create significant costs in relation to staffing, amending rosters, and advertising the revised opening hours to customers.

In most years, the major retailers trade on Boxing Day under exemptions from the restrictions; in fact, the "Boxing Day sales" have become a Christmas holiday tradition across Australia. The Better Regulation Office considers that it would be anomalous to now seek to prohibit trading by General Shops on Boxing Day; particularly given that Boxing Day trading occurs each year in both Victoria and Queensland, and that many other retail, hospitality, and other businesses are free to trade.

However, if the recent practice of closing general shops on Boxing Day when it falls on a Sunday or public holiday Monday is to continue, it should be clearly provided for in the Act, rather than implemented through ad hoc legislative amendment. This would significantly improve certainty for businesses, employees and consumers, and would go some way to reducing the regulatory burden.

Recommendation 3:

Only the following days should be prescribed as restricted trading days:

- ANZAC Day before 1pm;
- Good Friday;
- Easter Sunday; and
- Christmas Day.

4.4 To which shops should the prohibitions apply?

Many submissions received by the Better Regulation Office noted that the exclusions which currently apply for “Small Shops” and “Scheduled Shops” are complex, confusing and arbitrarily discriminatory.

In part, this appears to be the inevitable consequence of there being a lack of any single or coherent set of objectives for, on the one hand, restricting trading hours and, on the other hand, excluding some but not all shops from those restrictions.

Historically, reasons advanced for imposing shop trading hour restrictions included observance of the Sabbath, protection of small businesses and reducing the incentive to coerce shop employees to work outside traditional working hours.

Exemptions from the restrictions are justified on various grounds, which are not necessarily consistent. For example, some exclusions appear to be based on a desire to allow consumers to access everyday goods which they need even on non-trading days. This, for example, appears to justify the exclusion of chemists and vehicle service shops from the restrictions. That objective is, however, less clearly the driver for the exclusion of shops such as book shops and audio shops or the exclusion of Small Shops generally. It has also not been seen as a sufficient justification to permit large grocery stores to open.

To some extent, any dividing line between shops which can and cannot open will necessarily be arbitrary. Given that, the Better Regulation Office considers that the following considerations are particularly important:

- From a regulatory reform perspective, it would be a retrograde step to reduce the current exclusions in such a way that shops which are currently not subject to regulatory restrictions will become subject to them. Accordingly, any exclusions should be at least as generous as the current exclusions.
- Any exclusions should be drafted in such a way that, as a practical matter, it is as clear and straightforward as possible for any individual shop to determine whether or not it is subject to the restrictions.
- To the extent possible, any exclusions should avoid creating artificial incentives (eg., for a shop to remain below a certain size in order to avoid the restrictions).
- As recommended by IPART, the exclusion of Small Shops should be sufficient to ensure that it encapsulates shops which are of such a small size that restrictions on trading are not warranted. In its report, IPART expressed concern that the current definition of Small Shops, and by implication the definition of General Shops, could inadvertently result in the application of the Act to some small businesses.

Bearing these considerations in mind, the Better Regulation Office considers that the optimal approach is for the New South Wales legislation to be harmonised, as much as possible, with the Victorian legislation; particularly in so far as it defines exempt shops (see Appendix H).

Under the Victorian legislation, one of the categories of exempt shops is a shop where:

- The number of persons employed and working in a business carried on in the shop at that time does not exceed 20; and
- At any time within the period of 7 days before that time, the number of persons employed by the occupier of the shop (or, where the occupier is a body corporate, by any related body corporate) and working in any business carried on in shops of any kind in Victoria does not exceed 100.

This definition is simple and easy to apply. For enforcement purposes, it is relatively easy to observe and prove whether a shop falls within the category or not. The definition also deals appropriately and in a straightforward way with retail chains and corporate groups. Harmonising also reduces the burden for shops which operate across State borders.

