

WESTERN AUSTRALIA

RETAIL TRADING HOURS ACT 1987

(No. 123 of 1987)

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WESTERN AUSTRALIA

RETAIL TRADING HOURS ACT

No. 123 of 1987

AN ACT relating to the hours of trading for retail shops and for other and incidental purposes.

[Assented to 31 December 1987]

The Parliament of Western Australia enacts as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Retail Trading Hours Act 1987*.

Commencement

2. The provision of this Act shall come into operation on such day or days as is or are, respectively, fixed by proclamation.

Interpretation

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

“authorized person” means a person authorized in writing by the Permanent Head;

“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;

(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, including meals and refreshments, 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;

(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.

Application

4. (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*.

Exemptions

5. (1) The Minister may by order published in the *Gazette* provide for exemptions from this Act.

(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.

PART II—ADMINISTRATION

Officers

6. There shall be appointed under and subject to the *Public Service Act 1978* such officers and other persons as are necessary for the administration of this Act.

Inspectors

7. The Permanent Head may designate any person referred to in section 6 as an inspector.

Certificate of identity

8. The Permanent Head shall furnish an inspector with a certificate signed by the Permanent Head certifying that that person has been designated an inspector.

Inspector subject to Permanent Head

9. In carrying out the functions conferred on an inspector by this Act the inspector shall give effect to any direction given by the Permanent Head.

PART III—RETAIL TRADING HOURS

Categories of retail shops

10. (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 and operated by not more than 2 natural persons either in partnership or as a body corporate and the retail shop—
 - (i) is the only retail shop operated by those persons or any one of them or the body corporate, as the case requires;
 - (ii) is operated solely or principally for those persons or the members of the body corporate, as the case requires; and
 - (iii) is operated at any time by not more than 4 persons including at least one of the persons who own and operate the retail shop; and
- (c) the Permanent Head has issued a certificate in relation to the retail shop certifying that it is a small retail shop in terms of this subsection.

(4) Subject to this Act, a retail shop shall be regarded as a special retail shop if—

- (a) a certificate is issued by the Permanent Head 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.

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

11. (1) A person who desires to operate a small retail shop or a special retail shop at any place shall apply to the Permanent Head for a certificate in relation to that place in accordance with the regulations.

(2) If the Permanent Head is satisfied in relation to an application under subsection (1) that there is no reason for the refusal of the application the Permanent Head shall issue a certificate in terms of the application.

(3) The Permanent Head shall not issue a certificate certifying a filling station to be a small retail shop or a special retail shop.

(4) The Permanent Head may cancel a certificate certifying a retail shop to be a small retail shop or a special retail shop if the Permanent Head 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); 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 Permanent Head 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.

Trading hours for retail shops

12. (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.

(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.

Special provisions for certain areas and certain shops

13. (1) Notwithstanding anything in section 12 (1) (c) where a local authority whose district is outside or portion of whose district is outside the metropolitan area applies to the Minister for the closing of general retail shops in the district of the local authority 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 of the local authority 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.

(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*.

Trading hours and extraordinary trading hours for filling stations

14. (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;

“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 1 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 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 shopkeeper 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 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 prosecution of a complaint 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 authorized 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

(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*.

Permits

15. (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 Permanent Head 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 Permanent Head 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 Permanent Head relevant the Permanent Head may issue a permit in terms of the application or in such terms as the Permanent Head thinks fit authorizing 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 classes of goods or provide such services or classes of services as are specified in the permit or both.

(3) The Permanent Head 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.

Covenants relating to opening of retail shops

16. Notwithstanding any rule of law or construction to the contrary, where an agreement, lease or contract relating to the letting of 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 authorized by this Act.

Retail Shops Advisory Committee

17. (1) There shall be established a Committee to be known as the Retail Shops Advisory Committee.

(2) The Committee shall consist of 9 persons as follows—

(a) one person shall be the Permanent Head or an officer of the Public Service of the State nominated by the Permanent Head who shall be chairman of the Committee; and

(b) 8 persons shall be appointed by the Minister as follows—

(i) one person shall be appointed on the written nomination of the body known as the W.A. Council of Retail Associations;

(ii) one person shall be appointed on the joint written nomination of the body known as the W.A. Chamber of Commerce and Industry (Inc.) and the body known as the Retail Traders Association of W.A. (Inc.);

(iii) 2 persons shall be appointed on the written nomination of the body known as the Shop Distributive and Allied Employees Association of Western Australia;

(iv) 3 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 Public Service Board, 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 Permanent Head.

Temporary members

18. (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.

Vacation of office of member

19. (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.

Sub-committees

20. (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.

Functions of the Committee

21. 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 Permanent Head 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.

PART IV—MISCELLANEOUS

Covenants contrary to this Act negated

22. 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.

Auctions of domestic furniture at a dwelling house

23. 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.

Retail shop deemed not to be closed

24. 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.

Offence

25. (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.

(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.

Control of advertising of retail shopping hours

26. (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.

Powers of Permanent Head

27. (1) The Permanent Head may, by notice in writing require any person within such period as is specified in the notice, to furnish such information as the Permanent Head 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.

(2) A person who fails to comply with a request by the Permanent Head made under subsection (1) commits an offence.

Penalty: \$2 000.

Access to books, etc.

28. The Permanent Head, an inspector or other person authorized by the Permanent Head 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.

Inspector may require information

29. (1) An inspector or any person authorized by the Permanent Head 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 authorized by the Permanent Head 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 authorized person is authorized to question under this Act, or whose name and address is in the opinion of the inspector or authorized 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.

Obstructing an inspector, etc.

30. A person shall not—

- (a) assault, resist or impede, delay or in any way obstruct an inspector or an authorized 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 authorized person or a person acting as interpreter for an inspector or authorized 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 authorized person;
- (d) when required by or under this Act to furnish any assistance or to furnish any information to an inspector or authorized person, fail to furnish that assistance or information or furnish false or misleading information;
- (e) fail, when so required by an inspector or authorized 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 authorized 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;
- (f) directly or indirectly prevent any person from appearing before or being questioned by an inspector or authorized 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 authorized person or any employee with respect to any inspection, examination or interrogation made by an inspector or authorized person; or
- (h) impersonate an inspector.

Penalty: \$2 000.

Protection of person questioned

31. 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 authorized person pursuant to this section the inspector shall advise the person accordingly.

Secrecy

32. 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.

False information

33. (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.

Vicarious liability

34. (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) of this section 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.

Printing of forms and records

35. 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.

English language to be used

36. All records, books or other documents authorized or required to be kept under this Act and all notices required to be exhibited under this Act shall be in legible writing in the English language.

Consent of the Permanent Head

37. Proceedings for an offence against this Act shall not be commenced without the consent in writing of the Permanent Head.

Protection of officers, members and others

38. No liability attaches to the Permanent Head, any inspector, authorized 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.

Evidentiary

39. In any prosecution for offences against this Act—

- (a) it is not necessary to prove the appointment of an inspector or authorized 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 defendant to prove the extent of that authority;
- (b) a signature purporting to be that of the Minister, the Permanent Head or any inspector or authorized 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 Permanent Head 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 complaint 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 defendant to prove the facts relating thereto;
- (g) a statement signed by the Permanent Head 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.

Regulations

40. (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.

(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.

Review of Act

41. (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.

Savings

42. (1) Notwithstanding anything in section 10 (3) of 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* 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.
