



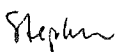
**Government  
of South Australia**

TRS19D1303

Hon Stephen Mullighan MP  
Member for Lee  
Unit 1, 62 Semaphore Road  
SEMAPHORE SA 5019

**Treasurer**  
Level 8  
State Administration Centre  
200 Victoria Square  
Adelaide SA 5000  
GPO Box 2264  
Adelaide SA 5001  
DX 56203 Victoria Square  
Tel 08 8226 1866  
treasurer.dtf@sa.gov.au

[lee@parliament.sa.gov.au](mailto:lee@parliament.sa.gov.au)

  
Dear Mr Mullighan

**APPLICATION UNDER THE FREEDOM OF INFORMATION ACT 1991**

I refer to your application made under the *Freedom of Information Act 1991* (FOI Act), dated 13 May 2019.

Your application seeks access to:

*"All minutes, briefings and correspondence titled 'Compliance Action Under the Shop Trading Hours Act 1977' as described on the Objective document management system, between 12 July 2018 and 13 May 2019."*

The legislative prescribed timeframe to determine this application has expired and is now deemed to have refused you access to all documents relevant to your application. I refer to my letter dated 26 May 2019 where I sought additional time to make my determination.

The purpose of this letter is to advise you of my determination. An extensive search was conducted within this office. A total of 2 documents were identified as answering the terms of your application.

I grant you access in full to 2 documents; copies of which are enclosed.

Please note, in compliance with Premier and Cabinet Circular PC045 - *Disclosure Logs for Non-Personal Information Released through Freedom of Information* (PC045), the Department of Treasury and Finance is now required to publish a log of all non-personal information released under the *Freedom of Information Act 1991*.

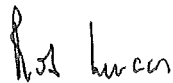
In accordance with this Circular, any non-personal information determined for release as part of this application, may be published on the DTF website. A copy of PC045 can be found at the following address: <https://dpc.sa.gov.au/resources-and-publications/premier-and-cabinet-circulars>. Please visit the website for further information.

As I am determining this application as Principal Officer, Section 29(6) of the Act does not provide for an internal review. If you are dissatisfied with my determination you are entitled to exercise your rights of external review with the Ombudsman.

Alternatively, you can apply to the South Australian Civil and Administrative Tribunal. If you wish to seek a review, Section 39(3) of the Act states you must do so within 30 calendar days of receiving the determination.

If you require any further information, please contact Vicky Cathro on 8226 9769.

Yours sincerely

A handwritten signature in black ink that reads "Rob Lucas". The signature is written in a cursive style with a large initial "R".

**Hon Rob Lucas MLC**  
*Principal Officer*

24 September 2019

**TO:           TREASURER**

**CC:           UNDER TREASURER  
              DEPARTMENT OF TREASURY AND FINANCE**

**SUBJECT:    COMPLIANCE ACTION UNDER THE *SHOP TRADING HOURS ACT 1977***

**PURPOSE**

- To provide you with information about the steps that would be undertaken by SafeWork SA to commence regulatory action under the *Shop Trading Hours Act 1977*.

**BACKGROUND**

- Your office has sought information on the steps that would need to be undertaken to commence regulatory action under the *Shop Trading Hours Act 1977* (STH Act) where initial evidence indicates that retailers are currently trading in breach of the STH Act.
- The STH Act provides for a range of offences however section 14 of the STH Act relates specifically to the requirement to close and fasten a shop at all times except those which it is entitled to open along with the provision that prohibits the sale of goods at times when a shop is required to be closed.
- Section 17A of the STH Act also provides the power to the responsible Minister to issue a prohibition notice, if the Minister has reason to believe, on reasonable grounds, that a person has contravened a provision of the Act in circumstances that make it likely that the contravention will be repeated.
- There is currently a delegation instrument in place that has delegated this power to issue a prohibition notice from the Minister to the person holding or acting within the position of Executive Director, SafeWork SA. A further delegation instrument is in place that further delegates this power from the Executive Director, SafeWork SA to all SafeWork SA Inspectors.

