

FACTORIES AND SHOPS (AMENDMENT) ACT.

Act No. 17, 1946.

**George VI.
No. 17, 1946.**

An Act to amend the Factories and Shops Act, 1912-1943, in certain respects; and for purposes connected therewith. [Assented to, 28th March, 1946.]

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:—

**Short title,
citation and
commence-
ment.**

1. (1) This Act may be cited as the "Factories and Shops (Amendment) Act, 1946."

(2) The Factories and Shops Act, 1912-1943, is in this Act referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the Factories and Shops Act, 1912-1946.

(4) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

**Amendment
of Act No. 39,
1912.**

2. The Principal Act is amended—

**Sec. 6.
(Registra-
tion of
factories.)**

(a) (i) by omitting subsection one of section six and by inserting in lieu thereof the following subsection:—

(1) (a) No person shall occupy or use any premises as a factory unless a certificate of registration or a permit has been issued in accordance with this section in respect of such premises, and is in force for the time being.

(b) Application for the registration of any premises as a factory shall be made to the Under Secretary by written notice in the

the form prescribed and shall be accompanied by a plan of such premises showing such particulars as may be prescribed. **No. 17, 1946.**

(ii) by omitting subsections seven and ten of the same section;

(b) by omitting section seven and by inserting in lieu thereof the following sections:— **Substituted sec. 7 and new sec. 7A.**

7. Any factory deemed to be an unregistered factory pursuant to section six of this Act or in which or in respect of which there is a contravention of section six of this Act shall be deemed not to be kept in conformity with this Part of this Act. **Penalty for occupation of un-registered factory.**

7A. (1) No person shall commence or cause to be commenced the erection of any building intended for use as a factory or carry out or cause to be carried out any structural alterations or additions to any premises registered as a factory or intended for use as a factory or in respect of which a permit is in force for the time being unless the approval of the Under Secretary is first obtained. **Factories not to be erected, altered or added to without approval.**

(2) Application for the approval of the Under Secretary shall—

(a) be made by the builder or owner or his architect in the prescribed manner;

(b) be accompanied by two copies of the plans and specifications of the building, structural alterations or additions, one copy of which shall be retained by the Under Secretary.

(3) The Under Secretary shall consider such application and the plans and specifications accompanying it and may approve, or approve subject to conditions, or disapprove thereof.

(4) Where any application under this section is approved subject to conditions, or disapproved, the applicant may if dissatisfied with such decision appeal in the manner prescribed to the Minister. The decision of the Minister shall be final.

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(5) Every building intended for use as a factory and every structural alteration or addition to premises registered as a factory or intended for use as a factory or in respect of which a permit is in force for the time being shall be erected and carried out to the satisfaction of the Under Secretary in conformity with the application, plans and specifications approved pursuant to this section for the erection of such building or the carrying out of such structural alterations or additions.

(6) If any person does or causes to be done any work in connection with the erection of a building intended for use as a factory or carries out or causes to be carried out any structural alterations or additions to any premises registered as a factory or intended for use as a factory or in respect of which a permit is in force for the time being without the approval required by this section or not in conformity with such approval, he shall be liable to a penalty not exceeding fifty pounds.

Sec. 19A.
(Outdoor workers in clothing trade to be licensed.)

(c) by inserting at the end of section 19A the words "No occupier of a factory or trader selling any such clothing shall require, order, cause to be done or performed or contract for the doing or performance of any work to which this section applies outside a factory by any person who is not the holder of a license as an outdoor worker."

Sec. 19b.
(Restriction on employment of outdoor workers.)

(d) by inserting at the end of section 19b the words "A trader who sells clothing to which section 19A of this Act applies by wholesale or retail shall not have at any one time more than the number of licensed outdoor workers determined by the Industrial Registrar";

Sec. 25.
(Ventilation, etc., in certain cases.)
cf. Factories Act, 1937
(Imp.)
s. 27.

(e) by inserting at the end of section twenty-five the following new subsections:—

(3) Where in a factory work is to be done inside any chamber, tank, vat, pit, pipe, flue or similar confined space in which dangerous fumes are liable to be present or to enter or to be generated

generated in the course of the work to such an extent as to involve risk of persons being overcome thereby— No. 17, 1948.