Harmonisation with the Victorian legislation should not, however, result in any specific kinds of shops which are currently “Scheduled Shops” or otherwise exempt (eg., under sections 88, 88A, 89A, 89C, 89D or 101) ceasing to be exempt. As mentioned above, it would be a retrograde step to reduce the current exclusions in such a way that shops which are currently not subject to regulatory restrictions become subject to them.

The Victorian approach of exempting shops by reference to their “predominant business” is preferred to the current New South Wales approach of exempting shops by reference to the particular goods sold in them.

The Victorian approach requires an assessment to be made as to which particular business predominates. So, for example, a garden nursery which also sells soft drinks will remain a nursery, whereas a grocery store which sells some potted plants is unlikely to be characterised as being a nursery. The current New South Wales legislation, on the other hand, contains complex provisions concerning “mixed shops”, which requires a mixed shop, if it wishes to open on a non-trading day, to partition its non-exempt goods.

Recommendation 4:

To the extent possible, the exclusions from the trading hours prohibitions under the New South Wales legislation should be harmonised with the exclusions under the Victorian legislation.

Recommendation 5:

Those shops which are currently “Scheduled Shops” should continue to be exempt from the trading restrictions, together with those shops described in sections 88, 88A, 89A, 89C, 89D or 101. For clarity, those shops should be consolidated into a single list of exempt shops.

The current provisions relating to mixed shops and partitioning of shops should be repealed and, in harmony with the Victorian approach, the question of whether a particular shop falls within a category of exempt shop should be determined simply by reference to the “predominant business” carried on by that shop.

4.5 The power to grant exemptions

If trading hours restrictions are reformed in the manner recommended above, the need for an administrative power to grant exemptions from those restrictions should be greatly reduced. Nevertheless, there will continue to be a need for exemptions to be available. For example, in some areas, such as holiday resort areas, it may be appropriate for shops to be able to open on a restricted trading day, such as on Easter Sunday.

The availability of exemptions can also provide an opportunity to address any anomalies or inconsistencies which may arise in the application of the definitions of exempt shops in the legislation.

At present, the Director General of the Department of Commerce has power to grant an exemption to a particular shop on the application of the shopkeeper, and the Minister has power to grant an exemption to shops within a particular “holiday resort” area on the application of the local council.

To simplify and streamline the process, the Better Regulation Office recommends a single exemption power, which can apply to an individual shop or to a particular category of shops (eg., shops of a certain type or within a specified area), which should reside with the Director General.

Given the variety of shops and local conditions that may give rise to an application, the exemption power must remain broad and flexible. To assist applicants in framing their applications and to provide greater transparency, however, guidance should be included in the legislation as to the factors that may be considered as relevant in deciding whether to grant an exemption.

Where the same or similar considerations apply, it is an unnecessary burden to require separate applications to be submitted for each individual shop. The current practice is that, once one shop obtains an exemption in a certain area, exemptions for other shops in similar circumstances (eg., in the same locale) are more or less approved as a matter of course. This unfairly imposes regulatory costs on the first applicant.

It would be more efficient to allow a single application to be made for categories of shops, as well as for an individual shop. For example, an application could be made by a shopkeeper for all of its shops, an application could be made in respect of all shops which sell a particular

type of good, or an application could be made in respect of all shops within a particular location.

Similarly, the category of persons who can apply for an exemption should also be broadened. Where an exemption is sought for shops of a certain type or located within a certain area, for example, the categories of persons who may submit an application should be expanded to include a retailers' association, a local chamber of commerce or a shopping centre.

To ensure continued certainty for those shops and 'holiday resort' areas which already have the benefit of an exemption, any existing exemptions should be grandfathered.

Recommendation 6:

The existing powers to grant exemptions should be replaced with a single power of the Director General to grant an exemption to a specified shop or a specified class of shops (including all shops operated by a particular company, all shops within a particular shopping centre, or all shops in a specified area).

