

**FACTORIES, SHOPS AND INDUSTRIES
(AMENDMENT) ACT.**

New South Wales



ANNO UNDEVICESIMO

ELIZABETHÆ II REGINÆ

Act No. 83, 1970.

An Act relating to the hours of trade of shops for the sale of motor spirit and certain other goods and the safety of persons engaged in or about the refrigerated compartments of certain vehicles; for these and other purposes to amend the Factories, Shops and Industries Act, 1962; and for purposes connected therewith. [Assented to, 9th December, 1970.]

BE

Factories, Shops and Industries (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by No. 83, 1970
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, Shops and Short
Industries (Amendment) Act, 1970". title.

2. The Factories, Shops and Industries Act, 1962, is Amendment
amended— of Act No.
43, 1962.

(a) by omitting from subsection one of section seventy- Sec. 74.
four the definition of "Motor accessories"; (Defini-
tions.)

(b) (i) by inserting in subsection one of section Sec. 78.
seventy-eight after the words "Part of this (Defini-
Act" the words "and in Schedule Three to tions and
this Act"; application.)

(ii) by inserting next after the definition of
"Ladies' hairdressing shop" in the same sub-
section the following new definition :—

"Lease" includes sublease, tenancy, sub-
tenancy or license to use or occupy,
whether in writing or not, and "to
lease", "leasing", "lessor" and "lessee",
and derivatives thereof; have a
corresponding meaning.

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

"Vehicle accessories" means replacement
parts for vehicles, caravans, trailers or
boats, and other goods specially
designed or adapted for use in or upon
vehicles, caravans, trailers or boats,
but does not include caravans, trailers
or boats.

"Vehicle

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“Vehicle service shop” means shop for the sale of motor spirit, motor oil or vehicle accessories.

“Vehicle shop” means shop for the sale of vehicles, caravans, trailers or boats.

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

(4) For the purposes of the definitions of “Vehicle accessories” and “Vehicle shop” in subsection one of this section, “vehicle” means vehicle used, or intended for use, on land and propelled by mechanical power.

Sec. 79.
(Closing and opening times of certain shops on week days.)

(c) by omitting from subsection one of section seventy-nine the words “shops for the sale of motor vehicles, motor spirit, motor oil or motor accessories” and by inserting in lieu thereof the words “vehicle service shops”;

Sec. 81.
(Closing and opening times of shops for the sale of motor vehicles, motor spirit, etc.)

(d) by omitting section eighty-one;

Sec. 84.
(Trading hours of shops on Sunday.)

(e) by omitting from subsection one of section eighty-four the words “shops for the sale of motor vehicles, motor spirit, motor oil or motor accessories” and by inserting in lieu thereof the words “vehicle service shops”;

Sec. 85.
(Matters to be dealt with in awards.)

(f) (i) by omitting from subsection one of section eighty-five the words “the Conciliation Commissioner” and by inserting in lieu thereof the words “a Conciliation Commissioner”;

(ii) by omitting from the same subsection (paragraph (d) excepted) the words “shops for the sale of motor vehicles, motor spirit, motor oil

or

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or motor accessories” wherever occurring and by inserting in lieu thereof the words “vehicle service shops”; No. 83, 1970

- (iii) by omitting paragraph (d) of the same subsection;
- (iv) by omitting from paragraph (b) of subsection two of the same section the words “shops for the sale of motor vehicles, motor spirit, motor oil or motor accessories” and by inserting in lieu thereof the words “vehicle service shops”;
- (g) by omitting subsection three of section eighty-six; Sec. 86.
(Offences.)
- (h) by inserting next after section 89D the following new section :— New sec.
89E.

89E. Until the Industrial Commission of New South Wales or a Conciliation Commissioner or a conciliation committee, in making an award after the commencement of the Factories, Shops and Industries (Amendment) Act, 1970, performs in respect of vehicle shops situate in an area the duties imposed on it or him by subsection one of section eighty-five of this Act, every vehicle shop situate in that area shall be kept closed at all times when a shop for the sale of motor vehicles situate in that area would have been required by or under this Act to be kept closed had the amendments made by section two (paragraph (h) excepted) of the Factories, Shops and Industries (Amendment) Act, 1970, not been made. Vehicle shops.

- (i) by inserting next after section ninety the following new section :— New sec.
90A.

90A. (1) In this section, unless the context or subject matter otherwise indicates or requires— Petrol shops.

“Open” means open whether for the sale of any goods or for any other purpose.

“Petrol

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“Petrol shop” means shop for the sale of motor spirit, or of motor spirit and any other goods, and includes any place or premises in or upon which a pump for supplying motor spirit is installed, and any such pump itself.

