

Western Australia

## **Retail Trading Hours Act 1987**

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## **Retail Trading Hours Act 1987**

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Western Australia

## **Retail Trading Hours Act 1987**

**An Act relating to the hours of trading for retail shops and for other and incidental purposes.**

## Part I — Preliminary

### 1. Short title

This Act may be cited as the *Retail Trading Hours Act 1987*<sup>1</sup>.

### 2. Commencement

The provision of this Act shall come into operation on such day or days as is or are, respectively, fixed by proclamation<sup>1</sup>.

### 3. Interpretation

(1) In this Act unless the context otherwise requires —

**“agreement”** includes any agreement containing provisions, whether express or implied, under or by virtue of which —

- (a) a person authorises, permits or requires a person operating a retail shop to use, in connection with the retail sale of goods or services at the retail shop, a mark identifying, commonly associated with or controlled by that first-mentioned person;
- (b) a person grants a right to, or otherwise authorises or permits, a person operating a retail shop to possess, occupy or use the retail shop in connection with the sale of any goods or the provision of any services;
- (c) a person is entitled or required to supply goods or provide services to the person operating a retail shop for retail sale by the person operating the retail shop; or
- (d) a person operating a retail shop agrees with another person to acquire goods or services from another person (whether a party to the agreement or not) for retail sale by the person operating the retail shop;

**“authorised person”** means a person authorised in writing by the chief executive officer;

**“chief executive officer”** means the chief executive officer of the department principally assisting the Minister in the administration of this Act;

**“Committee”** means the Retail Shops Advisory Committee established under section 17;

**“filling station”** means a retail shop referred to in section 10(5);

**“fuel”** means fuel for operating a motor vehicle;

**“inspector”** means a person designated as an inspector under section 7;

**“member”** means a member of the Committee;

**“operate”** means, in relation to a retail shop, conducting or carrying on the business of a retail shop and includes causing, employing or engaging another person to carry on or conduct that business;

**“place”** includes a building, stall, tent, vehicle, boat or vessel;

**“prescribed services”** means any one or more of the following services —

- (a) hairdressing;
- (b) pawnbroking or dealing in second-hand goods under the *Pawnbrokers and Second-hand Dealers Act 1994*;
- (c) broking marine craft or motor vehicles;
- (d) such other services as may be prescribed;

**“retail sale”** means a sale of goods or services that is not for the purposes of their re-sale;

**“retail shop”** means any place at, in, on or from which —

- (a) goods are sold by way of retail sale;
- (b) goods are displayed, kept or sold for retail sale; or
- (c) prescribed services are provided by way of retail sale;

**“sell”** includes barter, supply for profit, offer for sale, expose for sale, send forward or deliver for sale, cause or suffer or permit to be sold and disposal or offer for disposal of goods under credit sale agreement or hire purchase agreement.

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- (1a) A place that is otherwise a retail shop does not cease to be a retail shop by reason only that meals or refreshments or both are also sold at that place.
- (2) For the purposes of this Act a place at which —
- (a) orders are received or obtained for the retail sale of goods or services; or
  - (b) goods are held or stored for the purposes of retail sale,
- is a retail shop notwithstanding that the goods or services are supplied, or, the orders are received or obtained, at another place.
- (3) Notwithstanding anything in this Act, a place at which meals or refreshments are sold or served only to persons who are employed or engaged at that place is not a retail shop for the purposes of this Act.
- (4) For the purposes of this Act the metropolitan area means the part of the State within the area described in the regulations.
- [Section 3 amended by No. 1 of 1991 s. 4 and 14; No. 88 of 1994 s. 100.]*

**4. Application**

- (1) This Act applies only to the part of the State south of the 26th parallel of South Latitude.
- (2) This Act does not apply to a place that is used for or in connection with —
- (a) a show held by an incorporated agricultural or horticultural society;
  - (b) a bazaar or fair the proceeds of which are intended for religious, charitable or public purposes.
- (3) This Act does not apply to a place that is used as —
- (a) a restaurant or a cafe;
  - (b) a take-away-food shop;



- (c) a veterinary clinic; or
  - (d) a retail shop and is located in a public passenger transport terminal or station where public passenger transport services are running.
- (4) Nothing in this Act affects the sale or supply of liquor at licensed premises under the *Liquor Act 1970*<sup>2</sup>.

**5. Exemptions**

- (1) Notwithstanding anything in this Act, the Minister may by order published in the *Government Gazette* provide for exemptions from this Act or such of the provisions of this Act as are specified in the order.
- (2) Section 43(4) and (7) to (9) of the *Interpretation Act 1984* applies to an order under subsection (1) as though the order were subsidiary legislation.

*[Section 5 amended by No. 1 of 1991 s. 5.]*

## **Part II — Administration**

### **6. Officers**

There shall be appointed under and subject to Part 3 of the *Public Sector Management Act 1994* such officers and other persons as are necessary for the administration of this Act.

*[Section 6 amended by No. 32 of 1994 s. 3(2).]*

### **7. Inspectors**

The chief executive officer may designate any person referred to in section 6 as an inspector.

*[Section 7 amended by No. 1 of 1991 s. 14.]*

### **8. Certificate of identity**

The chief executive officer shall furnish an inspector with a certificate signed by the chief executive officer certifying that that person has been designated an inspector.

*[Section 8 amended by No. 1 of 1991 s. 14.]*

### **9. Inspector subject to chief executive officer**

In carrying out the functions conferred on an inspector by this Act the inspector shall give effect to any direction given by the chief executive officer.