The criteria for granting an exemption should be specified in the Act and should include:

- Where the application is in respect of a particular shop, the nature of the shop and the goods offered for sale;
- The public need for such shop(s) to be open on the relevant day;
- The effect of the proposed exemption on the local community and economy, on tourists and on tourism;
- The impact on other businesses in the vicinity; and
- The impact on employees.

Applications should be able to be made by individual shops, business associations, shopping centres (in respect of shops operating in that centre) and local councils (in respect of shops within specified areas).

Existing exemptions under the current legislation should be grandfathered.

4.6 Impact of reforms on particular stakeholders

Consumers

No submissions were received by the Better Regulation Office from any individual consumer or organisation representing consumer interests.

Reduced trading hour restrictions should, however, benefit consumers in so far as it affords them greater choice, convenience and reduced congestion. That said, and as mentioned above, trading hours in New South Wales are already effectively deregulated. The reforms recommended in this Report are, therefore, unlikely to give rise to a significant change in the opening hours of shops, and consequently, will have a relatively minor effect on consumers.

To the extent that some businesses may be able to respond more directly to local consumer demand under the proposed arrangements, this should deliver some additional benefits to consumers through increased flexibility and choice.

Small business

During the last century, the regulation of trading hours and particularly restrictions on Sunday trading have become a useful source of competitive advantage for small independent shops (which have been allowed to trade) against large stores and retail chains (which have not been allowed to trade).

The Retail Traders & Shopkeepers Association – NSW has expressed concerns that any increased ability of large retail chains such as Coles and Woolworths to trade would impose “greater burdens on independent retailers to maintain a competitive position in the market”.

Arguably, however, concerns about market concentration and the potential for those with substantial market power to take advantage of that power are more appropriately addressed through robust trade practices legislation, rather than through business regulations which seek to confer an artificial advantage on their competitors.

A separate concern has been raised that allowing large shops in shopping centres to open may result in smaller shops being forced by the shopping centre also to open, even at times when it is inefficient or otherwise undesirable for them to do so. Regulating to restrict the trading hours of large shops is, however, an indirect and inefficient tool to address this concern. In this regard it is noted that there are already provisions in the *Retail Leases Act 1994* (NSW) which directly protect against small shops in shopping centres being forced by a minority of large stores to open outside agreed ordinary trading hours (see s. 61).

There may be some potential benefits to small retailers if large shops were to expand their trading hours. According to the Australian National Retailers’ Association (which represents large national retailers):

“Deregulated trading will benefit a majority of small retailers, particularly those located within shopping centres. At times when the major ‘anchor’ tenant is closed (such as a supermarket or department store) the patronage to the overall shopping centre drops.”

The progressive deregulation of shop trading hours over the last few decades has meant that small businesses are already facing deregulated competition in terms of trading hours. Small shops have increasingly been required to find alternative sources of competitive advantage, including by offering greater convenience, niche products and better quality of service.

Employees

The effect of deregulated trading hours on employees is somewhat equivocal. On the one hand, the Australian National Retailers’ Association has submitted that:

“Removing restrictions would allow those employees working on Sundays to increase their hours should that suit their circumstances....”

“The retail sector, and large national retailers in particular, are the largest employer of young people aged 15-19 and also of part-time workers. Retail is also one of the leading employers of married women. Both groups are well-represented during Sunday trading as it allows staff to work around their other commitments, such as further education, family and sporting commitments. Deregulating Sunday trading would provide these employees with greater certainty and choice, and increased employment opportunities generally.”

On the other hand, the Shop, Distributive and Allied Employees' Association (SDA) and Unions NSW have expressed concerns about employees being required to work unsociable hours and there being a resultant deterioration in the work/life balance. Their concerns have been heightened by recent developments in the industrial relations field and, in particular, by the introduction of the Commonwealth Government's *WorkChoices* legislation.

The SDA has, however, acknowledged that "NSW is essentially already deregulated with respect to Sunday trading". Simply bringing shop trading hours legislation into line with practice cannot be regarded as being likely to have a significant adverse effect on employees. While changes to industrial relations laws at the Commonwealth level have a potentially adverse effect on some employees, seeking to indirectly regulate working hours for one part of one industry through the re-regulation of retail trading hours is not an effective or efficient solution.

