

# Factories, Shops and Industries Act 1962 No 43

[1962-43]



New South Wales

## Status Information

### Currency of version

Historical version for 15 July 2001 to 16 July 2001 (accessed 25 May 2025 at 3:18)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Occupational Health and Safety Amendment Act 1997 No 51](#), Sch 2.3 (except so much of Sch 2.3 [7] as omits secs 10-13) (not commenced)
  - [Occupational Health and Safety Act 2000 No 40](#) (not commenced)
- **See also**
  - [Statute Law \(Miscellaneous Provisions\) Bill 2001](#)

### Authorisation

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File last modified 15 July 2001

# Factories, Shops and Industries Act 1962 No 43



New South Wales

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# Factories, Shops and Industries Act 1962 No 43



New South Wales

An Act to make provisions with respect to the supervision and regulation of factories, shops, and certain other industries; and to the health, safety and welfare of persons employed therein; to restrict the hours on week days and Sundays during which shops may be opened and certain trades may be carried on; to control the advertising and description of goods; to regulate outdoor work in the clothing trades; to repeal the *Factories and Shops Act 1912* and certain other enactments; and for purposes connected therewith.

## Part 1 Preliminary

### 1 Name of Act and commencement

- (1) This Act may be cited as the *Factories, Shops and Industries Act 1962*.
- (2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

### 2 (Repealed)

### 3 Repeals and savings

- (1) The several Acts mentioned in Schedule 1 are to the extent therein expressed hereby repealed.
- (2) All proclamations, notices, exemptions, registrations, renewals of registrations, certificates including certificates of registration and renewals of registration, licences, permits, authorities, approvals, regulations and orders published, given, granted, issued or made under any enactment hereby repealed and re-enacted, with or without modification by this Act and being in force at the commencement of this Act, shall be and continue in force hereunder, and shall be deemed to have been published, given, granted, issued or made, as the case may be, under this Act.

All applications made and all proceedings and investigations commenced under any enactment hereby repealed, and not determined or completed at the commencement of this Act, may be dealt with, determined and completed as though made or commenced pursuant to this Act.

All persons appointed under any enactment hereby repealed, and holding office at the

commencement of this Act, shall remain in office as if this Act had been in force at the time they were appointed and they had been appointed hereunder, and this Act shall apply to them accordingly.

Nothing in this subsection shall be construed as extending the term for which any registration, certificate of registration, renewal of registration, certificate of renewal of registration, licence, permit or appointment was granted, issued or made under any enactment hereby repealed.

- (3) References in any Act, by-law, regulation or any other instrument or document whatsoever of the same or different kind or nature to provisions of any enactment hereby repealed which are re-enacted, with or without modification, by this Act shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted.

#### 4 Definitions

- (1) In this Act, unless the context or subject matter otherwise indicates or requires:

**Authority** means the WorkCover Authority constituted under the [WorkCover Administration Act 1989](#).

**Bakehouse** means any building or place in which any bread, biscuits, cakes, confectionery, cereal food for human consumption, pastry, sweetmeats, sugar goods, muffins, crumpets or goods of a like kind are made or baked for trade or sale, and include any place or room used in connection with the bakehouse for storing such goods when made or baked or the ingredients and materials to be used in the manufacture of such goods.

**Contravention** includes, in relation to any provision, term or condition, a failure to comply with, observe or carry out that provision, term or condition, and the word “contravenes” shall be construed accordingly.

**Director-General** means the Director-General of the Department of Industrial Relations, Employment, Training and Further Education.

**Factory** means:

- (a) any building or place other than a farm or rural holding used exclusively for agricultural, horticultural or pastoral purposes in which:
- (i) four or more persons are engaged directly or indirectly in a manufacturing process, or
  - (ii) fewer than four persons are engaged in a manufacturing process and which the Governor has pursuant to this Act declared to be a factory, or
  - (iii) one or more persons are engaged directly or indirectly in:

- (a) a manufacturing process involving the use, handling, or processing of lead, any alloy of lead, or any compound of lead, or any substance or thing containing lead, any alloy of lead, or any compound of lead, or
- (b) spray painting, or
- (iv) mechanical power is used in or in aid of:
  - (a) a manufacturing process, or
  - (b) any of the following processes carried out for trade or sale or gain or as ancillary to any business, that is to say, the sorting or packing of goods or articles, the filling of bottles or other containers, the freezing, chilling or storing in cold storage of goods or articles, or the generation of water power or any other power, or
- (v) electricity is generated or mechanically transformed, or
- (b) any bakehouse, or
- (c) any laundry or dyeworks in which four or more persons are engaged or in which mechanical power is used and which is carried on by way of trade or for the purpose of gain or as ancillary to another business, or incidental to the purposes of any public institution, or
- (d) any boat-building yard, ship-building yard, dockyard or ship-repairing yard in which any ship or boat is constructed, reconstructed, repaired, refitted, finished or broken up,

but, subject to section 5, does not include a ship.

**Furniture** means articles whether new or second-hand of which wood, wicker, pithcane, bamboo, seagrass, reedtex or metal forms a part and such as are usually made or assembled by cabinetmakers, assemblers in the furnishing trades, woodcarvers, woodturners, chair, seat, couch and frame workers, upholsterers, polishers, woodworking machinists, sawyers, mattress and wire mattress makers and wicker, pithcane and seagrass workers, and without limiting the generality of the foregoing definition includes billiard tables, sewing machines, wood bedsteads, clock cases, printers' cases, pianos, gramophones, wireless and television cabinets, incubators, refrigerators, ice chests, wood mantels, and other articles of like description.

**General Manager** means the General Manager of the Authority.

**Harbour** includes harbours properly so called, whether natural or artificial, estuaries, navigable rivers, piers, jetties and other works in or at which ships can obtain shelter, or ship or unship goods or passengers.

**Inspector** means an inspector appointed under the *Occupational Health and Safety Act 1983* to exercise functions under this Act.

**Maintained** means maintained in good order, condition and repair and in an efficient state and, in the case of any mechanical equipment or device, in good and efficient working order.

**Manufacturing process** means any handicraft or process in or incidental to the making, assembling, altering, repairing, renovating, preparing, ornamenting, finishing, cleaning, washing, breaking up, or adapting of any goods or any articles or any part of an article for trade or sale or gain, or as ancillary to any business, and includes any handicraft or process declared by the Governor, pursuant to this Act, to be a manufacturing process.

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

**Motor spirit** means any liquid or substance used or adapted or intended to be used for the propulsion of motor vehicles.

**Occupier** means, in relation to a factory or shop, the person, partnership, association, or corporation employing persons in the factory or shop, or occupying the factory or shop, and includes any agent, manager, foreman, or other person acting or apparently acting in the general management or control of the factory or shop and the owner or person deemed to be the occupier pursuant to subsection (2).

**Prescribed** means prescribed by this Act or the regulations.

**Regulations** means regulations made or deemed to have been made under this Act.

**Ship** includes every description of vessel used in navigation not propelled by oars.

- (2) For the purposes of the definition of **factory** in subsection (1):
- (a) a place shall not be excluded from such definition 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: Provided that where a place within such close, curtilage or precincts is solely used otherwise than for or in connection with the processes carried on in the factory, that place shall not be deemed to form part of the factory but shall, if otherwise it would be a factory, be deemed to be a separate factory,
  - (c) a part of a factory may, on application by the occupier thereof and with the approval in writing of the General Manager, be taken to be a separate factory, and two or more factories may, on application by the occupiers thereof and with the

like approval, be taken to be a single factory,

- (d) where the General Manager, being satisfied that a part of a factory is occupied as a factory by a person other than the occupier of the remaining parts of the factory, by notice in writing to such occupier and other person so directs, the said part shall be deemed to be a separate factory,
- (e) where persons employed in any factory are lodged in any premises attached to such factory, such premises shall be deemed to be part of the factory,
- (f) a building or place occupied by a council or a county council within the meaning of the *Local Government Act 1993* or other public authority and which, if a handicraft or process carried on therein were carried on for trade or sale or gain or as ancillary to a business, would be within such definition, shall be deemed to be within such definition.

For the purposes of any repairs, renovations, replacements, alterations or additions required by or under this Act to be made to a building forming part of a factory or shop or within which a factory or shop is situated, the Minister may, by notice in or to the effect of the form prescribed, notify the owner of the factory or shop, or the person receiving the rent for the same, whether on his or her own account or on account of any other person, that he or she will regard him or her for such special purposes as the occupier of the same and thereupon the said owner or person shall, for the said purposes, be deemed to be the occupier of the factory or shop.