(a) the confined space shall, unless there is other adequate means of egress, be provided with a manhole which may be rectangular, oval or circular in shape and shall be not less than eighteen inches long and sixteen inches wide or (if circular) not less than eighteen inches in diameter: Provided that in the case of tank waggons and other mobile plant, the manhole may be not less than sixteen inches long and fourteen inches wide or (if circular) not less than sixteen inches in diameter; and

(b) the occupier of the factory shall cause the following requirements to be complied with:—

(i) all practicable steps shall be taken to remove any fumes which may be present and to prevent ingress of fumes and, unless it has been ascertained by a suitable test that the space is free from dangerous fumes, the person entering shall wear a belt to which there is securely attached a rope of which the free end is held by a person outside:

Provided that in case of emergency or where it is impracticable to comply with the foregoing requirements, the person entering shall wear a suitable breathing apparatus;

(ii) effective provision shall be made to collect as near as practicable to the point of origin and remove to the outer air any and all fumes generated during the course of the work and to ventilate the confined space;

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- (iii) suitable breathing apparatus and a suitable reviving apparatus and suitable belts and ropes shall be provided and maintained in good order and condition so as to be readily accessible; and
- (iv) a sufficient number of the persons employed shall be trained and practised in the use of such apparatus and in the method of restoring respiration:

Provided that the Chief Inspector may by certificate grant, subject to any conditions specified in the certificate, exemption from compliance with any of the requirements of this subsection in any case where he is satisfied that compliance with those requirements is unnecessary or impracticable.

For the purposes of this subsection the expression "fume" means fume, gas, dust or vapour.

(4) No work shall be permitted in any boiler-furnace or boiler-flue or confined space referred to in subsection three of this section in which excessive heat is present until it has been sufficiently cooled by ventilation or otherwise to make work safe for the persons employed therein.

Sec. 33.
(Dangerous
machinery.)

- (f) (i) by omitting from section thirty-three the words "A factory in which there is a contravention of this section shall be deemed not to be kept in conformity with this Part of this Act" and by inserting in lieu thereof the words "The duty imposed on the occupier of a factory by this section shall be an absolute duty, in no way qualified by any other provision of this Act";
- (ii) by inserting at the end of the same section the following new subsection:—
 - (2) Any occupier of a factory who contravenes or fails to comply with the provisions of subsection one of this section shall

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be liable to a penalty not exceeding one hundred pounds. No. 17, 1946.

(g) (i) by inserting in subsection two of section thirty-four after the words "first-aid attention" the words "including the appointment of personnel qualified to give nursing or first-aid attention"; Sec. 34. (Safeguards from dangers.)

(ii) by omitting from subsection three of the same section the word "twenty" and by inserting in lieu thereof the word "fifty";

(iii) by inserting at the end of the same section the following new subsection:—

(5) (a) The powers relating to welfare, including the provision of facilities for rest, recreation, meals, changing and protection of clothing, and washing, which are exercisable by the Minister under subsection two of this section in relation to a factory may also be exercised by the Minister in relation to any industry and for such purpose—

(i) a reference in subsection two or subsection three of this section to a factory shall be deemed to include a reference to an industry; and

(ii) a reference in subsection two of this section to an occupier of a factory shall be deemed to include a reference to an employer in an industry.

(b) Any employer who fails to comply with the requirements of any order made in pursuance of this subsection shall be liable to a penalty not exceeding fifty pounds.

(c) For the purposes of this subsection the expression "industry" means any craft, occupation or calling (other than mining) in which persons of either sex are employed for hire or reward in any premises or place not being a factory.

(h)

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Sec. 36c.
(Factory
Welfare
Board.)

- (h) (i) by inserting in paragraph (a) of subsection two of section 36c after the words "first-aid attention" the words "including the appointment of personnel qualified to give nursing or first-aid attention";
- (ii) by inserting in the same paragraph after the word "welfare" where firstly occurring the words "or safety";
- (iii) by inserting after the same paragraph the following new paragraph:—
- (a1) to investigate and make recommendations to the Minister in respect of matters relating to the welfare of employees in any industry, including the provision of facilities for rest, recreation, meals, changing and protection of clothing, and washing;
- (iv) by inserting in subsection three of the same section after the word "welfare" where secondly and thirdly occurring the words "or safety";
- (v) by inserting in subsection five of the same section after the words "a factory" where firstly occurring the words "or any premises or place in which an industry is being carried on";
- (vi) by inserting at the end of subsection six of the same section the following new paragraph:—
- (b) In this section the expression "industry" means any craft, occupation or calling (other than mining) in which persons of either sex are employed for hire or reward in any premises or place not being a factory.

