

WESTERN AUSTRALIA.

FACTORIES AND SHOPS.

12° Elizabeth II., No. XLIV.

No. 44 of 1963.¹

(Affected by Acts Nos. 56 of 1964, s. 5; and 113 of 1965, s. 8.)
[As amended by Acts:

- No. 83 of 1964, assented to 14th December, 1964;
- No. 56 of 1965,² assented to 9th November, 1965;
- No. 50 of 1970, assented to 8th October, 1970;
- No. 65 of 1972,³ assented to 31st October, 1972;
- No. 94 of 1972,⁴ assented to 4th December, 1972;
- No. 51 of 1974,⁵ assented to 26th November, 1974;
- No. 5 of 1975,⁶ assented to 9th May, 1975;

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

AN ACT to Consolidate and Amend the Law relating to the Supervision and Regulation of Factories Shops and Warehouses and for incidental and other purposes.

[Assented to 3rd December, 1963.]

BE it enacted—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Factories and Shops Act, 1963-1975*.

Short title.
Amended by
No. 5 of
1975, s. 1.

2. This Act shall come into operation on a date to be fixed by proclamation.¹

Commence-
ment.

¹ Came into operation on 1st January, 1964; see *Gazette* 13/12/63, p. 3836.

² Came into operation on 11th February, 1966; see *Gazette* 11/2/66, p. 436.

³ Sections 1, 2, 4 and 11 came into operation on 15th December, 1972; see *Gazette* 15/12/72, p. 4682. Sections 3, 5, 7, 8 and 10 came into operation same date as Act No. 63/72, i.e. 22nd June, 1973. Sections 6 and 9 came into operation on 22nd February, 1974; see *Gazette* 22/2/74, p. 520.

⁴ Metric Conversion Act, 1972. The relevant amendments included in this reprint effective from 26th April, 1974; see *Gazette* 26/4/74, p. 1406.

⁵ Came into operation on 13th December, 1974; see *Gazette* 13/12/74, p. 5320.

⁶ Sections 4 and 7 came into operation on 6th June, 1975; see *Gazette* 6/6/75, p. 1767; balance operative from Assent date.

Arrange-
ment.

3. This Act is divided into Parts and Divisions as follows—

PART I.—PRELIMINARY. Ss. 1.-10;

PART II.—ADMINISTRATION. Ss. 11-20;

PART III.—REGISTRATION OF FACTORIES, SHOPS
AND WAREHOUSES. Ss. 21-32;

PART IV.—RECORDS AND NOTICES TO BE GIVEN
BY OCCUPIERS AND DOCUMENTS TO BE EX-
HIBITED. Ss. 33-38;

PART V. — PROVISIONS RELATING TO OUT-
WORKERS. Ss. 39-43;

PART VI.—PROVISIONS RELATING TO THE WEL-
FARE AND WORKING CONDITIONS OF EMPLOY-
EES. Ss. 44-60;

*Division I.—Factory Welfare Board and regula-
tions relating to Welfare of Employees. Ss.
44-48;*

*Division II.—Restrictions relating to employ-
ment of women and persons who are not
of full age. Ss. 49-54;*

*Division III.—Working hours and overtime.
Ss. 55-60;*

PART VII.—PROVISIONS RELATING TO HEALTH,
SANITATION AND SAFETY IN FACTORIES. Ss.
61-66;

PART VIII.—PROVISIONS RELATING TO SALE AND
MARKING OF FOOTWEAR AND FURNITURE. Ss.
67-81;

*Division I.—Provisions relating to Footwear.
Ss. 67-74;*

*Division II.—Provisions relating to Furniture.
Ss. 75-81;*

PART IX.—PROVISIONS RELATING TO SHOPS. Ss. 82-103;

Division I.—Retail Trade Advisory and Control Committee. Ss. 82-84;

Division II.—Closing of Shops. Ss. 85-93C;

Division III.—Miscellaneous provisions relating to Shops, Shop Assistants and Warehouses. Ss. 94-98;

Division IV.—General provisions relating to Factories, Shops and Warehouses. Ss. 99-103;

PART X.—MISCELLANEOUS. Ss. 104-121;

Division I.—Provisions relating to the remedying of defects in factories, shops and warehouses. Ss. 104-105;

Division II.—General provisions. Ss. 106-121;

FIRST SCHEDULE—ACTS REPEALED BY THIS ACT.

4. (1) The Acts set out in the First Schedule to this Act are repealed to the extent therein specified. Repeals and savings.

(2) Without limiting the provisions of the Interpretation Act, 1918, generally and in particular the provisions of section fifteen and sixteen of that Act, it is hereby declared that the repeal of any provision of an Act by this Act does not affect any document made or anything whatsoever done under the provision so repealed or under any corresponding former provision and the document or thing, so far as it is subsisting or in force at the time of the repeal and could have been made or done under this Act, shall continue and have effect as if it had been made or done under the corresponding provision of this Act and as if that provision had been in force when the document was made or the thing was done.

Inter-
pretation.
Amended by
No. 56 of
1965, s. 3;
No. 50 of
1970,
s. 2; No.
65 of 1972,
s. 3; No. 94
of 1972, s. 6.
No. 5 of
1975, s. 3.

5. (1) In this Act, unless the contrary intention appears—

“award” means—

- (a) an award, order or industrial agreement under the Industrial Arbitration Act, 1912; and
- (b) an award or an order or an agreement having the force of an order or award under the Conciliation and Arbitration Act, 1904-1961 of the Parliament of the Commonwealth as amended from time to time or under any Act passed in substitution for the firstmentioned Act,

in force at any material time and whether made before, on, or after the coming into operation of this Act;

“bakehouse” means any place in which any bread, cake, pastry, sweet meats or goods intended to be sold are baked or prepared for baking and includes any place or room used in connection with the bakehouse for storing the bread, cake, pastry, sweet meats or goods when baked or any ingredients or materials used for or in connection with the baking thereof;

“Chief Inspector” means the person who for the time being holds the office of Chief Inspector of Factories and Shops under this Act or the inspector for the time being acting in the place of that person;

“child” means a person who is not of leaving age as defined in section three of the Education Act, 1928;

“Commissioner” means the Commissioner of Public Health appointed under the Health Act, 1911;

“Division” means a Division of a Part;

“employed” or “engaged” means engaged in work of any kind, whether payment is received for the work or not, other than work of constructing or repairing buildings, plant or machinery, and includes in its application occupier and employee;

“employee” means a person who is in the employment of an occupier and a person who works in a factory, shop or warehouse whether for pay or not at any kind of work, or who is employed by the occupier in delivering goods to or from the factory, shop or warehouse but does not include a contractor or an employee of a contractor;

“factory” means, subject to subsection (2) of this section, any premises in or on which four or more persons including the occupier are employed or engaged, directly or indirectly, in a handicraft, or in making, preparing, altering, repairing, ornamenting, finishing, cleaning, sorting or adapting articles for trade or for sale or for purposes of gain; and whether they are factories by reason of the foregoing interpretation or not, includes premises of the following kinds that is to say every building, premises, or other place whatsoever in which—

- (a) such number of persons are engaged in a manufacturing process;
- (b) steam, water, gas, oil, electric, atomic, nuclear, mechanical or any other power exceeding 0.75 kilowatt is used in or in aid of a manufacturing process or in packing goods for transport;
- (c) electricity is generated or transformed for the supply of heat, light or power or where coal gas or other gas is produced for the like purposes;

Factories and Shops.

- (d) a bakehouse, or other place whatsoever where food or drink intended for human consumption is prepared or manufactured for sale, trade or gain but not including a kitchen of a shop where such food or drink is prepared for consumption or sale in the shop;
- (e) subject to section eight, a laundry, dye works or any other premises in or on which articles of clothing are cleaned, pressed, dyed or repaired, and which is carried on by way of trade or for the purpose of gain or as ancillary to another business;
- (f) every boat building yard, ship building yard, dock, dockyard, ship repairing yard or other place in which any ship or boat is constructed, reconstructed, repaired, fitted, refitted, finished or broken up for trade or for sale or for purposes of gain;
- (g) any clay pit, sand pit, gravel pit or quarry in or on which four or more persons, including the occupier, are employed directly or indirectly in extracting clay, sand, gravel or stone;
- (h) any premises in which one or more persons are engaged, directly or indirectly in any handicraft, or in preparing or manufacturing goods for sale or trade as paid employees for the purpose of the trade or business of their employer;

but does not include—

- (i) any prison or any industrial or reformatory school or any prison or reformatory farm or any training institution within the meaning of section four of the Child Welfare Act, 1947;

(j) a ship;

(k) a colliery or a mine, or a place in which machinery is used about a colliery or mine;

(l) any building premises or place used exclusively for pastoral, agricultural, orchard, vineyard or garden purposes; or

(m) a part of a factory that is a shop;

“furniture” means articles of which wood, reeds, rattan, cane, seagrass or metal comprise the whole or part and such as are usually made or assembled by cabinet makers, assemblers in the furnishing trades, chair and couch makers, upholsterers, wood carvers, or wood turners;

“inspector” means an inspector appointed or deemed to be appointed under this Act and includes the Chief Inspector;

“leaving age” has the same meaning as that expression has in section three of the Education Act, 1928;

“local authority” means the Council of a Municipality under the Local Government Act, 1960;

“maintain” means maintain in a clean and efficient state, in efficient working order, and in good repair;

“manufacturing process” means any handicraft or process in or incidental to the making, assembly, altering, repairing, renovating, preparing, ornamenting, finishing, cleaning, washing or adapting of any goods or of any other articles or of any part thereof for trade or sale or gain or as ancillary to any business;

“occupier” in relation to a factory, shop, warehouse or other place whatsoever, includes every person, whether employing any other person or not, in actual occupation of the

factory, shop, warehouse or other place; any person employing any person in, or in connection with, the business carried on in the factory, shop, warehouse or other place, and an agent, manager, foreman or other person acting or apparently acting in the general management or control of the business carried on in the factory, shop, warehouse or other place;

“out worker” means a person who, outside a factory, shop or warehouse, but for and on behalf of the occupier thereof, wholly or partly prepares or manufactures an article for trade or for sale or for purposes of gain;

“parent” in relation to a child or young person, means the parent, guardian or person having the custody of, or control over, the child or young person;

“Part” means a Part of this Act;

“section” means a section of this Act;

“sell” includes to sell by wholesale or retail and 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 the disposal or offer for disposal of goods under hire purchase agreement; and “sale” and “sold” and other derivatives have a corresponding meaning;

“shop” means a building, room, stall, tent, vehicle, boat or other vessel, or place of whatsoever kind in, on or from which—

- (a) goods are offered or exposed for sale by retail to the public; or
- (b) the business of—
 - (i) hairdressing;
 - (ii) pawn broking;
 - (iii) repairing footwear; or

(iv) serving meals or refreshments, is carried on, but does not include premises in which meals or refreshments are served exclusively to the employees of an occupier and not to the public and includes any place used as a showroom or for the public display of his wares by a vendor or his servant or agent with a view to effecting the sale by retail of any of those wares or obtaining orders on a retail basis from any purchaser, notwithstanding that the orders obtained are fulfilled from stocks of wares that are kept elsewhere than in that place and also includes any place where goods are kept or stored for sale by retail to the public;

“shop assistant” includes—

- (a) a person who is employed in or about the business of a shop whether any consideration is paid for his services or not, in selling or supplying or assisting in selling or supplying in or about the shop, goods to the public or as a messenger; and
- (b) a person engaged in packing goods in or about a shop or engaged in the shop as a clerk or engaged in delivering any goods from a shop;

“shop keeper” in relation to a shop means the person, partnership or corporation occupying the shop directly or indirectly as principal, and any agent or other person acting in the management or control of a shop;

“substance” includes any liquid or gas;

“the Board” means The Factory Welfare Board constituted under this Act;

“the Committee” means The Retail Trade Advisory and Control Committee constituted under this Act;

“the Under Secretary for Labour and Industry” means the permanent head of the department of the Public Service of the State principally responsible for assisting the Minister in the administration of this Act;

“warehouse” means a building or portion of a building or any other place in or from which goods are sold, or exposed or offered for sale, or distributed by wholesale only and includes a building or portion of a building used in connection with or as ancillary to a warehouse or shop in which goods are stored in bulk, before being moved to the warehouse or the shop for the purpose of being sold;

“week” means the period between midnight on a Saturday and midnight on the succeeding Saturday;

“woman” means a female person, irrespective of age;

“young person” means a person of an age between leaving age and sixteen years of age.

(2) For the purpose of the interpretation of “factory” in subsection (1) of this section—

(a) a place is not excluded from that interpretation by reason only that the place is in the open air;

(b) all those parts of the close, curtilage or precincts of a factory over which the occupier has the right of access or control shall be deemed to be part of the factory but where a place within that close,

curtilage or precinct is used solely otherwise than for or in connection with the processes carried on in the factory, that part shall not be deemed to form part of the factory and shall, if otherwise it would be a factory, be deemed to be a separate factory;

- (c) a part of a factory may, on the written application of the occupier and with the written approval of the Chief Inspector, be taken to be a separate factory, and two or more factories may, on the written application of the respective occupiers and with the like approval, be taken to be a single factory;
- (d) where the Chief Inspector, being satisfied that a part of a factory is occupied as a factory by a person other than the occupier of the remainder of the factory, he shall by notice in writing to the occupier and other person so direct, that the part shall be deemed to be a separate factory.
- (e) [*Repealed by No. 56 of 1965, s. 3.*]

(3) A reference in this Act to a failure to do any act or thing shall be read as including a refusal or neglect to do that act or thing.

Construction.

(4) A reference, however expressed, in any other Act or in any regulation, notice, proclamation, or statutory instrument of any kind made, published or in force under this or any other Act to the Secretary for Labour shall, unless the context requires otherwise, be read and construed as a reference to the Under Secretary for Labour and Industry as defined in subsection (1) of this section.

6. (1) (a) The Minister, with the approval of the Governor, may by order published in the *Gazette*, declare that the application of all or any of the provisions of this Act, shall extend, either with such modifications, if any, as may be specified in the order or without modifications, to premises in which persons are employed or engaged, directly or indirectly, in any process, trade, occupation or work specified in the order, being premises that are not included within the interpretation of a factory in section five.

Power of Minister to extend operation of Act to certain classes of premises.

(b) On publication of the notice in the *Gazette*, those provisions shall be deemed to apply to those premises accordingly.

(2) The Minister shall cause a copy of any order made under this section to be laid on the Table of each House of Parliament within the first fourteen sitting days of the House after the publication of the order in the *Gazette*.

(3) If either House of Parliament passes a resolution of which notice has been given within the first fourteen sitting days of that House after the copy of an order under this section has been laid on the Table of that House that the order be disallowed, the order thereupon ceases to have effect, but the disallowance of the order does not affect or invalidate anything done in good faith by the Minister or any officer exercising any powers or performing any duties under this Act, before the passing of the resolution.

Power of
Minister to
exempt
from Act.

7. (1) The Minister, with the approval of the Governor, may by order published in the *Gazette*, declare that all or any of the provisions of this Act do not apply according to the order, in respect of—

- (a) any factory, shop or warehouse specified in the order;
- (b) all factories, shops or warehouses comprised in a class thereof so specified or situated in a part of the State so specified; or
- (c) all or any persons, factories, shops or warehouses in the circumstances so specified.

(2) The Minister may subject any exemption granted under this section, to such circumstances or conditions or both as he may so specify and, notwithstanding anything contained in this Act, but subject to subsection (4) of this section, any declaration made under subsection (1) of this section has effect according to its tenor.

(3) When the circumstances and conditions subject to which an exemption has been granted under this section, cease to exist or are breached the exemption ceases to operate.

(4) The provisions of subsections (2) and (3) of section six apply to an order made under this section as though it were an order made under section six.

8. (1) Where the only persons employed in a laundry are— Application of Act.

(a) inmates of any industrial or reformatory school, or of any other institution for the time being subject to inspection under any other Act; or

(b) inmates of an institution conducted for religious or charitable purposes,

the laundry, except as provided in subsection (2) of this section is not a factory for the purposes of this Act.

(2) (a) Notwithstanding anything contained in subsection (1) of this section, the provisions of sections fifty-two, fifty-five, fifty-six, fifty-seven and fifty-eight, except those portions of sections fifty-five and fifty-six that relate to the payment of persons for extended hours of employment, apply to the persons and laundry referred to in subsection (1) of this section and any inspector may enter the laundry at all reasonable hours for the purpose of seeing that the provisions of those sections are being complied with.

(b) The occupier of the laundry shall keep a record in a form approved by the Chief Inspector showing in the case of each person who is employed or engaged in the laundry any extended hours of employment, the name and sex of each such person and the respective dates and periods of the extended hours of employment.