## **5 Extension of this Act and exemptions therefrom**

- (1) The Governor may, by proclamation published in the Gazette, declare:
  - (a) a building or place specified in the proclamation in which fewer than four persons are engaged directly or indirectly in a manufacturing process so specified, to be a factory,
  - (b) all buildings and places in which fewer than four persons are engaged directly or indirectly in a manufacturing process so specified, to be factories,
  - (c) any handicraft or process so specified, to be a manufacturing process.
- (2) The Governor may, by proclamation as aforesaid, extend such of the provisions of this Act or of the regulations, being provisions in respect of factories, as are specified in the proclamation to:
  - (a) all work (not being work done by the master or crew of a ship or done on board a ship during a trial run) carried out in a harbour or wet dock in constructing, reconstructing, repairing, refitting, painting, finishing or breaking up a ship or in scaling, scurfing or cleaning boilers (including combustion chambers and smoke boxes) in a ship, or in cleaning oil-fuel tanks or bilges in a ship,

(b) all premises in which motor spirit is stored, or any class of such premises specified in the proclamation,

and for the purpose of such provisions so specified all ships in or upon which the said work is carried out, or such premises or class of premises, as the case may be, shall be deemed to be factories, and in the case of a ship any person undertaking the said work shall be deemed to be the occupier of the factory.

- (3) The Governor may, by proclamation as aforesaid, exempt, either wholly or in part, any factory or class of factories, or shop or class of shops, from the operation of Part 3, and such factory or class of factories, or shop or class of shops, shall thereupon be exempted as aforesaid.
- (4) The Governor may, by proclamation as aforesaid, revoke, vary, or alter any proclamation published under the authority of this Act.
- (5) Sections 39, 40 and 41 of the *Interpretation Act 1987* apply to a proclamation made under this section in the same way as they apply to a statutory rule within the meaning of that Act.

## **6 Construction and application**

- (1) This Act shall be read and construed subject to 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 is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances, shall not be affected.
- (2) Nothing in this Act shall affect the operation of the *Construction Safety Act 1912*, the *Rural Workers Accommodation Act 1926*, the *Textile Products Labelling Act 1954* or any Act amending or replacing any such Act.

### **6A Part 3 to bind the Crown**

- (1) The provisions of Part 3 (except Division 2) and the regulations made thereunder bind the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.
- (2) In this section, a reference to the provisions of Part 3 includes a reference to a provision of this Act (including Part 11) ancillary to those provisions.

## **Part 2**

### **7-8 (Repealed)**

## **Part 3 Health, safety and welfare in factories, shops and other**

## industries

### Division 1 Preliminary

#### 9 Definitions

(1) In this Part, unless the context or subject matter otherwise indicates or requires:

**Authority** means the WorkCover Authority constituted under the *WorkCover Administration Act 1989*.

**Boiler** means:

- (a) any vessel in which for any purpose steam is generated under pressure greater than atmospheric pressure, or
- (b) any vessel in which for any purpose water is heated under pressure greater than atmospheric pressure to a temperature exceeding 99 degrees Celsius without the generation of steam,

and includes any economiser used to heat water being fed to any such vessel, and any superheater used for heating steam and includes feed, blow down and steam distribution pipe lines, fittings and connections, but does not include a boiler in any ship or a boiler used in or about a mine.

**Child** means any person under the age of 15.

**Employee** means any person in the employment of an occupier. Any person, other than the person occupying the factory or shop or employing persons therein, who works in a factory or shop, whether for wages or not, at any kind of work whatever, shall be deemed to be an employee and to be employed.

**Engine** means:

- (a) a piece of mechanism used to convert heat or some other form of energy into mechanical work, or
- (b) a machine for the development or utilisation of power from some source of energy such as coal, gas, oil or compressed air, or
- (c) refrigerating machinery in which the volumetric displacement of the compressor or compressors exceeds:
  - (i) for a system using carbon dioxide as a refrigerant 6 litres per second,
  - (ii) for a system using ammonia as a refrigerant 20 litres per second,
  - (iii) for a system using freon as a refrigerant 40 litres per second,

- (iv) for a system using carrene as a refrigerant 48 litres per second,
- (v) for a system using as a refrigerant, gases other than carbon dioxide, ammonia, freon or carrene, such volumetric displacement of the compressor or compressors as may be prescribed,

but does not include:

- (a) any engine used on a ship, or
- (b) any engine in or about a mine, or
- (c) any electric motor (other than an electrically propelled locomotive, traction engine or road roller), electric generator, electric convertor, electric transformer or electric rectifier, or
- (d) any engine used exclusively for domestic purposes in a private dwelling-house, or
- (e) any engine (except a locomotive, traction engine or road roller) of any self-propelled vehicle used for the carriage of passengers or goods, or
- (f) any engine used in rural industries, or
- (g) any stationary internal combustion engine or engines having an area of cylinder or a combined area of cylinders not exceeding 735 square centimetres, or
- (h) any crane, hoist or lift, as defined by the [Construction Safety Act 1912](#), as amended by subsequent Acts.

**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.

**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, and includes a section or division of an industry and a particular business, establishment or undertaking within an industry but does not include rural or local government industry.

**Local government industry** means industry in which persons are engaged:

- (a) in a park, garden, nursery, recreation area, sports ground or reserve under the control or management of, or vested in, a council or a county council within the meaning of the [Local Government Act 1993](#),
- (b) in road, water supply, sewerage or drainage works for such a council or for a contractor to such a council,
- (c) in clearing, fencing, trenching, draining, reclaiming or developing land for such a council or for a contractor to such a council,



- (d) in lopping or tending trees for such a council or for a contractor to such a council,
- (e) in the collection or disposal of garbage or other waste for such a council or for a contractor to such a council,

not being employment in building work, excavation work or compressed air work within the meaning of the *Construction Safety Act 1912* or employment in or about a mine within the meaning of the *Mines Inspection Act 1901* or the *Coal Mines Regulation Act 1982*.

**Maximum allowable safe working pressure** in relation to any boiler or pressure vessel means the maximum allowable safe working pressure specified in the certificate issued pursuant to the regulations and for the time being applicable to that boiler or pressure vessel.

**Pressure vessel** means any vessel subjected to pressure (including pressure due to a static head) by liquids, vapours or air or other gases but does not include:

- (a) a boiler, or
- (b) a vessel attached to or forming part of a domestic water supply and which contains:
  - (i) cold water, only, under pressure, or
  - (ii) atmospheric air the compression of which serves only as a cushion, or
- (c) a vessel containing a liquid only at a temperature not exceeding 99 degrees Celsius wherein the pressure is due solely to the height of a column of liquid above the vessel, or
- (d) a pressure vessel on any ship or used in or about a mine.

**Prime mover** means every engine, motor or other appliance which provides mechanical energy derived from steam, water, wind, electricity, the combustion of fuel, or other source.

**Refrigerated compartment** means a compartment of a vehicle of a prescribed class of vehicles, being a compartment that is used or intended for use for the cold storage of goods while they are being transported by the vehicle.

**Refrigerating system** means a combination of interconnected refrigerant containing parts constituting a closed refrigerant circuit in which a refrigerant is circulated for the purpose of extracting heat, but does not include a refrigerating system in any ship or a refrigerating system used in or about a mine.

**Rural industries** means industries in which persons are engaged for hire or reward and whether as employees or otherwise:

- (a) upon farms, orchards, vineyards, or agricultural or pastoral holdings in connection with dairying, poultry farming, or bee farming, or the sowing, raising, harvesting, or treating of grain, fodder, fruit, or other crop or farm produce whether grown for food or not, or the management, rearing, or grazing of horses, cattle, sheep, or other live stock, or the shearing or crutching of sheep, or the classing, scouring, sorting, or pressing of wool, upon any farm or station, or at other farm or station work, or
- (b) in or in connection with the formation, tending, protection, or regeneration of forests, or
- (c) in or in connection with timber-getting or the transport or storing of timber, or
- (d) in flower or vegetable market gardens or nurseries, or
- (e) at clearing, fencing, trenching, draining, or otherwise preparing land for any of the abovementioned purposes.

**Shop** means any building or place, or portion of a building or place, in which goods are exposed or offered for sale by retail.

**Transmission machinery** means every shaft, wheel, drum, pulley, system of fast and loose pulleys, coupling, clutch, driving-belt or other device by which the motion of a prime mover is transmitted to or received by any machine or appliance.

**Week** means the period between midnight on Saturday night and midnight on the succeeding Saturday night.

**Welfare** includes the provision of facilities for housing, rest, recreation, meals, changing and protection of clothing, and washing.

**White phosphorus** means the substance usually known as white or yellow phosphorus.

(2) (Repealed)

## **9A Fees to be paid into WorkCover Authority Fund**

Any fees paid under this Part or under regulations made for the purposes of this Part are to be paid into the WorkCover Authority Fund under the [WorkCover Administration Act 1989](#).