“Public holidays” means the first day of January, the twenty-sixth day of January, Easter Monday, the anniversary of the birth of Her Majesty and the twenty-sixth day of December or any day observed as such in accordance with the provisions of the Banks and Bank Holidays Act, 1912, and any day appointed by the Governor pursuant thereto as a public holiday throughout the State, and includes, in relation to any particular petrol shop, such special days or special half-days as may be appointed by the Governor, pursuant to that Act, to be observed as public holidays in the part of the State or in the city, town, or district in which the particular shop is situated.

“The prescribed hours” means—

- (a) on Sundays and public holidays—between seven o'clock in the morning and one o'clock in the afternoon; and
- (b) on days other than Sundays and public holidays—between seven o'clock in the morning and half-past six o'clock in the afternoon,

but, notwithstanding anything in the foregoing provisions of this definition, does not include any part of the twenty-fifth day of December, of Good Friday, or of Anzac Day.

(2)

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(2) (a) This subsection applies to every No. 83, 1970 lease or assignment of a lease of, or agreement relating to the leasing of a petrol shop, or agreement for the supply of any goods to the lessee or shopkeeper of a petrol shop, whether the lease, assignment or agreement was executed, entered into or made before or after the commencement of the Factories, Shops and Industries (Amendment) Act, 1970.

(b) Where any provision of a lease, assignment or agreement to which this subsection applies requires or purports to require a petrol shop to be kept open during certain times and those times are—

- (i) wholly outside the prescribed hours, that provision shall be void; or
- (ii) partly outside the prescribed hours, that provision shall be void except in so far as it requires or purports to require the shop to be kept open at times that are within those hours.

(c) Where a lease, assignment or agreement to which this subsection applies contains a provision requiring or purporting to require a petrol shop to be kept open at times wholly or partly outside the prescribed hours, the lease, assignment or agreement—

- (i) shall be construed as if that provision were omitted therefrom and a provision requiring the petrol shop to be kept open at such of those times (if any) as are within the prescribed hours were substituted therefor; and
- (ii) shall be in force accordingly.

(3)

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(3) Any person who—

- (a) gives a lease, or assigns a lease, of a petrol shop which lease or assignment, as the case may be, contains or is subject to a provision or condition requiring or purporting to require the lessee or assignee to keep the shop open at times wholly or partly outside the prescribed hours;
- (b) consents to an assignment of a lease of a petrol shop upon a condition requiring or purporting to require the assignee to keep the shop open at times wholly or partly outside the prescribed hours;
- (c) refuses to give a lease or to assign a lease, or to consent to an assignment of a lease, of a petrol shop except upon a condition requiring or purporting to require the lessee or assignee, as the case may be, to keep the shop open at times wholly or partly outside the prescribed hours;
- (d) renews a lease of a petrol shop upon a condition requiring or purporting to require the lessee to keep the shop open at times wholly or partly outside the prescribed hours, or refuses to renew a lease or give a fresh lease of any such shop except upon such a condition;
- (e) directly or indirectly induces or attempts to induce a person to take or agree to take a lease, or an assignment or renewal of a lease, of a petrol shop upon a condition requiring or purporting to require that person to keep the shop open at times wholly or partly outside the prescribed hours;

(f)

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- (f) agrees to supply any goods to the lessee or shopkeeper of a petrol shop upon a condition requiring or purporting to require the lessee or shopkeeper, as the case may be, to keep the shop open at times wholly or partly outside the prescribed hours, or refuses to supply any goods to the lessee or shopkeeper, as the case may be, except upon such a condition, or stops the supply of any goods to the lessee or shopkeeper, as the case may be, because the lessee or shopkeeper, as the case may be, refuses to keep or agree to keep the shop open at times wholly or partly outside those hours; or
- (g) directly or indirectly, by any threat, induces or persuades or attempts to induce or persuade the shopkeeper of any petrol shop to keep the shop open at times wholly or partly outside the prescribed hours,

shall be guilty of an offence against this Act and be liable to a penalty not exceeding one thousand dollars.

(4) Where the lessee of a petrol shop is not entitled to require the lessor to renew the lease of the shop or to give a fresh lease thereof and the lessor refuses to renew the lease or give a fresh lease except upon a condition requiring or purporting to require the lessee to keep the shop open at times wholly or partly outside the prescribed hours, and the lessee is in consequence obliged to give up possession of the shop, the lessee shall be entitled to recover damages from the lessor in any court of competent jurisdiction as if the lessor had committed a breach of a covenant to renew the lease for the same term and upon the same conditions as are provided for by the lease.

(5)

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(5) Nothing in this section makes it lawful for a shop to be open at any time at which, if this section were omitted from this Act, the shop would be required by or under this Act to be kept closed.