Any defects in the current Federal industrial relations legislation should be corrected directly, rather than by taking indirect steps that impose undue costs on consumers, distort competition, and are incomplete in so far as they would affect only some employees (i.e., those who work for large retailers) but not others in arguably similar circumstances (e.g., those who work in hospitality or takeaway food retailing).

That said, as discussed above, there are certain days which are generally recognised as being of such significance that it is appropriate for shops to close and for the community to put aside, as far as practicable, their usual occupations to mark the particular occasion. These include Good Friday, Easter Sunday and Christmas Day.

There will always be some categories of people whose work is so essential that the community cannot do without their services, even on these special days: people like nurses, police officers and fire fighters. By and large, however, retail employees cannot be considered to be a category of essential worker. Accordingly, the commercial desire of a shop to open on one of these special days does not need to compromise the general entitlement of people, including the shop's employees, to spend that day marking the occasion with their family and friends if they so desire.

Recommendation 7:

Any exemption allowing a shop to trade on a non-trading public holiday should be made subject to a condition that the shop be staffed only with persons who have voluntarily agreed to make themselves available to work on that day.

APPENDIX A

Submissions Received

AMP Capital Shopping Centres

Australian Retailers' Association

Australian National Retailers' Association

Bunnings Group Limited

Centro Properties Limited

Coles Group Limited

The GPT Group

National Retail Association

Property Council of Australia

QIC

Retail Traders & Shopkeepers Association – NSW

Shop, Distributive & Allied Employees' Association (NSW Branch) and Shop Assistants and Warehouse Employees' Federation of Australia (Newcastle and Northern NSW)

Shopping Centre Council of Australia

Stockland Property Management Limited

Unions NSW

APPENDIX B

Small Shops

Shops and Industries Act 1962 (NSW), Section 78B

- (1) A shop is a Small Shop for the purposes of this Act if it complies with the requirements of this section.
- (2) The shopkeeper or shopkeepers of a Small Shop is or are to be natural persons not exceeding 2 in number (whether or not carrying on the business of the shop in partnership) or 1 corporation.
- (3) The shopkeeper or shopkeepers of a Small Shop is or are to be the owner or owners of the business of the shop and entitled to the profits of that business.
- (4) The number of persons engaged in a Small Shop as employees or otherwise in the conduct of the business of the shop on any day (either at the same time or at different times) is not to exceed 4.
- (5) The number of persons permitted to be engaged in a Small Shop as referred to in subsection (4) does not include:
 - (a) the shopkeeper or shopkeepers or, if the shopkeeper is a corporation, not more than 2 natural persons who are shareholders of the corporation, or
 - (b) any person so engaged in an emergency during the absence from the shop for part of a day of a person who is so engaged in the shop on that day, or
 - (c) any person so engaged outside the normal working hours of any person so engaged on a full-time basis.
- (6) Subsection (4) does not apply to a shop during a period of exemption specified in an order for the time being in force under s. 89B in respect of an area or locality within which the shop is situated.
- (7) A shopkeeper of a Small Shop is not to be a person acting as the employee of or acting directly or indirectly as the agent of another person in the conduct of the business of the shop.
- (8) A shop is not a Small Shop if a direct or indirect interest in the business of the shop is held by:
 - (a) a corporation that is engaged in a business other than the business of the shop, or
 - (b) a director of a corporation that is engaged in a business other than the business of the shop, or
 - (c) any other person who is engaged, as an employee or otherwise, in a business other than the business of the shop, or
 - (d) any corporation (whether or not engaged in a business) that for the purposes of s. 50 of the Corporations Act 2001 of the Commonwealth is to be taken to be related to a corporation referred to in paragraph (a) or (b).
- (9) A reference in any other Act, award or instrument to a Small Shop as defined in s. 76A of this Act is to be read as a reference to a Small Shop within the meaning of this section.
- (10) In this section:
business means:

- (a) the business of the sale of goods by retail, or
- (b) the business of a hairdresser.

shareholder, in relation to a corporation, means a person having a relevant interest in a share in that corporation for the purposes of Part 6C.1 of the Corporations Act 2001 of the Commonwealth.