(c) An inspector may at all reasonable times require the occupier to verify the entries in the record in such manner as may be prescribed.

8A. This Act applies to factories that belong to or are occupied by or on behalf of the Crown.

Application of Act to factories of the Crown. Added by No. 56 of 1965, s. 4.

Application of Act in relation to shows and charitable bodies.

9. (1) Nothing in Part III or Division II of Part IX applies to any place in a show that is being held by an incorporated agricultural or horticultural society.

(2) Nothing in this Act applies to any bazaar or fair where goods are sold in order that the net proceeds of the sale of the goods may be devoted solely to religious, charitable or public purposes.

Construction of Act to be subject to Constitution and Industrial Arbitration Act, 1912 and awards.

10. (1) This Act shall be read and construed subject to the provisions of the Commonwealth of Australia Constitution Act, and so as not to exceed the legislative power of the State, to the intent that where any provision of this Act, or the application thereof to any person or circumstance would, but for this section, have been construed as being in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power.

(2) Except where it is otherwise provided in this Act, this Act applies subject to any provision of the Industrial Arbitration Act, 1912, and of any award, order or industrial agreement made thereunder so that where any such provision is inconsistent with a provision of this Act, the firstmentioned provision prevails and the provision of this Act to the extent of the inconsistency is inoperative.

PART II.—ADMINISTRATION

Administration of Act. Amended by No. 5 of 1975, s. 9.

11. This Act shall be administered by the Minister and, subject to any direction of the Minister, by the Under Secretary for Labour and Industry.

Inspectors. Amended by No. 65 of 1972, s. 4; No. 5 of 1975, s. 4.

12. (1) There shall be appointed, under and in accordance with the provisions of the Public Service Act, 1904, such number of inspectors of such grades and classes and other officers as are necessary for carrying into effect the provisions of this Act.

(2) One of such inspectors shall be appointed Chief Inspector of Factories and Shops and another of them shall be appointed Deputy Chief Inspector of Factories and Shops who—

Chief Inspector and Deputy Chief Inspector.

(a) in the event of illness or absence of the Chief Inspector has, and may exercise and perform the powers, authorities, duties and functions of the Chief Inspector under this Act, or any other Act; and

(b) may exercise such powers of the Chief Inspector as the Chief Inspector may from time to time assign to him in writing, either generally or in a particular case.

(3) Without limiting the operation of section four the person who immediately before the date of the coming into operation of this Act was the Chief Inspector of Factories and the person who immediately before that date was the Assistant Chief Inspector of Factories shall be deemed to have been appointed in accordance with this Act the Chief Inspector of Factories and Shops and the Deputy Chief Inspector of Factories and Shops, respectively.

Appointments presumed.

(4) Without limiting the operation of section four each person who on the date of the coming into operation of this Act was an inspector of any grade or class under any Act repealed by this Act, shall without further appointment under this Act, be deemed to be appointed on that date an inspector of the same grade or class in accordance with and for the purposes of this Act, and shall subject to this Act continue to hold his office under this Act.

Inspectors, etc., appointed under repealed Acts.

(5) Subject to subsection (4) of this section, a person shall not be appointed an inspector unless, he has passed the prescribed examination or has otherwise satisfied the Minister that he possesses a professional or technical qualification that necessarily implies a training and experience relevant for the purposes of carrying out the duties of an inspector and that he has a sufficient knowledge of the law relevant for that purpose, nor shall his appointment as an inspector of any grade or class

Qualifications of Inspector.

be confirmed until he has carried out, to the satisfaction of the Minister, the duties of an inspector for a period of six months.

Inspector to have certificate of appointment.

13. The Minister shall give or cause to be given to each inspector a certificate of his appointment, signed by either the Minister or the Chief Inspector and upon entering any place pursuant to the powers conferred on him by this Act the inspector shall, if required, produce the certificate to the occupier of the place.

Inspector subject to Under Secretary for Labour and Industry. Amended by No. 5 of 1975, s. 9.

14. Each inspector shall perform the duties imposed upon him by this Act under the general supervision and direction of the Under Secretary for Labour and Industry and may exercise and perform his powers, authorities and duties under this Act in any part of the State wherein this Act applies.

15. [*Repealed by No. 51 of 1974, s. 3.*]

General powers of Inspector. Amended by No. 5 of 1975, s. 9. "This Act" includes regulations. See Act No. 30 of 1918, s. 4.

16. (1) In addition to all other powers and authorities conferred upon him by any of the other provisions of this Act, an inspector may at all reasonable hours by day and night—

- (a) enter, inspect and examine any place used or intended to be used, as a factory, shop or warehouse;
- (b) call to his assistance any member of the police force where he has reasonable cause to apprehend any obstruction in the exercise of his powers or in the execution of his duties;
- (c) take with him into any place referred to in paragraph (a) of this section, any person he may require as a professional or expert adviser or interpreter, and whose assistance he deems necessary in the performance of his duties under this Act;
- (d) question either alone or in the presence of some other person with respect to matters under this Act, any person he finds in or

on any place referred to in paragraph (a) of this section or whom he has reasonable cause to believe to be, or within the last preceding two months to have been, an employee of the occupier of the place, and require that person—

- (i) to answer any questions put to him by the inspector; and
 - (ii) to sign a statutory declaration of the truth of his answers;
- (e) make such examination and inquiry and conduct such tests whether within any place referred to in paragraph (a) of this section or elsewhere as may be necessary to ascertain whether the provisions of this Act or of the laws relating to public health are being complied with in respect to any place referred to in paragraph (a) of this section, by the occupier of the place and the employees of the occupier employed thereon or therein;
- (f) require the production of, and inspect, examine and copy any book, notice, record, pay sheet, list or document that is required by or under this Act to be kept or exhibited or that are kept by any employee and that relate to his employment in a factory, shop or warehouse;
- (g) require any person whom he finds committing or whom he reasonably suspects has committed an offence against this Act, or whom the inspector is authorised to question under this Act, or whose name and address is, in the opinion of the inspector, 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;

- (h) subject to the direction of the Under Secretary for Labour and Industry, institute proceedings for offences against this Act;
- (i) if an inspector holds a certificate from the Commissioner certifying that the inspector is qualified under the Health Act, 1911, to exercise the powers conferred by that Act, he may in relation to any factory, shop or warehouse exercise all the powers of an inspector appointed under that Act;
- (j) at any reasonable time, require a person who is registered as an out worker under section forty to produce for inspection the certificate of registration granted to that out worker under that section, and require such information as the inspector may require with respect to the persons for whom any articles have been, or are being, prepared or manufactured by the out worker, or the price or rate paid or to be paid by the person in respect of the preparation or manufacture thereof; and
- (k) exercise such other powers and authorities as may be prescribed.

(2) A person shall not be required, under the authority of this section, to answer any question or give any information tending to criminate him, and before any person is questioned by an inspector pursuant to this section the inspector shall advise the person accordingly.

(3) Notwithstanding anything to the contrary in this Act, where an inspector has issued any order or given any direction or notice or made any request under this Act, he or any other inspector may at any time by direction of the Chief Inspector withdraw or revoke or from time to time vary the order, direction, notice or request, or take such further action therein as may be necessary to give effect thereto.

17. (1) A question, inquiry or requisition that is put or made on behalf of an inspector by a person acting as interpreter for the inspector shall be deemed to have been put or made by the inspector, and the answer thereto, made to the interpreter, shall be deemed to have been made to the inspector.

Questions by Interpreter.

(2) A person who obstructs a person who is acting as professional or expert adviser to, or interpreter for, an inspector shall be deemed to have obstructed the inspector in the execution of his duties under section nineteen and is liable to be punished under that section accordingly.

Offence of obstructing adviser or interpreter of Inspector.

(3) The occupier of a factory, shop or warehouse shall furnish the means required by an inspector as necessary for any entry, inspection, examination, inquiry or taking of samples or otherwise for the exercise of his powers under this Act in relation to the factory, shop or warehouse.

Occupier to assist inspector.

18. Where an inspector observes in any factory any breach of the provisions of the Health Act, 1911 or the regulations or by-laws made thereunder or if an inspector is of opinion that to secure proper sanitary conditions therein, the exercise of certain of its powers by the local authority in whose district the factory is situated is necessary, he shall notify the local authority and the Commissioner in writing accordingly.

Powers of inspector relating to health.

18A. 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—

Secrecy. Added by No. 51 of 1974, s. 4.

- (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 and in the performance of a duty under this Act.

Penalty: Two hundred dollars.

Offences.
Amended by
No. 113
of 1963, s. 8.

19. (1) A person shall not—

- (a) assault, resist or impede, delay or in any way obstruct an inspector 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 a person acting as professional or expert adviser to, or interpreter for, an inspector 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;
- (d) when required by or under this Act to furnish any assistance or to furnish any information to an inspector, fail to furnish that assistance or information or furnish false or misleading information;
- (e) fail, when so required by an inspector, to produce any permit, certificate or authority held or had by him, or any book, pay sheet, notice, record, list or other document of whatsoever kind required by this 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 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 in accordance with this Act, or attempt to do so;

- (g) use any threat or any abusive or insulting language to any inspector or any employee with respect to any inspection, examination or interrogation made by an inspector; or
- (h) impersonate an inspector.

(2) Except for the purposes of this Act and to assist an inspector in the exercise of his duties under this Act, a person who acts as a professional or expert adviser to, or interpreter for, an inspector shall not disclose to any person any information that in the performance of his duty as such adviser or interpreter, he acquires respecting any factory, shop or warehouse.

Penalty: For a first offence one hundred dollars, for any subsequent offence two hundred dollars.

20. (1) Before the first day of October in each year the Under Secretary for Labour and Industry shall make a written report to the Minister as to the administration and operation of this Act.

Annual report by Under Secretary for Labour and Industry. Amended by No. 5 of 1975, s. 9.

(2) The Minister shall lay the report of the Under Secretary for Labour and Industry before each House of Parliament within nine sitting days of the House after the receipt of the report by the Minister.

- (3) A report under this section shall not—
 - (a) refer by name to any particular occupier; or
 - (b) be so framed as to render the identity of any occupier readily ascertainable.

PART III.—REGISTRATION OF FACTORIES, SHOPS,
AND WAREHOUSES.

21. No person shall occupy or use any place as a factory, shop or warehouse, unless a certificate of registration of that place as a factory, shop or warehouse as the case may be, or a permit under section

Registration of Factories, Shops and Warehouses. Amended by No. 113 of 1965, s. 8.

twenty-three or thirty in respect of that place has been granted to that person and is in force for the time being.

Penalty: One hundred dollars. Default penalty.

Application
for
registration
and renewal
thereof.

22. An application for registration of a factory, shop or warehouse under this Act or renewal thereof—

- (a) shall be made in writing in the prescribed form to the Chief Inspector by or on behalf of the occupier or prospective occupier of the factory, shop or warehouse; and
- (b) shall be accompanied by the prescribed fee and in the case of an initial registration—
 - (i) by a plan of the factory, shop or warehouse as the case may be, containing such particulars as are prescribed; and
 - (ii) by a certificate in writing from the local authority in whose district the factory is situate certifying that the establishment and operation of the factory on the site proposed therefor is in conformity with any existing town planning scheme and zoning by-laws of the local authority.

Power of
Chief
Inspector to
register.

23. (1) As soon as practicable after the receipt of an application for registration or renewal of registration under section twenty-two, the Chief Inspector after or without an inspection of the place to which the application relates may—

- (a) register or, as the case requires, renew the registration of the factory, shop or warehouse as the case may be, by entering in the appropriate register to be kept for the purpose such particulars relating thereto as may be prescribed; and issue to the

applicant a certificate of registration or renewal of registration in the form prescribed;

- (b) issue to the applicant on payment of the prescribed fee a permit in the prescribed form authorising the use of the place referred to in the application as a factory, shop or warehouse, as the case may be, for the period specified in the permit pending the carrying out of any requirements that the Chief Inspector considers necessary to make, and which he is hereby authorised to make, before the place is registered as a factory, shop or warehouse under this Act or before such registration of the place is renewed under this Act;
- (c) refuse to register the place as a factory, shop or warehouse; or
- (d) require an applicant for renewal of registration to show, within a period allowed by the Chief Inspector, cause to the satisfaction of the Chief Inspector why the application should not be refused and if the applicant fails to so satisfy the Chief Inspector when required so to do, the Chief Inspector may refuse to renew the registration of the place as a factory, shop or warehouse and prohibit the use of the place as a factory, shop or warehouse.

(2) Without prejudice to the generality of the provisions of subsection (1) of this section but subject to subsection (3) of this section, the Chief Inspector may after conferring with the Board, refuse to register a place as a factory, if it appears to him that the place, if used as a factory, or the nature of the work carried on, or proposed to be carried on, therein would constitute a nuisance or annoyance to persons residing in the neighbourhood thereof.

(3) The Chief Inspector shall not register a place as a factory if that place is situated in an area in which the erection or use of factories generally or

of factories of the same class as the proposed factory, or the carrying on of any process of manufacture or the particular process of manufacture intended to be carried on in the proposed factory is prohibited by or under any Act relating to public health, local government or town planning.

(4) If the Chief Inspector—

- (a) refuses to register a place as a factory, shop or warehouse;
- (b) refuses to renew the registration of a place as a factory, shop or warehouse; or
- (c) refuses to grant a permit to the occupier under paragraph (b) of subsection (1) of this section,

the applicant for registration or renewal of registration may, within fourteen days after such refusal, appeal to the Local Court held nearest to the place to which his application relates,

- (d) by filing in that Court a notice of appeal in the prescribed form setting forth with reasonable particularity the grounds of appeal; and
- (e) by serving a copy of the notice of appeal on the Chief Inspector as soon as practicable after the notice of appeal is filed in the Local Court.

(5) Upon the notice of appeal being duly filed the Local Court shall fix a time and place for the hearing of the appeal, being the earliest convenient time, and the Clerk of the Court shall, by notice in the prescribed form, notify the appellant and the Chief Inspector of the time and place fixed for the hearing of the appeal.

(6) On the hearing of the appeal the Local Court may by order confirm, reverse or vary the decision of the Chief Inspector as it thinks fit, and the order is final and binding on all parties.

24. A permit issued pursuant to paragraph (b) of subsection (1) of section twenty-three—

Effect of permit and conditions.

- (a) may be issued either unconditionally or subject to conditions specified therein and any of those conditions may be varied or revoked by the Chief Inspector; and
- (b) may, while it remains in force, authorise the person to whom it is issued to occupy and use the place specified therein, as a factory, shop or warehouse and for the purposes of this Act that place, while the permit remains in force, shall be deemed to be duly registered under this Act as a factory, shop or warehouse as the case may be.

25. (1) Where a person proposes to erect any building intended to be used as a factory or proposes to alter or adapt any building for use as a factory, he shall before—

Local authority to advise Chief Inspector of receipt of plans, etc., relating to a factory. Amended by No. 56 of 1965, s. 5.

- (a) he commences to erect the building or make such alteration or adaptation; and
- (b) he complies with section three hundred and seventy-four of the Local Government Act, 1960,

cause to be submitted to the Chief Inspector a copy of the specifications, and a plan showing clearly the building proposed to be built, or the alteration or adaptation to be made.

(2) Where a local authority has received a copy of the specifications of, and a plan of the proposed building or buildings pursuant to section three hundred and seventy-four of the Local Government Act, 1960, if the specifications and plan relate to a building that is proposed to be built for use as a factory or is being used as a factory, the local authority shall within seven days of the receipt by it of the specifications and plan advise the Chief Inspector in writing of the fact.

Register of
factories,
shops and
warehouses.

26. The Chief Inspector shall keep or cause to be kept separate registers in respect of factories, shops and warehouses, and those registers shall be in such forms as may be prescribed.

Duration of
registration.
Amended by
No. 50 of
1970, s. 3.

27. (1) Every registration under this Act of a place as a factory, shop or warehouse or renewal thereof, commences on the day on which it is expressed to commence and unless previously cancelled under this Act or otherwise determined, expires notwithstanding any change in the ownership or occupancy of the place, on the day on which it is, in accordance with subsection (2) of this section, expressed to expire unless renewed in accordance with this Act.

(2) A registration referred to in subsection (1) of this section or renewal thereof shall be expressed to expire on a day not less than six months or more than eighteen months after the day it commences.

Fees for
certain regi-
strations.
Added by
No. 50 of
1970, s. 4.

27A. The fee payable on a registration or renewal thereof that is, in accordance with subsection (2) of section twenty-seven, expressed to expire on a day other than the day twelve months after it commences shall be the amount which bears to the prescribed fee the same ratio as the period between the day on which it is expressed to commence and the day on which it is expressed to expire bears to a period of twelve months.