*[Section 9 amended by No. 1 of 1991 s. 14.]*

## **Part III — Retail trading hours**

### **10. Categories of retail shops**

- (1) For the purposes of this Act retail shops are assigned different categories as follows —
  - (a) general retail shops;
  - (b) small retail shops;
  - (c) special retail shops; and
  - (d) filling stations.
- (2) Subject to this Act, any retail shop that is not a small retail shop, a special retail shop or a filling station shall be regarded as a general retail shop.
- (3) Subject to this Act, a retail shop shall be regarded as a small retail shop if —
  - (a) only goods or services that are prescribed for the purposes of sale at a small retail shop are sold or provided at the retail shop;
  - (b) the retail shop is owned by one eligible person or not more than 4 eligible persons trading in partnership or by a body corporate with not more than 4 shareholders all of whom are eligible persons;
  - (ba) the retail shop is operated for the benefit of the eligible persons referred to in paragraph (b);
  - (bb) the eligible persons referred to in paragraph (b) are personally and actively engaged in the retail shop;
  - (bc) not more than 5 persons (inclusive of the eligible persons who own and operate the retail shop) work in the retail shop at any one and the same time; and
  - (bd) the retail shop is owned and operated in accordance with the directions given under subsection (3b);

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- (c) the chief executive officer has issued a certificate in relation to the retail shop certifying that it is a small retail shop in terms of this subsection.
- (3a) A person is not an eligible person for the purposes of subsection (3) unless —
- (a) in relation to a case where the person is the only person in question the person —
    - (i) is a natural person;
    - (ii) does not own or operate, either alone or together with any other person, more than 2 retail shops except as a shareholder in a listed corporation as defined under the *Companies (Western Australian) Code*<sup>3</sup>;
  - (b) in relation to a case where the person in question is one of a group of persons, the person —
    - (i) is a person to whom the provisions of paragraph (a)(i) and (ii) apply;
    - (ii) does not own or operate another retail shop together with a person who is outside that group of persons; and
    - (iii) does not himself or herself own or operate a retail shop alone if one of the other persons in the group owns or operates a retail shop that is not owned or operated together with the other persons in the group.
- (3b) The Minister may by order give directions for the purposes of subsection (3) and any such order may include directions with respect to —
- (a) the persons who shall be, and, the persons who shall not be, regarded as owners for the purposes of subsection (3);
  - (b) the persons for whose benefit a small retail shop may be owned and operated; and

- (c) the extent to which any person other than a person who owns or operates a small retail shop may benefit from the operation of the small retail shop;
- (d) the extent to which the natural persons who operate the retail shop shall be personally and actively engaged in the operations of the retail shop;
- (e) such other matters (including a requirement that any statement made for the purposes of this section be verified by statutory declaration) as the Minister considers necessary,

and effect shall be given to any such order.

- (3c) Without affecting anything in the *Interpretation Act 1984* sections 41 to 47 of that Act apply to and in relation to an order made under subsection (3b) as though the order were regulations.
- (3d) A person who is aggrieved by a decision of the chief executive officer refusing the issue of a certificate under subsection (3)(c) may appeal to the Minister whose decision is final.
- (4) Subject to this Act, a retail shop shall be regarded as a special retail shop if —
  - (a) a certificate is issued by the chief executive officer in relation to the retail shop specifying it to be a special retail shop within one of the categories of special retail shops prescribed for the purposes of this paragraph; and
  - (b) only the goods or services or both that are prescribed in relation to a special retail shop of that category are sold or provided at the retail shop.
- (5) A retail shop shall be regarded as a filling station if the whole or part of the business of the retail shop constitutes the sale of fuel and for the purposes of this Part any pump or contrivance in a filling station for supplying fuel is deemed to be included in the filling station.

*[Section 10 amended by No. 1 of 1991 s. 6 and 14.]*

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**11. Issue and cancellation of certificates for small retail shops and special retail shops**

- (1) A person who desires to operate a small retail shop or a special retail shop at any place shall apply to the chief executive officer for a certificate in relation to that place in accordance with the regulations.
- (2) If the chief executive officer is satisfied in relation to an application under subsection (1) that there is no reason for the refusal of the application the chief executive officer shall issue a certificate in terms of the application.
- (3) The chief executive officer shall not issue a certificate certifying a filling station to be a small retail shop or a special retail shop.
- (4) The chief executive officer may cancel a certificate certifying a retail shop to be a small retail shop or a special retail shop if the chief executive officer is satisfied —
  - (a) in relation to a small retail shop —
    - (i) that any goods or service other than goods or a service prescribed under section 10(3)(a) is sold or provided at that retail shop;
    - (ii) that the retail shop is not owned or operated in terms of section 10(3) and (3b); or
    - (iii) that the retail shop is operated during the hours it is required to be closed under this Act;
  - or
  - (b) in relation to a special retail shop —
    - (i) that any goods or service other than goods or service prescribed as goods or a service in relation to a special retail shop of that category, are sold or is provided at that retail shop; or
    - (ii) that the special retail shop is operated during the hours it is required to be closed under this Act.

- (5) Where under subsection (4) the chief executive officer cancels a certificate certifying a retail shop to be a small retail shop or a special retail shop the retail shop shall be deemed to be a general retail shop for the purposes of this Act.
- (6) The cancellation of a certificate under this section does not prevent a person from being prosecuted for an offence against this Act.

*[Section 11 amended by No. 1 of 1991 s. 7 and 14.]*

**12. Trading hours for retail shops**

- (1) Subject to this Act a general retail shop shall be closed —
  - (a) on Monday, Tuesday, Wednesday and Friday in each week until 8 a.m. and from and after 6 p.m.;
  - (b) on Thursday in each week, until 8 a.m. and from and after 9 p.m.;
  - (c) on Saturday in each week, until 8 a.m. and from and after 5 p.m.;
  - (d) on Sunday in each week; and
  - (e) on each public holiday and public half-holiday.
- (1a) Notwithstanding anything in subsection (1)(a), (b) or (c) the Minister may by order published in the *Government Gazette* fix a time or times from and after which general retail shops shall remain closed on any day in each week instead of the time referred to in any of those provisions and by any such order may —
  - (a) direct that the order applies to such portion or portions of the State as is or are, respectively, specified in the order; and
  - (b) impose such terms, conditions or restrictions as the Minister thinks fit including a condition fixing the closing time or times for general retail shops in the area to which the order applies on any day in each week

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referred to in subsection (1)(a), (b) or (c) while the order remains in force.