APPENDIX C

Scheduled Shops

Shops and Industries Act 1962, Schedule 3

Audio shops

Book shops

Chemists' shops

Confectioners' shops

Cooked food shops, being:

- a) cake and pastry shops,
- b) cooked provision shops,
- c) refreshment shops,
- d) restaurants, and
- e) take-away food shops

Fish shops

Flower shops

Fruit and vegetable shops

Garden plant shops

Newsagencies

Pet shops

Souvenir shops

Tobacconists' shops

Vehicle service shops

Vehicle shops

Video shops

APPENDIX D

Locations with Sunday Trading

Adamstown 2289	Broadway 2007	Dee Why 2086
Albion Park 2527	Broken Hill 2880	Deniliquin 2710
Albury 2640	Brookvale 2067	Doonside 2767
Alexandria 2015	Budgewoi 2262	Double Bay 2028
Ambarvale 2560	Burwood 2134	Drummoyne 2047
Armidale 2350	Byron Bay 2481	Dubbo 2830
Arndell Park 2148	Cabramatta 2166	Dungog 2820
Artarmon 2064	Cambridge Gardens 2747	Dural 2158
Ashfield 2131	Camden 2570	Eaglevale 2558
Asquith 2078	Campbelltown 2560	Earlwood 2206
Auburn 2144	Camperdown 2050	East Maitland 2323
Avalon 2107	Campsie 2194	Eastgardens 2036
Avalon Beach 2107	Canterbury 2193	Eastlakes 2018
Balgowlah 2093	Cardiff 2285	Eastwood 2122
Ballina 2478	Caringbah 2229	Edgecliff 2207
Balmain 2041	Carlingford 2118	Emerton 2770
Bankstown 2200	Casino 2470	Emu Plains 2750
Barrack Heights 2528	Castle Hill 2154	Engadine 2233
Bass Hill 2197	Castlegrag 2068	Epping 2121
Bateau Bay 2261	Casula 2170	Erina 2250
Batemans Bay 2536	Cecil Hills 2171	Ermington 2115
Bathurst 2041	Cessnock 2325	Fairfield 2165
Baulkham Hills 2153	Charlestown 2290	Fairfield West 2165
Beecroft 2119	Chatswood 2066	Fairy Meadow 2519
Bega 2550	Cherrybrook 2126	Figtree 2525
Bella Vista 2153	Chester Hill 2162	Finley 2713
Belmont 2280	Chittaway Point 2261	Forbes 2871
Belrose 2085	Chullora 2190	Forestville 2087
Bennetts Green 2290	Coffs Harbour 2450	Forster 2428
Berrigan 2712	Condobolin 2877	Forster South 2428
Berry 2535	Cooma 2630	Frenchs Forest 2086
Bexley North 2207	Coonabarabran 2357	Gladesville 2111
Bingara 2404	Cooranbong 2265	Glen Innes 2370
Blackbutt 2529	Cootamundra 2590	Glendale 2285
Blacktown 2148	Corcord 2068	Glenfield Park 2650
Blair Athol 2560	Corowa 2646	Glenmore Park 2745
Blayney 2799	Corrimal 2518	Goonellabah 2480
Bondi Junction 2022	Cowra 2794	Gordon 2072
Bonnyrigg 2177	Cremorne 2090	Gorokan 2263
Booragul 2284	Cronulla 2230	Gosford 2250
Boronia Park 2111	Crows Nest 2065	Goulburn 2580
Bowral 2576	Croydon 2132	Grafton 2460
Braidwood 2622	Dapto 2530	Granville 2142
Brighton-Le-Sands 2153	Dareton 2717	Green Hills 2323