Renewal of
registration.
Repealed
and re-en-
acted by
No. 50 of
1970, s. 5.

28. An application for renewal of the registration of a place as a factory, shop or warehouse may be made at any time within the period of one month immediately preceding the day on which the registration would expire unless renewed.

Cancellation
of
registration.

29. (1) Where the Chief Inspector is satisfied at any time by such evidence, information or inquiries as he deems sufficient that—

- (a) any place registered under this Act as a factory, shop or warehouse is no longer a factory, shop or warehouse; or

- (b) any notice in relation to the place required to be lodged with him in accordance with section thirty-four or thirty-five has not been so lodged,

the Chief Inspector may cancel the registration under this Act of that place as a factory, shop or warehouse.

(2) Where the Chief Inspector—

- (a) is satisfied at any time that any order under this Act served on the owner or occupier of a place registered as a factory, shop or warehouse has not been complied with; or
- (b) prohibits the use of any place as a factory, shop or warehouse,

he may by written notice under his hand cancel the registration of the place as a factory, shop or warehouse and prohibit the use of the place as such, unless the owner or occupier of the place on whom the notice shall be served shows cause to the satisfaction of the Chief Inspector, within the time specified in the notice, why the registration should not be cancelled.

(3) If the Chief Inspector cancels a registration or prohibits the use of a place as a factory, shop or warehouse, pursuant to subsection (2) of this section, any person aggrieved by the cancellation of the registration or such prohibition may appeal to the Local Court in accordance with the provisions of section twenty-three and those provisions so far as applicable apply to the appeal.

30. Where through fire, tempest, flood or other calamity or through alterations, renovations, repairs, demolition for rebuilding or other cause, an occupier of a place registered under this Act as a factory, shop or warehouse is unable to use the place as such, the Chief Inspector may issue a permit, without fee, authorising the occupier to occupy and use another place specified in the permit

Temporary permit to occupy place as factory, shop or warehouse in an emergency.

as a factory, shop or warehouse, for a period to be so specified and that place while it is so occupied and used shall be deemed to be duly registered under this Act as a factory, shop or warehouse.

Power of
inspector to
extend
period of a
permit.

31. The Chief Inspector may from time to time extend the period of any permit issued under this Act by endorsement on the permit.

Calculation
of fees.
Amended by
No. 56 of
1965, s. 6.

32. (1) For the purpose of calculating the fee payable on the registration under this Act of a place as a factory, shop or warehouse or the renewal of the registration—

- (a) all employees whether employed indoors or out of doors in or in connection with the business of, or carried on or in the factory, shop or warehouse shall be regarded as employed therein and the occupier of the factory, shop or warehouse shall be regarded as a person who is employed therein;
- (b) where the occupier is married, then the occupier together with the wife or husband of the occupier, if employed or engaged in the factory, shop or warehouse shall be regarded as one person; and
- (c) every person who is registered under this Act as an outworker in respect of a factory, shop or warehouse shall be regarded as being a person employed in that factory, shop or warehouse.

Notice of
change in
number of
employees.

(2) Where during the currency of the registration of any place as a factory, shop or warehouse the number of persons employed therein is so increased as to require a larger registration fee, the occupier of the place shall within seven days thereafter give written notice thereof to the Chief Inspector and pay the difference in value between the registration fee already paid and the fee payable on the increased number.

(3) The Minister may, in such circumstances as he thinks fit, by order in writing exempt unconditionally or subject to such conditions as he specifies in the order, any person from the payment of the whole or part of the fees prescribed under this Act as payable upon the registration or renewal of any factory, shop or warehouse.

Power of Minister to exempt from payment of fees.

(4) An order under subsection (3) of this section—

- (a) has effect or shall be deemed to have had effect, from and including such date as is specified in the order; and
- (b) may be revoked by the Minister at any time by order in writing made by him.

PART IV.—RECORDS AND NOTICES TO BE KEPT AND GIVEN BY OCCUPIERS AND DOCUMENTS TO BE EXHIBITED.

33. (1) The occupier of every factory, shop or warehouse shall keep or cause to be kept therein or at such other place as the Chief Inspector approves a record in the prescribed form, or such other form as may be approved by the Chief Inspector.

Time and Wages Book.
Amended by No. 56 of 1965, s. 7; No. 113 of 1965, s. 8.

(2) The record shall be known as “the time and wages book” and there shall be entered therein the following particulars, showing in the case of each employee—

- (a) the name, place of residence and sex of the employee;
- (b) his age, if under twenty-one years of age;
- (c) the kind of work on which he is usually employed;
- (d) the award, if any, under which the employee is employed;
- (e) the hours of his employment during each week and the time he commences and finishes work;

- (f) the wages paid to him each week and the wages paid to him for overtime;
- (g) such other matters as the occupier is required to keep on record pursuant to any award; and
- (h) such other particulars as are prescribed.

(2a) Notwithstanding the provisions of subsections (2) and (3) of this section the Chief Inspector may, by notice in writing, exempt any occupier of a factory, shop or warehouse—

- (a) from entering in the record all or any of the particulars referred to in subsection (2) of this section that are specified in the notice; and
- (b) from complying with all or any of the provisions of subsection (3) of this section that are so specified.

(3) The occupier shall, from day to day, enter up the wages and time book or cause it to be entered up and the book shall be signed each week by each employee if the entries therein relating to him are correct.

**Record of
out workers.**

(4) Where the occupier of a factory, shop or warehouse engages out workers he shall, in addition to the record referred to in subsection (1) of this section keep a record in the prescribed form or such other form as may be approved by the Chief Inspector, and shall enter therein—

- (a) the description and quantity of the work performed for the occupier by each out worker;
- (b) the name and address of each out worker;
- (c) the rate of payment and the amount received by each out worker for the work; and
- (d) such other matters as may be prescribed.

(5) Every record kept pursuant to this section and in use for the time being, and every such record used at any time within the two last preceding years, shall at all reasonable times be open to the inspection of an inspector.

(6) An inspector may at any time during ordinary working hours require the occupier of a factory, shop or warehouse to verify the entries in a record required to be kept by him under this section, by statutory declaration, or in such manner and form as may be prescribed, and the occupier shall comply with such requirement.

(7) An occupier who fails to comply with any provision of this section that is applicable to him is guilty of an offence against this Act.

Penalty: Two hundred dollars.

(8) A person, not being an employee, who issues or gives out, or authorises or permits to be issued or given out, articles for the purpose of being wholly or partially prepared or manufactured outside a factory, shop or warehouse for trade or for sale, shall be deemed to be the occupier of a factory, shop or warehouse for the purposes of this section.

(9) No person shall be convicted of an offence against this section who proves that—

- (a) he acted in good faith and without any intention to evade the provisions of this section; and
- (b) on demand made by an inspector, he gave to the inspector all information in his power with respect to the alleged offence.

34. (1) Where any person other than the person named in a certificate of registration or permit issued under section twenty-three as the occupier of a place registered as a factory, shop or warehouse, under this Act or deemed to be so registered becomes

Change of
occupancy of
factory,
shop or
warehouse.

the occupier thereof, the person so named in the certificate or permit and the person becoming the occupier of the place shall serve on the Chief Inspector a notice in the form prescribed of the change of occupancy, within fourteen days after that change.

(2) If the person named in the certificate or permit or the person becoming the occupier fails to duly serve the notice on the Chief Inspector as required by subsection (1) of this section, the person named in the certificate or permit in addition to any penalty to which he may be liable for such failure, shall be deemed to be the occupier of the factory, shop or warehouse and is subject to the provisions of this Act relating thereto until the notice is so served.

Vacation of
factory,
shop or
warehouse.

35. (1) Where the person named in the certificate of registration or permit issued under section twenty-three as the occupier of a place registered as a factory, shop or warehouse under this Act or deemed to so be registered, vacates the place or ceases to carry on business thereat then he, or when the place ceases to be a factory, shop or warehouse, then the occupier thereof at the time, shall within fourteen days thereafter serve on the Chief Inspector a notice in the form prescribed setting out the particulars prescribed.

(2) In addition to any penalty to which a person failing to serve a notice as required by this section may be liable, he shall, if he fails to so serve the notice, be deemed to continue as the occupier of the factory, shop or warehouse and is subject to the provisions of this Act relating thereto until the notice is so served.

Notice of
change in
nature of
work or
business,
etc., in
factory,
shop or
warehouse.

36. Where in a place registered under this Act as a factory, shop or warehouse—

- (a) there is any change in the nature of the work or business carried on from that for which the place has been registered;

- (b) there is effected any extension or reduction in size of the premises constituting the factory, shop or warehouse; or
- (c) the number of employees employed therein or thereon is in excess of the maximum number of such employees specified in the certificate of registration of the factory, shop or warehouse,

then the occupier of the place shall within fourteen days thereafter serve on the Chief Inspector a notice in the form prescribed setting out the particulars prescribed.

37. The owner of any place that another person intends to occupy or use as a factory, shop or warehouse, shall, before permitting that person to so occupy or use the place, serve on the Chief Inspector a notice in writing of the intended occupation and use of the place as a factory, shop or warehouse.

Notification by owner that place to be used as factory, shop or warehouse.

38. (1) The occupier of a factory, shop or warehouse shall affix or cause to be affixed and maintained therein in some conspicuous place and in such characters and in such positions as to be conveniently read by employees therein—

Documents to be exhibited. Amended by No. 113 of 1965, s. 8.

- (a) the certificate of registration of the place as a factory, shop or warehouse, as the case may be;
- (b) a notice setting out the working hours and holidays of the employees therein;
- (c) true copies or abstracts of such parts of this Act and the regulations as the Chief Inspector directs to be so affixed and maintained;
- (d) the name of the occupier and where the occupier is a company or firm the name of the company or the firm name, as the case may require; and
- (e) such other notices as may be prescribed.

(2) An occupier who fails to comply with the provisions of this section or any direction given thereunder is guilty of an offence.

Penalty: Twenty dollars.

PART V.—PROVISIONS RELATING TO OUTWORKERS.

Outworkers
to be
registered.
Amended by
No. 113 of
1965, s. 8.

39. A person shall not, outside a factory but for or on behalf of the occupier of a factory, shop or warehouse, wholly or partly prepare or manufacture for trade or for sale or for purposes of gain any article of clothing, wearing apparel, curtains, cushions, upholstery or other prescribed article, unless that person is registered as an outworker under this Part, and is the holder of a current certificate of registration.

Penalty: Forty dollars.

Offence.
Amended by
No. 113 of
1965, s. 8.

40. The occupier of a factory shall not let or give out work to be performed outside the factory, in connection with the preparation or manufacture, whether wholly or partly, of an article referred to in section thirty-nine, except to a person who is registered as an outworker under this Part and is the holder of a current certificate of registration.

Penalty: Forty dollars.

Registration
of out-
workers.

41. (1) Upon application being made to him in that behalf, the Chief Inspector, without payment of any fee therefor, may register a person as an outworker and may grant to him a certificate of registration under this section.

(2) An application under subsection (1) of this section shall be made in the prescribed form.

(3) A certificate of registration under this section shall be in the prescribed form and shall be granted upon such terms and conditions as the Chief

Inspector may determine and as may be specified in the certificate.

(4) A certificate of registration under this section, unless sooner suspended or revoked, continues in force for a period of twelve months from the date thereof and may, in the discretion of the Chief Inspector, be renewed for any further period or periods not exceeding twelve months at any time.

(5) The Chief Inspector may suspend or revoke a certificate of registration granted under this section if he is satisfied that the holder thereof—

- (a) is suffering from a disease of such a nature that he is likely to communicate infection to other persons; or
- (b) has contravened any of the provisions of this Part that are applicable to him.

(6) Where the Chief Inspector is satisfied that a certificate of registration granted under this section has been lost or accidentally destroyed he may issue a duplicate certificate of registration without payment of any fee therefor.

(7) A copy of every certificate of registration issued under this section shall be forwarded as soon as practicable to the registered office of the appropriate Industrial Union of Workers.

42. (1) A person who is registered as an out-worker under section forty-one shall—

- (a) not employ any other person in wholly or partly preparing or manufacturing an article referred to in section thirty-nine;
- (b) not perform work inside a factory, shop or warehouse; or
- (c) not directly or indirectly sublet the work or any part thereof by way of piecework or otherwise.

Prohibition of employment of other persons by out-workers. Amended by No. 113 of 1965, s. 8.

(2) (a) The occupier of a factory by whom the work is let or given out shall not knowingly permit or suffer any offence under this section to be committed.

(b) In any proceedings under this section against the occupier of a factory the knowledge of his servants shall be deemed to be his knowledge.

Penalty: Forty dollars.

Factory employees not to work outside factory. Amended by No. 113 of 1965, s. 8.

43. (1) Subject to the provisions of subsection (2) of this section, if any person employed in a factory does any work for and on behalf of the occupier of the factory elsewhere than in the factory, the occupier and that person commit an offence against this Act.

Penalty: Forty dollars.

(2) Nothing in this section applies to any work that cannot by reason of its nature, be performed in the factory.

PART VI.—PROVISIONS RELATING TO THE WELFARE AND WORKING CONDITIONS OF EMPLOYEES.

Division I.—Factory Welfare Board and regulations relating to welfare of employees.

Interpretation.

44. In this Division unless the contrary intention appears—

“member” means a member of the Board and includes the Chairman;

“the Chairman” means the Chairman of the Board.

Factory Welfare Board. Amended by No. 5 of 1975, ss. 5 and 9.

45. (1) There shall be a board, to be called the Factory Welfare Board, which shall consist of three members appointed by the Governor.

(2) Of the members—

(a) one shall be the person who for the time being holds the office of Under Secretary for Labour and Industry who shall be the Chairman;

- (b) one shall be a person willing to act as member appointed upon the joint written nomination of the bodies known as Western Australian Employers' Federation (Incorporated) and the West Australian Chamber of Manufactures (Incorporated) to represent the occupiers of factories; and
- (c) one shall be a person willing to act as a member appointed upon the written nomination of the body known as The Trades and Labor Council of Western Australia to represent employees in factories.

(3) If any body or bodies referred to in subsection (2) of this section fails or fail to submit to the Minister the name of a person nominated by it or them to be a member or deputy member in accordance with paragraph (b) of subsection (6) of this section, within thirty days after the receipt by it or them of a written request from the Minister so to do, the Minister may nominate for appointment as member or deputy member, in place of the body or bodies in default, a person willing to act as member or deputy member.

(4) (a) The members, other than the Chairman, shall—

- (i) be appointed for a term of five years; and
- (ii) be eligible, subject to this section, for re-appointment from time to time on the expiration of their term of office.

(b) Each member and deputy member shall be paid such fees or remuneration and such travelling and out of pocket expenses as the Minister may approve.

(5) If the Chairman is unable to attend a meeting of the Board, he may appoint an officer of the Department of which he is the permanent head to attend and act in his place at that meeting and that person, when so acting, shall for all purposes, be deemed to be the Chairman.

(6) (a) The Governor may appoint a person to act as a deputy for the member representative—

(i) of the occupiers of factories; or

(ii) of the employees in factories,

while that member is incapacitated by illness or other sufficient cause from performing the duties of his office.

(b) Each deputy member—

(i) shall be so appointed upon the written nomination of the body or bodies that nominated the member for whom he is to be deputy member or the nomination of the Minister as provided in subsection (3) of this section where the body or bodies has or have failed to nominate a member; and

(ii) may act as a member during the incapacity of the member for whom he is a deputy and while so acting shall, for all purposes, be deemed to be a member.

(7) If a member or deputy member—

(a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes any assignment of his estate for their benefit;

(b) is absent, except on leave granted by the Board, from three consecutive meetings of the Board;

(c) resigns his office by writing under his hand delivered to the Minister; or

(d) is removed from office by the Governor on account of inability or misbehaviour,

he shall be deemed to have vacated his office of member or deputy member.

(8) If a member ceases to hold office before the expiration of the period of his appointment, another person may, in accordance with this section, be appointed in his place for the remainder of that period.

(9) With the consent of the Minister administering any department of the Public Service of the State, the Board may co-opt the services of any person employed in that department upon such terms as may be agreed between that Minister and the Minister.

(10) (a) The Board shall hold its meetings at such times and places as the Board may from time to time determine.

(b) The Chairman may at any time convene a meeting of the Board.

(c) The Chairman shall preside at all meetings of the Board at which he is present.

(11) No question shall be decided by the Board unless the three members of the Board are present at the meeting when the question is being decided, but the question may be decided by a majority of the votes of the members voting.

46. (1) The Board shall in relation to any factory or class or description of factories investigate and make recommendations to the Minister with respect to all measures necessary for securing the safety, health and welfare of employees, including—

Powers and
duties of
Board.
Amended by
No. 113 of
1965, s. 8;
No. 5 of
1975, s. 9.

