

WESTERN AUSTRALIA

RETAIL TRADING HOURS AMENDMENT ACT

No. 1 of 1991

AN ACT to amend the *Retail Trading Hours Act 1987*.

[Assented to 17 May 1991.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Retail Trading Hours Amendment Act 1991*.

Commencement

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

Principal Act

3. In this Act the *Retail Trading Hours Act 1987** is referred to as the principal Act.

[*Act No. 123 of 1987.]

Section 3 amended

4. Section 3 of the principal Act is amended—

(a) by inserting in the appropriate alphabetical positions the following definitions—

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

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

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

- (b) in the definition of "retail shop" by deleting ", including meals and refreshments,"; and
- (c) by inserting after subsection (1) the following subsection—

" (1a) A place that is otherwise a retail shop does not cease to be a retail shop by reason only that meals or refreshments or both are also sold at that place. "

Section 5 amended

5. Section 5 of the principal Act is amended by repealing subsection (1) and substituting the following subsection—

" (1) Notwithstanding anything in this Act, the Minister may by order published in the *Government Gazette* provide for exemptions from this Act or such of the provisions of this Act as are specified in the order. "

Section 10 amended

6. Section 10 of the principal Act is amended—

- (a) in subsection (3) by deleting paragraph (b) and substituting the following paragraphs—

" (b) the retail shop is owned by one eligible person or not more than 4 eligible persons trading in partnership or by a body corporate with not more than 4 shareholders all of whom are eligible persons;

(ba) the retail shop is operated for the benefit of the eligible persons referred to in paragraph (b);

(bb) the eligible persons referred to in paragraph (b) are personally and actively engaged in the retail shop;

(bc) not more than 5 persons (inclusive of the eligible persons who own and operate the retail shop) work in the retail shop at any one and the same time; and

- (bd) the retail shop is owned and operated in accordance with the directions given under subsection (3b); ”;

and

- (b) by inserting after subsection (3) the following subsections—

“ (3a) A person is not an eligible person for the purposes of subsection (3) unless—

- (a) in relation to a case where the person is the only person in question the person—

(i) is a natural person;

(ii) does not own or operate, either alone or together with any other person, more than 2 retail shops except as a shareholder in a listed corporation as defined under the *Companies (Western Australian) Code*;

- (b) in relation to a case where the person in question is one of a group of persons, the person—

(i) is a person to whom the provisions of paragraph (a) (i) and (ii) apply;

(ii) does not own or operate another retail shop together with a person who is outside that group of persons; and

(iii) does not himself or herself own or operate a retail shop alone if one of the other persons in the group owns or operates a retail shop that is not owned or operated together with the other persons in the group.

(3b) The Minister may by order give directions for the purposes of subsection (3) and any such order may include directions with respect to—

- (a) the persons who shall be, and, the persons who shall not be, regarded as owners for the purposes of subsection (3);
- (b) the persons for whose benefit a small retail shop may be owned and operated; and
- (c) the extent to which any person other than a person who owns or operates a small retail shop may benefit from the operation of the small retail shop;
- (d) the extent to which the natural persons who operate the retail shop shall be personally and actively engaged in the operations of the retail shop;
- (e) such other matters (including a requirement that any statement made for the purposes of this section be verified by statutory declaration) as the Minister considers necessary,

and effect shall be given to any such order.

(3c) Without affecting anything in the *Interpretation Act 1984* sections 41 to 47 of that Act apply to and in relation to an order made under subsection (3b) as though the order were regulations.

(3d) A person who is aggrieved by a decision of the chief executive officer refusing the issue of a certificate under subsection (3) (c) may appeal to the Minister whose decision is final. ”.

Section 11 amended

7. Section 11 of the principal Act is amended in subsection (4) (a) (ii) by inserting after “10 (3)” the following—

“ and (3b) ”.