Sec. 91.
(Leases of shops and warehouses.)

- (j) (i) by omitting from section ninety-one the words “, or enters into an agreement by which any other person occupies”;
- (ii) by omitting from the same section the words “or agreement”;
- (iii) by inserting in the same section after the words “this Act” the words “, section 90A excepted”;

Sec. 94.
(Trading hours for automatic vending devices.)

- (k) by omitting from subsection one of section ninety-four the words “other than an automatic vending device in which motor spirit or motor oil is or are offered or exposed for sale”;

Schedule Three.

- (l) by inserting at the end of Schedule Three the following words :—

Vehicle shops.

Further amendment of Act No. 43, 1962.

3. The Factories, Shops and Industries Act, 1962, is further amended—

Sec. 2.
(Division into Parts and Divisions.)

- (a) by omitting from section two the words “*and Refrigerating Systems*” and by inserting in lieu thereof the words “, *Refrigerating Systems and Refrigerated Compartments*”;

Sec. 9.
(Definitions.)

- (b) by inserting next after the definition of “Prime mover” in subsection one of section nine the following new definition :—

“Refrigerated compartment” means a compartment of a vehicle of a prescribed class of vehicles, being a compartment that is used

or

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or intended for use for the cold storage of goods while they are being transported by the vehicle. No. 83, 1970

(c) by omitting from the heading to Division 11 of Part III the words "*and Refrigerating Systems*" and by inserting in lieu thereof the words "*, Refrigerating Systems and Refrigerated Compartments*"; Heading to
Division 11
of Part III.

(d) by inserting at the end of section sixty-five the following new subsection :— Sec. 65.
(Power to
make regu-
lations.)

(4) The Governor may make regulations, not inconsistent with this Act, prescribing all matters necessary or convenient to be prescribed for preventing or reducing the risk of death, personal injury or disease to persons employed or engaged, whether in factories or not, in or about refrigerated compartments.

Without prejudice to the generality of the foregoing provisions of this subsection the Governor may make regulations—

(a) relating to—

- (i) the design, construction, equipment, maintenance, repair, and methods of operation and use of refrigerated compartments;
- (ii) duties of, and instructions to be given to, persons employed or engaged in or about such compartments;
- (iii) the provision of warning notices in or on such compartments or vehicles containing such compartments;

(iv)

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(iv) the provision of protective clothing and protective equipment to persons so employed or engaged;

(b) requiring notification, by and to prescribed persons, of accidents to, or diseases contracted by, persons when so employed or engaged, where such accidents or diseases are of a prescribed class.

Sec. 73.
(Power of
Inspectors.)

(e) (i) by inserting next after subparagraph (ii) of paragraph (a) of subsection one of section seventy-three the following new subparagraphs :—

(iii) any premises or place wherein there is any vehicle containing a refrigerated compartment ;

(iv) any vehicle containing a refrigerated compartment in any premises or place referred to in subparagraph (iii) of this paragraph ;

(ii) by inserting in paragraph (b) of the same subsection after the words "is used" where secondly occurring the words ", or there is any vehicle containing a refrigerated compartment," ;

(iii) by inserting next after the same paragraph the following new paragraph :—

(b1) to enter, inspect, and examine, at any time by day or night, any vehicle in or upon a public road or other place to which the public (whether on payment of a fee or otherwise) ordinarily

has

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has access, if the vehicle contains, or if he has reasonable cause to believe that it contains, a refrigerated compartment;

- (iv) by omitting from paragraph (c) of the same subsection the word "premises" and by inserting in lieu thereof the words "premises, vehicle";
- (v) by inserting in paragraph (e) of the same subsection after the words "this Act" the words ", or the regulations thereunder,";
- (vi) by omitting from the same paragraph the word "premises" and by inserting in lieu thereof the words "premises, vehicle";
- (vii) by omitting from the same paragraph the word "therein" and by inserting in lieu thereof the words "or engaged in or about the same";
- (viii) by inserting in paragraph (g) of the same subsection after the words "this Act," the words "or the regulations thereunder,";
- (ix) by inserting in the same paragraph after the words "employed therein," the words "or any person whom he finds employed or engaged in, or about the vehicle,";
- (x) by inserting in paragraph (h) of the same subsection after the words "refrigerating system," the words "refrigerated compartment,";
- (xi) by inserting in paragraph (i) of the same subsection after the words "this Act" the words "or the regulations thereunder";

(xii)

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- (xii) by inserting in subsection two of the same section after the words "and servants," the words "and the person in charge of a vehicle referred to in that subsection,";

 - (xiii) by omitting from the same subsection the words "shop, premises" and by inserting in lieu thereof the words "shop, premises, vehicle".
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