## **Division 2 Registration of factories and control of building operations**

### **10-13 (Repealed)**

### **14 Service of notice by Authority in respect of certain buildings, alterations etc**

(1) Where the Authority is satisfied that:

- (a) any person has commenced or caused to be commenced or is about to commence or to cause to be commenced the erection of any building, or structural alterations or additions to any building, and
- (b) any industry is being or is intended to be carried on in that building, and
- (c) such building is not a factory nor intended for use as a factory,

the Authority may by notice in writing served on such person require an application to be made to the Authority for its approval of such erection, alterations or additions, as the case may be, and of the plans and specifications thereof.

- (2) Application for the approval of the Authority shall:
  - (a) be made in the prescribed manner by the person on whom the notice was served,
  - (b) be accompanied by two copies of the plans and specifications of the building, structural alterations or additions, as the case may be, one copy of which shall be retained by the Authority.
- (3) The Authority 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.
- (5) Where any application under this section has been approved, the erection of the building or structural alterations or additions to any building to which such approval relates shall be carried out to the satisfaction of the Authority in conformity with the plans and specifications thereof approved by the Authority.
- (6) Any person who after a notice has been served on him or her pursuant to this section in relation to the erection of any building or structural alterations or additions to any building does any work in connection with such erection, structural alterations or additions without the approval required by this section or not in conformity with such approval shall be guilty of an offence against this Act.
- (7) Nothing in this section shall apply to any building which is intended to be used primarily as a private dwelling-house.

## **Division 3 Records and notices (factories)**

### **15 Registers and records**

- (1) The occupier of every factory shall keep or cause to be kept in the factory a register in the prescribed form, called the general register, and there shall be entered in or

attached to that register:

- (a) the prescribed particulars as to the persons under twenty-one years of age employed in the factory,
- (b) the prescribed particulars as to the washing, whitewashing or colour washing, painting or varnishing of the factory,
- (c) the prescribed particulars as to every accident and case of disease occurring in the factory and of which notice is by this Act required to be sent to the Authority, and
- (d) other prescribed matters.

The general register may, unless the regulations otherwise prescribe, be in two or more separate volumes or parts.

(2) The occupier of a factory shall keep or cause to be kept in the factory a record of:

- (a) the names of all employees in the factory and of the ages of all such employees as are under twenty-one years of age,
- (b) such other particulars in relation to employees in the factory as may be prescribed,
- (c) where he or she employs persons in a manufacturing process in the business of the factory outside the factory:
  - (i) the name of every person so employed,
  - (ii) the place where each such person is so employed,
  - (iii) the rate of payment in each instance, and
  - (iv) the number of articles and description of work in respect of which each payment is made.

Such record may be incorporated with the general register or with any time and wages record required by any Act other than this Act to be kept in the factory.

(3) The occupier of a factory shall:

- (a) retain in the factory for a period of two years from the date of the last entry, or for such other period as may be prescribed in relation to the class or description of factories to which the factory belongs, the general register and all records which he or she is required by this section to keep in respect of the factory,
- (b) whenever so required by an inspector, send to the inspector such extracts from or information contained in any of the said registers and records as the inspector

may require.

- (4) An occupier of a factory who fails to comply with any provision of this section shall be guilty of an offence against this Act and be liable to a penalty not exceeding 2 penalty units.

#### **16 Documents to be exhibited**

- (1) The occupier of a factory shall cause to be affixed and maintained in the factory at the principal entrance by which employees enter and in such characters and in such positions as to be conveniently read by employees in the factory:
  - (a) a notice of the address and telephone number of the office of an inspector normally carrying out duties under this Act in the area in which the factory is situated,
  - (b) a copy of this Act and of the regulations made or deemed to have been made under this Part, or such copies or summaries of the provisions of this Act or of the said regulations as may, in relation to the class or description of factories to which the factory belongs, be directed by the Authority to be so affixed and maintained, and
  - (c) a notice setting out the usual working hours of the factory:

Provided that an inspector may by notice in writing to the occupier direct that all or any of such documents shall be affixed and maintained in such other parts of the factory, either in addition to or in substitution for the said principal entrance, as may be specified in the notice, and the occupier shall comply with such notice.

- (2) An occupier of a factory who fails to comply with subsection (1) or any direction thereunder shall be guilty of an offence against this Act and be liable to a penalty not exceeding 2 penalty units.

#### **17 Registers etc to be in English**

All registers, records, extracts, information, documents and notices required by this Division to be kept, affixed, maintained, sent or given shall be in the English language.

#### **18 (Repealed)**

### **Division 4 Health (factories)**

#### **19 Cleanliness and painting of factories**

- (1) Every factory shall be kept in a clean state and free from effluvia arising from any drain, sanitary convenience, or nuisance, and without prejudice to the foregoing provisions of this subsection the following requirements shall be complied with in respect of every factory:

- (a) accumulations of dirt, waste and refuse shall be removed daily from the floors and benches of workrooms, and from all stairways and passages,
  - (b) receptacles of fire-resistant material shall be provided in every factory and all waste and refuse shall be placed in those receptacles, which shall be emptied at least once each day,
  - (c) receptacles used for liquid waste or refuse, or for material likely to decay or have an offensive odour, shall be of metal or glazed earthenware, or be lined with metal, and shall not leak. They shall be kept covered and shall be emptied as often as is necessary to avoid offensiveness, and shall be cleaned and disinfected as often as is necessary to keep them in a sanitary condition,
  - (d) the floor of every workroom shall be cleaned at least once in every week by washing, or, if it is effective and suitable, by sweeping or other method,
  - (e) the cleaning of floors or the removal of dirt, waste or refuse shall so far as is practicable be done outside the working hours of the factory, and where such cleaning or removal is done inside those hours it shall be done in such a manner as will avoid the raising of dust or odours,
  - (f) all inside walls and partitions, and all ceilings or tops of rooms, and all walls, sides and tops of passages shall:
    - (i) where they have been painted with oil paint or varnished, be repainted or revarnished at least once in every period of seven years,
    - (ii) where they have been painted with at least two coats of washable water paint, be repainted with at least one coat of such paint at least once in every period of three years,
    - (iii) where they have been painted or varnished as aforesaid, or have not been painted but have a smooth impervious surface, be at least once in every period of fourteen months washed with hot water and soap or other suitable detergent or cleaned by such other method as may be approved by an inspector,
    - (iv) in all other cases be kept whitewashed or colour washed, and the whitewashing or colour washing shall be repeated at least once in every period of fourteen months.
- (2) Notwithstanding the provisions of subsection (1):
- (a) the regulations may, in respect of any class of factories, require the washing, cleaning, painting, varnishing, whitewashing or colour washing of the factory or any prescribed parts thereof at intervals more frequent than those prescribed by that subsection, and may exempt classes of factories from any of the provisions of

that subsection,

- (b) an inspector may, if it appears to him or her necessary, by notice in writing served on the occupier of a factory direct that the factory or any specified part thereof shall be washed, cleaned, painted, varnished, whitewashed or colour washed in the manner provided by that subsection within a period specified in the notice, and the occupier shall comply with that notice.
- (3) Where in respect of any factory there is a contravention of any requirement of this section or any regulation thereunder or of any notice served thereunder the factory shall, while such failure continues, be deemed not to be kept in conformity with this Part.
- (4) The occupier of a factory shall on demand inform an inspector of the dates of the last washing, cleaning, painting, varnishing, whitewashing or colour washing of each portion of the factory and shall if he or she fails to do so be guilty of an offence against this Act and be liable to a penalty not exceeding 2 penalty units.

## **20 Sanitary conveniences**

- (1) Sufficient and suitable sanitary conveniences for the persons employed in a factory shall be provided, maintained and kept clean, and effective provision shall be made for lighting the conveniences and, where persons of both sexes are or are intended to be employed (except in the case of factories where no more than 5 persons are employed where the only persons employed are members of the same family dwelling there), such conveniences shall afford proper separate accommodation for persons of each sex.
- (2) The regulations may prescribe in respect of factories or any class or description of factories what is sufficient and suitable provision for the purposes of this section.

## **21 Avoidance of infection**

Every occupier of a factory 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 guilty of an offence against this Act, unless he or she proves that he or she was not aware of the existence of the disease in the building and could not reasonably have been expected to have become aware of it.

## **22 (Repealed)**

## **23 Air space, temperature and ventilation**

- (1)
  - (a) No room or part of a factory shall be so overcrowded while work is carried on therein as to be likely to be injurious to the health of persons employed therein.

