

Retail trading restrictions A guide for take away liquor stores



This fact sheet assists take away liquor stores in NSW. Trading hour restrictions for packaged liquor stores are included in the *Retail Trading Act 2008* and in the *Liquor Act 2007*. Liquor stores must comply with both sets of laws.

In some areas, local restrictions, such as Council planning approvals, may also limit trading hours by liquor stores.

This information is provided as a guide only.

Trading restrictions under the Retail Trading Act 2008

Other than the restricted days set out below, there are no general restrictions on liquor stores trading on any time of day or day of the week.

Trading restrictions under the Liquor Act 2007

Standard trading hours for packaged liquor licences are from 5am to 10pm Monday to Saturday, and from 10am to 10pm on Sundays. Extended trading on Sundays can only be applied for from 5am to 10am, but not for 10pm to midnight.

Trading is not permitted by packaged liquor licences on restricted trading days prescribed in the *Liquor Act*.

Restricted trading days

The *Retail Trading Act* defines restricted trading days as:

- Good Friday*
- Easter Sunday
- prior to 1pm on ANZAC Day, 25 April
- Christmas Day, 25 December*
- Boxing Day, 26 December.

NOTE: Good Friday and Christmas Day are restricted trading days under the Liquor Act.

Liquor stores may only trade on a restricted trading day (other than Good Friday and Christmas Day) if:

- the shop is located in a nominated tourist zone

- the shop is operating under a hotel licence
- the shop is a small shop, or
- an exemption has been granted.

Unless exempted, it is an offence under the *Retail Trading Act* to trade or advertise to trade on a restricted trading day.

Packaged liquor store trading on Good Friday and Christmas Day is not permitted in any circumstances because of restrictions under the *Liquor Act*.

Tourist zones

All shops, including liquor stores, operating in tourist zones exempted under the former *Shops and Industries Act 1962* are also exempted from the *Retail Trading Act*.

A list of these zones is available from the NSW Industrial Relations website.

Hotel take away outlets

The *Retail Trading Act* permits a take away liquor outlet operating under a hotel licence to trade on Easter Sunday, ANZAC Day and Boxing Day.

Small shops

Liquor stores classified as a small shop may trade on restricted trading days (excluding Good Friday and Christmas Day). A liquor store is classified as a small shop only when:

- the number of people that own the shop does not exceed two, or one corporation, and the owner or owners of the shop take the profits from the business, and
- the total number of employees engaged by a small shop does not exceed four regular employees, whether working at the same time or different times.

The number of people working in a liquor store **does not include**:

- the occupier or occupiers. If the occupier is a corporation, then two natural persons who are shareholders of the corporation

- any person engaged in an emergency during the absence from the shop for part of a day of a person who is engaged in the shop on that day, or
- any person engaged outside the normal working hours of any person engaged on a full-time basis.

If the owner or a director of a liquor store is also engaged in another shop, then the liquor store is not a small shop.

Seeking an exemption

Under the *Retail Trading Act*, the Secretary, NSW Treasury may grant an exemption to a liquor store enabling it to trade on restricted days. However, trading is not permitted on Good Friday and Christmas Day under the *Liquor Act*.

Applications must be made on the approved form, which is available for download on the NSW Industrial Relations website. The form provides details on the application process and who can make the application.

What is the test for an application?

The Secretary **must not** grant an exemption for any store unless satisfied that there are exceptional circumstances of the case and that it is in the public interest to grant the exemption.

In making any decision, the Secretary must have regard to the following matters:

- the nature of the shop and kind of goods sold
- the need for the shop to be kept open on the day concerned
- the likely effect of the proposed exemption on the local economy, tourism and small and other businesses in the area and
- the likely effect of the proposed exemption on employees of, or persons working in, the shop.

Once a decision about an application has been made, it is published on the NSW Industrial Relations website, along with reasons for the decision.

When can an application be made?

An application seeking an exemption to trade on a restricted day can be made at any time during the year.

However, any application received within 28 days of the restricted day will not be considered for that day.

All applications will be displayed for a period of at least 21 days on the NSW Industrial Relations website. During this 21 day period, public comment is invited regarding any application received by the Department.

The Secretary must have regard to any public comment received during the 21 day period when making a decision.

Effect of an exemption

If granted, exemptions will apply for a period not exceeding three years.

Voluntary staffing

The *Retail Trading Act* requires that any employee of a liquor shop working on a restricted day must freely elect to work on that day without any coercion, harassment, threat or intimidation by, or on behalf of, the shop owner.

Failure to comply with the voluntary staffing provisions can attract a maximum penalty of up to \$11,000 per person found to have been coerced to work.

Lease arrangements

Any provisions of a lease are void to the extent where there is a requirement that the occupier of a liquor store is required to keep the shop open on any restricted day.

This includes either an agreement or an arrangement between the occupier of the shop and owner of the premises in which the shop is located, or if it the occupier is a sub-lessee, between the occupier and the lessee.

Landlords of retail premises leased by shopkeepers may be liable for fines of up to \$22,000 if they compel shopkeepers to open on restricted trading days.

Applications & further information

Further information on the *Retail Trading Act* is available from NSW Industrial Relations

☎ 131 628

Applications for exemptions under the *Retail Trading Act* must be submitted on the approved application form to:

NSW Industrial Relations
GPO Box 5469
Sydney NSW 2001

The application form is available for download from the NSW Industrial Relations website at:

www.industrialrelations.nsw.gov.au

Further information on trading provisions and applications under the *Liquor Act* is available from the NSW Office of Liquor, Gaming & Racing. Contact details are as follows:

☎ 02 9995 0333

www.olgr.nsw.gov.au