- (1b) An order under subsection (1a) may be amended or revoked by the Minister by an order published in the *Government Gazette*.
- (2) Subject to this Act a small retail shop or special retail shop shall be closed on every day of the year until 6 a.m. and from and after 11.30 p.m.

*[Section 12 amended by No. 1 of 1991 s. 8.]*

**13. Special provisions for certain areas and certain shops**

- (1) Notwithstanding anything in section 12(1)(c) where the local government of a district that is, in whole or part, is outside the metropolitan area applies to the Minister for the closing of general retail shops in the district or in the portion of the district outside the metropolitan area on and after 1 p.m. on Saturday of each week the Minister may by order direct that general retail shops in the district or in the portion thereof outside the metropolitan area, as the case requires, shall close on and after 1 p.m. on Saturday in each week and the order shall have effect accordingly.
- (2) Notwithstanding anything in section 12(1)(c), where the Minister is satisfied that the persons or the majority of the persons operating general retail shops in which are sold or provided goods or services of a particular class are in favour of those goods or services being not sold or provided on Saturday in each week from and after 1 p.m. the Minister may by order, direct that any general retail shop or any portion of a general retail shop, as the case requires, in which the class of goods or the class of services specified in the order, are sold or provided, shall be closed on Saturday in each week from and after 1 p.m. and the order shall have effect accordingly.
- (2a) Notwithstanding anything in section 14(2)(b), where the local government of a district that includes a non-metropolitan zone applies to the Minister for the closing of filling stations in that non-metropolitan zone on and after 1 p.m. on Saturday of



each week the Minister may by order direct that, subject to section 14(14), filling stations in the non-metropolitan zone shall be closed on and from 1 p.m. on Saturday in each week and the order shall have effect accordingly.

- (2b) Where a non-metropolitan zone forms part of more than one local government district an application under subsection (2a) shall be made by the local governments of each of those districts, but where all the local governments in question do not apply the application shall be deemed to have been made only in relation to the portions of the non-metropolitan zone within the districts of the local governments that are applicants under that subsection and any order made by the Minister in relation to such application shall have effect only in those districts.
- (3) An order made by the Minister under this section shall be published in the *Government Gazette* and may be amended or revoked by the Minister by a further order published in the *Government Gazette*.
- (4) In subsections (2a) and (2b) —
- “non-metropolitan zone”** means a zone as defined in section 14(1) that is situated outside the metropolitan area.

*[Section 13 amended by No. 1 of 1991 s. 9; No. 14 of 1996 s. 4.]*

**14. Trading hours and extraordinary trading hours for filling stations**

- (1) In this section, unless the contrary intention appears —
- “approved”** means approved by the Minister under subsection (13);
- “extraordinary trading hours”** means any time other than ordinary trading hours;
- “motor vehicle”** means a motor vehicle as defined by the *Road Traffic Act 1974*;
- “ordinary trading hours”** means the hours which under subsection (2) a filling station may be open;

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**“public ambulance”** means motor vehicle used exclusively for the purpose of conveying a member of the public to or from a hospital or other place for or after medical treatment;

**“requisite”** means any thing, not being fuel, necessary or required for equipping or operating a motor vehicle and includes, without derogating from the generality of the foregoing, lubricant in any form, tyre, tube, battery, part and accessory;

**“the representative body”** means the body known as the Motor Trade Association of Western Australia Incorporated or such other body as is appointed in its place under subsection (19);

**“unzoned filling station”** means filling station not in a zone;

**“zone”** means portion of the State prescribed under subsection (6) as a zone;

**“zoned filling station”** means filling station in a zone.

- (2) Subject to this Act, a filling station other than an unzoned filling station shall be closed —
- (a) on Monday, Tuesday, Wednesday, Thursday and Friday, in each week, until 7 a.m. and from and after 6 p.m.;
  - (b) on Saturday in each week until 7 a.m. and from and after 6 p.m.;
  - (c) on Sunday in each week; and
  - (d) on Anzac Day, Good Friday and Christmas Day.
- (3) A person who operates a zoned filling station having fuel and requisites for sale at or in, the zoned filling station or a part thereof —
- (a) shall keep the zoned filling station or that part of the zoned filling station, as the case requires, closed; and
  - (b) shall not sell or allow to be sold fuel or requisites,
- except during ordinary trading hours or when required to do so by subsection (14).

- (4) A person who operates an unzoned filling station having fuel and requisites for sale at or in, or at or in a part of, the unzoned filling station may —
- (a) keep the unzoned filling station, or that part of the unzoned filling station, open; and
  - (b) sell or allow to be sold fuel or requisites,
- during such hour as he thinks fit.
- (5) A person who operates a filling station, whether the filling station is in a zone or not, shall not, at any time outside ordinary trading hours prescribed for general retail shops under section 12, sell or allow to be sold at the filling station any thing that is not —
- (a) fuel or a requisite; or
  - (b) one of the goods prescribed for the purposes of this paragraph.
- (6) Subject to subsection (7), the Governor may on —
- (a) the approved recommendation of the representative body made to the Minister; or
  - (b) the recommendation of the Minister,
- by regulation prescribe a portion of the State as a zone for the purpose of this section.
- (7) In exercising the power conferred on him by subsection (6), the Governor shall have regard to —
- (a) the area of the proposed zone; and
  - (b) the facilities for the supply of fuel and requisites in the area referred to in paragraph (a).
- (8) The Minister may, on the recommendation of the representative body and subject to subsections (10) and (11), by order published in the *Gazette* specify in relation to a zone —
- (a) which filling station or filling stations in the zone shall be open, and the days and times during which the filling

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station, or the respective days and times during which those respective filling stations, if more than one, shall be open for the sale of fuel and requisites during extraordinary trading hours; and

- (b) whether all forms of fuel or requisites, or any form of fuel or requisite only, shall be sold by the shopkeeper of the filling station so specified, or the shopkeepers of the filling stations so specified, during the days and times so specified,

but shall exercise the power conferred by this subsection so that fuel and requisites will be available during extraordinary trading hours at such filling station or filling stations in the zone only as are necessary in order to cater for requirements during extraordinary trading hours.