**DISCUSSION**

- Further to my briefing of 22 June 2018 (18SWSA0329), upon your request, SafeWork SA undertook a project that involved seeking the measurements of 14 supermarkets that were trading as exempt shops pursuant to the STH Act. As a result, SafeWork SA found that only three of these stores were found to be legally trading as an exempt shop by having a floor area of equal to or less than 400m<sup>2</sup>.
- SafeWork SA advised you that it has taken no further action in relation to these stores trading as exempt shops.
- You have indicated that in the event that the Retail Trading Bill 2018, which is currently before the Legislative Council, should be unsuccessful, the Government will commence compliance action against shop owners that are trading in breach of the STH Act.
- Should SafeWork SA be required to commence compliance action, the following steps would be undertaken before a prosecution would be considered:

1. SafeWork SA would initially write to those shops that have already been identified as trading outside the hours permitted by the STH Act;
  - The purpose of the letter would be to advise that their store has been identified as non-compliant with the STH Act and advise that from a specified date, SafeWork SA will be enforcing compliance. The letter would provide the shop owner with an opportunity to voluntarily undertake the required steps to comply by closing at times required by the STH Act. The letter would also include a reasonable timeframe set by SafeWork SA to meet the requirements of the STH Act and outline what evidence will be required to be provided to determine this.
2. If a shop owner was unable to meet the set timeframe, SafeWork SA would ask them to provide an expected timeframe for compliance which would need to be assessed individually as to whether it would be considered reasonable.
3. Shops that either refuse to comply or do not respond will be visited by an Inspector to conduct a proactive audit.
  - Section 8 of the STH Act outlines the powers of Inspectors and includes that a person must not hinder or obstruct an Inspector, use abusive or threatening language, or refuse or fail to answer a question put to the person. A maximum penalty of \$25 000 applies to this section.
4. Should a shop continue to trade outside the permitted hours, Inspectors will issue the shop owner with a prohibition notice pursuant to section 17A of the STH Act.
  - The prohibition notice would require the shop to remain closed at hours not permitted by the STH Act. A person who contravenes or fails to comply with the notice is guilty of an offence. A maximum penalty of \$100 000 plus \$20 000 for each day on which the offence is committed applies.
5. Should a shop continue to trade in breach of the STH Act, SafeWork SA will commence the relevant steps with a view to initiating a prosecution.
- Whilst I advise that SafeWork SA in recent times has not commenced any prosecutions under the STH Act, it is expected that the following information and evidence would be collected with a view to prosecuting a business owner under section 14 of the STH Act:
  - assessment and measurement of the floor area based on the provisions of the STH Act i.e the area in which goods are displayed for inspection by the public, and the area to which the public has access for the purposes of inspecting and purchasing goods;
    - (noting excluded from these measurements would be access and egress areas at the front of the store (the non-retail side of the check-out area); trolley storage areas, and staff only point of sale areas such as check-outs, kiosks, deli departments etc.);
  - the publication of opening and closing times either at the shop, online or in printed material;
  - photos or video of the store failing to secure and fasten the shop at times it must be closed;
  - photos or video of persons inspecting or purchasing goods from the shop at times it must be closed;
  - receipt of the purchase of goods at times when the shop must be closed; and
  - information from employees required to assist with the purchasing of goods at times when the shop must be closed.

- It is expected that the same information and evidence would be required to issue a prohibition notice pursuant to section 17A of the STH Act.
- In addition to addressing shops that have already been identified as trading outside the hours permitted by the STH Act, SafeWork SA would need to consider undertaking a targeted compliance program to further identify shops trading outside the STH Act.

## RECOMMENDATIONS

That you:

- note the information about the steps that would be undertaken by SafeWork SA to commence regulatory action under the *Shop Trading Hours Act 1977*.

Should you wish to discuss this matter further, please contact me on telephone 8303 0230.



