

Guidelines for applications to trade on Weekends Under section 14G of the *Retail Trading Act 2008*

Introduction

Under the *Retail Trading Act 2008* (RT Act), banks are permitted to open their retail branches for business without formal approval on the Bank Close Days of August Bank Holiday and public holidays (other than Good Friday, Easter Sunday, before 1pm on Anzac Day and Christmas Day) on the condition that the branch must be staffed by persons who have freely elected to work.

Formal approval from NSW Fair Trading is still required where a bank or one or more of its branches wishes to open on **Saturdays or Sundays**.

The purpose of these guidelines is to assist banks when lodging an application under section 14G of the RT Act to apply for permission to trade on weekends.

What is a 'Bank Close Day'?

Under section 14C of the RT Act a bank must not open for retail banking business on a 'bank close day'. A '**bank close day**' is defined under section 14B of the RT Act and includes a Saturday or Sunday.

A 'Retail banking business' is defined under section 14C of the RT Act as 'banking business (within the meaning of the *Banking Act 1959* of the Commonwealth) that is conducted with customers in person at the bank or a branch of the bank'.

Approval to open on a Bank Close Day

A bank may apply to NSW Fair Trading under section 14G of the RT Act for approval to open the bank, or one or more branches of the bank, in New South Wales on a bank close day (other than on Good Friday, Easter Sunday, Anzac Day (before 1pm) or Christmas day).

Bank applications must specify the particular Bank Close Day

Applications to NSW Fair Trading under section 14G of the RT Act must specify the particular bank close day or days on which the applicant bank intends to open. An approval to open on a Saturday or Sunday will not permit the bank to open on a Saturday or Sunday that falls on Easter Sunday, the morning of Anzac Day or Christmas Day.

Approvals granted under repealed legislation

Weekend trading approvals granted to banks under the *Shops and Industries Act 1962* and under the *Banks and Bank Holidays Act 1912* which were current at 31 December 2010 have been preserved under the RT Act and continue to apply.

Lodging of applications

To apply, complete the '*Application for approval to open on Bank Close Days*' form located on the Fair Trading website. For any queries contact NSW Fair Trading by email at FTLicensing@finance.nsw.gov.au or phone 13 32 20.

Classes of application

There are two classes of application which can be made by banks. These are:

- applications for the state-wide opening of branches; and
- applications for the opening of nominated branches within the state.

A guideline, in the form of a checklist, has been developed for banks and can be found at the end of this document.

Principles for determining applications

In determining whether or not to grant an application, section 14H of the Retail Trading Act requires NSW Fair Trading to consider whether it is in the public interest to do so. NSW Fair Trading may take into account, but is not limited to, the likely effect that the granting of an approval will have on particular sections of the public. This includes customers of the bank and persons employed or engaged to perform services for the bank.

While the checklist is not intended to be an exhaustive statement of all the relevant public interest factors, compliance with the checklist will significantly reduce the time taken to consider an application and the need for any additional information to be provided by an applicant. In this regard, it is expected that the bank will act in good faith in the disclosure of information and will keep NSW Fair Trading advised of any issues during the approval process which may impact on the exercise of their discretion.

NSW Fair Trading reserves the right to request further information from a bank in support of its application. Failure to comply with a request will be grounds for refusal.

In order to comply with the public interest test, NSW Fair Trading may consult with the banking industry and/or local councils as part of the determination process. In addition, NSW Fair Trading reserves the right to seek the views of any other person in the determination of an application.

Consideration of applications

NSW Fair Trading has a period of 40 days in which to consider an application. All applications will be published on the NSW Fair Trading website for a period of at least 14 days for public comment. Generally a decision will be made within seven days of the conclusion of the public comment period, unless advised otherwise by NSW Fair Trading.

The 40 day period may be extended by NSW Fair Trading with the consent in writing of the applicant bank. In the event that NSW Fair Trading does not make a decision within the 40 day period or within any extended period, NSW Fair Trading will be deemed to have refused the application.

It should be noted that a bank has rights of review by the NSW Civil and Administrative Tribunal under the *Administrative Decisions Review Act 1997* in respect of a decision made by NSW Fair Trading to:

- refuse to grant an approval
- impose conditions on an approval
- vary the conditions of an approval
- suspend or cancel an approval.

In addition, a representative of an industrial organisation of which persons employed or engaged to perform services for a bank are entitled or eligible to belong may apply to the NSW Civil and Administrative Tribunal for a review of any of the following decisions:

- a decision of NSW Fair Trading to grant an approval under this part to the bank (whether with or without conditions); and
- a decision of NSW Fair Trading to vary the conditions of an approval granted to the bank under this Part.

Review rights may be exercised within 28 days after notification of the decision, or after the provision of a statement of reasons by NSW Fair Trading .

Granting of approvals

NSW Fair Trading may issue the approval with or without conditions and for a fixed or unlimited period of time. However, section 14F of the RT Act provides that an approval granted by NSW Fair Trading to open on a bank close day is subject to the condition that the nominated branch, or branches, must be staffed only by persons who have freely elected to work on the bank close day.

Under section 14F(2) a person will not be taken to have freely elected to work on the bank close day merely because the person is rostered, or required by the terms of an industrial instrument, to work on that day.

NOTE: The grant of an approval does not compel a bank to open any or all of its nominated bank branches on the bank close day specified in the approval.

The following checklist is provided to applicant banks to assist them in the making of an application and to provide guidance as to the provision of relevant information to assist NSW Fair Trading in the making of a determination under Part 3A of the RT Act.

Checklist for applications by Banks to open a nominated branch or branches on weekends

When completing the *'Application for approval to open on Bank Close Days'* form located on the Fair Trading website, a bank should ensure that its application contains information dealing with the following matters:

- **State-wide application** - identify if its an application for a NSW state-wide opening of branches;
OR
- **Branch application** - the location of the nominated branch or branches;

and

- The intended close day or close days on which the nominated branch or branches are to open and the intended hours of opening.
- Information regarding the level of support by the relevant industrial organisation for the making of the application.
- The grounds relied upon by the bank in support of the application for the opening of the nominated branch or branches.
- The benefits to be obtained by customers and the general public in the opening of the nominated branch or branches on the nominated bank close day or days.
- The type and nature of services to be provided by the nominated branch or branches if an approval is granted.
- Information on community support for the opening of the branch or branches, including local surveys of customers, shopkeepers and other interested parties.
- The bank's Work Health and Safety policy relating to the performance of work on bank close days.
- Details of the applicable industrial awards or agreements covering employees or other persons who work on the nominated day or days and, additionally, details of the industrial entitlements applicable to work performed on a bank close day.
- Details of the bank's policy regarding the voluntary staffing of branches on bank close days. Where an industrial instrument requires employees to work on the nominated bank close day or days, include information as to how the policy will operate in respect of those employees if an approval to open is granted by NSW Fair Trading to the bank.
- Details of **additional** fees to be imposed on customers who use the services of the branch or branches on the nominated bank close day or days.
- The name, telephone number and e-mail address of the person who is authorised by the bank to be the contact officer in relation to the application.

Note: Applications will be published on the NSW Fair Trading website for public comment for a period of at least 14 days.