- (9) The Minister may by order published in the *Gazette* revoke or amend an order made under subsection (8).
- (10) The Minister may, subject to subsection (11), exercise any power conferred on him by subsection (8) or (9) in respect of any zoned filling station the operator of which is not a member of the representative body, notwithstanding that the representative body has not made a recommendation in respect of that zoned filling station, but in so doing the Minister shall as far as is practicable preserve in respect of that zoned filling station uniformity with the matters specified by orders made on the approved recommendation of the representative body under subsection (8) in respect of other filling stations in the same zone as that zoned filling station.
- (11) If, prior to the first exercise in respect of a zone by the Minister of any of the powers conferred on him by subsection (8) or (10), a person who operates a filling station in the zone —
  - (a) gives notice in writing to the Minister that he does not wish to keep open that filling station during extraordinary trading hours, none of those powers shall be exercised or take effect so as to require that filling

station to be kept open during extraordinary trading hours; or

- (b) does not give notice in writing to the Minister that he does not wish to keep open that filling station during extraordinary trading hours and any of those powers has or have been exercised in respect of that filling station, that shopkeeper may give notice in writing to the Minister not less than one month before the expiry of any period during which the exercise of that power or those powers is effective that after the expiry of that period he does not wish to keep open that filling station during extraordinary trading hours, in which case that power or those powers shall not be exercised or take effect so as to require that filling station to be kept open after the expiry of that period during extraordinary trading hours.

- (12) If the representative body, after having been requested in writing to do so by the Minister, does not within the period specified in that request or within such longer period as the Minister allows make a recommendation to the Minister in respect of any of the matters referred to in subsection (6) or (8), the Minister may —
  - (a) in the case of a matter referred to in subsection (6), make the recommendation and the Governor may exercise the power conferred on him by that subsection in respect of that matter; or
  - (b) in the case of a matter referred to in subsection (8), exercise any power conferred on him by that subsection in respect of that matter,

as if the appropriate approved recommendation had been made by the representative body.

- (13) When the representative body makes a recommendation to the Minister in respect of any of the matters referred to in subsection (6) or (8) and the Minister considers that it is

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necessary or in the circumstances of the case desirable in the public interest to do so, the Minister may —

- (a) in the case of the matter referred to in subsection (6), approve that recommendation without modifying it or, after consulting the representative body, approve that recommendation after modifying it in such manner as he thinks fit; or
  - (b) in the case of a matter referred to in subsection (8), act on that recommendation without modifying it or, after consulting the representative body, act on that recommendation after modifying it in such manner as he thinks fit.
- (14) A person who operates a filling station specified under subsection (8), (9) or (10) shall —
- (a) subject to subsection (11) keep that filling station open; and
  - (b) on tender of the price reasonably charged, if required, sell such fuel or requisite,

during such times in extraordinary trading hours as is or are so specified in respect of that filling station.

Penalty: \$40.

- (15) Proof that a person who operates a filling station specified under subsection (8), (9) or (10), through no fault on his part, was unable, when required, to supply for sale any fuel or requisite is a defence to a charge of an offence against subsection (14)(b).
- (16) Notwithstanding anything in this section, an offence against this section is not committed by —
- (a) a person in supplying at any time, or in opening a filling station at any time in order to supply, any fuel or requisite for the purpose of enabling a public ambulance to proceed or continue on any journey;
  - (b) the Royal Automobile Club of W.A. (Incorporated) (in this paragraph called “**the Club**”) or any of its servants

in supplying at any time in an emergency any fuel or requisite for the purpose of enabling a motor vehicle of a member of the Club to continue on the journey on which it was proceeding when the emergency occurred;

- (c) a person in opening a filling station in a zone at any time other than in the ordinary trading hours or extraordinary trading hours for filling stations in the zone in order to supply, and in supplying, any fuel or requisite that is urgently and necessarily required for the operation of a motor vehicle if —
- (i) the person is authorised in writing by the Minister to do so;
  - (ii) that filling station is in a zone no part of which is less than 32 kilometres from the General Post Office in Perth;
  - (iii) that filling station is opened for that purpose only;
  - (iv) that filling station is closed immediately after the sale of that fuel or requisite is made; and
  - (v) the door of that filling station is kept locked except for the admission and exit of the person purchasing that fuel or requisite;

or

- (d) a person who —
- (i) supplies; or
  - (ii) opens a filling station for the purpose of supplying,

at any time other than during ordinary trading hours a requisite, if —

- (iii) the requisite is urgently and necessarily required to enable a motor vehicle to proceed or continue on any journey; and

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- (iv) that person holds a permit issued and in force under subsection (17) and complies with the terms and conditions to which that permit is subject.
- (17) The Minister may issue, subject to such terms and conditions (including the requirements of subsection (16)(c)(iii), (iv) and (v)) as the Minister thinks fit to impose, a permit in writing for the purposes of subsection (16)(d)(iv) and may amend or revoke such a permit.
- (18) A person who operates a zoned filling station having fuel for sale shall, while the zoned filling station is closed during extraordinary trading hours, cause to be displayed in a conspicuous place facing the street or road on which the zoned filling station is situated a notice in white letters of not less than 50 millimetres in height on a blackboard stating —
  - (a) the hours during which the zoned filling station is closed; and
  - (b) the locality of the filling station nearest the zoned filling station that is required to be kept open under subsection (14) during extraordinary trading hours.
- (19) If the representative body is dissolved or becomes defunct, the Governor may by regulation appoint in its place such body as he thinks fit to be the representative body.
- (20) If an agreement relating to a lease, letting or the sale and purchase of, or a licence to occupy, premises the whole or part of which is used or intended by the parties to that agreement to be used for the sale of any fuel or requisite was made prior to, or was current on, 1 January 1964, that agreement shall be deemed to include provision that, if —
  - (a) any party to that agreement claims that because of any of the provisions of this section any of the provisions of that agreement should be reviewed and adjusted; and
  - (b) the parties to that agreement cannot agree in respect of the review and adjustment referred to in paragraph (a),



the differences of those parties shall be settled on reference to arbitration under the *Commercial Arbitration Act 1985*.