- (b) Without prejudice to the generality of paragraph (a), a room shall be deemed to be so overcrowded if it contains less than 11 cubic metres of space for each person employed therein, all space more than 4.25 metres above the level of the floor being disregarded.
- (2) Every part of the ceiling of a factory and of every room in a factory, and where there is no ceiling every part of the interior of the roof, shall be at least 2.4 metres above the level of the floor.
- (3) The regulations may:
- (a) prescribe measures to be taken for the prevention of overcrowding in factories,
  - (b) in respect of any class of factories or parts thereof require that rooms shall contain such greater space than that prescribed by subsection (1), or that the ceilings of the factories or parts shall be of such greater height than that prescribed by subsection (2), as is prescribed.
- (4) Suitable atmospheric conditions shall be maintained in workrooms, by natural or artificial means, to avoid insufficient air supply, stagnant or vitiated air, harmful draughts, excessive heat or cold, sudden variations in temperature and where practicable, having regard to the nature of the processes carried on, to avoid excessive humidity or dryness, and objectionable odours.

The regulations may require prescribed measures to be taken in relation to the temperature and ventilation of workrooms in all factories or specified classes of factories.

## **24 Lighting**

- (1) Effective provision shall be made for securing and maintaining sufficient and suitable lighting, whether natural or artificial, in every part of a factory in which persons are working or passing.
- (2) The regulations may prescribe standards of lighting in relation to all factories or specified classes of factories and may require prescribed steps to be taken or provision made in relation to such lighting.
- (3) All glazed windows and skylights used for the lighting of workrooms shall, so far as practicable, be kept clean on both the inner and outer surfaces and free from obstruction: Provided that this subsection shall not affect the whitewashing or shading of windows and skylights for the purpose of mitigating heat or glare.

## **25 Sanitation and hygiene in bakehouses**

- (1)
- (a) No place on the same level with a bakehouse, and forming part of the same



building, shall be used as a sleeping-place unless such sleeping-place is effectually separated from communication with the bakehouse by a partition extending from the floor to the ceiling, and there is an external glazed window in such sleeping-place of at least 0.8 square metre in area, of which at least 0.4 square metre is made so as to open for ventilation.

- (b) No sanitary convenience, cesspit, or ashpit shall be within or communicate with the bakehouse.
  - (c) Any cistern for supplying water to a bakehouse shall be separate and distinct from any cistern supplying water to a water-closet.
  - (d) No drain-pipe for carrying off faecal or sewage matter shall have an opening within a bakehouse.
- (2) Every bakehouse shall be maintained in conformity with any standards of sanitation and hygiene which may be prescribed in respect of bakehouses.
- (3) Any person who lets or occupies, or continues to let or knowingly suffers to be occupied, any place in which there is a breach of the provisions of this section shall be guilty of an offence against this Act.

## **26 Exemptions**

The Authority may by certificate signed by the Authority grant, either absolutely or subject to conditions, exemption from compliance with any of the requirements of this Division where the Authority is satisfied that compliance with those requirements would be unnecessary or impracticable.

## **Division 5 Safety (factories)**

### **27 Dangerous machinery to be fenced**

- (1) The occupier of a factory shall securely fence all dangerous parts of the machinery therein, and with respect to such fencing the following provisions shall have effect:
- (a) every flywheel directly connected to any prime mover, and every moving part of any prime mover shall be securely fenced whether the flywheel or prime mover is situated in an engine-house or not: Provided that every part of electric generators, motors and rotary converters, and every flywheel directly connected thereto, shall be securely fenced unless it is in such a position or of such construction as to be as safe to every person employed in the factory as it would be if securely fenced,
  - (b) every wheel-race not otherwise secured shall be securely fenced close to the edge of the wheel-race,
  - (c) every part of the transmission machinery and every cog-wheel shall either be securely fenced or be in such position or of such construction as to be as safe to

every person employed in the factory as it would be if securely fenced,

- (d) all fencing shall be constantly maintained in position in an efficient state while the parts required to be fenced are in motion or use.
- (2) 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.
- (3) In this section **factory** includes, in addition to any premises which constitute a factory as defined in section 4, any building in which sheep are shorn by machinery.
- (4) Any occupier of a factory who contravenes any of the provisions of subsection (1) shall be guilty of an offence against this Act.
- (5) In any prosecution for a breach of the obligation imposed on an occupier by paragraph (d) of subsection (1) it shall be a defence if the defendant proves that:
  - (a) the parts required to be fenced were necessarily exposed while in motion or use for examination or for lubrication or adjustment shown by such examination to be immediately necessary, and
  - (b) the period of exposure was no longer than was absolutely necessary for such examination, lubrication or adjustment, and
  - (c) he or she took all precautions necessary to avoid the risk of injury to any person, and
  - (d) such other conditions as may be prescribed were complied with.

## **28 Transmission machinery**

- (1)
  - (a) In every room or place where work is carried on in a factory efficient devices or appliances shall be provided and maintained by which the power can promptly be cut off from the transmission machinery in that room or place.
  - (b) Where an inspector by notice in writing served on the occupier of a factory so requires, there shall be installed and maintained in the factory such devices or appliances as the inspector may in such notice specify for:
    - (i) the interruption of the mechanical power supplied to any specified machine,
    - (ii) the prompt stopping or bringing to rest of any specified machine after the mechanical power supplied to it has been interrupted,
    - (iii) the restoration of the power supplied to a specified machine after the supply of that power has been interrupted,

(iv) preventing the inadvertent starting of a machine, or machinery, specified in the notice.

Where the inspector by such notice so directs, such devices or appliances shall be placed in positions specified in the notice.

- (2) No driving belt forming part of the transmission machinery in a factory shall, when not in use, be allowed to rest or ride upon any part of the transmission machinery.
- (3) There shall be provided and maintained in every factory suitable striking gear or other efficient mechanical appliances for moving driving belts to and from fast and loose pulleys forming part of the transmission machinery in the factory, and such belts shall not be so moved except by means of such gear or appliances. The gear or appliances shall be so constructed, placed and maintained as to prevent the driving belt from creeping back on to the fast pulley.

## **29 Construction, sale and use of new machinery**

- (1) In the case of any machine in a factory, being a machine driven or intended to be driven by mechanical power:
  - (a) every set-screw, pin, bolt or key on any revolving shaft, spindle, wheel, or pinion shall be so sunk, encased, or otherwise effectively guarded as to prevent danger,
  - (b) all spur and other toothed or friction gearing which does not require frequent adjustment while in motion shall be completely encased unless it is so situated as to be as safe as it would be if completely encased.
- (2) Every wheel or pulley which is part of the transmission machinery in a factory or of a machine driven or intended to be driven by mechanical power in a factory shall have a solid web or disc centre unless the wheel or pulley is totally encased or is in such a position as to be as safe as it would be if totally encased.
- (3) A factory in which there is a contravention of this section shall be deemed not to be kept in conformity with this Part.
- (4) Any person who sells or lets on hire or as agent of the seller or hirer causes or procures to be sold or let on hire, for use in a factory in New South Wales any machine or machinery intended to be driven by mechanical power and which does not comply with the requirements of subsection (1) or (2) shall be guilty of an offence against this Act.
- (5) The regulations may make it an offence for any person to sell or let on hire, or as agent of the seller or hirer to cause or procure to be sold or let on hire, for use in a factory in New South Wales, or for any prescribed use in a factory in New South Wales, all machines or machinery, or any prescribed class or description of machines or machinery, not complying with such provisions of this Act or the regulations as are

specified by the regulations so made.

(5A) The regulations may prescribe the guards or fences with which any prescribed machine or machinery is to be fitted at the time it is sold or let on hire for use in a factory.

(5B) Any person who sells or lets on hire, or as agent of the seller or hirer causes or procures to be sold or let on hire, for use in a factory in New South Wales:

(a) any machine prescribed as a machine to which this paragraph applies, if it is not fitted with such guards or fences that, when the machine is in motion or use and the guards or fences are properly adjusted, persons will thereby be prevented from coming into contact with dangerous parts of the machine at every place on or in the machine where any operation or process is carried out by means of the machine, or

(b) any machine or machinery not fitted with such guards or fences as are prescribed under subsection (5A) in relation thereto,

shall be guilty of an offence against this Act.

(6) It shall be a defence to any prosecution for an offence:

(a) against this section if the defendant proves that the machine or machinery to which the charge relates was manufactured in or imported into New South Wales:

(i) where the offence is not an offence against subsection (5B)—before the commencement of this Act,

(ii) where the offence is an offence against paragraph (a) of subsection (5B)—before the prescription of the machine to which the charge relates as a machine to which that paragraph applies, or

(iii) where the offence is an offence against paragraph (b) of subsection (5B)—before the commencement of the regulations prescribing the guards and fences to which the charge relates,

(b) against any regulations made under this section if the defendant proves that the machine or machinery to which the charge relates was manufactured in or imported into New South Wales before the commencement of such regulations,

but the defendant shall be liable to pay the costs incurred by the prosecution unless he or she has given reasonable notice to the informant that he or she will rely on such defence.

