

FACTORIES AND SHOPS.

No. 50 of 1981.

AN ACT to amend the Factories and Shops Act
1963-1978.

[Assented to 16 September 1981.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Factories and Shops Amendment Act 1981*.

Short title
and citation.

(2) In this Act the Factories and Shops Act 1963-1978 is referred to as the principal Act.

Reprinted as
approved 24
July 1975
and amended
by Acts Nos.
7 of 1976
and 13 of
1978.

(3) The principal Act as amended by this Act may be cited as the Factories and Shops Act 1963-1981.

Commence-
ment.

2. (1) This Act, other than section 17 thereof, shall come into operation on the day on which it is assented to by the Governor.

(2) Section 17 of this Act shall come into operation on the twenty-eighth day after the day on which this Act is assented to by the Governor.

Section 5
amended.

3. Section 5 (1) of the principal Act is amended—

(a) in paragraph (a) of the definition of “award” by deleting “, order or industrial agreement” and substituting the following—

“ or order ” ; and

(b) in paragraph (b) of the definition of “award” by deleting “, 1904-1961” and substituting the following—

“ 1904 ” .

Section 10
amended.

4. Section 10 (2) of the principal Act is amended by deleting “, order or industrial agreement” and substituting the following—

“ or order ” .

Section 12
amended.

5. Section 12 (1) of the principal Act is amended by deleting “, 1904,” and substituting the following—

“ 1978, ” .

Section 45
amended.

6. Section 45 of the principal Act is amended—

(a) in subsection (2) (b) by deleting “joint written nomination of the bodies known as Western Australian Employers’ Federation

(Incorporated) and the West Australian Chamber of Manufactures (Incorporated)” and substituting the following—

“ written nomination of the body known as The Confederation of Western Australian Industry (Incorporated) ” ;

(b) in subsection (3) by deleting—

- (i) “or bodies”, wherever it occurs;
- (ii) “or fail”; and
- (iii) “or them”, wherever it occurs;

and

(c) in subsection (6) (b) (i) by deleting—

- (i) “or bodies”, wherever it occurs;
- (ii) “has or have failed” and substituting the following—
“ has failed ” .

7. Section 54 (a) of the principal Act is amended by deleting “Marriage Act,” and substituting the following—

Section 54 amended.

“ Marriages Act ” .

8. Section 61 (2) (c) of the principal Act is amended by deleting “two hundred dollars” and substituting the following—

Section 61 amended.

“ \$400 ” .

9. Section 64 (1) of the principal Act is amended by deleting “Inspection of Machinery Act, 1921” and substituting the following—

Section 64 amended.

“ Machinery Safety Act 1974 ” .

Section 92
repealed and
substituted.

10. (1) Section 92 of the principal Act is repealed and the following section is substituted—

Trading
hours for
sale of
fuel.

“ 92. (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;

“filling station” means shop in which the sale of fuel constitutes the whole or part of its business and includes any pump or contrivance for supplying fuel;

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

“motor vehicle” means a motor vehicle as defined by the Road Traffic Act 1974;

“ordinary trading hours” means—

(a) from 7 a.m. to 6 p.m. on each Monday, Tuesday, Wednesday, Thursday and Friday, whether a public holiday or not, except Christmas Day, Good Friday and Anzac Day, and whether any part of that day is a public half-holiday or not; and

(b) from 7 a.m. to 1 p.m. on each Saturday, whether a public holiday or not, except Christmas Day and Anzac Day, and whether any part of that day is a public half-holiday or not;

“paragraph” means paragraph of the subsection in which the term appears;

“prescribe” means prescribe by regulations made under section 121;

“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 derogation from the generality of the foregoing, lubricant in any form, tyre, tube, battery, part and accessory;

“subsection” means subsection of this section;

“the representative body” means the body known as the Western Australian Automobile Chamber of Commerce 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) The shopkeeper of a zoned filling station having fuel and requisites for sale at or in, or at or in a part of, the zoned filling station—

(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).

(3) The shopkeeper of 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 hours as he thinks fit.

(4) The shopkeeper of a filling station, whether the filling station is in a zone or not, shall not, at any time during which a shop to which section 85 applies is required to be kept closed, 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 to be exempted goods.

