

Act No. 28, 1909.

An Act to amend the Factories and Shops Act of 1896; and for other purposes. [29th December, 1909.]

FACTORIES AND
SHOPS
(AMENDMENT).

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Factories and Shops (Amendment) Act, 1909," and shall be construed with the Factories and Shops Act of 1896, hereinafter referred to as the Principal Act. Short title.

2. Section two of the Principal Act is amended— Amendment of s. 2.

(a) by inserting before the definition of "child" the following:—

"Bakehouse" means any place in which any bread, pastry, sweetmeats, or sugar goods are made or baked for sale, and includes any place or room used in connection with the bakehouse for storing such food when baked or to be baked, or any material to be used for the manufacture of such food to be baked.

(b) Paragraph (a) of the definition of "factory" is amended by omitting the word "bakehouses."

(c) Paragraph (b) in the definition of "factory" is omitted, and the following substituted:—

(b) any office, building, or place in which one or more Chinese are so engaged.

(d) Paragraph (c) of the same definition is amended by inserting after "transit" the words "or in generating electricity, water power, or any other power."

(e) The same definition is further amended by inserting after paragraph (c) the following paragraph:—

(d) any bakehouse.

(f) The following definitions are inserted next after the definition of "inspector":—

"Mechanical power" means power generated by water, steam, gas, oil, electricity, or any power other than manual power.

"Mill-gearing" includes any shaft, whether upright, oblique, or horizontal, and any wheel, drum, pulley, belt, rope, or chain by which the motion of the first moving power is communicated to the operative part of any machine. 41 and 42 Vic.,
c. 16, s. 96.

(g)

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(g) The following is inserted at the end of the definition of "occupier":—"For the purposes of any structural alteration or building additions required by this Act to be made to a factory or shop, the Minister may, by notice in the form prescribed, notify the owner of the factory or shop, or the person receiving the rent for the same, whether on his own account or on account of any other person, that he will regard him for such special purposes as the occupier of the same; and thereafter the said owner or person shall, for the said purposes, be deemed to be the occupier of the factory or shop."

Amendment of s. 6.

3. Section six of the said Act is amended—

- (a) by omitting subsection one;
- (b) in subsection two by omitting "any tenement" and inserting "or about to occupy any premises"; by inserting after "so used" the words "or again used"; by omitting "shall register the building" and inserting "may register the premises";
- (c) by omitting the last paragraph of subsection two from "any occupier" to the end of the subsection.
- (d) by adding the following new subsection at the end of the section:—

(III) The inspector or such other person as aforesaid may, if he thinks fit, instead of registering the premises, issue a permit authorising the use of the premises for a period to be named in such permit pending the carrying out of any alterations or repairs required in order to make such premises suitable for a factory. Such permit may, from time to time, be extended by the Minister.

New ss. 6A and 6B.

4. The following new sections are inserted next after section six of the said Act:—

Penalty for occupation of unregistered factory.

6A. Any person in occupation of an unregistered factory within a district to which at the time of such occupation the provisions of this Act have for a period of at least twenty-eight days been applied shall be liable to a penalty not exceeding ten pounds unless he proves that he had duly applied within the prescribed time for the registration of the factory, and had taken all proper measures to obtain the registration of the factory and that such application had not been refused, or that he is the holder of a permit under this Act authorising him to occupy the factory.

Notification by inspector of defects in building.

6B. (1) If, in the opinion of an inspector, any office, building, or place used or about to be used as a factory, is unfit for such purpose, he shall, by notice in writing served on the occupier or the applicant for registration of the factory, personally or posted to his last known address, request such occupier or applicant to comply with such requirements specified in such notice as he may deem necessary to render such office, building, or place fit for occupation as a factory.

(2)

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(2) If the occupier or applicant is dissatisfied with the requirements of the said notice, he may, within seven days of service of such notice, appeal to the Minister in writing in the form prescribed, stating what amendments in the said requirements he desires should be made. Appeal to Minister.

(3) The Minister may forthwith determine the appeal, or may appoint a competent person to hold an investigation in such manner and under such conditions as the Minister may approve as to the necessity for, or reasonableness of, the inspector's requirements, and to report to him and make a recommendation as to whether such requirements, or any one or portion of any one of them, should be carried into effect. Determination of appeal.

(4) The Minister shall make such order as he deems just and necessary, and his decision shall be final. Order by Minister on appeal.

(5) Where an inspector reports that in his opinion no requirements that may be specified will, by reason of structural difficulties, sanitary defects, or otherwise, fit any office, building, or place, for use as a factory, he shall so report to the Minister, and the Minister may thereupon take such action as hereinbefore referred to, and make an order forbidding the use of the said office, building, or place as a factory or such other order as he may think fit. Order by Minister forbidding use of factory.

5. (1) Paragraph (II) of section seven of the said Act is amended by inserting after "nuisances" the words "or any person whom he may think qualified to act as an interpreter." Amendment of s. 7. Act No. 1975 (Vict.), s. 16 (11).

