

## CLAUSE NOTES

### *Anzac Day Observance Amendment Bill 2018*

#### Clause 1: Short Title

The short title will be the *Anzac Day Observance Amendment Act 2018*

#### Clause 2: Commencement

The Amendment Act will commence on the day on which this act receives Royal Assent

#### Clause 3: Repeal of the Act

This Act will be repealed 365 days from the day on which it commences.

### PART 2 – ANZAC DAY OBSERVANCE ACT 1929 AMENDED

#### Clause 4: Principal Act

In this Part, the Principal Act to which the amendments apply is the *Anzac Day Observance Act 1929*.

#### Clause 5: Section 3 Amended (Interpretation of Part II)

Part II of the Principal Act provides for the observance of Anzac Day.

Section 3 of the Principal Act provides for the definition of terms contained in the Principal Act. This Section is amended by including the definition of 'shop' after the definition of 'race meeting'. The definition of 'shop' is the same as the meaning of 'shop' in the *Shop Trading Hours Act 1984*.

#### Clause 6: Sections 5A, 5B and 5C inserted

Section 5 of the Principal Act provides for work in connection with race meetings and sports on Anzac Day.

Under this clause, new sections that relate to shop trading on Anzac Day are inserted in Part II of the Principal Act. These sections are consistent with those in the *Shop Trading Hours Act 1984*.

The new Section 5A is about the circumstances under which shops are not to open on Anzac Day.

Under the new clause 5A(1), shops as defined in the amended Section 3 of the Principal Act, cannot open before 12.30pm on Anzac Day. The fine for breaching the clause is 200 penalty units.

The new clause 5A(2) describes the circumstances under which a shop is taken to be open.

- 5A(2)(a) The shop is not locked or otherwise closed to stop members of the public from entering; or
- 5A(2)(b) Any person in the shop is engaged in selling goods, seeking orders or delivering goods to customers.

The new clause 5A(3) provides for circumstances where the shop has a common entry with a factory or warehouse. In these circumstances, the shop is not taken to be open if that entrance is closed but not locked.

The new clause 5A(4) provides for exemptions to the new Section 5A(1). There are a number of circumstances under which shops may open before 12.30pm

- 5A(4)(a) The shop is a shop, or belongs to a class of shops, that the Minister approves can open before 12.30pm.  
  
This exemption by the Minister must be done by notice in accordance with subsections 5A(5) and 5A(6).
- 5A(4)(b) The shop is a pharmacy.
- 5A(4)(c) The shop is a newsagency.
- 5A(4)(d) The shop is part of a large shopping complex with many shops and the number of employees of that shop on any day in the most recent month of March is not more than 10 people.
- 5A(4)(e)(i) and 5A(4)(e)(ii)  
  
The shop is a business at which an auction can be held by a real estate agent or general auctioneer, and is a shop that is used primarily for holding auctions as provided by the *Property Agents and Land Transactions Act 2016*.
- 5A(4)(f) The shop is a bottle shop.
- 5A(4)(g) The shop is a café or restaurant.
- 5A(4)(h) The shop is a service station.
- 5A(4)(i) The shop is a car yard that sells cars or car parts.

The new clause 5A(5) outlines what the Minister must consider when deciding to approve an exemption to clause 5A(1). It provides for the Minister to consider issues that he/she thinks are relevant. The Minister must consider:

- 5A(5)(a) the needs of the community within which the shop operates, including but not limited to, organisations that support veterans and ex-serving personnel and

their families, such as the Returned and Services League sub-branch in that community if one operates; and

5A(5)(b) the effect on the community if the shop, or class of shops, was to remain closed before 12.30pm on Anzac Day; and

5A(5)(c) whether, in making a notice under this section, the controls on shop trading provided in the *Shop Trading Hours Act 1984* are not weakened. The Minister cannot approve an exemption in this instance.