### **30 Space between machines and fixed structures**

(1) In any factory no moving part of any machine and no material carried on any moving

part of any machine shall, if the space over which it runs is a space over which any person is liable to pass, whether in the course of his or her employment or otherwise, be allowed to run within a distance of 600 millimetres from any fixed structure not being part of the machine.

(2) It shall be a defence to any prosecution for an offence against this section if the defendant proves that:

(a) the machine to which the charge relates was installed in the factory before the commencement of this Act, and

(b) the moving part or the material to which the charge relates was not allowed to run within a distance of 450 millimetres from any fixed structure not being part of the machine,

but the defendant shall be liable to pay the costs incurred by the prosecution unless he or she has given reasonable notice to the informant that he or she will rely on such defence.

### **31 Fencing of stock-bars and materials**

(1) In any factory, any part of a stock-bar which projects beyond the head-stock of a lathe shall be securely fenced unless it is in such a position as to be as safe to every person employed in the factory as it would be if securely fenced.

(2) The regulations may, as respects any type of machine in factories or any process in which machines are used in factories, require the fencing of materials or articles while in motion in the machine and may regulate the manner of such fencing.

### **32 (Repealed)**

### **33 Lifts and openings**

(1) In every factory, the opening of every hoist-way, lift and well-hole, and all openings in walls and all open sides of mezzanine floors shall be rendered safe by fencing or by such other means as an inspector may approve.

(2) If a lift in a factory used for the conveyance of employees or other persons is considered by an inspector to be unsafe or dangerous to use, he or she may by notice in writing prohibit the occupier from using such lift until it is made safe to the inspector's satisfaction. Should any lift be used at any time whilst its use is so prohibited, the occupier of the factory shall be guilty of an offence against this Act.

(3) No person under eighteen years of age shall be allowed to have the care, custody, management, or working of any lift in a factory.

(4) Subsections (1) and (2) shall not apply to or in respect of any hoist-way or lift to which the *Construction Safety Act 1912* applies.

In this section **lift** has the meaning ascribed thereto by that Act but in subsection (3) does not include a lift capable of being operated from any landing, place or position outside the confines of the cage or car of the lift.

### **34 Floors, passages and stairs**

In every factory:

- (a) all floors, steps, stairs, passages and gangways shall be of sound construction and properly maintained,
- (b) substantial hand-rails shall be provided and maintained:
  - (i) on all open sides of stairways,
  - (ii) on both sides of every stairway which, by reason of its construction or the condition of the surface of the steps or otherwise, is likely to cause accidents,and all such open sides shall be further guarded by the provision and maintenance of a lower rail or other effective means,
- (c) all openings in floors shall be securely fenced, except to the extent that and so long as the nature of the work done in the factory renders such fencing impracticable,
- (d) all ladders shall be of sound construction and properly maintained.

### **35 Storage and transport of hot and corrosive substances**

- (1) In every factory in which there is any molten metal or hot or corrosive substance:
  - (a) there shall be provided and maintained containers of such design, material and construction as to ensure safe storage, handling, transport and use of such metal or substance within the factory,
  - (b) every container for such metal or substance shall, if it is designed to revolve or tilt, be fitted with safe mechanical catches or other safe appliances which will regulate its position.
- (2) The regulations may prescribe precautions to be taken in particular classes or descriptions of factories for the prevention of accidents arising from the storage, handling, transport or use of molten metal or hot or corrosive substances, and the precautions so prescribed shall be additional to those prescribed by subsection (1).

### **36 (Repealed)**

### **37 Guarding of steam pipes**

In every factory, all steam pipes and all pipes used for heating purposes, other than pipes which are in such positions that persons employed in the factory would be unlikely to come in contact with them in the ordinary course of employment, shall be properly

insulated or guarded.

### **38 Stacking of materials**

All goods, articles and substances which are stored or stacked in a factory shall be stored or stacked:

- (a) in such manner as not to interfere with the adequate distribution of natural or artificial light, the proper operation of machines or other equipment, the unobstructed use of passageways or traffic lanes, and the efficient functioning of sprinkler systems or the use of other fire-fighting equipment,
- (b) on firm foundations not liable to settle and in such manner as not to overload the floors,
- (c) in such manner as will best ensure stability and prevent any collapse of such goods, articles or substances or their supports,

and shall not be stored or stacked against a wall or partition unless it is known that the wall or partition is of sufficient strength to withstand the pressure.

### **39 Dangerous containers**

- (1) In this section ***dangerous container*** means vat, pan, tank, sump, pit or similar vessel which contains any scalding, corrosive or poisonous liquid or which is otherwise dangerous because of its contents or depth.
- (2) In every factory, every dangerous container of which the edge is less than 1 metre above the adjoining ground, floor or platform shall either be securely covered or be securely fenced to at least that height, or where by reason of the nature of the work neither secure covering nor secure fencing to that height is practicable, all practicable steps shall be taken by covering, fencing or other means to prevent any person from falling into the dangerous container.
- (3) Where a dangerous container in a factory is not securely covered, no plank, ladder, stair or gangway shall be placed across or inside it which is not:
  - (a) at least 450 millimetres wide, and
  - (b) securely fenced on both sides to a height of at least 1 metre and securely fixed.
- (4) Where in a factory any dangerous containers adjoin, and the space between them, clear of any surrounding brick or other work, is less than 450 millimetres in width or is not securely fenced on both sides to a height of at least 1 metre, secure barriers shall be so placed as to prevent passage between them.
- (5) Every upper opening of every container, hopper or chute used for the reception of solid materials in a factory shall be provided with a grid such as will prevent persons

from falling through the opening, unless the opening is as safe to all persons employed in the factory as it would be if provided with such a grid.

- (6) The regulations may exempt any class of dangerous container from all or any of the provisions of subsections (2), (3) and (4) and in such case may prescribe other precautions for the prevention of accidents.

#### **40 Safety of working places and means of access**

- (1) There shall so far as is reasonably practicable be provided and maintained in every factory safe means of access to every place at which any person has at any time to work.
- (2) Where in any factory a person is to work at a place from which he or she will be liable to fall a distance more than 3 metres, then, unless the place is one which affords secure foot-hold and, where necessary, secure hand-hold, means shall be provided so far as is reasonably practicable, by fencing or otherwise for securing his or her safety.
- (3) The occupier of a factory shall, when so required by an inspector by notice in writing, provide within the factory such gangways or passageways as are specified in the notice. Such gangways or passageways shall:
- (a) be of such width as is specified in the notice, or if no width is specified shall be at least 1.2 metres wide,
  - (b) have clearly marked boundaries, and
  - (c) be kept clear of materials, stock and other obstructions.

If such notice is not complied with within the time for compliance specified therein the factory shall be deemed not to be kept in conformity with this Part.

#### **41 Protection from fumes etc**

- (1) In this section **fume** means fume, mist, gas, vapour, dust or other impurity.
- (2) Where in connection with any process carried on in a factory there is generated or given off any fume of such a character and to such an extent that the inhalation thereof would be likely to be injurious or offensive to persons employed in the factory, or any substantial quantity of dust of any kind, effective measures shall be taken to prevent the accumulation in any workroom of such fume or dust and to protect such persons against the inhalation thereof.

Where the nature of the process makes it practicable, exhaust appliances shall be provided and maintained, as near as possible to the point of origin of the fume or dust, so as to prevent it from entering the air of any workroom.

- (3) The Authority may by notice in writing require an occupier of a factory to take such



measures specified in the notice as in the opinion of the Authority are likely to prevent the emission into the atmosphere of any workroom or accumulation in any workroom of any fume or to protect any persons against the inhalation of any fume. If such notice is not complied with within the time for compliance specified therein the factory shall be deemed not to be kept in conformity with this Part.

Compliance with such a notice is not necessarily to be taken as compliance with subsection (2).

- (4) Notwithstanding the provisions of this section, the regulations may prescribe:
- (a) the maximum concentration of any fume that may be present in any factory or class of factory or in specified parts of factories and impose a penalty on the occupier of a factory wherein such concentration is exceeded,
  - (b) precautions to be taken in particular classes or descriptions of factories for the prevention of injury to health from the inhalation of fumes.

The regulations may exempt classes of factories from any of the requirements of subsection (2).

- (5) No stationary internal combustion engine shall be used or operated in a factory unless effective provision is made for conducting the exhaust gases from the engine into the open air.