- (21) Without limiting the operation of section 16, where a term or covenant of an agreement relating to a filling station requires the person operating the filling station to open the filling station for more than 61 hours in a week, then the term or covenant is null and void.

*[Section 14 amended by No. 1 of 1991 s. 10; No. 84 of 2004 s. 80.]*

## **15. Permits**

- (1) Notwithstanding anything in this Part a person who operates a retail shop, or, a body consisting of persons who operate a class of retail shops or retail shops in a part of the State, may apply to the chief executive officer for a permit to open the shop operated by him or the shops operated by its members, as the case requires, at times other than the times specified in section 12 or to sell goods or provide services notwithstanding that those goods or services are not goods or services prescribed for the purposes of section 10(3)(a) or 10(4)(b), as the case requires.
- (2) Where an application is made under subsection (1) and the chief executive officer is satisfied in relation to the shop or class of shops referred to in the application that it is desirable or necessary in the interests of the public that the shop or class of shops should be open or should be permitted to sell goods or provide services that are not goods or services, or both, prescribed for the purposes of section 10(3)(a) or 10(4)(b), as the case requires, by reason of an event or any circumstances that is or are in the opinion of the chief executive officer relevant the chief executive officer may issue a permit in terms of the application or in such terms as the chief executive officer thinks fit authorising the applicant or applicants to open the shop or shops referred to in the application during such hours or periods as are specified in the permit or to sell such goods or

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classes of goods or provide such services or classes of services as are specified in the permit or both.

- (3) The chief executive officer may impose terms and conditions on a permit issued under subsection (2) including conditions as to the closing of retail shops specified in the permit.
- (4) A person who contravenes any term or condition imposed under subsection (3) commits an offence.

Penalty: \$2 000.

*[Section 15 amended by No. 1 of 1991 s. 14.]*

**16. Covenants relating to opening of retail shops**

Notwithstanding any rule of law or construction to the contrary, where an agreement, between any person and a person operating a retail shop contains a term or covenant providing for the opening of the shop, whether at specified hours or specified times or not, the person operating the retail shop is not in breach of that term or covenant by reason only of failing to open the retail shop between the hours authorised by this Act.

*[Section 16 amended by No. 1 of 1991 s. 11.]*

**17. Retail Shops Advisory Committee**

- (1) There shall be established a Committee to be known as the Retail Shops Advisory Committee.
- (2) The Committee shall consist of 15 persons as follows —
  - (a) one person shall be the chief executive officer or an officer of the Public Service of the State nominated by the chief executive officer who shall be chairman of the Committee; and
  - (b) 14 persons shall be appointed by the Minister as follows —
    - (i) 2 persons shall be appointed on the written nomination of the body known as the W.A. Council of Retail Associations;

- (ia) one person shall be appointed on the nomination of the body known as the Retail Traders Association of W.A. (Inc.);
  - (ii) one person shall be appointed on the written nomination of the body known as the W.A. Chamber of Commerce and Industry (Inc.);
  - (iii) 4 persons shall be appointed on the written nomination of the body known as the Shop Distributive and Allied Employees Association of Western Australia;
  - (iv) 5 persons shall be persons who in the opinion of the Minister are representative of consumers;
  - (v) one shall be a person who in the opinion of the Minister represents the tourist industry.
- (3) The Minister may make such arrangements as the Minister considers appropriate for the receipt of nominations for the purposes of an appointment under subsection (2)(b).
- (4) A member appointed under subsection (2)(b) —
- (a) shall hold office for such term not exceeding 3 years as is specified in the instrument appointing that member;
  - (b) is, on the expiration of the term of office of that member, eligible for re-appointment.
- (5) A member appointed under subsection (2)(b) is entitled to such remuneration and allowances as the Minister, on the recommendation of the Minister for Public Sector Management<sup>4</sup>, determines.
- (6) A nomination for the purposes of subsection (2)(a) may be made so as to operate in relation to such circumstances as are specified in the instrument of nomination and may be amended or revoked by the chief executive officer.

*[Section 17 amended by No. 1 of 1991 s. 12 and 14.]*

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**18.      Temporary members**

- (1) If a member appointed under section 17(2)(b) is or is expected to be absent or otherwise unable to perform his functions the Minister may appoint another person to act temporarily in the place of the member, and that other person while so acting has all the functions and entitlements of a member.
- (2) No act or omission of a person acting in place of another under this section shall be questioned on the ground that the occasion for his appointment or acting had not arisen or ceased.
- (3) The appointment of a person as a temporary member may be terminated by the Minister at any time.

**19.      Vacation of office of member**

- (1) The office of a member appointed under section 17(2) becomes vacant if he —
  - (a) resigns by written notice addressed to the Minister;
  - (b) is an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy;
  - (c) is absent without leave of the Minister from 3 consecutive meetings of the Committee; or
  - (d) is removed from office by the Governor on grounds of misbehaviour, incompetence, or mental or physical incapacity impairing the performance of his duties.
- (2) Where the office of a member becomes vacant otherwise than by effluxion of time the Minister may appoint another to the office, but the office of any person so appointed shall be only for the remainder of the term of the person who vacated the office of member.

**20. Sub-committees**

- (1) The Committee may from time to time with the approval of the Minister —
  - (a) establish sub-committees consisting of members of the Committee or members of the Committee and such other persons as the Committee determines;
  - (b) discharge, alter or reconstitute any such sub-committee; and
  - (c) give directions to a sub-committee with respect to the performance of its functions.
- (2) A sub-committee shall give effect to any direction given by the Committee.