- (a) the prevention or diminution of noise;
- (b) the lighting and ventilation of factories;
- (c) the prevention of accidents;
- (d) the supply and use of protective clothing and protective equipment;
- (e) the welfare of employees;
- (f) the provision of facilities for taking meals;

- (g) the provision of facilities for medical or first aid attention;
- (h) the making, amending or revoking of any regulation made under this Act; and
- (i) any matters that may be prescribed.

(2) The Board shall in relation to any factory or class or description of factories—

- (a) collaborate with organisations of employers and of employees and with authorities and bodies engaged in technical research in relation to any of the matters specified in subsection (1) of this section;
- (b) encourage and assist in the establishment in factories or groups of factories of safety committees and direct and supervise the activities of those committees;
- (c) investigate and report on any question referred to it by the Minister in relation to any of the matters referred to previously in this section and any other matters relating to or affecting the health, safety or welfare of employees; and
- (d) carry out such other duties and exercise such other powers as may be prescribed.

(3) The Board, or a member who is authorised in writing by the Chairman so to do, may at any reasonable time enter and inspect a factory and the work being carried on or performed therein.

(4) A member shall not, directly or indirectly communicate or divulge to a person other than the Minister or the Under Secretary for Labour and Industry any information relating to a factory or the occupier of a factory, that comes to his knowledge in consequence of his position as a member, or make use of any information that so comes to his knowledge, except for the purpose of the performance of his duties as a member of the Board.

Penalty: One hundred dollars.

47. (1) Where it is proposed to make any regulation under any other Act for the purpose—

Proposals for certain regulations to be first submitted to the Board.

- (a) of securing the safety, health or welfare of any employee engaged in any manufacture, plant, process or form of manual labour used in any factory that is dangerous or injurious to health or dangerous to life or limb, either generally or in any particular case, or likely to be so; or
- (b) of regulating or prohibiting any noise, gas, dust, fumes or impurity generated in a factory that interferes or is reasonably likely to interfere with the personal comfort of any person employed in a factory,

the Minister to whom the administration of the Act under which it is proposed to make the regulation is for the time being committed by the Governor or his deputy shall forward a copy of the draft of the proposed regulations to the Board before the regulations are made.

(2) (a) On receipt of the draft of the proposed regulations from the Minister or his deputy, as provided in subsection (1) of this section, the Board shall, as soon as practicable, make to that Minister or his deputy such recommendations in connection therewith as the Board thinks fit.

(b) The proposed regulations—

- (i) shall not be made until those recommendations have been duly considered by such Minister or his deputy; and
- (ii) when made shall give effect to such of those recommendations as that Minister or his deputy approves.

(3) Where it is proposed under any other Act to make any order requiring the occupier of any factory to make any structural alteration to the factory or to provide any equipment therein for the purpose of securing the safety, health or welfare of any employees in the factory, the Minister to whom

the administration of the Act under which it is proposed to make the order is for the time being committed by the Governor or his deputy shall forward a copy of the draft of the proposed order to the Board before the order is made.

(4) (a) On receipt of the draft of the proposed order from that Minister or his deputy, as provided in subsection (3) of this section, the Board shall, as soon as practicable, make to that Minister or his deputy such recommendations in connection therewith, including recommendations as to the best method of giving effect to the order, as the Board thinks fit.

(b) The proposed order—

- (i) shall not be made until those recommendations have been duly considered by that Minister to whom they have been made or his deputy; and
- (ii) when made shall give effect to such of those recommendations as that Minister or his deputy approves.

(5) In this section, unless the contrary intention appears—

“order” includes requisition, direction or decision; and

“regulation” includes a rule or by-law and an amendment thereof, whether or not the regulation the subject of the amendment, was made before or after the coming into operation of this Act.

**Welfare
regulations.**

48. (1) The Governor may make such regulations as he may consider necessary or convenient for the purpose of securing the welfare of persons employed in factories or in any class of factories and in particular may make regulations under this section dealing with or relating to all or any of the following matters, that is to say—

- (a) arrangements for preparing and heating, and for taking, meals;

- (b) the supply and use of protective clothing;
- (c) ambulance and medical and first aid arrangements including the provisions of medical attention, the provision and equipment of first aid or casualty rooms, and the attendance of persons qualified to apply first aid treatment; and
- (d) rest rooms for employees.

(2) No regulations under this section shall apply to a factory in which the only persons employed are members of the same family.

Division II.—Restrictions relating to employment of women and persons who are not of full age.

49. This Part applies subject to the provisions of this Act generally and in particular to subsection (2) of section ten.

Application of Part.

50. (1) Subject to subsection (2) of this section, an occupier of a factory, shop or warehouse shall not knowingly employ therein a child.

Prohibition on employment of a child.

Repealed and re-enacted by No. 56 of 1965, s. 8.

(2) An occupier of a factory, shop or warehouse may employ therein a child, who has been exempted from further attendance at school pursuant to subsection (4) of section thirteen of the Education Act, 1928, in order to be employed therein.

(3) Every person appointed to the office of welfare officer under section fifteen of the Education Act, 1928, has by virtue of that office, the powers conferred by this Act on an inspector, to the extent necessary or expedient to enable him to discover any breach of subsection (1) of this section.

51. The occupier of a factory shall not, except by the written permission of the Chief Inspector, given on such terms and conditions as the Chief Inspector thinks fit, employ in or about any factory,

Prohibition of employment in factories during certain working hours.

any young person in working his or her ordinary working hours or any part of those hours, at any time between nine o'clock in the evening of any day and six o'clock in the morning of the day next following.

Prohibition on employment of women within six weeks of confinement.

52. A woman shall not knowingly work in any part of a factory, and an occupier of a factory shall not knowingly require or permit a woman to work in any part of a factory, during the six weeks immediately before or after her confinement.

Certificates of fitness for work.

53. (1) Where an inspector is of opinion that any employee under the age of sixteen is physically unfit for the employment in which he is engaged, he may, by notice in writing, require that person to produce to him, within the time specified in the notice, a certificate in the prescribed form of his fitness for that employment.

(2) A certificate under this section may be granted by any legally qualified medical practitioner, and shall be to the effect that he—

- (a) is satisfied by the production of a certificate of the birth or other sufficient evidence that the person named in the certificate of fitness is of the age therein specified; and
- (b) has personally examined that person and found him not to be incapacitated by disease or otherwise for working daily for the time allowed by law in the factory, shop or warehouse specified in the certificate.

Certificate of age of certain young persons.

54. An employee shall, where a certificate of fitness is not required under section fifty-three, obtain and produce when demanded by an inspector, a certificate of birth and it is sufficient compliance with this section if the employee produces either—

- (a) a certificate or extract of birth under the Registration of Births, Deaths and Marriage Act, 1961; or

- (b) a statutory declaration as to his age made by a person who, of his own knowledge, is able to depose to the correct age of the person.

Division III.—Working Hours and Overtime.

55. (1) Subject to section fifty, no occupier of a factory, shop or warehouse shall, except as provided by subsection (2) of this section, employ or authorise or permit to be employed in or about the factory, shop or warehouse—

Working hours of women and young persons. Amended by No. 56 of 1965, s. 9; No. 113 of 1965, s. 8.

- (a) a woman, child or young person—
 - (i) for more than forty hours in a week;
 - (ii) for more than nine hours in a day;
 - or
 - (iii) for more than five hours continuously without an interval of not less than half an hour nor more than one hour for a meal; or
- (b) a young person later than nine o'clock in the evening in manufacturing articles for or in connection with a trade or for sale.

Penalty: For a first offence—Forty dollars. For a subsequent offence not less than forty dollars or more than eighty dollars.

(2) In order to meet a press of work the hours of employment mentioned in subsection (1) of this section may, except in respect of a child or young person, be exceeded, but subject to the following conditions, that is to say—

- (a) the hours of employment shall not exceed fifty-six hours in a week; and
- (b) the occupier shall—
 - (i) enter on a record referred to in subsection (1) of section thirty-three the prescribed particulars relating to the extra working;

- (ii) pay overtime for the extra working to each employee who is employed on wages at the rate of not less than time and a half, and to each employee who is employed on piece work at the rate of not less than rate and a half; and
- (iii) pay to each employee who is employed after six o'clock in the afternoon such sum by way of tea money as from time to time may be prescribed.

(3) An occupier who contravenes or fails to comply with any of the provisions of this section, commits an offence against this Act.

Penalty: For a first offence—Forty dollars. For a subsequent offence not less than forty dollars or more than eighty dollars.

Working hours of male workers. Amended by No. 56 of 1965, s. 10; No. 113 of 1965, s. 8.

56. (1) Subject to this Division, an occupier of a factory, shop or warehouse shall not employ or authorise or permit to be employed in or about the factory, shop or warehouse a male employee who is of or over the age of sixteen years—

- (a) for more than forty hours in a week; or
- (b) for more than nine hours in a day; or
- (c) for more than five hours continuously without an interval of not less than half an hour nor more than one hour for a meal.

Penalty: For the first offence—Forty dollars. For a subsequent offence not less than forty dollars or more than eighty dollars.

(2) The limits of working hours prescribed in subsection (1) of this section do not apply in respect of a male employee who is engaged in getting up steam, or in making preparations for the work of a factory, or who is employed therein as a caretaker or watchman, but all hours in excess of forty hours a week shall be paid for as set forth in subsection (3) of this section.

(3) The hours of employment mentioned in subsection (1) of this section may be exceeded if wages at the rate of not less than time and a half are paid to each male employee who is employed on wages for all overtime and not less than rate and a half is paid to each such employee who is employed on piece work for overtime worked in excess of forty hours in a week but nothing in this section authorises the occupier of a factory, shop or warehouse to require any such employee to work for more than sixty hours in a week.

57. (1) Nothing in sections fifty-five and fifty-six prevents the occupier of a factory, shop or warehouse from requiring an employee or any employees included in a class of employees, to work, or to be in attendance at the factory, shop or warehouse for the purpose of working, for hours in excess of the hours prescribed in those sections—

Special provisions as to overtime work in certain conditions.

(a) in case of emergency; or

(b) where the Chief Inspector is satisfied that, by reason of seasonal conditions, the period of the year or other special circumstances, work or attendance during additional hours is necessary, and so certifies in writing to the occupier, for such period and to such extent as the Chief Inspector approves in writing and upon and subject to such conditions, if any, as the Chief Inspector determines.

(2) The occupier shall enter in the record referred to in subsection (1) of section thirty-three the prescribed particulars relating to the extra working permitted under this section and shall pay the employee for the extra working at the rate set forth in subsection (3) of section fifty-six.

58. (1) A person who is employed in a factory, shop or warehouse shall, meal times excepted, be deemed to be employed therein from the time when he commences work until the time when he ceases work.

Calculation of working time.

(2) The whole of the time in any day or week during which a person is employed at any work of any description for or on behalf of an occupier counts in calculating the hours of employment under sections fifty-five and fifty-six.

(3) A period during which an employee so works before the time for starting work, or after the time for ceasing work, or during the time for meals, that applies to him, shall be regarded as extra working time for the purposes of sections fifty-five and fifty-six.

Holidays in
factories.
Amended by
No. 65 of
1972, s. 5.

59. (1) Subject to this section the occupier of a factory, shall allow to any person employed in the factory the following holidays without deduction of pay in respect thereof, that is to say—

- (a) a whole holiday on every public holiday and a half-holiday on every public half-holiday;
- (b) a half holiday on every Saturday from the hour of one o'clock in the afternoon; and
- (c) such period of annual leave as is required to be allowed by an employer to a worker under and subject to the provisions of the award for the time being in force under the Industrial Arbitration Act, 1912, governing the employment of shop assistants in the Metropolitan Area of Perth in the State, in the circumstances and upon and subject to the terms and conditions therein prescribed, and for the purposes of this paragraph any reference in that award to a casual worker shall be deemed to be a reference to a person who is engaged by the same occupier to work for less than one week.

(2) Where the occupier of a factory requires a person employed therein to work on any of the holidays or half holidays referred to in subsection (1) of this section, the occupier shall pay to that

person wages at the rate of double time for such work or by agreement between the occupier and that person the occupier shall give to the person another day as a holiday or another half day as a half holiday instead of the holiday or half holiday on which he was so required to work.

60. The occupier of a factory shall allow to any person employed in the factory payment for non-attendance for work at the factory caused by the ill health of that person for one-twelfth of a week for each completed month of employment with the occupier but—

Payment for non-attendance through ill health.

- (a) the liability under this section is limited to payment for one week for each calendar year of employment with the occupier and to an accumulation not exceeding two weeks;
- (b) this section does not apply to any case where the person employed in the factory is incapacitated for work, and is entitled to compensation under the Workers' Compensation Act, 1912 in respect thereof, or where the non-attendance arises out of the wilful default of that person or an accident that does not arise out of or in the course of his employment in the factory; and
- (c) the person is not entitled to benefit under this section unless and until he produces to the occupier satisfactory proof of his ill health causing the non-attendance.

PART VII.—PROVISIONS RELATING TO HEALTH,
SANITATION AND SAFETY IN FACTORIES.

61. (1) The Governor may on the recommendation of the Board make regulations for the purpose of securing the health and safety of persons

Health and safety regulations. Amended by No. 113 of 1965, s. 8.

employed in factories and in particular the regulations may —

- (a) provide for the cleaning of factories and the abatement of nuisances therein, and for the painting and washing of internal walls and ceilings of factories;
- (b) prohibit overcrowding in factories and prescribe the space to be provided in factories for employees;
- (c) prescribe maximum and minimum temperatures for factories or particular parts thereof;
- (d) provide for and regulate the increase or reduction of the temperature and humidity of a work room in a factory and prohibit the use of methods of maintaining a temperature that may be injurious to persons employed therein;
- (e) require that thermometers shall be provided and maintained in such places and positions in factories as may be prescribed or as the Chief Inspector may direct or approve;
- (f) prescribe standards and methods of ventilation in factories;
- (g) regulate lighting in factories;
- (h) provide for the drainage of floors in factories where any process is carried on therein which renders the floor liable to be wet to such an extent that the wet is capable of being removed by drainage;
- (i) require the provision and prescribe the construction of sanitary conveniences and washing facilities in factories;
- (j) require and regulate the provision and maintenance of proper floors, steps, stairways, passages, gangways and galleries in factories;

- (k) prohibit the employment in a factory of any class of person in any process or trade capable of injuring that class of person;
- (l) regulate sleeping and eating in factories, and prohibit sleeping and eating therein in particular cases; and
- (m) regulate and restrict the lifting and handling of heavy weights by employees in factories.

(2) The regulations made under this Part may be made—

- (a) so as to be of general application or limited application according to individuals, individual factories, classes of individuals, classes of factories or any work, time, place, locality, purposes, circumstances or otherwise as prescribed;
- (b) so as to apply to any building or premises whether constructed, partly constructed or under construction; and
- (c) imposing a penalty not exceeding two hundred dollars for a breach of any regulation and, in the case of a continuing breach, a daily penalty not exceeding twenty dollars.

(3) The power to make regulations under this section for or in respect of any matter or thing includes power to prohibit that matter or thing either generally or to meet particular cases and to make different regulations with respect to different matters or things and with respect to different classes of the same matter or thing.

62. (1) Where it appears to the Minister that in any factory or in any class of factories—

Power of
Governor
to make
regulations.

- (a) cases of illness have occurred that he has reason to suspect may be due to the nature of a process used therein or other conditions of work therein;

- (b) by reason of changes in a process used therein or in a substance that is used in such a process, or by reason of the introduction of a new process or new substance for use in a process used therein, there may be a risk of bodily injury to, or of injury to the health of, persons employed in that process;
- (c) young persons are or are about to be employed in work that may cause risk of injury to their health; or
- (d) any noise, gas, dust, fume or impurity generated in a factory interferes or is reasonably likely to interfere with the personal comfort of any person whether employed in the factory or not,

he may, after obtaining the advice of the Board, recommend to the Governor that regulations be made requiring such reasonable arrangements to be made—

- (e) for the medical supervision of persons employed in the factory as may be specified in the regulations; and
- (f) in order to prevent such interference or likely interference as is referred to in paragraph (d) of this subsection.

(2) In this section the expression, "medical supervision" means first aid treatment and medical treatment of a preventive character only, and does not include any other kind of medical treatment.

(3) A person shall not be precluded by any agreement from doing, or be liable under any agreement to any damages, penalty or forfeiture for doing, such acts as may be necessary in order to comply with any regulation made in respect of any matter mentioned in paragraph (d) of subsection (1) of this section.