Green Point 2251	Manly 2095	Northmead 2152
Greystanes 2145	Manly Vale 2093	Nowra 2541
Griffith 2680	Marayong 2148	Nowra South 2541
Guildford 2161	Maroubra 2035	Ocean Shores 2483
Gulgong 2852	Maroubra Junction 2035	Orange 2800
Gunnedah 2380	Marrickville 2204	Paddington 2021
Hamilton 2303	Marsfield 2122	Pagewood 2035
Harrington Park 2567	Mascot 2020	Panania 2213
Haymarket 2000	Mayfield 2304	Parkes 2870
Helensburgh 2508	Menai 2234	Parklea 2768
Hillsdale 2036	Merimbula 2548	Parramatta 2150
Hinchinbrook 2077	Merrylands 2160	Pennant Hills 2120
Hornsby 2077	Miller 2168	Penrith 2750
Hurstville 2220	Minchinbury 2770	Picton 2571
Illawong 2234	Minto 2566	Plumpton 2770
Ingleburn 2565	Miranda 2228	Port Macquarie 2444
Inverell 2306	Mittagong 2575	Potts Point 2011
Jamison town 2750	Moore Park 2021	Prospect 2148
Jannali 2226	Moorebank 2170	Quakers Hill 2763
Jerrabomberra 2619	Moree 2400	Queanbeyan 2620
Jesmond 2299	Moruya 2537	Ramsgate 2217
Kareela 2232	Mosman 2088	Randwick 2031
Katoomba 2780	Moss Vale 2577	Raymond Terrace 2324
Kellyville 2155	Mount Annan 2567	Raymond Terrace
Kempsey 2440	Mount Druitt 2770	North 2324
Kensington 2033	Mount Hutton 2290	Redfern 2016
Kiama 2533	Mudgee 2805	Regentville 2745
Killarney Vale 2261	Mullumbimby 2482	Revesby 2212
Kincumber 2251	Murwillumbah 2484	Rhodes 2138
Kings Langley 2147	Muswellbrook 2333	Richmond 2753
Kingswood Park 2750	Muswellbrook South 2333	Riverwood 2210
Kogarah 2217	Nambucca Heads 2448	Rockdale 2216
Koorinal 2650	Narellan 2567	Rose Bay 2029
Kotara 2289	Narooma 2546	Roselands 2196
Lake Cathie 2445	Narrabeen 2101	Rosemeadow 2165
Lake Haven 2263	Narrabri 2390	Round Corner 2158
Lakemba 2195	Narromine 2821	Rouse Hill 2155
Lane Cove 2066	Nelson Bay 2313	Ryde 2112
Laurieton 2443	Neutral Bay 2089	Salamander 2317
Lavington 2641	Newcastle 2300	Salamander Bay 2301
Leeton 2705	Newington 2127	Sandgate 2304
Leichhardt 2040	Newtown 2042	Scone 2337
Lidcombe 2141	North Parramatta 2151	Seven Hills 2147
Lindfield 2070	North Richmond 2754	Shellharbour 2529
Lisarow 2250	North Rocks 2151	Singleton 2330
Lismore 2480	North Ryde 2116	Singleton Heights 2330
Lithgow 2790	North Strathfield 2137	South Lismore 2480
Liverpool 2170	North Sydney 2060	South Muswellbrook 2333
Macksville 2447	North Wollongong 2500	South Nowra 2541
Macquarie Fields 2564	Northbridge 2063	South Tweed Heads 2486
Maitland 2320		