Sec. 38.
(Notice of
accidents.)

- (i) by inserting at the end of section thirty-eight the following new subsections:—
- (3) Written notice of every case of lead, phosphorous, arsenical or mercurial poisoning, anthrax or poisoning due to work in connection with

with radio-active substances or any other disease due to any cause which the Minister specifies by order published in the Gazette occurring in a factory shall forthwith be sent by the occupier in the prescribed form and accompanied by the prescribed particulars to the Under Secretary. No. 17, 1946.

(4) In addition to the written notices furnished pursuant to subsections one, two and three of this section, a return in the prescribed form shall be sent to the Under Secretary on or before the expiration of one month after the thirty-first day of March and the thirtieth day of September in each year of cases of accident and disease occurring in such factory during the periods of six months ending on the thirty-first day of March and the thirtieth day of September in each year.

(j) by inserting at the end of section 38A the following new subsection:— Sec. 38A.
(First-aid
appliances.)

(2) Where the Minister is satisfied that it is necessary in the interests of persons employed in any factory or class or description of factories that more than one first-aid ambulance chest should be installed, equipped and maintained in such factory or class or description of factories, he may by order direct the occupier or occupiers of such factory or class or description of factories to make such provision for the installation, equipment and maintenance of additional first-aid ambulance chests as appears to him to be reasonably practicable and to meet the necessity of the case.

(k) by inserting next after subsection (1A) of section sixty-two the following new subsection:— Sec. 62.
(Governor
to have
power to
make regu-
lations.)

(1B) (a) The Governor may make regulations not inconsistent with this Act—

- (i) providing for the qualifications, examination, certification, supervision and control of engine drivers;
- (ii) providing for the granting and issue of appropriate certificates of competency or service in respect of the driver of

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of any engine or class or type of engine and the cancellation and suspension of such certificates;

- (iii) providing for the establishment of an examination board for engine drivers;
- (iv) relating to the powers, authorities, duties and functions of the examination board for engine drivers;
- (v) prescribing the fees to be paid for examination for certificates of competency and the issue of certificates of service;
- (vi) authorising the Chief Inspector by certificate in writing under his hand to exempt the driver of any engine from any or all of the provisions of the regulations where he is satisfied that such provisions cannot reasonably be applied to the driver of such engine or class or type of engine. Any such exemption may be absolute or may be made subject to such conditions as the Chief Inspector may impose;
- (vii) prohibiting any person from being employed as or acting in the capacity of an engine driver of any class or type of engine unless he is the holder of a certificate of competency or of service appropriate to that class or type of engine;
- (viii) prescribing a penalty not exceeding fifty pounds for any breach of the regulations made in relation to the matters referred to in this subsection.

(b) For the purposes of this subsection:—

“Engine driver” means a person employed or acting in the capacity of driver or attendant in charge of an engine, whether the same is in a factory or not, but does not include a person acting as
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an authorised attendant in charge of a lift or as driver in charge of a power crane who is the holder of an authorised lift attendant's certificate or a power crane driver's certificate, respectively, issued in pursuance of the provisions of the Scaffolding and Lifts Act, 1912-1942. No. 17, 1946.

“Engine” means—

- (i) a piece of mechanism used to convert heat or some other form of energy into mechanical work;
or
- (ii) a machine for the development or utilisation of power from some source of energy such as coal, gas, oil or compressed air; or
- (iii) refrigerating machinery in which the volumetric displacement of the compressor or compressors exceeds:—
 - (a) for a system using carbon dioxide as a refrigerant twelve cubic feet per minute;
 - (b) for a system using ammonia as a refrigerant forty-two and one-half cubic feet per minute;
 - (c) for a system using freon as a refrigerant eighty-four cubic feet per minute;
 - (d) for a system using carbon dioxide as a refrigerant one hundred and two cubic feet per minute;
 - (e) for a system using as a refrigerant, gases other than carbon dioxide, ammonia, freon or carbon dioxide, such volumetric displacement of the compressor or compressors