(2) Paragraph (v) of the same section is amended by inserting the following at the end thereof:— Ibid. s. 17 (3).

"Provided that no person shall be required to answer any question, if the answer to such question might incriminate him."

(3) The following paragraph is inserted next after paragraph (v) aforesaid:—

(v A) subject to this Act, to conduct prosecutions in connection herewith, whether the information be laid in his name or not, to take proceedings for the punishment of offenders against this Act, and to attend and examine witnesses at any inquest into the cause of the death of any employee while employed in a factory or shop.

6. Section twelve of the said Act is amended by omitting "eighteen" and inserting the words "twenty-one." Amendment of s. 12.

7. Section twenty-four of the said Act is amended in subsection one by inserting after "his" the words "factory or." Amendment of s. 24.

8. The following new section is inserted next after section twenty-four of the said Act:— New section 24A.

24A. Where, in the opinion of the Minister, a change of the dress of any females employed in a factory or shop is rendered necessary by the work to be done, or is desirable for the comfort of such employees, Dressing-rooms for females. Queensland, 64 Vic. No. 28, s. 32.

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employees, the occupier of such factory or shop shall, at the request in writing of the Minister, on or before the date fixed in such request, provide suitable dressing-rooms for such employees, under a penalty not exceeding one pound for each day such room is not provided after the day fixed for so doing.

Sections substituted for section 25.

9. Section twenty-five of the said Act is omitted, and the following sections are substituted in its place:—

Avoidance of infection.

Ibid., s. 34.

58 and 59 Vic. c. 37, s. 6.

25. Every occupier of a factory or shop who causes or permits wearing apparel to be made, cleaned, or repaired in, or issues any materials from, any building, whether a factory or not, in which any person is suffering from a disease declared by or under any law relating to Public Health to be an infectious disease, shall be liable to a penalty not exceeding twenty pounds, unless he proves that he was not aware of the existence of the disease in the building and could not reasonably have been expected to become aware of it.

Premises in connection with factory to be open to inspection.

25A. Where in connection with any factory any employees are lodged in any premises in the possession of the occupier of the factory, whether attached to or detached from such factory, all such premises shall be open to inspection by an inspector, and in respect thereof he may exercise all the powers as to sanitary requirements which he is entitled to exercise in respect of the factory.

Nuisances, &c., punishable under other Acts to be notified.

25B. Where it appears to an inspector that any act, neglect, or default in relation to any drain, water-closet, privy, ashpit, water-supply, nuisance, or other matter in, about, or in the vicinity of a factory, is punishable, or that the consequences of such act, neglect, or default, are remediable, under any law relating to the public health or any other law, but not under this Act, such inspector shall give notice in writing to the authority generally administering the Act or the local authority in whose district the factory is situate, and it shall be the duty of such authority to make such inquiry into the subject of the notice, and take such action thereon as to such authority may seem proper for the purpose of enforcing or carrying out the law.

Amendment of s. 28.

10. (1) Paragraph (I) of section twenty-eight of the said Act is amended by inserting after "steam-engine" the words "or other engine used for generating mechanical power."

(2) Paragraph (III) of the same section is amended by inserting after "mill-gearing" the words "and every cog-wheel."

Amendment of s. 30.

11. Section thirty of the said Act is amended by inserting after "machine," wherever occurring in the section, the words "or mill-gearing."

Section 34.
New subsection (3).

12. Subsection three of section thirty-four of the said Act is repealed, and the following is inserted:—

Means of escape from fire.

(3) Every factory in which persons are employed above the first floor shall, in addition to the usual fire escapes, distinct from

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from the stairs in ordinary use, be provided, on each floor above the first floor, with means by which persons prevented by flames or smoke from descending by the ordinary ways may be enabled to descend in safety from windows or other openings or by external stairs, ladders, or by such other means as may be deemed sufficient. All such means to be approved in writing by the chief officer of fire brigades, or any officer of fire brigades appointed by him in that behalf.

13. The following section is inserted next after section thirty-five of the said Act:— New section 35A.

35A. The Minister may, by order, prohibit the employment in any factory or class of factory, at or in connection with any machinery described in such order as dangerous, of males under the age of sixteen years or of females in any work in which he considers it undesirable that they should be employed. Employment of women and young persons may be prohibited in certain cases.

Where in any factory there is a contravention of any such order, the occupier of the factory, who has been served with a copy of such order, shall be deemed to be guilty of an offence against this Act.

14. Section thirty-seven of the said Act is amended by adding the following subsections at the end thereof:— Amendment of s. 37. New subsections.

(2) Notice of having availed himself of the proviso to subsection one of this section shall be given by the occupier of the factory to an inspector or such other person as the Minister may name, within forty-eight hours after the commencement of the working of such overtime, and a copy thereof shall be affixed in the factory within such period. The notice shall be accompanied by a statement signed by the occupier of the facts on which he relies to show that such working was bona fide for the purpose of meeting the exigencies of trade. Notice of overtime working. Act No. 1975 (Vict.), s. 40 (2) (c).