Spit Junction 2088
St Clair 2579
St Ives 2147
St Johns Park 2176
St Leonards 2065
St Marys 2760
Stanhope Gardens 2768
Strathfield 2135
Sutherland 2232
Swansea 2281
Sydney 2000
Sylvania 2224
Tahmoor 2573
Talbingo 2720
Tamworth 2340
Taree 2430
Taren Point 2229
Tea Gardens 2324
Telopea 2117
Temora 2666
Tenterfield 2372
Terrigal 2260
The Entrance 2261
Thirroul 2515
Thornleigh 2120
Tocumwal 2714
Toormina 2452
Toronto 2283
Toukley 2263
Tuggerah 2259
Tumut 2720
Tuncurry 2428
Turramurra 2074
Tweed Heads 2485
Tweed Heads South 2486
Ulladulla 2539
Umina 2257
Unanderra 2526
Valley Heights 2777
Vaucluse 2030
Villawood 2163
Wagga Wagga 2650
Wallsend 2287
Warabrook 2300
Waratah 2298
Warilla 2528
Warners Bay 2282
Warrawong 2502
Warriewood 2102
Warwick Farm 2170
Wattle Grove 2173
Wauchope 2446
Wee Waa 2388
Wellington 2820
Wentworth 2648
Wentworthville 2145
West Ballina 2478
West Gosford 2250
West Pennant Hills 2125
West Ryde 2114
West Wyalong 2671
Westleigh 2120
Wetherill Park 2164
Wickham 2293
Willoughby 2068
Windsor 2756
Winmalee 2777
Winston Hills 2153
Wollongong 2500
Woollahra 2025
Woy Woy 2256
Wyoming 2250
Wyong 2259
Yagoona 2199
Yamba 2464
Yass 2582
Yerong Creek 2642
Young 2594

APPENDIX E

Suspended Public Holiday Trading Prohibitions Since 2001

New Year's Day

- 2006, Monday 2 January

The Minister suspended the prohibition where the public holiday did not fall on the day, indicating current policy to restrict trading on New Year's Day itself and not on the public holiday if it is observed on a different day.

Australia Day

- 2001, Friday 26 January
- 2002, Monday 28 January
- 2003, Monday 27 January
- 2004, Monday 26 January
- 2005, Wednesday 26 January
- 2006, Thursday 26 January

The Minister has consistently suspended the prohibition, indicating current policy to not restrict trading on Australia Day.

Good Friday and Easter Sunday

The Minister has not suspended the prohibition, indicating current policy to restrict trading on Good Friday and Easter Sunday.

ANZAC Day

- 2001, Wednesday 25 April - after 1pm
- 2002, Thursday 25 April - after 1pm
- 2003, Friday 25 April - after 1pm
- 2004, Monday 26 April
- 2005, Monday 25 April - after 1pm
- 2006, Tuesday 25 April - after 1pm
- 2007, Wednesday 25 April – after 1pm

The Minister has generally suspended the prohibition after 1pm, indicating current policy to restrict trading on ANZAC Day until 1pm. The only full day exemption was granted where the public holiday did not fall on ANZAC Day itself.

Christmas Day

The Minister has not suspended the prohibition, indicating current policy to restrict trading on Christmas Day.

Boxing Day

- 2004, Monday 27 December
- 2005, Tuesday 27 December

The Minister suspended the prohibition where the public holiday did not fall on Boxing Day, indicating current policy to restrict trading on Boxing Day itself and not on the Boxing Day public holiday.

APPENDIX F

Holiday Resort Exemptions

Section 89B orders are in force allowing General Shops in the following areas to trade unrestricted during specified periods of up to 15 weeks each year:

- City of ALBURY
- City of ARMIDALE
- Shire of BALLINA
- City of BATHURST
- Shire of BEGA
- Shire of BELLINGEN
- Shire of BERRIGAN
- City of BLUE MOUNTAINS
- Shire of BYRON
- Municipality of CASINO
- City of COFFS HARBOUR
- Shire of COOMA-MONARO
- Shire of COONABARABRAN
- Shire of COROWA
- Municipality of DENILIQUIN
- Shire of DUNGOG
- Shire of EUROBODALLA
- Town of GLEN INNES
- Shire of GLOUCESTER
- City of GOSFORD
- City of GOULBURN
- City of GRAFTON
- Shire of GREAT LAKES
- Town of GRIFFITH
- Municipality of HASTINGS
- Shire of KEMPSEY
- Municipality of KIAMA
- Shire of KYOGLE
- Town of LEETON
- City of LISMORE
- Shire of MACLEAN
- Town Improvement District of MATHOURA
- Shire of NAMBUCCA
- Shire of NARABRI
- Shire of NARRANDERA
- Shire of PORT STEPHENS
- City of QUEANBEYAN
- Shire of RICHMOND RIVER
- Municipality of SHELLHARBOUR
- City of SHOALHAVEN
- Shire of SINGLETON
- City of TAMWORTH
- City of GREATER TAREE
- Shire of TWEED
- Shire of WALGETT
- Shire of WELLINGTON
- Shire of WINGECARRIBEE
- Shire of WYONG
- Business District of the Town of YOUNG

APPENDIX G

Prosecutions under the *Shops & Industries Act 1962* since 2001.

Respondent: **Wholesale Heaven P/L**
Proceedings: 1586/2001
Date of offence: 25 April 2001 (ANZAC Day)
Hearing date: 21 September 2001
Breaches: section 85(1), section 87(1)(a)
Orders: \$250 fine, plus \$200 professional costs, plus \$58 court costs

Respondent: **Copperart P/L, t/as Homeart Maitland**
Proceedings: 3491/2005
Date of offence: 26 December 2004 (Boxing Day)
Hearing date: 23 September 2005
Breaches: section 85(1)
Orders: \$100 fine, plus \$600 professional costs

Respondent: **Youngdown P/L, t/as Go-Lo Lithgow**
Proceedings: 00118/2006
Date of offence: 1 January 2006 (Sunday)
Hearing date: 9 November 2006
Breaches: section 84(1), section 86(2)
Orders: \$225 fine, plus \$600 professional costs

Respondent: **Quirindi Supermarket No.1 Pty Ltd as Trustee for the Quirindi Supermarket No.1 Unit Trust and Quirindi Supermarket No.2 Pty Ltd as Trustee for the Quirindi Supermarket No.2 Family Trust**
Proceedings: 03773/2006
Date of offence: 25 April 2006 (ANZAC Day)
Hearing date: 18 January 2007
Breaches: section 85(1)
Orders: Offence proven, no penalty imposed (s.10 of the *Crimes (Sentencing Procedure) Act 1999*), plus \$300 professional costs

Respondent: **John Cootes Furniture Pty Limited**
Proceedings: 2988/2007
Date of offence: 8 April 2007 (Easter Sunday)
Hearing date: 25 September 2007
Breaches: section 84(1), section 85(1), section 87(1)
Orders: \$300 fine, plus \$600 professional costs

APPENDIX H

Exempt Shops under the Victorian legislation

Shop Trading Reform Act 1996 (Vic), Section 4

- (1) A shop is an exempt shop if the predominant business carried on in the shop is that of—
 - (a) a chemist shop; or
 - (b) a petrol shop; or
 - (c) an eating-house, restaurant, cafe or any other shop that sells cooked or prepared meals that are ready to eat on the premises or to be consumed off the premises; or
 - (d) a prescribed kind.
- (2) A shop is also an exempt shop at a particular time if—
 - (a) the number of persons employed and working in a business carried on in the shop at that time does not exceed 20; and
 - (b) at any time within the period of 7 days before that time, the number of persons employed by the occupier of the shop and working in any business carried on in shops of any kind in Victoria does not exceed 100.
- (3) The number of persons employed for the purposes of sub-section (2)(b)—
 - (a) if the occupier of the shop is a body corporate, is to include the persons—
 - (i) employed in shops of any kind in Victoria by a body corporate that is, by reason of the Corporations Act, related to that body corporate; and
 - (ii) working in any business carried on in those shops;
 - (b) is to be calculated by dividing the total number of the hours worked by all persons employed and working in the business carried on in those shops during the relevant period by 38.