## **42 (Repealed)**

## **43 Precautions against explosion**

- (1) Where in connection with any process giving rise to dust or gas, there may escape into any workroom of a factory dust or gas of such a character and to such an extent as to be liable to explode or burn if ignited, all practicable steps shall be taken to prevent such explosion or burning by enclosure of the plant used in the process, and by removal or prevention of accumulation of the dust or gas, and by exclusion or effective enclosure of possible sources of ignition.
- (2) Where in any factory there is present in any plant used in any such process as aforesaid dust or gas of such a character and to such an extent as to be liable to explode on ignition, then, unless the plant is so constructed as to withstand the pressure likely to be produced by any such explosion, all practicable steps shall be taken to restrict the spread and effects of such an explosion by the provision, in connection with the plant, of chokes, baffles and vents, or other equally effective appliances.
- (3) Where in a factory any part of a plant contains any explosive or inflammable gas under pressure greater than atmospheric pressure, that part shall not be opened, except in accordance with the following provisions:

- (a) before the fastening of any joint of any pipe connected with the part of the plant or the fastening of the cover of any opening into the part is loosened, any flow of the gas into the part or into any such pipe shall be effectively stopped by a stop-valve or otherwise,
- (b) before any such fastening as aforesaid is removed, all practicable steps shall be taken to reduce the pressure of the gas in the pipe or part of the plant to atmospheric pressure,

and if any such fastening has been loosened or removed as aforesaid, no explosive or inflammable gas shall be allowed to enter the pipe or part of the plant until the fastening has been secured or, as the case may be, securely replaced:

Provided that this subsection shall not apply to plant installed in the open air.

- (4) No plant, tank or vessel which contains or has contained any explosive or inflammable substance shall in a factory be subjected to any welding, brazing or soldering operation, to any cutting operation which involves the application of heat, or to any operation involving the application of heat for the purpose of forming, taking apart or removing the plant, tank or vessel or any part thereof or for the purpose of removing plant from the plant, tank or vessel unless:
  - (i) all practicable steps have been taken to remove the substance and any fumes arising therefrom, or to render them non-explosive or non-inflammable, and
  - (ii) suitable and adequate fire-fighting equipment is provided at the place where the operation is performed,

and if any plant, tank or vessel has been subjected to any such operation, no explosive or inflammable substance shall be allowed to enter the plant, tank or vessel until the metal has cooled sufficiently to prevent any risk of igniting the substance.

- (5) The Authority may by certificate grant, either absolutely or subject to conditions specified in the certificate, exemption from compliance with any of the requirements of subsections (3) and (4) in any case where the Authority is satisfied that compliance with the requirement is unnecessary or impracticable.
- (6) In this section **gas** means gas, mist or vapour.

#### **44 Training and supervision of persons working at machines**

No person shall be employed in any factory to work at any machine unless:

- (a) he or she has been fully instructed as to the dangers arising in connection with the machine and the precautions to be observed in connection with the machine, and
- (b)

- (i) he or she has received a sufficient training in work at the machine, or
- (ii) he or she is under adequate supervision by a person who has a thorough knowledge and experience of the machine.

#### **44A Electrical hazards**

- (1) The occupier of a factory shall ensure that the electrical installation, equipment and apparatus in the factory is so designed, constructed, protected and maintained as to eliminate as far as practicable the risk of any accidental electric shock or any electrical fire.
- (2) Where a regulation deals with the design, construction, protection or maintenance of the electrical installation, equipment or apparatus in a factory and the occupier of the factory complies with the regulation he or she shall, in relation to the matter dealt with by the regulation, be deemed to have complied with subsection (1).

#### **45 Means of escape from and extinguishing fires**

- (1) In every factory in which ten or more persons are employed the main inside and outside doors shall open outwards, and all the doors of every room in a factory in which persons are actually at work, or passages leading to such rooms, or serving as entrances and exits, shall neither be locked, bolted, nor barred during working hours.
- (2)
  - (a) Every factory shall be provided with sufficient means of escape in case of fire for the persons employed therein. For the purposes of this paragraph means of escape shall be deemed to be sufficient if section 11 (3B) has been complied with in relation to the factory.
  - (b) The obligation to provide such sufficient means of escape shall be upon the owner of the building in which the factory is situated.

Where such sufficient means of escape are not provided the General Manager may serve upon such owner a notice requiring him or her to provide the same within a period to be specified in the notice.

Any owner who neglects or fails to comply with any such notice shall be guilty of an offence against this Act and be liable, in the case of a corporation, to a penalty not exceeding 500 penalty units or, in any other case, to a penalty not exceeding 250 penalty units, and (in any case) to a further penalty not exceeding 5 penalty units for each day the offence continues.

- (3) The means of escape in case of fire provided in any factory shall be maintained in good condition and free from obstruction, and if they are not so maintained the factory shall be deemed not to be kept in conformity with this Act.

- (4) Before such means of escape are provided, two sets of plans and specifications thereof shall be submitted by the owner to the Authority for approval, one set of which shall be retained by the Authority.

On each set of plans shall also be shown the alternative means of egress from all floors of the building.

(4A) (Repealed)

- (5) In every factory there shall be such means of extinguishing fire as are prescribed.

#### **46 Use of white phosphorus**

Any factory in which white phosphorus is used in the manufacture of matches shall be deemed to be a factory not kept in conformity with this Part.

#### **47 Exemptions from compliance**

The Authority may by certificate in writing grant either absolutely or subject to conditions, exemptions from compliance with any of the requirements of this Division where the Authority is satisfied that compliance with those requirements would be unnecessary or impracticable.

### **Division 6 Notification of accidents and diseases occurring in factories**

#### **48 Notice to be given of accidents and diseases**

- (1) Where in a factory an accident occurs which:

- (a) causes loss of life to a person employed in the factory, or
- (b) is due to any machinery moved by mechanical power or to molten metal, hot liquid, or other hot substance, explosion, escape of gas or steam, or to electricity, or to an acid or alkaline solution, and so disables a person employed in the factory that during the whole of the working day next following the day on which the accident occurred he or she is absent from the factory or unable to perform his or her usual duties therein, or
- (c) so disables a person employed in the factory that during the whole of the seven days next following the day on which the accident occurred he or she is absent from the factory or unable to perform his or her usual duties therein, or
- (d) is of a class of accidents required by the regulations to be notified under this section,

written notice of the accident in the prescribed form and accompanied by the prescribed particulars shall forthwith be given by the occupier of the factory to the Authority.

- (2) If any accident causing disablement is notified under this section, and after notification thereof results in the death of the person disabled, notice in writing of the death shall be given by the occupier of the factory to the Authority as soon as the death comes to the knowledge of such occupier.
- (3) Written notice of every case of lead, phosphorus, arsenical or mercurial poisoning, anthrax or poisoning due to work in connection with radio-active substances and occurring in a factory, and every other case of disease so occurring and required by the regulations to be notified under this section, shall forthwith be given by the occupier of the factory in the prescribed form and accompanied by the prescribed particulars to the Authority.
- (4) The regulations may:
  - (a) require the notification under this section of prescribed classes of accidents and cases of disease occurring in factories,
  - (b) require the occupier of a factory to give to the Authority at prescribed times and in respect of prescribed periods, in addition to the notices required by or under this section to be given, such particulars of and in respect of accidents and cases of disease occurring in the factory as may be prescribed.

In this subsection **accidents** includes accidents which do not result in loss of life or the disablement of any person as well as accidents which so result.

- (5)
  - (a) Any person who fails to comply with any of the provisions of this section or the regulations thereunder shall be guilty of an offence against this Act.
  - (b) (Repealed)

## **Division 7 Employment of women and young persons in factories**

### **49 Employment of children and young persons in factories**

- (1) No child shall, unless by special permission of the Minister, be employed in any factory; and no such special permission shall be given to a child under the age of fourteen years.
- (2) A person under the age of sixteen years shall not be employed in a factory unless the occupier of the factory has obtained a certificate in the prescribed form of the fitness of such person for employment in that factory.
- (3) A certificate of fitness for the purposes of this section may be granted by any legally qualified medical practitioner, and shall be to the effect that he or she is satisfied by the production of a certificate of birth or by such other evidence as may be prescribed that the person named in the certificate of fitness is of the age therein specified, and

that such person has been personally examined by him or her, and is not incapacitated by disease or bodily infirmity from working daily for the time allowed by law in the factory named in the certificate.