(3) The occupier of a factory shall keep a record each week, in the form and containing the particulars prescribed, of the occasions on which he avails himself of the said proviso. Record of overtime. See Act No. 1975 (Vict.), s. 40 (2) (d).

(4) If the Minister is not satisfied that such working was bona fide for the purpose of meeting the exigencies of trade, he shall give notice in writing of his dissatisfaction to the occupier; and unless the occupier, within one month from such notice, proves to the satisfaction of the Minister that such working was bona fide for such purpose, the Minister shall direct that a record be made that the working was not bona fide for such purpose. Working must be to meet exigencies of trade. Ibid. (g).

(5) If the Minister directs such record to be made in regard to any occupier of a factory three times within any twelve months such occupier shall not thereafter at any time be entitled to avail himself of the said proviso unless by the special permission of the Minister. Occupier debarred from using proviso. Ibid. (b).

(6) If any person contravenes any provision of this section he shall be liable on conviction to a penalty for the first offence not exceeding five pounds, and for any subsequent offence not exceeding twenty pounds. Penalty. Ibid. (3).

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Amendment of s. 40.

15. Section forty of the said Act is amended by omitting the words "under eighteen years of age," and by substituting the word "six" for the word "seven."

New section 42A.

16. The following section is inserted next after section forty-two of the said Act:—

Hours of employ-
ment in Chinese and
certain other
factories.Act No. 1975 (Vict.),
s. 42 (1).

42A. (1) In any factory where any Chinese works, and in any other factory where any person is employed in preparing or manufacturing articles of furniture, no person shall work, or shall employ or authorise or permit any person whomsoever to work on any day before half-past seven o'clock in the morning or after six o'clock in the evening, or on a Saturday after one o'clock in the afternoon, or on Sunday at any time whatever; and no portion of a factory used for the purpose of preparing or manufacturing goods or articles for trade or sale shall at any time be used as a sleeping place.

Penalty.
Ibid. (2).

(2) If any person offends against any of the provisions of this section, he shall for each and every day in which he offends be liable on conviction to a penalty for the first offence not exceeding ten pounds, and for a second or subsequent offence not exceeding twenty-five pounds; and the registration of a factory, the occupier of which is convicted under this section of a third offence, shall be forthwith cancelled by the Minister.

Evidence.
Ibid. (3).

(3) In any prosecution for an offence against this section, evidence—

(a) that at any time during which work is prohibited by this section in any factory, sounds have been heard, such as would ordinarily be heard if made by persons engaged in such factory in the usual work therein carried on; and

(b) that during such time any member of the police force or inspector was refused or could not gain immediate admission to such factory,

shall be prima facie proof that the provisions of this section have been contravened by the defendant.

Suspension of
operation of section.
Ibid. s. 40 (4).

(4) In order to meet the exigencies of trade, the Minister may, subject to the conditions and restrictions imposed in section thirty-seven, suspend the operation of this section relating to the working hours in any one or more factories for any period not exceeding two months.

Amendment of s. 45.

17. Section forty-five of the said Act is amended by adding the following subsection:—

(2) In a prosecution for any such breach or contravention, an authority to prosecute, purporting to have been signed by the Minister, shall be prima facie evidence of such authority without proof of the Minister's signature.

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18. The following section is added at the end of the said Act:—

56. The Governor may also make regulations—

Additional
regulations by the
Governor.

- (a) to provide for the increase or reduction of the temperature of any rooms in a factory or shop;
- (b) to prescribe the precautions to be taken against the risk of accident in a factory, and to impose on certain persons the duty of seeing that such precautions are taken;
- (c) to require the adequate lighting of any factory or portion thereof;
- (d) to prescribe the cubical spaces and the amount of ventilation for each person employed in a factory or in a room in a factory, and to prevent the overcrowding of persons so employed;
- (e) to prescribe the material of the flooring and ceiling of factories;
- (f) to prescribe the dimensions of dressing rooms in factories or shops;
- (g) to regulate closet accommodation in factories and shops with regard to situation, design, construction, material, approach, space, and ventilation, as may be necessary for decency or the health and convenience of employees, and to secure proper sanitation;
- (h) prescribing that separate closet accommodation for members of each sex employed in a factory or shop and who are not all members of the same family shall be provided;
- (i) to compel the supply of sufficient wash-basins and water for the use of employees in factories or shops;
- (j) to compel the supply of sufficient cold drinking water for the use of such employees;
- (k) to compel the fencing of stairways, tanks, vats, and grind-stones in factories;
- (l) extending the provisions of section twenty-two of this Act so as to apply to shops or any specified classes of shops;
- (m) extending the provisions of subsection one of section thirty-four of this Act, so as to apply to shops or to any specified classes of shops;
- (n) regulating the construction of doors of exit in any specified classes of shops, and providing for uninterrupted exit by such doors during working hours;
- (o) imposing any penalty not exceeding twenty pounds for the breach of any regulation made under this section:

Provided that the Minister by notification in the Gazette may exempt any shops or classes of shops from any regulations made under paragraph (h) or paragraph (l) of this section, and may amend or revoke any such notification.