63. (1) For the better prevention of fires, and of accidents resulting from fires, the occupier of a factory shall observe the following provisions—

Provisions relating to prevention of fire and accidents therefrom. Amended by No. 113 of 1965, s. 8.

- (a) the occupier shall provide and maintain and keep readily available for immediate use, such fire escapes, and such appliances and equipment for the extinguishment of fire, as may be required by or under the Fire Brigades Act, 1942, or by or under the provisions of any Acts that relate to the prevention or extinguishment of fire, or if the relevant requirements of any Act other than this Act are not applicable to the factory, as may be prescribed under this Act;
- (b) if so required by the Chief Inspector, the occupier shall take such steps as may be necessary to ensure that every fire escape door, whether external or internal, is hung so as to open outwards; and
- (c) the occupier shall ensure that—
 - (i) all doors, passages, and stairways are at all times, kept clear and free from obstructions, and available as a means of escape in case of fire; and
 - (ii) all stairways and steps leading from one floor to another or to the ground are provided with substantial hand-rails to the satisfaction of the Chief Inspector, and if so required by the Chief Inspector, are also provided with slats or other like fittings to prevent slipping.

(2) If the Chief Inspector, after consulting with the Chief Officer of Fire Brigades appointed under the Fire Brigades Act, 1942, or an officer appointed under that Act authorised by the Chief Officer for the purpose, is of opinion that any stairway or passage in a factory is so steep, narrow, winding, intricate or insecure, or otherwise defective, as to be unsafe in the event of fire, he may, with the

approval of the Chief Officer, by notice in writing given to the occupier, direct him to take such steps as may be specified in the notice, within the time so specified, to remedy the defect and the occupier shall comply in all respects with the notice within the time so specified.

(3) An occupier who contravenes or fails to comply with any of the provisions of subsection (1) or subsection (2) of this section is guilty of an offence against this Act.

Penalty: One hundred dollars. Default penalty: Ten dollars.

(4) A person shall not obstruct, or cause or permit to be obstructed any door, passage or stairway in a factory.

Penalty: Forty dollars. Default penalty: Ten dollars.

(5) The provisions of paragraph (b) and subparagraph (i) of paragraph (c) of subsection (1) of this section extend to the outer or entrance door by which persons employed in a factory usually approach or leave the factory, whether the outer or entrance door forms part of the factory building or not.

(6) The Chief Inspector may by a certificate under his hand grant either absolutely or subject to conditions exemption from compliance with any requirement of this section where he is satisfied that compliance with those requirements would be unnecessary or impracticable.

Notice of
accidents
in factories.

64. (1) Where there occurs in a factory an accident that is caused otherwise than by a boiler or machinery that is subject to the Inspection of Machinery Act, 1921, if the accident—

(a) causes the death of an employee in the factory; or

- (b) causes bodily injury to an employee in the factory of such a nature that the employee is, or is likely to be, thereby incapacitated from work for not less than one day,

the occupier of the factory shall as soon as it is practicable for him to do so give to the Chief Inspector notice in the prescribed form containing the prescribed particulars of the accident.

(2) The notice referred to in subsection (1) of this section shall— Time for giving notice.

- (a) in the case of the death of the employee, be given as soon as practicable after the happening of the accident and before giving the notice the occupier shall inform the Chief Inspector verbally of the accident by the quickest method of communicating the information to the Chief Inspector that is available to the occupier and the Chief Inspector shall thereupon notify the Secretary of the appropriate Industrial Union of Workers of that accident; and

- (b) in the case of the incapacity of the employee not more than twenty-four hours after the happening of the accident.

(3) The Chief Inspector or an inspector appointed by him— Duty of Inspector to visit scene of accident.

- (a) shall immediately on receipt of any notice referred to in subsection (1) of this section, that relates to an accident of the kind referred to in paragraph (a) of that subsection and may if the notice relates to an accident of the kind referred to in paragraph (b) of that subsection, proceed to the factory wherein the accident to which the notice relates happened and inquire into the cause thereof; and

- (b) after the conclusion of such inquiry, if the inquiry is conducted by an inspector, the inspector shall immediately report his finding to the Chief Inspector.

Power of
Minister
to direct
inquiry.

65. (1) Where an accident of the nature referred to in subsection (1) of section sixty-four has happened in a factory, the Minister may direct an inquiry to be held before a Stipendiary Magistrate and two other persons appointed by the Minister.

(2) The Stipendiary Magistrate and other persons may hold the inquiry at such times and places as the Magistrate appoints, and shall report in writing to the Minister on the cause of the accident as soon as practicable after concluding the inquiry.

(3) With respect to the summoning and attendance of witnesses at or upon the inquiry, and the examination of those witnesses upon oath, the Magistrate has all the powers that he would have or might exercise in any case within his jurisdiction under the Justices Act, 1902.

(4) Any inspector may attend any inquiry held under this section or any Coroner's inquiry held in connection with any accident referred to in subsection (1) of this section and may examine and cross-examine witnesses at the inquiry.

Regulations
covering
dangerous
trades.

66. (1) Where the Minister is satisfied after receiving the advice of the Board that any manufacture, machinery, plant, equipment, appliance, process, trade, or description of manual labour used or capable of being used, in factories is dangerous or injurious to health or dangerous to life or limb, either generally or in the case of females, young persons, or any other class of persons, he may certify that manufacture, machinery, plant, equipment, appliance, process, trade or description of manual labour to be dangerous, and thereupon the Governor may make such regulations as appear to him to be necessary and reasonably practicable and to meet the necessity of the case.

(2) Regulations made under this section or section sixty-two may prohibit the employment of, or modify or limit the period of employment of,

persons generally, or the persons included in a prescribed class of persons, in connection with any manufacture, machinery, plant, equipment, appliance, process, trade, or description of manual labour, and may prohibit, limit, regulate, or control the use of any substance or process.

PART VIII.—PROVISIONS RELATING TO THE SALE AND MARKING OF FOOTWEAR AND FURNITURE.

Division I.—Provisions relating to Footwear.

67. In this Division of this Part, unless the contrary intention appears— Interpre-
tation.

“boots” includes shoes, sandals, slippers and other footwear;

“label” includes band or ticket;

“sole” means all that part of a boot that in use is under the foot of the wearer of the boot, including both the outsole and the insole and the heel, but not including the thin slip of leather, paper or like material that is affixed to the upper surface of the inner sole and thread, wax, rivets, pegs, nails, toe plates and heel plates;

“statement of materials” means a statement of materials composing the sole and the upper;

“upper” in relation to a boot means the part of a boot that is above the sole and welt but does not include any thread, lace or eyelet.

68. A person shall not manufacture for sale, or sell any boots, unless a true statement of the materials composing the sole and the upper (if any) is conspicuously and legibly marked on each boot in accordance with the regulations.

Soles to be stamped with name of material of sole and upper
Amended by No 113 of 1865, s. 8.

Penalty: One hundred dollars.

Boots to bear certain particulars. Amended by No. 113 of 1965, s. 8.

69. (1) A person shall not sell any boots that do not bear upon each boot in conspicuous and legible characters a mark in accordance with the regulations, specifying the name of the manufacturer of the boots and such other particulars, if any, as may be prescribed.

Penalty: One hundred dollars.

(2) A person shall not sell any boots that have been manufactured elsewhere than within the Commonwealth unless there is stamped upon, or impressed into, each boot, or there is attached to each boot, a label containing a statement specifying the name of the country in which those boots were manufactured.

Penalty: One hundred dollars.

(3) The statement referred to in subsection (2) of this section, shall be set forth in conspicuous and legible characters and placed so as to be clearly visible.

Soles not to contain weighting substance. Amended by No. 113 of 1965, s. 8.

70. If a person—

- (a) manufactures for sale; or
- (b) sells,

any boots the soles of which consist of leather having an admixture of any weighting substance specified in the regulations, he is guilty of an offence against this Act.

Penalty: Not less than ten dollars nor more than one hundred dollars.

Powers of Inspector.

71. Without prejudice to the other powers conferred on an inspector by this Act any inspector may—

- (a) enter any place where boots are manufactured or sold, or any place where he has reason to believe any of such things is done;

- (b) inspect any articles in the place; and
- (c) in the place take any boots, whether manufactured or partly manufactured, after paying a just price therefor.

72. In any prosecution for an offence under this Division, unless the contrary is proved, any person who—

Proof of manufacture for sale.

- (a) manufactures boots shall be deemed to manufacture them for sale; and
- (b) carries on business in a place where any boots are kept in stock shall be deemed to have those boots in his possession for sale.

73. In any prosecution for an offence against paragraph (b) of section seventy, if the defendant proves that the boots that are the subject of the prosecution were purchased by him from any manufacturer, importer or wholesale dealer named by the defendant and that he had no reason to believe that the soles of the boots contained any weighting substance specified in the regulations, the complaint shall be dismissed.

Complaint to be dismissed in certain circumstances.

74. The Governor may make regulations prescribing all matters that by this Division are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to the provisions of this Division and in particular, the regulations may—

Regulations Amended by No. 113 of 1965, s. 8.

- (a) prescribe the form and manner in which, and the position on each boot in which, the statement required by sections sixty-eight and sixty-nine shall be marked upon or into boots, and any regulations made for the purposes of this paragraph may make different provision with respect to different classes or descriptions of boots and may

discriminate between boots manufactured within the Commonwealth and boots manufactured elsewhere;

- (b) require and regulate the marking, in such manner and position as may be prescribed, of boots with particulars relating to the quality, purity, grade, class, measure, size, gauge and weight thereof or any part thereof;
- (c) prescribe the materials of which, and the manner in which, shanks and stiffening, not consisting of solid leather, used in the soles of boots, may be manufactured and used;
- (d) prohibit the admixture, in leather forming the soles of boots, of specified weighting substances;
- (e) prescribe the cases in which, and the conditions, if any, under which boots shall be exempted, either wholly or to such extent as is specified in the regulations, from the provisions of this Division; and
- (f) impose penalties, not exceeding one hundred dollars, for offences against the regulations.

Division II.—Provisions Relating to Furniture.

Stamping of
furniture by
manu-
facturer

75. (1) A person who manufactures or prepares either wholly or partly, in this State any furniture for the purpose of sale shall, as soon as the furniture has been so nearly completed as to permit a stamp being applied to it, cause the furniture to be stamped in accordance with this Act.

"This Act"
includes
regulations.
See s. 4,
Act No. 30
of 1918.

(2) A person to whom subsection (1) of this section applies, who removes or causes or permits or suffers to be removed from any place in which the furniture was so manufactured or so prepared, any furniture that is not stamped as required by this section commits an offence.

76. Where any furniture is imported into this State for the purpose of sale the importer, consignee or buyer for the purpose of resale thereof shall, within forty-eight hours after the furniture first comes into his possession, cause the furniture to be stamped in accordance with this Act.

Stamping of furniture by importer.

"This Act" includes regulations. See s. 4, Act No. 30 of 1918.

77. (1) A person shall not sell any new furniture unless the furniture is stamped in accordance with this Act, with either the stamp of the maker or the stamp of the importer and complying in every respect with the provisions of this Act.

Offence of selling unstamped furniture.

"This Act" includes regulations. See s. 4, Act No. 30 of 1918.

(2) In any proceedings for an offence against this section, it is a sufficient defence for the defendant to prove that—

- (a) at the time when the offence is alleged to have been committed, the furniture to which the proceedings relate, bore the same stamp of the maker or the importer, as had been stamped on the furniture when the defendant acquired it;
- (b) the stamp appeared to comply with this Act in all respects;
- (c) the stamp had not been altered in any way by the defendant; and
- (d) on demand made by or on behalf of an inspector, the defendant gave to the inspector all the information in his power with respect to the person from whom he acquired the furniture.

78. Every occupier of a factory, shop or warehouse and every agent or employee thereof shall, when and as often as he is required by an inspector to do so, point out to the inspector where any article of furniture in the factory, shop or warehouse is stamped in accordance with this Act.

Stamps to be pointed out to inspectors.

Offences.

79. A person shall not—

- (a) falsely stamp any furniture with any stamp purporting to be a stamp of a manufacturer or importer under this Act or under any law of the Commonwealth or any other State or Territory of the Commonwealth;
- (b) remove, erase, deface or otherwise interfere with any stamp on any furniture purporting to be a stamp of a manufacturer or importer under this Act or under any law of the Commonwealth or any other State or Territory of the Commonwealth;
- (c) on any furniture wholly or partly manufactured by any person other than himself or his employees, place a stamp stating or implying that the furniture was made or, as the case may be, partly made by himself;

or

- (d) sell any furniture that he knows to be falsely stamped with the stamp of a manufacturer or importer.

Savings.

80. This Part shall be construed so as not to prejudice any civil liability incurred by any person in respect of an act or omission that constitutes an offence under this Part.

Regulations.

81. Regulations may be made under section one hundred and twenty-one for the purpose of regulating the stamping of furniture manufactured or prepared in, or imported into, this State and for prescribing all or any matters and things that the Governor considers necessary or convenient to be prescribed for carrying out or giving effect to this Division.

PART IX.—PROVISIONS RELATING TO SHOPS.

Division I.—Retail Trade Advisory and Control Committee.

82. (a) Except where otherwise expressly provided in this Act, this Part shall be read subject to the provisions of the Industrial Arbitration Act, 1912, and to any relevant award.

Construction and interpretation.

(b) In this Division unless the contrary intention appears—

“member” means a member of the Committee and includes the Chairman;

“the Chairman” means the Chairman of the Committee.

83. (1) There shall be a Committee, to be called the Retail Trade Advisory and Control Committee, which shall consist of three members appointed by the Governor.

Retail Trade Advisory Committee. Amended by No. 5 of 1975, s.9.

(2) Of the members—

(a) one shall be the person who for the time being holds the office of Under Secretary for Labour and Industry who shall be the Chairman;

(b) one shall be a person willing to act as member appointed upon the joint written nomination of the bodies known as The Retail Traders' Association of Western Australia (Inc.), The Retail Grocers' and Storekeepers' Association of Western Australia (Incorporated), and Perth Chamber of Commerce (Incorporated) to represent the occupiers of shops; and

(c) one shall be a person willing to act as a member appointed upon the written nomination of the Minister to represent the purchasers of goods from shops.

(3) (a) The members, other than the Chairman, shall—

(i) be appointed for a term of three years; and

(ii) be eligible, subject to this section, for re-appointment from time to time on the expiration of their term of office.

(b) Each member or deputy member shall be paid such fees or remuneration and such travelling and out of pocket expenses as the Minister may approve.

(4) The provisions of subsections (3), (5), (6), (7), (8), (9), (10) and (11) of section forty-five apply, with such modifications as circumstances require, to the Committee.

(5) (a) Where a matter that affects a particular class of shop or the business conducted therein is to be dealt with at a meeting of the Committee, if the Chairman is of opinion that for the purpose of adequately dealing with that matter it is necessary to change the constitution of the Committee during the time the matter is being so dealt with, or where the Minister so directs, he shall require the member referred to in paragraph (b) of subsection (2) of this section, not to attend and act at that meeting or having attended to retire from the meeting during that time.

(b) The member shall comply with a request of the Chairman made under paragraph (a) of this subsection and in the absence of the member pursuant to the request a person selected by the Chairman who has been severally nominated in writing to the Minister by Western Australian Automobile Chamber of Commerce Incorporated, The Federated Pharmaceutical Service Guild of Australia (W.A. Branch), Master Gentlemen's Hair-dressers Association of W.A., Union of Employers, Perth, Meat and Allied Trades' Federation of Australia (Western Australian Division) Union of Employers, Perth, and such other body as the Committee approves for the purpose, may attend and act at the meeting in place of the absent member during the time the matter referred to in

paragraph (a) of this subsection is being dealt with and while so acting that person—

- (i) shall be deemed to be a deputy for that member; and
- (ii) the provisions referred to in subsection (3) of section forty-five relating to a deputy member apply to that person.

84. (1) The Committee shall—

Powers and duties of Committee.

- (a) investigate and make recommendations to the Minister on such matters relating to shops and in particular with regard to the business carried on in shops, the type of goods sold therein, the hours of trading therein, the number of persons employed therein, the classification or registration of shops for the purpose of this Act and the effect of the application of the provisions of this Act and regulations on occupiers of shops, persons employed therein and persons purchasing goods therein, as the Minister may refer to it for the purpose;
- (b) investigate and report to the Minister on any matter referred to it by the Minister relating to or affecting the health, safety and welfare of employees in shops or warehouses; and
- (c) review the provisions of this Act and regulations for the time being in force relating to any of the matters referred to in paragraph (a) of this subsection and to make to the Minister recommendations for the making of new laws by way of substitution or amendment of those provisions.