The new clause 5A(6)(a) specifies that a notice made under 5A(4)(a) must be published in the *Gazette* and at least one newspaper circulating in Tasmania before the day on which it is intended that the notice will have effect.

The new clause 5A(6)(b) specifies that a notice made under 5A(4)(a) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

Exemptions made currently under the Shop Trading Hours Act are made by order, not notice. This requires drafting and finalising by the Office of Parliamentary Counsel, approval by the Minister and publication in the *Gazette*. There is relatively little time to complete these tasks before Anzac Day because the application period in respect of an order usually ends in early April. This process is further complicated if Anzac Day falls within the Easter period. Approving exemptions through notice has the same effect and approval process but a shorter timeline.

The new Section 5B is about the circumstances under which people are not required to work on Anzac Day.

The new clause 5B(1) outlines that the section applies to a shop specified under new clause 5A(4) (which provides for exemptions), which is not a shop that *Shop Trading Hours Act 1984* applies to. Section 5 of the Shop Trading Hours Act relates to shops that are prohibited from opening on certain occasions, namely, Christmas Day and Good Friday.

The new clause 5B(2) specifies that an employee of a shop cannot be required to work before 12.30pm on Anzac Day unless the employee agrees, in writing. The fine for breaching the clause is 200 penalty units.

The new clause 5B(3) relates to a body corporate. If a body corporate breaches this section:

5B(3)(a) A director of the body corporate or a person who is involved in the management of the body corporate is taken to have breached the section if they knowingly authorised or permitted the breach; and

5B(3)(b) A director of the body corporate or a person who is involved in the management of the body corporate may be prosecuted and convicted in accordance with paragraph (a) regardless of whether the body corporate has been prosecuted.

The new clause 5B(4) provides for a complaint against a shop to be valid if the complaint names the name and address used on the shop front, even if it is not the exact registered trading name. The complaint can be amended to the registered name once it's known.

The new section 5C is about the application of the *Shop Trading Hours Act 1984*.

Section 7 of the *Shop Trading Hours Act* provides for the powers of inspectors.

The new clause 5C(1) provides for section 7 of the *Shop Trading Hours Act* to apply to a shop as referred to in the new sections 5A and 5B in the *Anzac Day Observance Act*. Wherever section 7 of the *Shop Trading Hours Act 1984* refers to 'this Act', it will, under this clause, also refer to the *Anzac Day Observance Act 1929*.

The new clause 5C(2) provides for copies of documents made under section 7 of the *Shop Trading Hours Act 1984* to be admissible in proceedings for an offence against sections 5A and 5B.

### **PART 3 – SHOP TRADING HOURS ACT 1984 AMENDED**

#### **Clause 7: Principal Act**

In this Part, the Principal Act to which the amendments apply is the *Shop Trading Hours Act 1984*.

#### **Clause 8: Section 3A amended (Non-application of Act)**

Clause 3A(3)(f) of the Principal Act refers to the *Hairdressers' Registration Act 1975* in relation to a type of shop that the Act does not apply to. The *Hairdressers' Registration Act 1975* was repealed in 2002.

Clause 8 omits clause 3A(3)(f) from the Act and adjusts the punctuation in clause 3A(3)(e).

#### **Clause 9: Section 5AAA repealed**

Clause 9 repeals section 5AAA of the Principal Act. The section is repealed because its effect is inserted into the *Anzac Day Observance Act* by clause 6.

#### **Clause 10: Section 8 amended (Person not to be required to work contrary to an award or industrial agreement)**

Section 5AAA(2) of the Principal Act relates to shop trading on Anzac Day.

Clause 10 amends section 8(2) of the Principal Act by omitting 'or section 5AAA(2)'.

### **PART 4 – LEGISLATION REVOKED**

#### **Clause 11: Legislation revoked**

Clause 11 provides for legislation specified in Schedule 1 of the Principal Act to be revoked.

The legislation specified in Schedule 1 of the Principal Act is the *Shop Trading Hours Order 2012* (No 19 of 2012).