- (4) The certificate of birth which shall be produced to such legally qualified medical practitioner may be either:
  - (a) a certified copy of the entry in a register of births kept in pursuance of any Act in force for the time being relating to the registration of births of the birth of the person (and such certificate of birth shall be given by the registrar without fee), or
  - (b) a statutory declaration made by some competent person as to the age of the person for whom it is desired to obtain a certificate of fitness for employment.
- (5) The occupier shall, when required, produce to an inspector at the factory at which a person under sixteen years of age is employed the certificate of fitness of such person for employment which he or she is required to obtain under this section.
- (6) Where an inspector is of opinion that a person under the age of sixteen years is, by disease or bodily infirmity, incapacitated for working daily for the time allowed by law in a factory, he or she may serve written notice thereof on the occupier, requiring that the employment of such person be discontinued from the expiration of the period named therein, not being less than one nor more than seven days after the service of such notice, and the occupier shall not continue after the expiration of such period to employ such person (notwithstanding that a certificate of fitness has been previously obtained for such person) unless a legally qualified medical practitioner has, after the service of the notice, personally examined such person and has certified that such person is not so incapacitated as aforesaid.
- (7) Where in any factory a person is employed contrary to the provisions of this section the occupier of the factory shall be guilty of an offence against this Act.

## **50 Employment of females in factories**

- (1) The occupier of a factory in which a female performs any work during the six weeks immediately after her confinement shall be guilty of an offence against this Act provided it can be shown that he or she knew of such confinement.
- (2) The occupier of a factory shall, on application being made to him or her by a female employed in the factory and where such female has furnished to him or her a certificate, signed by a legally qualified medical practitioner, as to the presumed date of her confinement, permit such female to absent herself from the factory:
  - (a) during the time which commences on and includes the day four weeks before such presumed date and includes the actual date of her confinement, or during such part or parts of that time as may be specified by her in an application or applications so made, and

- (b) at such other time or times, not exceeding ten working days in the aggregate, before her confinement as may be so specified.
- (3) Notwithstanding anything contained in any award, agreement or contract of employment:
- (a) the absence of a female from a factory in accordance with subsection (1) or subsection (2), or on account of illness certified by a legally qualified medical practitioner to have arisen out of her pregnancy or confinement, shall not be deemed to terminate her employment,
  - (b) no person shall:
    - (i) dismiss a female from her employment in a factory by reason of or during her absence from the factory, or
    - (ii) give any female notice of dismissal from her employment in a factory during her absence from the factory, or to take effect during such absence,where such absence is in accordance with subsection (1) or pursuant to leave granted under subsection (2) or where such absence is of not more than two months' duration and is on account of illness certified by a legally qualified medical practitioner to have arisen out of her pregnancy or confinement.
- (4) A person who contravenes any of the provisions of subsections (2) and (3) shall be guilty of an offence against this Act.
- (5) No employee shall be entitled, by reason only of the operation of this section, to wages for any period of absence from employment: Provided that nothing in this section shall affect the right of any employee under any Act other than this Act, or under any award, agreement or contract of employment, to sick leave or other leave, or to payment therefor.

### **51 Employment of young persons in connection with machinery**

- (1) The Minister may, by order published in the Gazette, prohibit the employment in any factory, or class of factory, at or in connection with any machinery described in the order as dangerous, of persons under the age of sixteen years in any work in which he or she considers it undesirable that they should be employed.

#### **Editorial note—**

For orders under this subsection see Gazettes No 193 of 17.12.1937, pp 4985-4987, No 79 of 20.6.1941, p 2254, No 96 of 4.10.1963, p 2925 and No 97 of 7.8.1970, p 3092.

Any such order may be issued either unconditionally or subject to conditions specified therein.

Where in any factory there is a contravention of such order or any conditions specified

therein the occupier of the factory shall be guilty of an offence against this Act.

(2) No person under eighteen years of age shall be allowed:

(a) to clean or lubricate any part of the transmission machinery in a factory, or

(b) to put on, put off, adjust, tighten or lace any belt or belting which is part of such transmission machinery, or

(c) to go or remain on any overhead staging erected for the purpose of serving any such transmission machinery,

while such transmission machinery is in motion.

(3) No person under eighteen years of age shall be allowed to work in any factory between the fixed and traversing part of any self-acting machine while the machine is in motion.

#### **52, 53 (Repealed)**

#### **54 Employment of young persons at night**

(1) Subject to subsection (2), no person under sixteen years of age shall be employed:

(a) in any factory, or

(b) in the business of but outside any factory,

between the hours of six o'clock in the evening and six o'clock in the morning, unless in the case of overtime the working of which is permitted by a State industrial instrument.

(2) The Minister may, by notice in the Gazette or by notice in writing to the occupier of each factory concerned, exempt from subsection (1), either absolutely or subject to such conditions and for such time as the Minister may think fit, any factory or part thereof or any specified class of factories or parts thereof either generally or situated in any specified locality.

(3) Where a person is employed contrary to this section in any factory or in the business of any factory, or where in respect of any factory there is a breach of any exemption or of any condition attaching to any exemption granted pursuant to this section, the occupier of the factory shall be guilty of an offence against this Act.

#### **55 Power to make regulations—young persons**

(1) The regulations may prohibit or restrict the employment in factories or classes of factories or in such parts of factories or classes of factories or in such processes in factories as may be specified by the regulations, of such persons under 21 or less years of age as may be so specified.



- (2) Without limiting the generality of subsection (1), restrictions imposed by such regulations may relate to the number of hours in a week for which or the times at which such persons may be employed.

#### **56 Saving of rights under awards etc**

Nothing in the provisions of this Division or the provisions of any regulations thereunder shall affect the right of any employee in a factory to recover any such wages or other moneys as would, but for such provisions, have been recoverable by virtue of any Act other than this Act or any award, agreement, or contract of employment; but no person shall be entitled to claim benefits under this Division in respect of any work done by him or her as well as benefits under any such Act, award, agreement, or contract in respect of the same work.

### **Division 8 Welfare (factories)**

#### **57 Supply of drinking water**

- (1) In every factory there shall be provided and maintained a sufficient supply of wholesome cool drinking water at suitable points conveniently accessible to all persons employed in the factory.

In the case of a water supply which is not laid on, the drinking water and vessels in which it is contained shall be protected from contamination.

Subject to the regulations, where an inspector so directs:

- (a) the drinking water shall be supplied through bubblers or drinking fountains which deliver the water in an upward direction,
- (b) the drinking water supply (whether laid on or not) shall be clearly marked "Drinking Water".
- (2) The regulations may in respect of all factories or any class or description of factories prescribe what shall, for the purposes of subsection (1), be a sufficient supply and other requisites for compliance with the said subsection.

#### **58 Washing facilities**

- (1) In every factory there shall be provided and maintained for the use of the employees therein adequate and suitable facilities for washing, and the facilities shall be conveniently accessible to the employees and shall be kept in a clean and orderly condition.
- (2) The regulations may in respect of all factories or any class or description of factories, or as respects any class or description of persons employed in factories:
- (a) prescribe what facilities shall, for the purposes of subsection (1), be adequate or

suitable facilities for washing,

- (b) make provisions in respect of the supply of soap, clean towels or other means of cleaning or drying.

## **59 Sitting accommodation**

- (1) Where any persons employed in a factory have in the course of their employment reasonable opportunities for sitting without detriment to their work, there shall be provided and maintained for their use suitable facilities for sitting sufficient to enable them to take advantage of those opportunities.
- (2) Where in a factory a substantial proportion of any work can properly be done sitting:
  - (a) there shall be provided and maintained for each person doing that work a seat of a design, construction and dimensions suitable for him or her and for the work, together with a foot rest on which he or she can readily and comfortably support his or her feet if he or she cannot do so without a foot rest, and
  - (b) the arrangements shall be such that the seat is adequately supported while in use for the purpose for which it is provided.

For the purposes of this subsection, the dimensions of a seat which is adjustable shall be taken to be its dimensions as for the time being adjusted.

## **60 First-aid**

- (1) In every factory not exempted from this section there shall be provided and maintained a first-aid chest containing such appliances and requisites for first-aid as are prescribed.
- (2) The regulations may in respect of all factories or any class or description of factories, other than factories exempted from this section:
  - (a) require the provision and maintenance in the factory of such number of first-aid chests, in addition to the first-aid chest required by subsection (1) to be provided and maintained, as is prescribed, and prescribing what appliances and requisites for first-aid such additional first-aid chests shall contain,
  - (b) require the provision and maintenance in the factory of a first-aid room or rooms and of prescribed fittings and equipment therein,
  - (c) regulate the manner in which first-aid chests and first-aid rooms provided pursuant to this section or the regulations shall be kept and maintained.
- (3) The regulations may exempt classes or descriptions of factories from this section.