**21. Functions of the Committee**

The functions of the Committee are to —

- (a) investigate and make recommendations to the Minister relating to the operation and administration of this Act;
- (b) consult with any person or body with respect to the operation and administration of this Act;
- (c) consider any submissions made by any person or body on the operation or administration of this Act;
- (d) make recommendations to the chief executive officer on the issue of permits under section 15;
- (e) investigate and report to the Minister on the degree of competition within the various sectors of the retail industry; and
- (f) monitor and report to the Minister on the effects on and costs to —
  - (i) consumers;
  - (ii) retail traders; and
  - (iii) employees in the retail industry,of the operation and administration of this Act.

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*[Section 21 amended by No. 1 of 1991 s. 14.]*

## **Part IV — Miscellaneous**

### **22. Covenants contrary to this Act negated**

Notwithstanding a covenant to the contrary, a person who operates a shop is not prevented from doing and is not liable for doing such acts as are necessary to comply with the provisions of this Act.

### **23. Auctions of domestic furniture at a dwelling house**

Notwithstanding anything in this Act, this Act does not apply to a *bona fide* auction of used household furniture, tools of trade, agricultural machinery or vehicles at a dwelling house or a farm that have been used for or in connection with or for the purposes of that dwelling house or farm as the case requires.

### **24. Retail shop deemed not to be closed**

For the purposes of this Act, a retail shop is deemed not to be closed if —

- (a) it is not locked or otherwise effectively secured to the complete exclusion of the public; or
- (b) the person operating the retail shop or any associated person is engaged therein in obtaining orders by any means of communication relating to the sale of any goods or the provision of any services.

### **25. Offence**

- (1) A person shall not in a retail shop —
  - (a) during a time when the shop or portion of the shop is required to be closed under this Act sell any goods or provide any services; or
  - (b) during a time when only a limited class of goods may be sold or only a limited class of services may be provided under this Act sell any goods or provide any services other than the goods or services so limited.

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- (2) A person who operates a retail shop that is a small retail shop under section 10(3) contrary to the provisions of that subsection commits an offence.
- (3) A person who contravenes subsection (1) or commits an offence under subsection (2) is liable to a penalty as follows —
- For a first offence, \$2 000;
  - For a second offence, \$3 000;
  - For a third offence, \$5 000,

but in the case of a fourth or subsequent offence committed within a period of 2 years since the date of the last conviction under this Act where it is shown that the accused has engaged in a course of conduct in contravention of this Act, to a penalty of not less than \$25 000.

**26. Control of advertising of retail shopping hours**

- (1) A person who operates a retail shop shall not himself or by his agent publish or cause to be published any statement which implies or suggests —
- (a) that at a time when a retail shop is required by this Act to be closed —
    - (i) the retail shop will be open to the admission of the public for any purpose of trade or inspection;
    - (ii) any goods or services will be sold, offered for sale or provided in the retail shop; or
    - (iii) any person will be in attendance at the retail shop for the receipt by any means of orders for goods or services, or requests for the demonstration of goods or services or the delivery of goods whether on approval or not;
  - or
  - (b) that, at any time during which the retail shop is permitted or required by this Act to be open only for a specified purpose or purposes, or for the sale only of



specified goods or provision only of specified services, or subject to a condition, the shop will be open for another purpose, or the sale of other goods or the provision of other services or contrary to any such condition.

Penalty: \$2 000.

- (2) In subsection (1) “**publish**” includes —
- (a) insert in any newspaper or publication in the State;
  - (b) publicly exhibit —
    - (i) in, on, over, or under any building, vehicle, or place of whatsoever kind, whether on land or water; or
    - (ii) in the air in the view of persons being or passing in or on any street or public place;
  - (c) contain in any document sent or delivered to any person or thrown or left upon any premises;
  - (d) broadcast by wireless transmission or by television; and
  - (e) make verbally.

**27. Powers of chief executive officer**

- (1) The chief executive officer may, by notice in writing require any person within such period as is specified in the notice, to furnish such information as the chief executive officer requires for the purpose of inquiring into or ascertaining whether that person is complying with the provisions of this Act or any permit or certificate issued under this Act or as to the terms of any partnership or memorandum of association or articles of a body corporate and may require that person to produce all books and other papers whatsoever in that person’s custody or under that person’s control relating thereto within the time specified in the notice.

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- (2) A person who fails to comply with a request by the chief executive officer made under subsection (1) commits an offence.

Penalty: \$2 000.

*[Section 27 amended by No. 1 of 1991 s. 14.]*

**27A. Delegation**

The chief executive officer may, either generally or as otherwise provided by instrument of delegation, by writing signed by the chief executive officer, delegate to a person any of the functions of the chief executive officer under this Act, other than this power of delegation.

*[Section 27A inserted by No. 1 of 1991 s. 13.]*

**28. Access to books, etc.**

The chief executive officer, an inspector or other person authorised by the chief executive officer in writing, whether generally or in a specific case, shall have full and free access at any reasonable time to all buildings, places, books and other papers for any of the purposes of this Act and for any such purpose may take extracts from or copies of any such books or papers.

*[Section 28 amended by No. 1 of 1991 s. 14.]*

**29. Inspector may require information**

- (1) An inspector or any person authorised by the chief executive officer under section 27 may question any person whom the inspector has reasonable cause to believe may be able to assist him with his inquiries under this Act.
- (2) An inspector or any person authorised by the chief executive officer under section 27 may require any person who he finds committing or who he reasonably suspects has committed an offence against this Act or whom the inspector or authorised person is authorised to question under this Act, or whose name

and address is in the opinion of the inspector or authorised person, reasonably required for the purpose of carrying out his duties under this Act, to state his name and address, and, if he has reasonable ground for suspecting that the name or address as stated is false, require evidence of the correctness thereof.

