First print

New South Wales

Bank Holidays Legislation Amendment Bill 2002

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Shops and Industries Act 1962* and the *Banks and Bank Holidays Act 1912*:

(a) to prevent banks from opening on Saturdays and Sundays unless they have an approval to do so granted by the Director-General of the Department of Industrial Relations or fall within certain exceptions, and

(b) to enable the Director-General to deal with applications for approvals.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 gives effect to Schedule 1 which contains amendments to the *Shops and Industries Act 1962*.

Clause 4 gives effect to Schedule 2 which contains amendments to the *Banks and Bank Holidays Act 1912*.

Schedule 1 Amendment of Shops and Industries Act 1962

Schedule 1 [2] inserts proposed Part 2 into the *Shops and Industries Act 1962* which enables a bank to apply for approval to open all branches or one or more branches on a Saturday or Sunday, or both.

Proposed section 6 provides that the application is to be made to the Director-General of the Department of Industrial Relations. In determining an application, the Director-General is to consider whether granting the approval will be in the interests of the public. The Director-General can impose conditions on an approval.

Proposed section 5 provides that ***bank*** has the same meaning as in Part 3 of the *Banks and Bank Holidays Act 1912* (see definition to be inserted by Schedule 2 [1] to the proposed Act).

Proposed section 7 provides that an approval remains in force for the period specified in the approval or, if no period is specified, until cancelled, subject to any suspension.

Proposed section 8 provides that the Director-General can vary the conditions of an approval or suspend or cancel an approval.

Proposed section 9 provides that a bank that is an applicant for an approval or the holder of an approval may apply to the Administrative Decisions Tribunal for a review of certain decisions relating to the application or the approval.

Schedule 1 [4] enables regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed amendments.

Schedule 1 [1] and **[3]** contain statute law revision amendments.

Schedule 2 Amendment of Banks and Bank Holidays Act 1912

Schedule 2 [1] inserts a definition of ***bank*** into Part 3 of the *Banks and Bank Holidays Act 1912*. The definition defines ***bank*** as an authorised deposit-taking institution within the meaning of the *Banking Act 1959* of the Commonwealth that is authorised to use the word “bank” or a word of similar import in its name. Regulations may be made excluding any such institution from the definition.

Schedule 2 [2] substitutes section 15A of the *Banks and Bank Holidays Act 1912* so as to provide that Saturdays and Sundays that are not otherwise bank holidays are bank holidays and are to be kept as close holidays in all banks in New South Wales. However, this does not prevent a bank opening in accordance with an approval granted under proposed Part 2 of the *Shops and Industries Act 1962* (to be inserted by Schedule 1 [2] to the proposed Act). Proposed section 15A does not apply to an agency of a bank unless the agency is a subsidiary of the bank or is controlled by the bank. Currently, section 15A provides for Saturdays to be bank holidays and prevents banks from opening on those days.

Schedule 2 [3] omits obsolete provisions that are covered by Commonwealth legislation.

Schedule 2 [4] enables regulations to be made for the purposes of the *Banks and Bank Holidays Act 1912* and gives effect to proposed Schedule 5 to that Act which contains savings and transitional provisions.

Schedule 2 [5] enables savings and transitional regulations to be made and contains the following specific savings and transitional provisions:

(a) a provision that ensures that the proposed amendments to the *Banks and Bank Holidays Act 1912* do not affect the meaning of ***bank holiday*** or ***public holiday*** in any existing industrial instrument,

(b) a provision that enables banks that were opening on the weekend during the 12-month period before the commencement of the proposed amendments to continue to so open for a further 6 months (or if they lodge an application for an approval under proposed Part 2 of the *Shops and Industries Act 1962*, until the application is finally determined) without the need for such an approval.

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No , 2002

A Bill for

An Act to amend the *Shops and Industries Act 1962* and the *Banks and Bank Holidays Act 1912* with respect to the opening of banks on weekends; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Bank Holidays Legislation Amendment Act 2002*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Shops and Industries Act 1962 No 43

The *Shops and Industries Act 1962* is amended as set out in Schedule 1.

4 Amendment of Banks and Bank Holidays Act 1912 No 43

The *Banks and Bank Holidays Act 1912* is amended as set out in Schedule 2.

Schedule 1 Amendment of Shops and Industries Act 1962

(Section 3)

[1] Section 4 Definitions

Omit ", Employment, Training and Further Education" from the definition of ***Director-General*** in section 4 (1).

[2] Part 2

Insert after Part 1:

Part 2 Opening of banks on weekends

5 Definition

In this Part, ***bank*** has the same meaning as in Part 3 of the *Banks and Bank Holidays Act 1912*.

6 Banks may apply to open on weekends

(1) A bank may apply to the Director-General for approval to open the bank, or one or more branches of the bank, in New South Wales on Saturdays or Sundays, or both, that are declared to be bank holidays under section 15A of the *Banks and Bank Holidays Act 1912*.

(2) An application is:

(a) to be made in writing to the Director-General, and

(b) to be accompanied by such information as the Director-General requires to determine the application, and

(c) to be accompanied by the fee prescribed by the regulations.

(3) The Director-General may:

(a) grant an approval unconditionally or subject to conditions, or

(b) refuse to grant an approval.

(4) In determining an application for an approval, the Director-General is to consider whether granting the approval would be in the interests of the public, taking into account the likely effect of granting the approval on particular sections of the

public, including customers of the bank concerned in any particular area (whether or not an area the subject of the application) and persons employed or engaged by the bank.