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compressors as may be prescribed,

but does not include—

- (i) any engine used on a ship; or
- (ii) any engine used at or in connection with any mine; or
- (iii) any electric motor, electric generator, electric convertor, electric transformer or electric rectifier; or
- (iv) any engine used exclusively for domestic purposes in a private dwelling house; or
- (v) any engine (except a locomotive, traction engine or road roller) of any self propelled vehicle used for the carriage of passengers or goods; or
- (vi) any engine used in rural industries within the meaning of subsection one of section one hundred and thirty-one of the Industrial Arbitration Act, 1940, as amended by subsequent Acts; or
- (vii) any stationary internal combustion engine or engines having an area of cylinder or a combined area of cylinders not exceeding one hundred and fourteen square inches; or
- (viii) any other type or class of engine exempted from the operation of the provisions of this subsection by the Minister and in respect of which notification of exemption has been published in the Gazette.

(c) Any provision inserted in any regulation made under this subsection may apply to engines generally or to engines of any specified class or type or to engines other than of a specified class or type.

(1)

- (l) by inserting next after section seventy-six the following new section:—

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New sec.
76A.
Application
of Part may
be extended

76A. (1) The Governor may from time to time by proclamation published in the Gazette declare that the provisions of this Part of this Act shall extend to any goods, other than bedding or upholstered furniture or wood furniture or boots, specified therein as from a date to be specified, and as from such date the provisions of this Part of this Act shall apply mutatis mutandis to such specified goods.

The Governor may in like manner revoke, amend, alter or vary any such proclamation.

(2) In this section the expression "goods" includes anything which is the subject of trade, manufacture or merchandise.

- (m) by inserting next after subsection (4A) of section one hundred and five the following new subsections:—

Sec. 105.
(Closing
times for
shops, other
than
butchers'
shops, etc.)

(4B) (a) Where at the commencement of the Factories and Shops (Amendment) Act, 1946, the closing time on Saturday fixed by or under this Act for any class of shops (other than shops of any of the classes specified in Schedule Eight to this Act) in a shopping district is later than one o'clock in the afternoon, then, as from such commencement, the closing time on Saturday for such class of shops shall be one o'clock in the afternoon.

(b) Where under the Shop Assistants, etc. (Metropolitan) Award, the Shop Assistants, etc. (Newcastle) Award, the Shop Assistants, etc. (Country) Award, or the Shop Assistants, etc. (Broken Hill) Award, or any award varying or replacing any such award, made or deemed to have been made under the Industrial Arbitration Act, 1940, as amended by subsequent Acts, provision is made for the observance of any weekly half-holiday within any shopping district in respect of any class of shops (other than shops of any of the classes specified in Schedule Eight to this Act) on a day other than Saturday, the terms

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terms of each such award shall as from the commencement of the Factories and Shops (Amendment) Act, 1946, be deemed to be varied and shall have and take effect as if Saturday were substituted for the day provided in the award for the observance of the weekly half-holiday within such shopping district and the times fixed by any such award for the cessation of the ordinary hours of work by employees in such class of shops on Saturday were substituted for the times fixed by such award for the cessation of the ordinary hours of work by such employees on the day which but for the provisions of this subsection would be observed as the weekly half-holiday in such shopping district.

(c) As soon as practicable after the commencement of the Factories and Shops (Amendment) Act, 1946, the Industrial Registrar shall, subject to appeal to the Industrial Commission of New South Wales, vary the terms of each award affected by the operation of this subsection to the extent necessary to give effect to the provisions of this subsection, and may make such alterations in the form of any such award as he may think necessary or desirable to enable full effect to be given to the provisions of this subsection.

The Industrial Registrar may refer any matter arising under this subsection to the Industrial Commission of New South Wales for directions.

(4c) (a) This subsection shall apply to and in respect of all shopping districts other than the Metropolitan Shopping District and the Newcastle Shopping District and any shopping district in which immediately before the commencement of the Factories and Shops (Amendment) Act, 1946, the closing time on Saturday fixed by or under this Act for any class of shops (other than shops of any of the classes specified in Schedule Eight to this Act) was not later than one o'clock in the afternoon.

(b)

(b) Where a shopping district does not extend beyond the boundaries of a municipality or shire, the council of that municipality or shire may take a poll to determine whether some specified week day shall, in lieu of Saturday, be the day (hereinafter referred to as the weekly half-holiday) on which the closing time for any class of shops (other than shops of any of the classes specified in Schedule Eight to this Act) in such district shall be one o'clock in the afternoon. No. 17, 1946.