(2) (a) The Committee may of its own motion and shall when requested in writing by the Minister to do so, consult with and consider any representations made to it by any body of occupiers of shops or employees therein, local authority or any other body of whatsoever kind or any natural person

relating to any of the matters referred to in subsection (1) of this section and make to the Minister, after such consultation and consideration, any recommendation thereon that it thinks fit.

(b) Subject to the approval of the Minister, where the Committee is of opinion that—

- (i) to meet the needs of the public it is necessary or in the circumstances of the case it is desirable in the public interest to do so; or
- (ii) because of the celebration or observance of any special occasion or the holding of any event in a particular locality it is desirable to do so,

the Committee may, subject to any award, for any period and on such terms and conditions as it thinks fit, grant to any shopkeeper a permit authorising the occupier to open the shop during such hours in addition to or in substitution for, the hours during which under this Act the shop may be open, as the Committee thinks fit and specifies in the permit.

(c) A permit granted under paragraph (b) of this subsection has effect according to its tenor.

(d) The Committee may in its discretion revoke or vary any permit granted by it under paragraph (b) of this subsection.

(3) The Committee may in addition to the powers conferred on it by this Act carry out such other functions and duties and exercise such other powers as may be prescribed.

Division II.—Closing of Shops.

Closing
hours of
shops.

85. (1) Subject to the provisions hereinafter contained in this Division every shop shall be kept closed by the shopkeeper—

- (a) on Monday to Friday inclusive, in each week, until eight o'clock in the forenoon and from and after six o'clock in the afternoon;

- (b) on Saturday in each week, until eight o'clock in the forenoon and from and after one o'clock in the afternoon; and
- (c) on Sunday in each week and on each of the whole holidays referred to in section fifty-nine.

(2) Where any such shop is situate in the municipal district of the Shire of Mandurah, Sandstone or Yilgarn, the shop shall, subject to the provisions contained in the Division relating to particular classes of shops, be kept closed as provided in subsection (1) of this section, except that on Wednesday of each week the shop shall be closed from and after one o'clock in the afternoon and on Saturday of each week shall be closed from and after six o'clock in the afternoon.

Closing hours in certain Shires.

(3) Where the majority of shopkeepers of shops situate in a municipal district referred to in subsection (2) of this section, makes a written application to the Minister to close their shops during the times referred to in subsection (1) of this section instead of as provided in subsection (2) hereof, the Governor may, on the recommendation of the Minister, by Order in Council direct accordingly, and on the making of the order, subsection (1) of this section shall apply, subject to this Act, to the shops situate in that municipal district.

Power of Governor to alter hours of closing in certain Shires.

86. Section eighty-five does not apply with respect to shops, in this Act called "exempted shops"—

Exempted shops. Repealed and re-enacted by No. 65 of 1972, s. 6.

- (a) in which the only goods kept or stored, sold or supplied, or offered for sale or supply are goods that are prescribed to be exempted goods or are, under the Liquor Act, 1970, authorised to be sold and supplied there; or
- (b) that are at any public passenger transport terminal or station where public passenger transport services are running.

Additional
trading
hours for
privileged
shops.

87. (1) The Chief Inspector shall, on the recommendation of the Committee grant to any shopkeeper of any class of shop prescribed for the purposes of this section having for sale therein goods of a class so prescribed (in this Act called "privileged shops"), a permit on such terms and conditions as the Committee thinks fit and as are specified therein, authorising the shopkeeper to open the shop during such hours and on such days in addition to those referred to in section eighty-five as are so specified.

(2) Where a shopkeeper to whom a permit has been granted under this section fails to comply with any condition specified therein, the Chief Inspector may, by order in writing under his hand served on the shopkeeper, suspend the operation of the permit for such period not exceeding three months as he thinks fit and specifies in the order and thereupon the permit is, subject to subsection (4) of this section, inoperative for that period.

(3) The Chief Inspector shall as soon as practicable notify the Committee in writing in each case where he suspends the operation of a permit under this section.

(4) The Committee may confirm, revoke or vary the notice of suspension of the permit given by the Chief Inspector subject to such terms and conditions as it thinks fit.

Closing
hours of
small shops.

88. (1) A small shop shall be kept closed by the shopkeeper on every day of the year until six o'clock in the forenoon and from and after thirty minutes past eleven o'clock in the afternoon.

(2) For the purposes of this Act, "small shop" means a shop—

- (a) that has been registered as such by the Chief Inspector in accordance with the regulations;

- (b) wherein is exposed for sale and sold only all or any of the following, confectionery, tobacco, cigarettes, cigars, cigarette papers, food, non-intoxicating beverages or goods (not being goods of an electrical or mechanical nature) used for the purpose of household cleaning or the cleaning of household goods or household equipment or such other goods as the Minister on the recommendation of the Committee, approves;
- (c) subject to subsection (3) of this section, wherein not more than two persons are employed or engaged at any one time in conducting the business carried on in the shop and who are not employed or engaged in any other retail business; and
- (d) in respect of which the persons or one of the persons referred to in paragraph (c) of this subsection have or has the joint or sole control of the conduct of the business carried on in the shop and the profits thereof belong to one or both of those persons.

(3) Where any of the persons referred to in paragraph (c) of subsection (2) of this section is incapacitated by illness, absence or other sufficient cause from conducting the business carried on in the shop, another person may during his incapacity be engaged or employed in his place.

(4) For the purpose of ascertaining whether a shop qualifies to be registered as a small shop under this Act, the Chief Inspector may, in relation to that shop, require any of the matters referred to in subsection (2) of this section to be certified by a statutory declaration made by the applicant for registration.

(5) No fee is payable under this Act for the registration under this section of a shop as a small shop.

Closing
hours of
chemists
and druggists' shops.
Amended by
No. 65 of
1972, s. 7.

89. (1) Subject to subsection (2) of this section a chemist shop or a druggist shop or any combination thereof shall be kept closed by the shopkeeper—

- (a) on Monday to Friday inclusive of each week except between eight o'clock in the forenoon and six o'clock in the afternoon;
- (b) on Saturday of each week, except between eight o'clock in the forenoon and one o'clock in the afternoon and between thirty minutes past six o'clock in the afternoon and eight o'clock in the afternoon; and
- (c) on Sunday of each week and on every public holiday and public half-holiday, except between thirty minutes past six o'clock in the afternoon and eight o'clock in the afternoon of each of those days.

(2) In the municipal districts referred to in subsection (2) of section eighty-five, a chemist or druggist shop shall, subject to that section, be kept closed during the hours referred to in subsection (1) of this section except that on Wednesday of each week the shop shall be closed except between eight o'clock in the forenoon and one o'clock in the afternoon and except between thirty minutes past six o'clock in the afternoon and eight o'clock in the afternoon, and on Saturday of each week shall be kept closed except between eight o'clock in the forenoon and six o'clock in the afternoon.

(3) A chemist or druggist shop may be opened at any time for the purpose of dispensing the prescriptions of a duly qualified medical practitioner and supplying medical and surgical appliances and medicines required in case of necessity or emergency, for so long only as may be necessary for that purpose in each particular case and if—

- (a) the shop is opened for that purpose only; and
- (b) the door of the shop is kept locked, except for the admission and exit of the customer.

90. The shopkeeper of a hairdresser's shop shall keep the shop closed on the days and hours provided in section eighty-five.

Closing hours of hairdressers' shops.

91. The shopkeeper of a butcher's shop shall keep the shop closed on the days and hours provided in section eighty-five.

Closing hours of butchers' shops.

91A. (1) Subject to subsection (2) of this section the shopkeeper of a shop where motor vehicles are offered or exposed, or kept or stored, for sale by retail to the public shall keep the shop closed on the days and hours provided in section eighty-five.

Closing hours of motor vehicle shops.
Amended by No. 50 of 1970, s. 6.

(2) A shop to which subsection (1) of this section refers may, for the purpose of selling motor vehicles only, be opened on Wednesday between six o'clock in the afternoon and ten o'clock in the afternoon unless the day is a whole holiday referred to in section fifty-nine.

92. (1) In this section unless the contrary intention appears—

“extraordinary trading hours” means any time other than ordinary trading hours;

“ordinary trading hours” means—

- (a) from seven o'clock in the forenoon to seven o'clock in the afternoon of 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 seven o'clock in the forenoon to one o'clock in the afternoon of each Saturday, whether a public holiday or not, except Christmas Day and

Trading hours for sale of motor vehicle requisites.
Amended by No. 83 of 1964, s. 2; No. 113 of 1965, s. 8; No. 50 of 1970, s. 7; No. 65 of 1972, ss. 8 and 9; No. 94 of 1972, s. 4.

Anzac Day and whether any part of that day is a public half holiday or not;

“prescribe” means prescribe by regulations;

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

“recommendation” means a recommendation made by the representative body to the Minister that is approved by the Minister with or without modification, or where that body does not make a recommendation, means a recommendation, made by the Minister;

“representative body” means the corporate body representative of proprietors of shops having requisites for sale, and known as Western Australian Automobile Chamber of Commerce Incorporated;

“requisite” means anything necessary, or required, for equipping or operating a vehicle, which is a motor vehicle according to the interpretation given to that expression by the Traffic Act, 1919, and includes, without derogation from the generality of the foregoing, fuel in any form, lubricant in any form, tyre, tube, battery, part, and accessory;

“shop” without derogation from the generality of the interpretation given to that expression by section five of this Act, means a shop where requisites are for sale, and includes any pump or contrivance for supplying fuel necessary or required for operating a motor vehicle;

“zone” means a portion of the State prescribed as a zone for trading during extraordinary trading hours.

(2) The provisions of this section have effect in respect of shops to which those provisions apply, notwithstanding any of the other provisions of this Act.

(3) (a) The shopkeeper of a shop in a zone prescribed under subsection (4) of this section having any requisite for sale at or in the shop, or at or in part of the shop, shall keep the shop, or that part of the shop closed, and shall not sell, and shall not allow to be sold any requisite except during ordinary trading hours, unless authorised and required under subsection (9) of this section to do so, and then only as so authorised; but this section does not preclude a shopkeeper of a shop that is not in a zone so prescribed from keeping the shop open during any hours he thinks fit.

(b) The shopkeeper of a shop, irrespective of whether it is in a zone prescribed under subsection (4) of this section or not, shall not, at any time during which any shop referred to in section eighty-five is required to be kept closed, sell or allow to be sold at his shop any article that is not—

(i) a requisite; or

(ii) one of the goods prescribed to be exempted goods.

(c) The provisions of paragraph (b) of this subsection do not limit or otherwise affect the provisions of section ninety-one A.

(4) (a) The Governor on recommendation may from time to time prescribe any part of the State as a zone for the purpose of subsection (5) of this section.

(b) In exercising the power conferred by paragraph (a) of this section, the Governor shall have regard to the area of the proposed zone and the facilities for the supply of requisites in that area during extraordinary trading hours.

(5) Where a zone is so prescribed, the Governor on recommendation may, subject to subsection (6) and (7) of this section prescribe—

- (a) what shop or shops may be opened, and the days and times during which the prescribed shop, or respective days and times, during which the respective prescribed shops, if more than one, may be opened, for the sale of requisites during extraordinary trading hours; and
- (b) whether all requisites, or any requisite only, or class of requisite only, may be sold by the shopkeeper of the prescribed shop or the shopkeepers of the prescribed shops during the prescribed times,

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

(6) Where a zone is so prescribed, the Governor may, subject to subsection (7) of this section, exercise any power conferred on him by subsection (5) of this section in respect of any shop that is in the zone, and of which the shopkeeper is not a member of the representative body, notwithstanding that the representative body has not made a recommendation in respect of the shop, but in so doing the Governor shall as far as is practicable preserve in respect of the shop uniformity with matters prescribed on recommendation under subsection (5) of this section in respect of other shops in the zone in which the shop is situated.

(7) (a) Where prior to the first exercise by the Governor of any power conferred on him by subsection (5) or subsection (6) of this section, the shopkeeper of a shop in a zone so prescribed, gives written notice to the Minister that he does not desire to keep open the shop during extraordinary trading

hours, none of those powers shall be exercised or take effect so as to require the shop to be kept open during extraordinary trading hours.

(b) If the shopkeeper of a shop in a zone so prescribed has not given that notice to the Minister before the first exercise of any of those powers, and if any of those powers have been exercised in respect of the shop, the shopkeeper of the shop may give written notice to the Minister at least one month before the expiration of any period during which the exercise of the powers is effective, that at the expiration of that period he does not desire to keep open the shop during extraordinary trading hours, in which case the powers shall not be exercised or take effect so as to require the shop to be kept open after the expiration of that period during extraordinary trading hours.

(8) (a) If the representative body, after having been requested in writing to do so by the Minister does not, within the time specified in the request or within such extended time as the Minister allows and is hereby authorised to allow, make a recommendation to the Minister in respect of any of the matters mentioned in subsection (4) or subsection (5) of this section, the Minister may make the recommendation and the Governor may exercise any power conferred by those subsections in respect of the matter, as if the recommendation were made by the representative body and approved by the Minister.

(b) Where the representative body makes a recommendation, if the Minister is of opinion that it is necessary or in the circumstances of the case it is desirable in the public interest to do so, he may approve the recommendation or, after consulting with the representative body, so approve with such modifications as he thinks fit.

(9) (a) The shopkeeper of any shop prescribed under subsection (5) or under subsection (6) of this section shall, subject to subsection (7) of this section, keep the shop open and shall on tender of

the price reasonably charged, if required, sell such requisites, during such times in extraordinary trading hours, as are prescribed in respect of the shop.

Penalty: Forty dollars.

(b) Proof that the proprietor, through no fault on his part, was unable, when required, to supply for sale any requisite is a valid defence to a prosecution of a complaint of an offence against paragraph (a) of this subsection for failing to sell the requisite when required.

(10) Notwithstanding any other provision of this section an offence against this section is not committed—

- (a) by any person in supplying at any time, or in opening a shop at any time, in order to supply any requisite for the purpose of enabling a public ambulance to proceed or continue on any journey;
- (b) by the Royal Automobile Club of W.A. (Incorporated) or any of its servants in supplying at any time in an emergency any 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) by any person in opening a shop in a zone at any time other than in the ordinary or extraordinary trading hours for shops in that zone in order to supply and in supplying any requisite that is urgently and necessarily required for the functioning of a motor vehicle within the meaning of the expression "motor vehicle" in the Traffic Act, 1919, if—
 - (i) the person is authorised in writing by the Minister to do so;

- (ii) the shop is situate in a zone no part of which is less than thirty-two kilometres from the General Post Office, Perth;
 - (iii) the shop is opened for that purpose only;
 - (iv) the shop is closed immediately after the sale of the requisite is made; and
 - (v) the door of the shop is kept locked, except for the admission and exit of the person purchasing the requisite;
- or
- (d) by any person who—
 - (i) supplies at any time; or
 - (ii) opens a shop for the purpose of supplying at any time,other than during ordinary trading hours, any requisite except fuel in any form or lubricant in any form, if—
 - (iii) the requisite is urgently and necessarily required to enable a motor vehicle, within the meaning of the expression, "motor vehicle" in the Traffic Act, 1919, to proceed or continue on any journey; and
 - (iv) the person holds a permit in writing from the Minister so to do, and complies with the terms and conditions specified in the permit, including the requirements of subparagraphs (iii), (iv) and (v) of paragraph (c) of this subsection,which terms and conditions the Minister is hereby authorised to impose.

(11) In each zone the shopkeeper of each shop having requisites for sale shall, while the shop is closed during extraordinary trading hours cause to be displayed in a conspicuous place facing the

street on which the shop is situated a notice in white letters of not less than fifty millimetres in height on a blackboard stating—

- (a) the hours during which his shop is closed; and
- (b) the locality of the shop nearest to his shop that is required to be kept open under subsection (9) of this section during extraordinary trading hours.

Penalty: Forty dollars.

(12) 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.

(13) Where an agreement—

- (a) was made prior to the coming into operation of this section;
- (b) is current on the coming into operation of this section; or
- (c) relates to a lease, letting, or license to occupy, or the sale and purchase of, premises, the whole or part of which are used or intended by the parties to be used for the sale of any requisites,

the agreement shall be deemed to include provision that, if any party to the agreement claims that because of any of the provisions of this section, any of the provisions of the agreement should be reviewed and adjusted, and if the parties cannot agree in respect of the adjustment, their differences shall be settled on reference to arbitration under the Arbitration Act, 1895.

Special provisions in respect of shops in holiday resorts.
Added by No. 51 of 1974, s. 5.

92A. (1) For the purposes of this section there shall be a committee, to be called the Holiday Resorts Advisory Committee.