*[Section 29 amended by No. 1 of 1991 s. 14.]*

**30. Obstructing an inspector, etc.**

A person shall not —

- (a) assault, resist or impede, delay or in any way obstruct an inspector or an authorised person in the exercise of his powers or in the discharge of his duties under this Act;
- (b) fail, without lawful excuse, to answer any question put to him in pursuance of this Act by an inspector or authorised person or a person acting as interpreter for an inspector or authorised person or give a false or misleading answer to any such question, or refuse to sign any declaration that he is required by or under this Act to sign;
- (c) fail to comply in any respect with the lawful request, requirement, direction or order of an inspector or authorised person;
- (d) when required by or under this Act to furnish any assistance or to furnish any information to an inspector or authorised person, fail to furnish that assistance or information or furnish false or misleading information;
- (e) fail, when so required by an inspector or authorised person, to produce any permit, certificate or authority held or had by him, or any book, notice, record, list or other document of whatsoever kind required by any Act to be held or kept by him, or required by this Act to be produced to an inspector, or fail to allow the inspector or authorised person upon him so producing the same, to make copies of or take extracts from it or of any part thereof or of any entries therein;

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- (f) directly or indirectly prevent any person from appearing before or being questioned by an inspector or authorised person in accordance with this Act, or attempt to do so;
- (g) use any threat or any abusive or insulting language to any inspector or authorised person or any employee with respect to any inspection, examination or interrogation made by an inspector or authorised person; or
- (h) impersonate an inspector.

Penalty: \$2 000.

**31. Protection of person questioned**

A person shall not be required, under section 28 or 29, to answer any question or give any information tending to incriminate him, and before any person is questioned by an inspector or authorised person pursuant to this section the inspector shall advise the person accordingly.

**32. Secrecy**

A person who discloses or makes use of any information that has been furnished to him or obtained by him under this Act, or in connection with the execution of this Act, commits an offence unless that information is disclosed or used —

- (a) with the consent of the person carrying on or operating any business to which that information relates; or
- (b) for the purpose of giving effect to the objects of this Act.

Penalty: \$2 000.

**33. False information**

- (1) A person shall not —
  - (a) forge, counterfeit or utter or wrongfully make use of, any certificate or permit for the purposes of this Act;
  - (b) wilfully make or sign a false statement or declaration or return required under this Act; or

- (c) wilfully make use of any entry, declaration or return, knowing it to be false.
- (2) A person who wilfully destroys, damages, defaces or pulls down any notice, certificate, permit, licence or other document posted or exhibited in any shop pursuant to this Act is guilty of an offence.
- (3) A person who contravenes subsection (1) or (2) commits an offence.  
Penalty: \$2 000.

**34. Vicarious liability**

- (1) When a body corporate is guilty of an offence against this Act and it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of, a director, manager, secretary or other officer of the body corporate or a person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of that offence.
- (2) When the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts or omissions of a member of the body corporate in connection with his functions of management as if he were a director of the body corporate.

**35. Printing of forms and records**

All records, books, forms, or other documents required to be kept under this Act by an occupier may be printed by the Government Printer, and may be obtained from the Government Printer or an inspector at a fee to be prescribed.

**36. English language to be used**

All records, books or other documents authorised or required to be kept under this Act and all notices required to be exhibited

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under this Act shall be in legible writing in the English language.

**37.        Consent of the chief executive officer**

Proceedings for an offence against this Act shall not be commenced without the consent in writing of the chief executive officer.

*[Section 37 amended by No. 1 of 1991 s. 14.]*

**38.        Protection of officers, members and others**

No liability attaches to the chief executive officer, any inspector, authorised person, officer of the Department, or to the Committee or a sub-committee or any member of the Committee or any sub-committee for any act or omission that occurred in good faith and in exercise or purported exercise or in discharge or purported discharge of his or its functions under this Act.

*[Section 38 amended by No. 1 of 1991 s. 14.]*

**39.        Evidentiary**

In any prosecution for offences against this Act —

- (a) it is not necessary to prove the appointment of an inspector or authorised person or his authority to do any act, to issue any order, to give any direction or notice, to make any request or to take any proceedings, but nothing in this paragraph prevents the right of the accused to prove the extent of that authority;
- (b) a signature purporting to be that of the Minister, the chief executive officer or any inspector or authorised person shall be taken to be the signature of the person whose signature it purports to be until the contrary is proved;
- (c) a statement signed by the chief executive officer that a certificate or permit, of the description mentioned in the statement has or had not been issued pursuant to this Act

to a person in respect of any premises specified in the statement, and, in the case of a certificate or permit that has been so issued, as to the date of issue of, and the particulars contained in, the certificate or permit, is evidence of the matters specified in the statement;

- (d) the allegation in or averment in any charge that any building, premises or other place is, or was at the time stated therein, a retail shop, is evidence thereof;
- (e) evidence of a person being found in any shop is proof that the person was employed therein unless the contrary is proved;
- (f) it shall not be necessary to prove the limits of any area, part of an area, radius or zone prescribed by or under this Act, but this paragraph does not prevent the right of the accused to prove the facts relating thereto;
- (g) a statement signed by the chief executive officer stating the class to which any retail shop specified in the certificate belongs, or stating that a class of articles as so specified are usually sold in a specified class of business, is proof of the matters so specified until the contrary is proved; and
- (h) any work done in a retail shop shall be deemed to have been done, or any person employed therein shall be deemed to have been employed, with the knowledge and by the authority of the person operating the retail shop unless the contrary is proved.

*[Section 39 amended by No. 1 of 1991 s. 14; No. 84 of 2004 s. 80 and 82.]*

#### **40. Regulations**

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

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- (2) Without limiting the generality of this subsection, the regulations may —
- (a) prescribe the forms and documents that are required to be given under this Act or kept for the purposes of this Act;
  - (b) prescribe requirements relating to the giving, furnishing and keeping of information and forms under this Act;
  - (c) provide for and regulate applications for and the granting of permits, certificates or other authorities under this Act;
  - (d) prescribe fees payable under this Act;
  - (e) prescribe penalties not exceeding \$1 000 for an offence against any regulations under this Act and provide in the case of a continuing offence for a penalty not exceeding \$300 for every day during which the offence continues.