(5) Nothing in subsection (4) limits the matters that the Director-General may consider in determining an application for approval.

(6) For the purposes of determining an application for approval, the Director-General may request the applicant to provide such further information as the Director-General considers relevant to the determination of the application.

(7) The Director-General may refuse to grant an approval if the applicant for approval does not comply with a request under subsection (6).

(8) The Director-General may prepare guidelines relating to the type of information that may be required in connection with an application under this Part.

(9) In preparing any such guidelines, the Director-General may consult with the banking industry.

(10) If the Director-General grants an approval, the Director-General must issue the applicant with a written approval that sets out any conditions to which the approval is subject.

(11) If the Director-General refuses an application for approval, the Director-General must give notice of the refusal in writing to the applicant setting out the reasons for the refusal.

7 Duration of approval

Except during any period of suspension, an approval under this Part remains in force for the period specified in the approval or, if no period is so specified, until the approval is cancelled.

8 Variation, suspension or cancellation of approval

(1) The Director-General may vary the conditions of, or suspend or cancel, an approval under this Part.

(2) An approval may be suspended or cancelled only if:

(a) the bank that holds the approval has contravened a condition of the approval, or

(b) the Director-General considers that it is no longer in the interests of the public for the approval to remain in force.

(3) The Director-General may only vary the conditions of, or suspend or cancel, an approval under this Part:

(a) after having given the bank concerned written reasons for the Director-General's intention to vary, suspend or cancel and an opportunity to make submissions, and

(b) after having considered any submissions duly made by the bank.

(4) Subsection (3) does not apply to the cancellation of an approval at the request of the bank that holds the approval.

(5) A variation of the conditions of, or a suspension or cancellation of, an approval:

(a) must be made by notice in writing served on the bank that holds the approval, and

(b) takes effect at the time at which the notice is served or at a later time specified in the notice.

(6) Before determining to take action under this section in relation to an approval, the Director-General may (but need not) determine that the approval will be subject to a period of review.

(7) The Director-General is to give written notice of a determination under subsection (6) to the bank that holds the approval concerned and is to include in the notice written reasons for the determination.

9 Review by Administrative Decisions Tribunal of decisions relating to approval

A bank that is the applicant for an approval under this Part or the holder of such an approval may apply to the Administrative Decisions Tribunal for a review of any of the following decisions:

(a) a decision of the Director-General to refuse to grant the approval,

(b) a decision of the Director-General to impose conditions on the approval,

(c) a decision of the Director-General to vary the conditions of the approval,

(d) a decision of the Director-General to suspend or cancel the approval.

[3] Schedule 2 Savings, transitional and other provisions

Omit “make regulations containing” from clause 1 (1).

Insert instead “contain”.

[4] Schedule 2

Insert “*Bank Holidays Legislation Amendment Act 2002*” at the end of clause 1 (1).

Schedule 2 Amendment of Banks and Bank Holidays Act 1912

(Section 4)

[1] Section 14A

Insert after section 14:

14A Definition

In this Part, ***bank*** means an authorised deposit-taking institution (within the meaning of the *Banking Act 1959* of the Commonwealth) that is authorised under that Act to use in its name:

(a) the word ***bank***, or

(b) any other word or expression (whether or not in English) that is of like import to the word ***bank***,

but does not include any such institution that is excluded from this definition by the regulations.

[2] Section 15A

Omit the section. Insert instead:

15A Saturdays and Sundays to be bank holidays

(1) Every Saturday and Sunday that is not a bank holiday under another provision of this Act is declared to be a bank holiday under this section and is to be kept as a close holiday in all banks in New South Wales.

(2) Subsection (1) does not prevent a bank opening (or one or more of its branches opening) in accordance with an approval granted under Part 2 of the *Shops and Industries Act 1962*.

(3) This section does not apply to an agency of a bank unless the agency is a subsidiary of the bank (within the meaning of the *Corporations Act 2001* of the Commonwealth) or the bank controls the agency (within the meaning of section 50AA of that Act).

[3] Sections 16 and 17

Omit the sections.

[4] Part 4

Insert after Part 3:

Part 4 Miscellaneous

23 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

24 Savings, transitional and other provisions

Schedule 5 has effect.

[5] Schedule 5

Insert after the Fourth Schedule:

Schedule 5 Savings, transitional and other provisions

(Section 24)

Part 1 Preliminary

1 Regulations

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Bank Holidays Legislation Amendment Act 2002

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of Bank Holidays Legislation Amendment Act 2002

2 Existing references to bank holidays

(1) In this clause:

amending Act means the *Bank Holidays Legislation Amendment Act 2002*.

existing industrial instrument means an industrial instrument as defined in the *Industrial Relations Act 1996* that was made before the commencement of this clause.

(2) An amendment made to Part 3 of this Act by the amending Act does not affect the meaning of any reference in any existing industrial instrument to a bank holiday or public holiday.

3 Opening hours for banks

A bank that was opening on any Saturday or Sunday, or both, during the period of 12 months immediately before the commencement of this clause may continue to so open without the need for an approval under Part 2 of the *Shops and Industries Act 1962*:

(a) until the expiration of the period of 6 months from the commencement of this clause, or

(b) if the bank makes an application for an approval under that Part before the expiration of that 6-month period, until the application is finally determined (taking into account any proceedings for a review by the Administrative Decisions Tribunal of a decision to refuse the application or to impose conditions of approval).