(2) The members of the Committee shall be—

- (a) the persons who are members for the time being of the Retail Trade Advisory Committee constituted under section eighty-three; and

(b) five persons appointed by the Governor of whom—

- (i) one shall be a person willing to act as member appointed upon the joint written nomination of The Country Shire Councils Association of W.A. and the Country Town Councils Association to represent country local authorities;
- (ii) one shall be a person willing to act as member appointed upon the written nomination of the Director of the Department of Tourism to represent the tourist industry;
- (iii) one shall be a person willing to act as member appointed upon the written nomination of the Western Australian Employers Federation Inc. to represent the employers having employees in shops; and
- (iv) two shall be persons willing to act as members appointed upon the written nomination of the body known as The Trades and Labor Council of Western Australia to represent employees in shops.

(3) The Chairman of the Retail Trade Advisory Committee constituted under section eighty-three shall be Chairman of the Committee.

(4) The term of a member appointed pursuant to paragraph (b) of subsection (2) of this section shall not exceed three years.

(5) Each member or deputy member shall be paid such fees or remuneration and such travelling and out of pocket expenses as the Minister may approve.

(6) The provisions of subsections (3), (5), (6), (7), (8) and (9) of section forty-five apply—

- (a) in relation to the members of the Committee referred to in paragraph (a) of subsection

(2) of this section, with such modifications as are effected pursuant to subsection (4) of section eighty-three; and

- (b) in relation to the members of the Committee referred to in paragraph (b) of subsection (2) of this section, with such modifications as the circumstances require.

(7) The provisions of subsections (10) and (11) of section forty-five apply to the Committee with such modifications as the circumstances require.

(8) The Committee shall investigate and make recommendations to the Minister on such matters relating to the administration of this section as are referred to it by the Minister.

(9) The local authority of a municipal district that—

- (a) has within its municipal district a holiday resort; and
- (b) has within its municipal district during the period or periods the subject of an application under this section a holiday population that is large by comparison with its normal resident population,

may apply to the Minister for an order under this section.

(10) An application pursuant to subsection (9) of this section shall—

- (a) set out the reasons for the application;
- (b) specify the area or locality sought to be affected by an order made under this section;
- (c) specify subject to subsection (11) of this section the period or periods during which and the times at which it is desired that

shops be allowed to remain open, or to trade in any class or classes of goods, pursuant to this section;

- (d) state whether and to what extent the application has the support or concurrence of the occupiers of shops situate within the area or locality.

(11) The period or periods specified under paragraph (c) of subsection (10) of this section—

- (a) shall not extend for longer than a total of one hundred and five days in each year;
- (b) shall be the same period or periods in each year;
- (c) shall, subject to an order made under this section, be a continuous unbroken period.

(12) If the Minister is satisfied that an application made pursuant to this section should be granted he may, subject to any conditions or variations he thinks fit, by order exempt the shops in the area the subject of the application or a part thereof from the provisions of this Division subject to such conditions as to hours of opening or closing or of trading in any class or classes of goods, or as to such other matters as he may specify in the order.

(13) The Minister shall not make an order under this section unless he has obtained and considered the report of the Director of Tourism appointed under the Public Service Act, 1904, or the holder of some other office prescribed for the purposes of this subsection as to—

- (a) whether or not the area or locality specified in the application for the order is a holiday resort; and
- (b) whether during the period or periods so specified the area or locality usually has a holiday population that is large by comparison with its normal resident population.

- (14) An order made under this section—
- (a) shall be published in the *Government Gazette*;
 - (b) may be revoked or varied by a subsequent notice so published; and
 - (c) shall remain in force from year to year in respect of the period or periods of exemption specified therein.

(15) A person shall not be guilty of an offence against this Act by reason only that a shop within an area or locality in respect of which an order under this section was for the time being in force was open at a time within the period or periods of exemption specified in that order and in accordance with the conditions, if any, so specified.

- (16) This section does not apply to a shop that is—
- (a) a shop under section eighty-six;
 - (b) a shop under section eighty-seven;
 - (c) a shop under section eighty-eight;
 - (d) a shop under section ninety-one A;
 - (e) a shop as defined in section ninety-two.

When shop
not closed.
Amended by
No. 50 of
1970, s. 8.

93. For the purposes of this Act, a shop shall be deemed not to be closed if—

- (a) it is not locked or otherwise effectually secured to the complete exclusion of the public; or
- (b) the shopkeeper or any employee is engaged therein at a time when the shop is required to be closed under this Act, in obtaining through the telephone or by any other means whatsoever any orders for the sale of any goods.

93A. A shopkeeper shall not, at any time during which he is permitted or required by this Act to keep his shop open for a specified purpose or purposes only, or for the sale of specified goods only, or subject to a condition, use that shop for another purpose, or for the sale of goods other than the specified goods, or contrary to any such condition, as the case may be.

Limitation
on use of
shop.
Added by
No. 50 of
1970, s. 8.

93B. A person who commits an offence against section eighty-five, eighty-nine, ninety, ninety-one, ninety-one A, subsection (3) of section ninety-two, or section ninety-three A is liable, on conviction, to a penalty of two hundred dollars for a first offence, three hundred dollars for a second offence and five hundred dollars for any third or subsequent offence.

Penalty for
after hours
or wrongful
trading.
Added by
No. 50 of
1970, s. 8.

93C. (1) A person shall not publish, or cause to be published, any statement which implies or suggests—

Prohibited
statements.
Added by
No. 50 of
1970, s. 8.

- (a) that at a time when the shop is required by this Act to be closed—
 - (i) the shop will be open to the admission of the public for any purpose of trade or inspection;
 - (ii) any goods will be sold or offered for sale in the shop; or
 - (iii) any person will be in attendance at the shop for the receipt by any means of orders for goods, or requests for the demonstration of goods or delivery of goods on approval; or
- (b) that, at any time during which a shop is permitted or required by this Act to be open for a specified purpose or purposes only, or for the sale of specified goods only, or subject to a condition, the shop will be used for another purpose, or the sale of other goods, or contrary to any such condition.

(2) In subsection (1) of this section “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,
- and “published” includes corresponding meanings.

Heading amended by No. 5 of 1975, s. 6.

Division III.—Miscellaneous Provisions Relating to Shops, Shop Assistants and Warehouses.

Prohibition of auction sales during certain hours

94. Notwithstanding anything contained in any other Act a person shall not sell by auction any goods of the class or description usually sold by retail in shops during the hours when, under the provisions of section eighty-five shops are required to be closed but this section does not apply to sales by auction of cereals, hay or chaff, or of second-hand furniture and household effects conducted in any dwelling house.

Holidays in shops. Amended by No. 56 of 1965, s. 11; No. 65 of 1972, s. 10.

95. (1) Subject to this Act every shop, except an exempted shop, a privileged shop and small shop, shall be closed on each public holiday and public half-holiday in addition to any other times during which they are required to be closed by or under this Act.

(2) A shopkeeper shall allow to each shop assistant a whole holiday on each public holiday and a half-holiday on each public half-holiday.

(3) (a) In addition to the holidays referred to in subsection (1) of this section, a shopkeeper shall allow to each shop assistant, such period of annual leave, if any, with payment of the ordinary wages of the shop assistant as is required to be allowed by an employer to an employee under and subject to the provisions of the award for the time being in force under the Industrial Arbitration Act, 1912, governing employment of shop assistants in the Metropolitan Area of Perth in the circumstances and upon and subject to the terms and conditions prescribed in that award.

(b) For the purposes of this subsection any reference in the award to a casual worker shall be deemed to be a reference to a shop assistant who is employed by the same shopkeeper for less than one week.

96. Every shopkeeper shall allow to each shop assistant employed by him payment for non-attendance at the shop caused by the ill-health of the shop assistant for one-twelfth of a week for each completed month of employment with the shopkeeper, but—

Payment
for non-
attendance
through
ill health.

- (a) the liability under this section is limited to payment for one week for each calendar year of employment with the shopkeeper and to an accumulation not exceeding two weeks;
- (b) this section does not apply in any case where the shop assistant is incapacitated for work and is entitled to compensation under the Workers' Compensation Act, 1912, in respect thereof, or where the non-attendance arises out of the wilful default of the shop assistant or an accident that does not arise out of or in the course of his employment in that shop; and

- (c) the shop assistant is not entitled to benefit under this section unless and until he produces to the shopkeeper satisfactory proof of his ill health causing the non-attendance.

Wages and time book to be kept in shop.

97. In every shop or warehouse in which one or more persons are employed the shopkeeper or occupier, as the case requires, shall at all times keep or cause to be kept in the prescribed form or in such other form as the Chief Inspector approves, records and notices in accordance with section thirty-three of this Act.

Regulations for health, safety and welfare.

Amended by No. 5 of 1975, s. 7.

98. (1) The Governor may, on the recommendation of the Committee, make regulations for the purpose of securing the health, safety and welfare of persons employed in shops and warehouses and in particular the regulations may provide for all or any of the matters referred to in section sixty-one.

(2) The provisions of section sixty-three apply to and in relation to shops and the provisions of sections sixty-four and sixty-five apply to and in relation to accidents occurring in shops and warehouses and, for those respective purposes,—

- (a) any reference in section sixty-three to a factory shall be construed as including a reference to a shop; and
- (b) any reference in section sixty-four or sixty-five to a factory shall be construed as including a reference to a shop and a warehouse.

Division IV.—General Provisions relating to Factories, Shops and Warehouses.

Payment of wages and provision for minimum wage.

Amended by No. 56 of 1965, s. 12; No. 113 of 1965, s. 8.

99. (1) A person being under the age of twenty-one years, who is employed in any capacity in a factory, shop or warehouse, is entitled to receive from the occupier such payment for his work as is agreed on, and notwithstanding any agreement purporting to fix a lesser sum, that person is, according to his or her age and sex, entitled to be

paid at a rate of wage not less than the following percentage of the basic wage as declared and varied from time to time by the Court under the provisions of the Industrial Arbitration Act, 1912 for males and females, as the case may be, and applying to the particular area in which the employee is employed:—

	Males. Percentage of Male Basic Wage.	Females. Percentage of Female Basic Wage.
Between 14 and 15 years of age	25	35
Between 15 and 16 years of age	35	35
Between 16 and 17 years of age	45	43
Between 17 and 18 years of age	55	52
Between 18 and 19 years of age	65	61
Between 19 and 20 years of age	75	73
Between 20 and 21 years of age	85	80

(2) The rate of payment referred to in subsection (1) of this section shall in every case be irrespective of overtime.

(3) The payment of wages as prescribed in this section shall be made in full at not longer than fortnightly intervals.

(4) If the occupier makes default for seven days in the full and punctual payment of any money payable by him to an employee as prescribed in this section, he is liable to a fine not exceeding two dollars for every day thereafter during which or any part of which the default continues.

(5) Without affecting any other remedies for the recovery of money payable under this section to a person employed in a factory, shop or warehouse proceedings, including proceedings under the Masters and Servants Act, 1892, for the recovery thereof, as being due under a contract of service, may be taken by an inspector in the name and on behalf of the person entitled to payment, irrespective of any disability to which that person may be subject, in any case where the inspector is satisfied that default in payment has been made.

(6) The occupier of a factory, shop or warehouse shall not make any deduction, set-off, or counter-claim against a claim for wages or other remunera-

tion for work actually and properly done by any employee, except to the extent of special damage, if any, which he proves he has suffered by reason of the unlawful act or default of the claimant in leaving the employment or being absent from the employment after the work was so actually and properly done.

(7) (a) Except with the permission in writing of the Chief Inspector, which shall be granted on the ground of old age or infirmity only, a person over the age of twenty-one years shall not be employed in a factory, shop or warehouse—

- (i) in the case of such a male person at a lesser rate of wage than the current basic wage prescribed for a male person over the age of twenty-one years by the Court under the provisions of the Industrial Arbitration Act, 1912; and
- (ii) in the case of such a female person, at a lesser rate of wage than the current basic wage so prescribed for a female person over the age of twenty-one years,

and applying to the particular area in which the person is so employed.

(b) Where under any law a person other than the Chief Inspector is authorised to permit any person to be employed in any factory, shop or warehouse, at the lesser rate of wage referred to in paragraph (a) of this subsection, if the first mentioned person so authorises he shall send to the Chief Inspector at the end of each month a record in a form approved by the Chief Inspector, showing such particulars relating to the person who is so authorised as the Chief Inspector requires.

(8) Unless otherwise expressly agreed upon in writing, the notice necessary to terminate the employment of an employee shall be one week except that—

- (a) an occupier may at any time dismiss an employee for refusal to obey lawful orders or for misconduct, or for neglect, after the

employee has received the one week's notice, to carry out his duties in a reasonably satisfactory manner, having regard to the circumstances of the case;

- (b) this subsection does not apply in the case of a person who is employed as a casual worker; and
- (c) for the purposes of this subsection the term "casual worker" means a person engaged by the occupier to work for less than one week.

100. (1) No person shall—

Taking
of premiums
prohibited.

- (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.

(2) Where a premium is paid or received in contravention of the provisions of subsection (1) of this section, or where an occupier makes a deduction from the wages of a person who is employed by him, or receives from a person employed by him or from another person any sum in respect of the premium of employment, the sum so paid, deducted, or received may, whether a penalty has been imposed on the occupier in pursuance of that subsection or not, be recovered from the occupier by the Chief Inspector, in the name of and on behalf of the persons by whom it was paid or from whose wages it was deducted, by action in a Court of competent jurisdiction.

101. (1) The occupier shall, on the request of any person leaving employment in the factory, shop or warehouse, give to that person a certificate under his hand, stating correctly the period during which that person has been so employed.

Certificate of
employment.
Amended by
No. 113 of
1965, s. 8.

(2) An occupier who refuses or neglects to give a certificate referred to in subsection (1) of this section, on the request of any person employed in the factory, shop or warehouse, or who gives such a certificate knowing the same to be false is guilty of an offence against this Act.

Penalty: Forty dollars.

Power of
Supreme
Court to
modify or
set aside
agreements.

102. If, by reason of an agreement between the owner and the occupier of any premises, the whole or a part of which has been let as a factory, shop or warehouse, the owner or occupier is prevented from carrying out any structural or other alteration of, or repairs or improvements to, the premises, that are necessary to enable the premises or any part thereof to be brought into conformity—

- (a) with this Act;
- (b) with any notice, order, requirement, or direction given or made under this Act; or
- (c) with any requirement that is prescribed by or under this Act,

either the owner or the occupier may apply to the Supreme Court in accordance with the Rules of Court for an order—

- (d) modifying the agreement; or
- (e) setting aside the agreement,

and, after hearing the parties to the application and any witnesses appearing on the hearing thereof, the Court may make an order—

- (f) setting aside the agreement; or
- (g) modifying the terms of the agreement,

as the Court may think just and equitable in the circumstances of the case.

Power of
Supreme
Court to
apportion
expenses.

103. Where on any premises, the whole or a part of which has been let as a factory, shop or warehouse, any structural or other alterations, or

any repairs or improvements are necessary to enable the premises or any part thereof to be brought into conformity—

- (a) with this Act;
- (b) with any notice, order, requirement or direction given or made under this Act; or
- (c) with any requirement that is prescribed by or under this Act,

and the owner or occupier, as the case may be, alleges that the whole or any part of the expenses of the alterations, repairs or improvements ought to be borne by the occupier or owner, either the owner or the occupier may apply to the Supreme Court in accordance with the Rules of Court for an order as to the payment of those expenses, and after hearing the parties and any witnesses appearing on the hearing of the application, the Court may—

- (d) make such order concerning the expenses or their apportionment, as it may think just and equitable in the circumstances of the case, regard being had to the terms of any agreement between the parties; or
- (e) if the Court thinks fit, at the requirement of a party thereto, it may determine any lease of the premises on such terms and conditions as it thinks just and equitable.

PART X.—MISCELLANEOUS.

Division I.—Provisions Relating to the Remedying of Defects in Factories, Shops and Warehouses.

104. (1) A factory, shop or warehouse in respect whereof there is a contravention of any provision of this Act that is applicable to the factory, shop or warehouse, shall be deemed to be a factory, shop or warehouse that is not kept in conformity with this Act.

Penalty for not keeping factory, etc., in conformity with Act. Amended by No. 113 of 1965, s. 8.

(2) The occupier of a factory, shop or warehouse that is not in conformity with this Act is guilty of an offence, and except where any other penalty is

prescribed by this Act, is liable to a penalty of forty dollars and a default penalty of two dollars after the delivery by an inspector at the factory, shop or warehouse of a notice notifying the occupier that a contravention of the provisions of this Act is taking place by reason of the factory, shop or warehouse not being kept in conformity with this Act.

(3) Any proceedings under subsection (2) of this section shall be brought before a Court of Petty Sessions constituted by a Stipendiary Magistrate and the Court, in addition to or instead of imposing a penalty under that subsection, may order the occupier to adopt means for the purpose of bringing the factory, shop or warehouse, the subject of the proceedings, into conformity with this Act.