(c) Where a shopping district extends beyond the boundaries of any municipality or shire the councils of all municipalities and shires wholly or partially included in such shopping district may agree to take in each of their areas a poll of the nature referred to in paragraph (b) of this subsection.

(d) Any such poll shall be taken not earlier than six and not later than nine months after the commencement of the Factories and Shops (Amendment) Act, 1946.

(e) Where a council has, pursuant to this subsection, decided or agreed to take a poll, the council shall—

- (i) fix the date and places for the taking of the poll: Provided that where the poll is being taken in respect of a shopping district to which paragraph (c) of this subsection applies the same date shall be fixed in each area which is wholly or partially included in the shopping district;
- (ii) appoint such persons as may be necessary to take or assist at the taking of the poll, and determine the duties of such persons in connection therewith;
- (iii) provide for the manner in which the poll is to be taken.

(f) A council shall, at least twenty-one days before the date fixed for the taking of a poll within its area, cause to be published in at least

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least one issue of a newspaper circulating in the area a notice setting out the date and places at which the poll is to be taken.

(g) Any person whose name appears on the local government roll for any ward or riding of a municipality or shire and whose place of living as stated in such roll is situated within the shopping district at the date on which a poll is being taken pursuant to this subsection in that municipality or shire and who at such date retains the qualifications under which he was enrolled on that roll shall be entitled to vote at such poll but shall be entitled to one vote only.

(h) The clerk of a council which has taken a poll pursuant to this subsection shall, within fourteen days after the taking of the poll, furnish the Minister with a return showing the number of persons entitled to vote at such poll, the number of persons who voted in favour of changing the weekly half-holiday from Saturday to some other specified week day and the number of persons who voted against such change.

(i) Where a poll has been taken pursuant to paragraph (b) of this subsection and the return furnished pursuant to paragraph (h) of this subsection shows that a majority of the persons voting at the poll, or where polls have been taken pursuant to paragraph (c) of this subsection and the returns furnished pursuant to paragraph (h) of this subsection shows that a majority of the persons voting in all areas wholly or partially included in the shopping district concerned, are in favour of the weekly half-holiday in the shopping district concerned being observed on some specified week day, other than Saturday, the Minister shall, as soon as practicable after the receipt of such return, publish in the Gazette a notification of that fact.

(j) Upon the publication in the Gazette of the notification, the Shop Assistants, etc. (Country) Award or the Shop Assistants, etc. (Broken Hill) Award, as the case may be, applying to the shopping district concerned shall, as from

from the date of publication of such notification, **No. 17, 1946.**
be deemed to be varied and shall have and take effect in respect of any class of shops (other than shops of any of the classes specified in Schedule Eight to this Act) as if, in relation to the shopping district concerned, the day specified therein were substituted for Saturday as the day on which the weekly half-holiday is to be observed and the times fixed by any such award for the cessation of the ordinary hours of work by employees in such class of shops on the specified day were substituted for the times fixed by such award for the cessation of the ordinary hours of work by employees on Saturday.

(k) As soon as practicable after the publication in the Gazette of any such notification, the Industrial Registrar shall, subject to appeal to the Industrial Commission of New South Wales, vary the terms of any award affected by the operation of paragraph (j) of this subsection to the extent necessary to give effect to the provisions of that paragraph, and may make such alterations in the form of any such award as he may think necessary or desirable to enable full effect to be given to the provisions of that paragraph.

The Industrial Registrar may refer any matter arising under this paragraph to the Industrial Commission of New South Wales for directions.

(l) In this subsection "local government roll" means the roll of electors prepared under the Local Government Act, 1919, as amended by subsequent Acts, and "area" has the meaning ascribed to it in that Act, as so amended.

(n) by inserting at the end of section one hundred and seven the following words:—

Sec. 107.

(Matters to be dealt with in awards.)

“and the time fixed by any such award for the cessation of the ordinary hours of work by employees in shops (other than shops of any of the classes specified in Schedule

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Schedule Eight to this Act) in any shopping district on Saturday, or on the day notified in accordance with the provisions of paragraph (i) of subsection (4c) of section one hundred and five of this Act as the day on which the weekly half-holiday is to be observed, shall not be later than one o'clock in the afternoon."

**Schedule
Eight.**

(o) by inserting in Schedule Eight next before the words "Chemists' shops" the words "Cake and Pastry shops."