Section 12 amended

8. Section 12 of the principal Act is amended by inserting after subsection (1) the following subsections—

“ (1a) Notwithstanding anything in subsection (1) (a), (b) or (c) the Minister may by order published in the *Government Gazette* fix a time or times from and after which general retail shops shall remain closed on any day in each week instead of the time referred to in any of those provisions and by any such order may—

(a) direct that the order applies to such portion or portions of the State as is or are, respectively, specified in the order; and

(b) impose such terms, conditions or restrictions as the Minister thinks fit including a condition fixing the closing time or times for general retail shops in the area to which the order applies on any day in each week referred to in subsection (1) (a), (b) or (c) while the order remains in force.

(1b) An order under subsection (1a) may be amended or revoked by the Minister by an order published in the *Government Gazette*. ”.

Section 13 amended

9. Section 13 of the principal Act is amended—

(a) by inserting after subsection (2) the following subsection—

“ (2a) Notwithstanding anything in section 14 (2) (b), where a local authority whose district includes a non-metropolitan zone applies to the Minister for the closing of filling stations in that non-metropolitan zone on and after 1 p.m. on Saturday of each week the Minister may by order direct that, subject to section 14 (14), filling stations in the non-metropolitan zone shall be closed on and from 1 p.m. on Saturday in each week and the order shall have effect accordingly.

(2b) Where a non-metropolitan zone forms part of the district of more than one local authority any application under subsection (2a) shall be made by each of those local authorities but where all the local authorities in question do not apply the application shall be deemed to have been made only in relation to the portions of the non-metropolitan zone within the districts of the local authorities that are applicants under that subsection and any order made by the Minister in relation to such application shall have effect only in the portions of the districts of those local authorities "; and

(b) by inserting after subsection (3) the following subsection—

" (4) In subsections (2a) and (2b)—

"non-metropolitan zone" means a zone as defined in section 14 (1) that is situated outside the metropolitan area. ".

Section 14 amended

10. Section 14 of the principal Act is amended—

(a) in subsection (2), by deleting "1 p.m." in paragraph (b) and substituting the following—

" 6 p.m. ";

(b) in subsection (10), by deleting "shopkeeper" and substituting the following—

" operator ";

(c) by inserting after subsection (20) the following subsection—

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

Section 16 amended

11. Section 16 of the principal Act is amended by deleting “lease or contract relating to the letting of a retail shop” and substituting the following—

“ between any person and a person operating a retail shop ”.

Section 17 amended

12. Section 17 of the principal Act is amended in subsection (2)—

(a) by deleting “9” and substituting the following—

“ 15 ”; and

(b) in paragraph (b)—

(i) by deleting “8” and substituting the following—

“ 14 ”;

(ii) by deleting “one person” in subparagraph (i) and substituting the following—

“ 2 persons ”.

(iii) by inserting after subparagraph (i) the following subparagraph—

“ (ia) one person shall be appointed on the nomination of the body known as the Retail Traders Association of W.A. (Inc.); ”;

(iv) by deleting “joint” in subparagraph (ii);

(v) by deleting “and the body known as the Retail Traders Association of W.A. (Inc.)” in subparagraph (ii);

(vi) by deleting “2” in subparagraph (b) (iii) and substituting the following—

“ 4 ”; and

(vii) by deleting “3” in subparagraph (b) (iv) and substituting the following—

“ 5 ”.

Section 27A inserted

13. After section 27 of the principal Act the following section is inserted—

Delegation

“ 27A. The chief executive officer may, either generally or as otherwise provided by instrument of delegation, by writing signed by the chief executive officer, delegate to a person any of the functions of the chief executive officer under this Act, other than this power of delegation. ”.

General amendment

14. The provisions of the principal Act specified in the Table below are amended by deleting “Permanent Head” wherever occurring and substituting in each case the following—

“ chief executive officer ”.

TABLE

sections 3, 7, 8, 9, 10, 11, 15, 17, 21, 27, 28, 29, 37, 38, 39.