(4) An order under subsection (3) of this section shall specify—

- (a) the means to be adopted by the occupier; and
- (b) the time within which those means shall be adopted, which time may be extended by the Court upon application.

(5) If, after the expiration of the time as originally specified in an order under subsection (3) of this section or subsequent extension, the order is not complied with, the occupier is liable to a default penalty of ten dollars.

Notice to
remedy
defect, etc.

105. (1) Where it appears to the Chief Inspector that a factory, shop or warehouse or part thereof, is defective by reason of being—

- (a) dilapidated;
- (b) unsafe;
- (c) unfit for use;
- (d) injurious to health; or

(e) not provided with, or insufficiently provided with—

- (i) the sanitary conveniences and facilities for washing required by or under this Act;
- (ii) proper fire escapes, and proper appliances and equipment for the extinguishment of fire;
- (iii) proper heating appliances; or
- (iv) effective means for securing and maintaining suitable lighting, whether natural or artificial,

the Chief Inspector shall give written notice to the occupier requiring the defect to be remedied.

(2) Where it appears to the Chief Inspector that a provision of this Act is not being complied with or is being insufficiently complied with in a factory, shop or warehouse, or in a part thereof, the Chief Inspector shall give written notice to the occupier requiring that that provision be complied with.

(3) A notice under this section shall specify—

(a) in the case of a notice under subsection (1) of this section—

- (i) the nature of the defect;
- (ii) the repairs, alterations or improvements required to be made; and
- (iii) the time within which those repairs, alterations or improvements are to be completed; and

(b) in the case of a notice under subsection (2) of this section—

- (i) the provision that is not being complied with, or as the case may be, that is being insufficiently complied with;
- (ii) the steps to be taken to secure compliance with that provision; and

- (iii) the time within which those steps are to be taken,

and unless the repairs, alterations, or improvements are completed, or as the case may be, the required steps are taken, within the time specified in that behalf on the notice, the Chief Inspector or an inspector, shall make a complaint before a Justice that the occupier of the factory, shop or warehouse has failed to comply with the provisions of this section.

(4) Upon a complaint being made pursuant to subsection (3) of this section against the occupier of a factory, shop or warehouse, the occupier shall be summoned to appear before a Court of Petty Sessions constituted by a Stipendiary Magistrate to show cause why the registration of the factory, shop or warehouse should not be cancelled.

(5) (a) Unless an occupier against whom a complaint has been made under this section satisfies the Court that the factory, shop or warehouse, or part thereof, as the case may be, is not defective in any of the matters specified in the notice, or as the case may be, that the provision of the Act that is referred to in the notice is being complied with in all respects, the Court shall make an order specifying the repairs, alterations, or improvements to be made, or as the case may be, the steps to be taken, to secure compliance with that provision, and the time within which they are to be made or taken.

(b) The time referred to in the order may be extended by the Court upon application.

(6) If an occupier fails to comply with an order of the Court made under subsection (5) of this section within the time specified in that behalf in the order, or any extended time, he is guilty of an offence against this Act, and, in addition to any penalty for the offence, the Chief Inspector may cancel the registration of the factory, shop or warehouse, and if the registration is so cancelled the factory, shop or warehouse shall not be re-registered under this Act, until the order of the Court is complied with.

Division II.—General Provisions.

106. (1) No action, claim or demand lies, or shall be commenced or allowed by or in favour of any person, against the Board or of any member of the Board, or the Committee or any member of the Committee in respect of any act, matter or thing done by the Board or any member thereof or by the Committee or any member thereof in good faith in the exercise or purported exercise of any powers or functions under this Act or for the purpose of giving effect to the provisions and objects of this Act.

Protection of Factory Welfare Board.
Retail Trade Advisory and Control Committee and Inspector.

(2) No matter or thing done by an inspector in good faith in the exercise or purported exercise of any powers or functions conferred on him by this Act shall subject the inspector to any personal liability in respect thereof.

107. (1) Where there is inconsistency between the provisions of this Act or any Order in Council, regulation, rule or by-law made under this Act including those continued in force by this Act that relate to the safety or welfare of employees and the provisions of any Order in Council, regulation, rule or by-law made under any other Act, including those continued in force by that other Act, the former provisions prevail in so far as they apply under this Act to any person, thing or circumstance and the latter provisions do not apply thereto.

Conflict with this Act.

(2) Where there is inconsistency between the provisions of any regulation made under sections forty-eight, sixty-one, sixty-two, sixty-six and ninety-eight of this Act and the provisions of any award, order or industrial agreement made under the Industrial Arbitration Act, 1912, the former provisions prevail in so far as they apply under this Act to any person, thing or circumstance and the latter provisions do not apply thereto.

Facilitation
of proof.
"This Act"
includes
regulations.
See s. 4,
Act No. 30
of 1918.

108. In any prosecution for offences against this Act—

- (a) it is not necessary to prove the appointment of an inspector 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 or of any inspector 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 Inspector that a certificate, permit, or licence of the description mentioned in the statement has or has 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, permit or licence that has been so issued, as to the date of issue of, and the particulars contained in, the certificate, permit or licence, is evidence of the matters specified in the statement;
- (d) where an employee is, in the opinion of the Court before which the defendant is being prosecuted, apparently of the age alleged by the complainant, it shall be on the defendant to prove that the employee is not of that age;
- (e) the allegation in or averment in any complaint that any building, premises or other place is, or was at the time stated therein, a factory, shop or warehouse is evidence thereof;
- (f) evidence of a person being found in any factory, shop or warehouse is proof that the person was employed therein unless the contrary is proved;

- (g) 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;
- (h) a statement signed by the Chief Inspector stating the class to which any factory, shop or warehouse 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;
- (i) in which it is material to prove that any work was done in a factory, at any time, evidence that at the time sounds were heard coming from the factory such as would ordinarily be heard if persons were working therein in the usual manner, or that any member of the police force or any inspector was refused or hindered in gaining or attempting to gain admission into the factory, is proof that work was at that time being done therein, until the contrary is proved; and
- (j) any work done in a factory, shop or warehouse 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 occupier unless the contrary is proved.

109. Subject to subsection (2) of section five, where the operations of a factory are carried on in several adjacent premises those premises shall, for the purposes of this Act, be deemed to be one and the same factory.

Adjacent premises to be one factory.

Exemption of occupier from penalty on conviction of actual offender. "This Act" includes regulations. See s. 4, Act No. 30 of 1918.

110. (1) An occupier against whom proceedings in respect of an offence against this Act have been taken, may, upon complaint against any other person whom he charges as the actual offender, have that person brought before the Court at the time for hearing the proceedings.

(2) If, after the commission of the offence has been proved, the occupier satisfies the Court that he has used all due diligence to enforce the observance of the provisions of this Act, and that the other person has committed the offence without the knowledge, consent, or connivance of the occupier, that other person shall be convicted of the offence, and no penalty shall be imposed on the occupier.

(3) A person who institutes proceedings in respect of an offence against this Act shall proceed against the person whom he believes to be the actual offender in the first instance, without first proceeding against the occupier, if it is made to appear to his satisfaction at the time of discovering the offence—

- (a) that the occupier has used all due diligence to enforce the observance of the provisions of this Act;
- (b) by whom the offence has been committed; and
- (c) that the offence has been committed without the knowledge, consent, or connivance of the occupier, and in contravention of his orders.

Proceedings to be before Stipendiary Magistrate.

111. All proceedings in respect of offences against this Act shall be heard and determined by a Stipendiary Magistrate sitting alone.

Fine on parent, etc., if young person or child wrongfully employed. Amended by No. 113 of 1965, s. 8.

112. If a child or young person is employed contrary to the provisions of this Act, the parent commits an offence against this Act and is liable to a penalty of ten dollars, unless it appears to the

Court by which the person so employing the child or young person is convicted, was so employed without the consent, connivance or wilful default of that parent.

113. A person shall not—

- (a) forge, counterfeit or utter or wrongfully make use of, any certificate, permit or licence for the purposes of this Act;
- (b) give or sign a certificate, permit or licence under or for the purposes of this Act knowing it to be false in a material particular;
- (c) wilfully make a false entry in a book, record, register, notice, certificate, list or document that is required by or under this Act to be kept by, or given or sent to, any person;
- (d) wilfully make or sign a false declaration or return under this Act; or
- (e) wilfully make use of any entry, declaration or return, knowing it to be false.

Miscellaneous offences. Amended by No. 113 of 1965, s. 8.

Penalty: Two hundred dollars or imprisonment for six months.

114. A person who wilfully—

- (a) destroys, damages, defaces or pulls down any notice, certificate, permit, licence or other document posted or exhibited in any factory, shop, warehouse or place pursuant to this Act; or
- (b) destroys or damages any wages book within the period during which it is required to be open to the inspection of any inspector under subsection (5) of section thirty-three,

Offence of destroying notices. Amended by No. 113 of 1965, s. 8.

"This Act" includes regulations. See s. 4, Act No. 30 of 1918.

is guilty of an offence against this Act.

Penalty: One hundred dollars.

General
penalty
provisions.
Amended by
No. 113 of
1965, s. 8.

115. (1) A person who—

- (a) does that which by or under this Act he is forbidden to do; or
- (b) does not do that which by or under this Act he is required or directed to do; or
- (c) otherwise contravenes or fails to comply with any provisions of this Act,

is guilty of an offence against this Act.

(2) A person who is guilty of an offence against this Act is liable on conviction to a penalty or punishment not exceeding the penalty or punishment expressly provided as the penalty or punishment for that offence, or, if a penalty or punishment for that offence is not so provided, to a penalty not exceeding one hundred dollars for a first offence and not exceeding two hundred dollars for a subsequent offence.

Default
penalties.
Amended by
No. 113
of 1965, s. 8.

116. (1) Where in, or at the foot of, any section or part thereof, there appears the expression "Default Penalty", that expression indicates that any person who is convicted of an offence against this Act in relation to that section or part thereof is guilty of a further offence against this Act if the offence continues after he is so convicted and is liable to an additional penalty for each day during which the offence so continues of not more than the amount expressed in that section or part as the amount of the default penalty, or if an amount is not so expressed, of an amount not more than ten dollars.

(2) Where any offence is committed by a person by reason of his failure to comply with any provision of this Act by or under which he is required or directed to do anything within a particular period, that offence, for the purposes of subsection (1) of this section shall be deemed to continue so long as the thing so required or directed to be done by him remains undone, notwithstanding that the particular period has elapsed.

117. (1) Nothing in this Act operates in any way to relieve an occupier from any liability that independently of this Act he may incur for damage or compensation in respect of any act or neglect or in respect of any accident or its consequences.

Liability of occupier independently of this Act.

(2) The payment by an occupier of any fine under this Act for non-payment of wages or remuneration to any employee does not relieve the occupier from his civil liability in respect of that employee.

118. (1) An inspector—

(a) may, to the extent authorised by the Chief Inspector of Machinery under and for the purposes of the Inspection of Machinery Act, 1921, exercise the powers of an inspector under and for the purposes of that Act in relation to the machinery and boilers to which that Act applies; and

Additional powers of inspectors appointed under this and other Acts.

Repealed and re-enacted by No. 65 of 1972, s. 11.

(b) may, to the extent authorised by the Chief Inspector of Construction Safety under and for the purposes of the Construction Safety Act, 1972, exercise the powers of an inspector under and for the purposes of that Act in relation to the works to which that Act applies.

(2) Notwithstanding any other provision of this Act, an inspector under and for the purposes of the Inspection of Machinery Act, 1921, or the Construction Safety Act, 1972, may, to the extent authorised by the Chief Inspector, under and for the purposes of this Act, exercise the powers of an inspector under and for the purposes of this Act, in relation to the factories and shops to which this Act applies.

119. 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.

Printing of records.

Records, etc.,
to be in
English
language.

120. All records, books or other documents authorised 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.

General
provisions
relating to
regulations.
Amended by
No. 113 of
1965, s. 8;
No. 5 of
1975, s. 8.

121. (1) The Governor may, in addition to the regulations authorised to be made by any other provision of this Act make regulations prescribing all matters that by this Act are required or permitted to be prescribed, for carrying out or giving effect to the provisions of this Act and in particular the regulations, in addition to prescribing any other matters that may be prescribed, may—

Forms.

(a) prescribe the forms of registers, notices, returns, records and other documents that are required to be given, furnished, or kept for the purposes of this Act, and regulate generally the giving, furnishing and keeping thereof;

Verification
of matter
in form.

(b) require that any return, notice or information or other document that is required by or under this Act to be given to the Chief Inspector by the occupiers of factories, shops or warehouses shall be verified by statutory declaration;

Precaution
against
accidents.

(c) prescribe the precautions to be taken against the risk of accident in factories, shops or warehouses and impose on a prescribed person the duty of ensuring that those precautions are taken;

Inspectors.

(d) prescribe, provide for and regulate the powers and duties of the Chief Inspector, other inspectors and other officers referred to in subsection (1) of section twelve, where considered necessary, the exercise and discharge of those powers and duties so as not to unreasonably or unduly interfere with the work or processes being carried on in any factory, shop or warehouse;

- (e) provide for and regulate applications for and the effecting of registrations and renewals of registrations under this Act of places as factories, shops or warehouses and the granting or issuing of permits, certificates or other authorities under this Act and to provide for and in relation to the surrender, transfer, cancellation and endorsement of all or any of those permits, certificates and other authorities, the delivery thereof to inspectors for any of such purposes; Registrations.
- (f) prescribe fees payable under this Act, which fees may differ in respect of different matters or things or classes of matters or things, and the matters and things and classes of matters or things in respect of which those fees shall be paid and prescribing the persons by whom and the places and times where and when those fees shall be paid; and Fees.
- (g) prescribe any pecuniary or other penalty for any offences against the regulations, including in the case of any offences a minimum as well as a maximum penalty, but so that a maximum pecuniary penalty does not exceed two hundred dollars and provided, in the case of a continuing offence, for a penalty not exceeding twenty dollars for every day during which the offence continues. Penalties.

(2) The regulations made under this section or any other section may—

- (a) be made so as to apply—
- (i) to factories, shops and warehouses generally or to any class thereof; or
 - (ii) only to factories, shops or warehouses in which any specified manufacture, plant, process, trade, or description of work is carried on or used;

- (b) discriminate according to the size, conditions or situation of factories, shops or warehouses or classes thereof;
- (c) be made so as to operate for a limited period or without limit as to the period of operation thereof;
- (d) exempt, either unconditionally or subject to prescribed conditions, any factory, shop or warehouse, or any class of factories, shops or warehouses from any specified provisions of the regulations;
- (e) adopt, either wholly or partially either specifically or by reference any of the standard rules, codes or specifications of the Standards Association of Australia, the British Standards Institution or of any other like authority specified in the regulations in relation to any matter with respect to which regulations may be made under this Act; and
- (f) authorise the Chief Inspector to give directions in writing to the occupiers of factories, shops and warehouses for the purpose of carrying out or giving effect to the purposes or objects of the regulations or of ensuring compliance with any of the provisions thereof.

(3) A person is not precluded by any agreement from doing, or is not liable under any agreement to any penalty or forfeiture for doing, such acts as may be necessary in order to comply with the provisions of any regulation.

FIRST SCHEDULE.

ACTS REPEALED BY THIS ACT.

(Section Four.)

Title of Act.	Extent of Repeal.
Factories and Shops Act, 1920	The whole Act.
Factories and Shops Act Amendment Act, 1921	The whole Act.
Factories and Shops Act Amendment Act, 1923	The whole Act.
Factories and Shops Act Amendment Act, 1932	The whole Act.
Factories and Shops Act Amendment Act, 1937	The whole Act.
Factories and Shops Act Amendment Act, 1939	The whole Act.
Factories and Shops Act Amendment Act (No. 2), 1946	The whole Act.
Factories and Shops Act Amendment Act (No. 3), 1946	The whole Act.
Factories and Shops Act Amendment Act, 1947	The whole Act.
Factories and Shops Act Amendment Act, 1948	The whole Act.
Acts Amendment (Increase of Fees) Act, 1948	Section five.
Factories and Shops Act Amendment Act, 1951	The whole Act.
Factories and Shops Act Amendment Act, 1952	The whole Act.
Factories and Shops Act Amendment Act, 1954	The whole Act.
Factories and Shops Act Amendment Act (No. 3), 1956	The whole Act.
Factories and Shops Act Amendment Act, 1957	The whole Act.
Factories and Shops Act Amendment Act, 1959	The whole Act.
Police Act, 1892-1961	Section sixty.
Footwear Regulation Act, 1916	The whole Act.
Footwear Regulation Act Amendment Act, 1949	The whole Act.