**41. Review of Act**

- (1) As soon as is practicable after the expiration of the period of 5 years following the coming into operation of this Act the Minister shall cause an investigation and review to be conducted, and a report to be prepared as to —
- (a) the operation of this Act;
  - (b) the operation of the Committee; and
  - (c) the need for this Act to continue in operation.
- (2) The Minister shall cause a copy of the report prepared for the purposes of subsection (1) to be laid before each House of Parliament as soon as is practicable after it is completed.

**42. Savings**

- (1) Notwithstanding anything in section 10(3) or 10(4) where a retail shop was immediately before the commencement day an exempted shop for the purposes of the *Factories and Shops Act 1963*<sup>5</sup> the person operating the retail shop is entitled to be



issued with a permit under section 15 of this Act to sell at that retail shop goods that were prescribed to be exempted goods under the regulations made under that Act and in force immediately before the commencement day and to remain open as though section 12 of this Act had not come into operation.

- (2) In subsection (1) —

**“commencement day”** means the day on which this Act comes into operation.

*[Section 42 amended by No. 73 of 1994 s. 4.]*

#### **43. Referendums on trading hours**

- (1) In this section —

**“day of the next general election”** means the day fixed under the *Electoral Act 1907* as the polling day for the first general election for the Legislative Assembly to be held after the *Retail Trading Hours Amendment (Referendums) Act 2004* comes into operation;

**“electors”** has the meaning given to that term in section 2(1) of the *Referendums Act 1983*.

- (2) Questions 1 and 2 set out in subsection (3) are to be submitted to the electors under and in accordance with the *Referendums Act 1983* on the day of the next general election.

- (3) The questions to be submitted to the electors are —

- (a) question 1:

“

##### **Extended week night shopping**

Do you believe that the Western Australian community would benefit if trading hours in the Perth Metropolitan Area were extended to allow general retail shops to trade until 9 pm Monday to Friday?

”;

and

- (b) question 2:

“

**Extended Sunday shopping**

Do you believe that the Western Australian community would benefit if trading hours in the Perth Metropolitan Area were extended to allow general retail shops to trade for 6 hours on Sunday?

”.

- (4) When an elector is voting at the referendum as to question 1 —
- (a) if the elector believes that the Western Australian community would benefit if trading hours in the Perth Metropolitan Area were extended to allow general retail shops to trade until 9 pm Monday to Friday, the elector is to place the word “Yes” in the space provided on the ballot paper for the answer to that question; or
  - (b) if the elector does not believe that the Western Australian community would benefit if trading hours in the Perth Metropolitan Area were extended to allow general retail shops to trade until 9 pm Monday to Friday, the elector is to place the word “No” in the space provided on the ballot paper for the answer to that question.
- (5) When an elector is voting at the referendum as to question 2 —
- (a) if the elector believes that the Western Australian community would benefit if trading hours in the Perth Metropolitan Area were extended to allow general retail shops to trade for 6 hours on Sunday, the elector is to place the word “Yes” in the space provided on the ballot paper for the answer to that question; or
  - (b) if the elector does not believe that the Western Australian community would benefit if trading hours in the Perth Metropolitan Area were extended to allow general retail shops to trade for 6 hours on Sunday, the

elector is to place the word “No” in the space provided  
on the ballot paper for the answer to that question.

*[Section 43 inserted by No. 78 of 2004 s. 4.]*

**Notes**

- <sup>1</sup> This is a compilation of the *Retail Trading Hours Act 1987* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

**Compilation table**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Retail Trading Hours Act 1987</i>	123 of 1987	31 Dec 1987	1 Sep 1988 (see s. 2 and <i>Gazette</i> 12 Aug 1988 p. 2695)
<i>Retail Trading Hours Amendment Act 1991</i>	1 of 1991	17 May 1991	Act other than s. 12: 2 Aug 1991 (see s. 2 and <i>Gazette</i> 2 Aug 1991 p. 3991); s. 12: 1 Nov 1991 (see s. 2 and <i>Gazette</i> 1 Nov 1991 p. 5588)
<i>Acts Amendment (Public Sector Management) Act 1994 s. 3(2)</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Statutes (Repeals and Minor Amendments) Act 1994 s. 4</i>	73 of 1994	9 Dec 1994	9 Dec 1994 (see s. 2)
<i>Pawnbrokers and Second-hand Dealers Act 1994 s. 100</i>	88 of 1994	5 Jan 1995	1 Apr 1996 (see s. 2 and <i>Gazette</i> 29 Mar 1996 p. 1495)
<i>Local Government (Consequential Amendments) Act 1996 s. 4</i>	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<b>Reprint of the Retail Trading Hours Act 1987 as at 18 Jan 2002</b> (includes amendments listed above)			
<i>Retail Trading Hours Amendment (Referendums) Act 2004</i>	78 of 2004	8 Dec 2004	8 Dec 2004 (see s. 2)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 80 and 82</i>	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))

- <sup>2</sup> Repealed by the *Liquor Licensing Act 1988*.

- <sup>3</sup> In respect of matters arising after 1 Jan 1991, the operation of the *Companies (Western Australia) Code* is subject to the provisions in the *Corporations (Western Australia) Act 1990* Pt. 13 Div. 2. The *Corporations (Western Australia) Act 1990* was superseded by the *Corporations Act 2001* of the Commonwealth on 15 Jul 2001.
- <sup>4</sup> Under the *Public Sector Management Act 1994* s. 112(2), a reference in a written law to the Public Service Board is, unless the contrary intention appears or it is otherwise provided under the *Acts Amendment (Public Sector Management) Act 1994*, to be construed as if it had been amended to be a reference to the Minister for Public Sector Management (as defined in the *Interpretation Act 1984*). This reference was amended under the *Reprints Act 1984* s. 7(5)(a).
- <sup>5</sup> Repealed by the *Industrial Relations Legislation Amendment and Repeal Act 1995*.