(5) Subsection (4) does not limit or otherwise affect section 91A.

(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,

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 notice 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 notice published in the *Gazette* revoke or amend a notice 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 notices 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), the shopkeeper of 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 the 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 represen-

tative 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) The shopkeeper of 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 the shopkeeper of 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 subparagraphs (iii), (iv) and (v) of subsection (16) (c)) 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) The shopkeeper of 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.

Penalty: \$40.

(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 Arbitration Act 1895. ” .

(2) Subject to subsection (3) of this section, a notice made under section 92 (5) of the principal Act before the coming into operation of this section and in force immediately before that coming into operation shall be deemed to have been made under section 92 (8) of the principal Act as amended by this section and may be revoked or amended accordingly.

(3) In a notice deemed by virtue of subsection (2) of this section to have been made under section 92 (8) of the principal Act as amended by this section, unless the contrary intention appears—

- (a) a reference to a shop shall be construed as a reference to a filling station as defined by section 92 (1) of the principal Act as amended by this section; and

- (b) a reference to a requisite shall be construed as a reference to a requisite as defined by section 92 (1) of the principal Act before the coming into operation of this section.

Section 92A
amended.

11. Section 92A of the principal Act is amended—

- (a) in subsection (2) (b) (iii) by deleting “the Western Australian Employers Federation Inc.” and substituting the following—

“ The Confederation of Western Australian Industry (Incorporated) ” ; and

- (b) in subsection (13) by deleting “, 1904,” and substituting the following—

“ 1978, ” .

Section 93B
amended.

12. Section 93B of the principal Act is amended by deleting—

- (a) “subsection (3) of section ninety-two” and substituting the following—

“ section 92 (2) ” ;

- (b) “two hundred dollars” and substituting the following—

“ \$500 ” ;

- (c) “three hundred dollars” and substituting the following—

“ \$750 ” ; and

- (d) “five hundred dollars” and substituting the following—

“ \$1 000 ” .

Section 93C
amended.

13. Section 93C (1) of the principal Act is amended by deleting “A person” and substituting the following—

“ A shopkeeper or his agent ” .

14. Section 100 of the principal Act is amended by repealing subsection (1) and substituting the following subsection—

Section 100
amended.

- “ (1) A person shall not—
- (a) pay, or offer to pay, to an occupier; or
 - (b) being an occupier, demand or receive,
- a premium in respect of the employment of a person in a factory, shop or warehouse. ” .

15. Section 107 (2) of the principal Act is amended by deleting “, order or industrial agreement” and substituting the following—

Section 107
amended.

“ or order ” .

16. Section 115 (2) of the principal Act is amended by deleting—

Section 115
amended.

- (a) “one hundred dollars” and substituting the following—
 - “ \$200 ” ; and
- (b) “two hundred dollars” and substituting the following—
 - “ \$400 ” .

17. After section 116 of the principal Act, the following section is inserted—

Section 116A
inserted.

- “ 116A. (1) When a body corporate is guilty of an offence against this Act and it is proved that that 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.

Guilt of
others when
corporation
guilty of
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 and 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. ” .

Section 118
amended.

18. Section 118 of the principal Act is amended by deleting “Inspection of Machinery Act, 1921”, wherever it occurs, and substituting in each case the following—

“ Machinery Safety Act 1974 ” .

Section 121
amended.

19. Section 121 (1) (g) of the principal Act is amended by deleting “two hundred dollars” and substituting the following—

“ \$400 ” .

Substitution
of
“Industrial
Arbitration
Act 1979” for
“Industrial
Arbitration
Act, 1912”.

20. The provisions of the principal Act specified in the Schedule to this Act are amended by deleting “Industrial Arbitration Act, 1912”, wherever it occurs, and substituting in each case the following—

“ Industrial Arbitration Act 1979 ” .

SCHEDULE.

(Section 20)

SUBSTITUTION OF “INDUSTRIAL ARBITRATION ACT 1979” FOR “INDUSTRIAL ARBITRATION ACT, 1912”.

Sections 5 (1) (definition of “award”), 10 (2), 59 (1) (c), 82 (a), 95 (3) (a), 99 (1), 99 (7) (a) (i), and 107 (2).