Martyn Campbell  
**EXECUTIVE DIRECTOR**  
**SAFEWORK SA**

11 October 2018

NOTED/APPROVED/NOT APPROVED

Treasurer

Date:     /     / 2018

MINUTES forming ENCLOSURE to

TRS18D1070 / 18SWSA0620

TO:           TREASURER

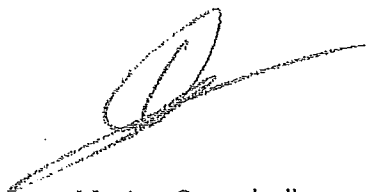
CC:           UNDER TREASURER  
              DEPARTMENT OF TREASURY AND FINANCE

RE:           COMPLIANCE ACTION UNDER THE *SHOP TRADING HOURS ACT*  
              1977

Please find attached a copy of the letter that I intend to send to relevant supermarket owners who have been identified as trading outside the hours permitted by the *Shop Trading Hours Act 1977* (the Act) for you to note.

The content of the letter is consistent with the steps that were outlined in a briefing (18SWSA0550) that was provided to you on 11 October 2018. Please note that SafeWork SA has requested a timeframe for compliance of 31 January 2019 to afford shopkeepers with a reasonable opportunity to take the necessary steps to comply with the Act.

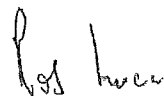
I intend to send the letters by no later than Friday, 16 November 2018.



Martyn Campbell  
EXECUTIVE DIRECTOR  
SAFEWORK SA

8 November 2018

NOTED/APPROVED/NOT APPROVED



Treasurer

Date: 16/11 /2018

Your ref :  
Our ref : 18SWSA0620

Office of the Executive Director  
Level 4, World Park A, 33 Richmond Road  
Keswick SA 5035

GPO Box 465  
Adelaide SA 5001

DX 715 Adelaide

Contact Martyn Campbell  
Phone (08) 8303 0230  
Email [martyn.campbell@sa.gov.au](mailto:martyn.campbell@sa.gov.au)

ABN 50-560-588-327

[www.safework.sa.gov.au](http://www.safework.sa.gov.au)

November 2018

Name  
Address 1  
Address 2

Dear Title Name

I refer to correspondence of 2 May 2018 from Mr Stephen De Musso of SafeWork SA regarding floor area measurements for the purposes of the *Shop Trading Hours Act 1977* (the Act) in relation to your shop located at **address**.

In response to that correspondence, you either provided SafeWork SA with a floor plan depicting the floor area of the shop or requested an Inspector attend your shop to conduct measurements.

As a result SafeWork SA is of the view that your shop is not an exempt shop as defined by section 4(1) of the Act and should only be trading during the hours prescribed by section 13(1) of the Act.

If your shop is currently trading outside of the hours prescribed by section 13(1) of the Act, SafeWork SA is providing you with an opportunity to undertake steps to comply with the Act. This can be achieved by altering your trading times so that you are no longer trading outside the prescribed hours or by complying with the definition of an exempt shop.

I am mindful of the impact that immediate change could have on your business, staff and customers, and I am prepared to provide a reasonable timeframe to comply with the Act. To that end, I request that you provide evidence in support of your shop's compliance to SafeWork SA by 31 January 2019.

That evidence should be provided to:

Mr Mark Hulme  
Manager  
Manufacturing, Wholesale, Retail, Transport and Utilities Team  
SafeWork SA  
GPO Box 465  
ADELAIDE SA 5001  
or email: [mark.hulme@sa.gov.au](mailto:mark.hulme@sa.gov.au).

Alternatively, prior to that date, you may request an inspection of your shop to assess compliance with the Act. If you are unable to meet the timeframe for compliance, SafeWork SA will consider a reasonable request for an extension of time.

Either request should also be made to Mr Hulme by email or by telephone on (08) 8303 0427.

I have enclosed a copy of the *Shop Trading Hours Act 1977* for your information.

Yours sincerely

Martyn Campbell  
**EXECUTIVE DIRECTOR**  
**SAFEWORK SA**

*Enc. Shop Trading Hours Act 1977*