## **Division 9 Application of certain provisions to shops**

### **61 Application of certain provisions to shops**

- (1) In sections 19, 21, 23, and 24, subsections (1) and (2) of section 33, and sections 36, 40, 45, 50 and 57, to 60, inclusive, and in any provisions extended to shops pursuant to subsection (2):
  - (a) the expression **factory** shall include a shop,
  - (b) the expression **workroom** shall include a room in which persons are employed in a shop.
- (2)
  - (a) The Governor may by proclamation published in the Gazette extend to shops such of the provisions of this Part (other than those referred to in subsection (1)) applicable to or in respect of factories as may be specified in the proclamation.
  - (b) The Governor may, by proclamation as aforesaid, revoke, vary, or alter any proclamation published under this section.

#### **Editorial note—**

No proclamations had been made under this subsection at the date of this update.

- (3) The regulations may regulate the construction of doors of exit in any specified classes of shops, and provide for uninterrupted exit by such doors during working hours.
- (4) No child shall, unless by special permission of the Minister, be employed in any shop in the sale of motor spirit or motor oil.

The occupier of a shop in which there is a contravention of this subsection shall be guilty of an offence against this Act.

## **Division 10**

### **62-64 (Repealed)**

## **Division 11 Boilers, pressure vessels, engines, refrigerating systems, refrigerated compartments and pressure testing**

### **65 Power to make regulations**

- (1) The Governor may make regulations not inconsistent with this Act, prescribing all matters necessary or convenient to be prescribed for securing the safe working and usage of boilers and pressure vessels, whether the same are in factories or not.

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

- (a) relating to the design, construction, fitting, location, erection, installation, setting, alteration, repair, maintenance, operation and use of boilers and pressure vessels,
- (b) providing for the identification of boilers and pressure vessels and the marking of the maximum allowable safe working pressure on boilers and pressure vessels,
- (c) providing for the examination, qualifications, licensing, powers, duties, supervision and control of boiler inspectors,
- (d) providing for the inspection and testing and the certification as to maximum allowable safe working pressure and as to conditions and requirements for the safe working and usage of boilers and pressure vessels,
- (e) requiring designs, specifications and particulars of boilers and pressure vessels to be submitted to and approved by the Authority,
- (f) providing for the supervision of the manufacture of boilers and pressure vessels and the submission to the Authority of particulars relating to the welding and the plates and other component materials and parts of boilers and pressure vessels and the testing thereof,
- (g) requiring persons engaged as welders or welding supervisors in the manufacturing of boilers and pressure vessels to hold certificates or permits and prescribing the qualifications which shall entitle persons to be issued with such certificates or permits,
- (h) prescribing the fees to be paid in respect of all or any of the following matters:
  - (i) the reviewing of designs, specifications and details of boilers and pressure vessels,
  - (ii) examination of candidates for licences as boiler inspectors, for the issue of such licences, and the annual renewal of such licences,
  - (iii) examination of candidates for certificates or permits as welders or welding supervisors and for the issue of such certificates or permits,
  - (iv) specification forms and forms for use for the purposes of the regulations by boiler inspectors,
- (i) prescribing the fees to be charged by boiler inspectors,
- (j) authorising the Authority, by certificate in writing to exempt any boiler or pressure vessel or any class or type of boiler or pressure vessel from the operation of any provision of the regulations where the Authority is satisfied that such provision cannot reasonably be applied to such boiler or pressure vessel or class or type of boiler or pressure vessel, as the case may be. Any such exemption may be absolute or may be made subject to such conditions as the Authority may impose.

(2)

(a) The Governor may make regulations not inconsistent with this Act:

- (i) providing for the qualifications, examination, certification, supervision and control of engine drivers and boiler attendants,
- (ii) providing for the granting and issue of appropriate certificates of competency or service in respect of the driver of any engine or class or type of engine and the attendant of any boiler or class or type of boiler and the cancellation and suspension of such certificates,
- (iii) providing for the establishment of an examination board for engine drivers and boiler attendants,
- (iv) relating to the powers, authorities, duties and functions of the examination board for engine drivers and boiler attendants,
- (v) prescribing the fees to be paid for examination for certificates of competency and the issue of certificates of service,
- (vi) prescribing the fees to be paid for the issue of statements of the particulars contained in certificates of competency and service,
- (vii) authorising the Authority by certificate in writing to exempt the driver of any engine or the attendant of any boiler from any or all of the provisions of the regulations where the Authority is satisfied that such provisions cannot reasonably be applied to the driver of such engine or class or type of engine or to the attendant of such boiler or class or type of boiler, as the case may be. Any such exemption may be absolute or may be made subject to such conditions as the Authority may impose,
- (viii) 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 or she is the holder of a certificate of competency or of service appropriate to that class or type of engine,
- (ix) prohibiting any person from being employed as or acting in the capacity of a boiler attendant of any class or type of boiler unless he or she is the holder of a certificate of competency or of service appropriate to that class or type of boiler,
- (x) authorising the Authority by notice in writing to restrict or prohibit the performance by the driver of any engine or engines of such work, additional to the driving of that engine or those engines, as may be specified in the notice, and requiring persons to comply with the terms of any such notice.

- (b) 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.
  - (c) Where an examination board for engine drivers and boiler attendants is established pursuant to this subsection, members of such board shall be entitled to receive such remuneration or fees for their services as may be fixed from time to time by the Governor, and each such member shall be entitled to receive travelling expenses at such rate as the Governor may from time to time determine.
- (3) The Governor may make regulations, not inconsistent with this Act, prescribing all matters necessary or convenient to be prescribed for securing the safe working and usage of refrigerating systems, whether the same be in factories or not.
- (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) 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.

#### **65A Pressure testing**

- (1) In this section ***rigid container*** means a tank, pipe or other vessel manufactured from metal or other rigid material.
- (2) A regulation referred to in subsection (3) does not apply to or in respect of anything done in or about a mine within the meaning of the *Mines Inspection Act 1901* or the

*Coal Mines Regulation Act 1982*, but applies to and in respect of the doing of any other thing whether in or about a factory or elsewhere.

- (3) The Governor may make regulations, not inconsistent with this Act, for or with respect to:
- (a) the testing for leaks, or for its ability to withstand pressure, of any rigid container or any seam, joint, fitting or other part of, or anything attached to, a rigid container, or
  - (b) the removal of any dents, kinks or other irregularities from a rigid container,
- by the application to the inside thereof of pressure by means of air or any other gas or gases or by means of a liquid other than a liquid that would not be harmful to persons in the vicinity of the rigid container if it escaped.

## **Division 12 Rural and local government industries**

### **66 Power to make regulations**

The Governor may make regulations not inconsistent with this Act, prescribing all matters necessary or convenient to be prescribed for securing the health, safety and welfare of persons engaged in rural or local government industries for hire or reward and whether as employees or otherwise.

Without affecting the generality of the foregoing provisions of this section, the Governor may, in relation to rural or local government industries, make regulations:

- (a) regulating or prohibiting the use of any machinery, plant, structure, equipment or appliance, the carrying on of any operation or the use of any process,
- (b) imposing requirements with respect to the construction, installation, examination, repair, maintenance, alteration, adjustment and testing of machinery, plant, equipment or appliances and the safeguarding of dangerous parts thereof and prohibiting the sale or letting on hire of any machinery, plant, equipment or appliance which does not comply with the requirements of the regulations,
- (c) requiring the giving of instructions with respect to the proper manner of using any machinery, plant, equipment, or appliance, carrying on any operation, or using any process,
- (d) prohibiting the engagement of any persons under 21 or less years of age (as may be specified) in any specified:
  - (i) process, or
  - (ii) description of work,either absolutely or except on condition that those persons have received sufficient

training in the process or work or are subject to such supervision as may be specified,

- (e) requiring the taking of such steps as may be prescribed for the purpose of bringing provisions of the regulations to the notice of persons engaged in rural or local government industries for hire or reward and whether as employees or otherwise,
- (f) (Repealed)
- (g) requiring the notification, by and to such persons as are prescribed and in the prescribed form and manner, of the occurrence of accidents of such classes and the contraction of such diseases as may be prescribed, and the keeping of prescribed records in relation to the occurrence of accidents and the contraction of diseases,

and with respect to the foregoing matters imposing obligations on persons so engaged, their employers, and persons of other specified classes.

Any such regulations may be made in relation to all or specified rural or local government industries, all or specified classes of premises or places in or upon which rural or local government industries are carried on or all or specified types of machinery, plant, structure, equipment or appliances or all or specified processes used or work done in such industries.

#### **67 Guards to be provided for chaff-cutting machines**

- (1) Every chaff-cutting machine (whether the same is in a factory or not) shall be provided with such guards as are prescribed and such guards shall be constantly maintained in an efficient state and properly adjusted.
- (2) If the owner or hirer of any chaff-cutting machine (whether the same is in a factory or not) does not provide the prescribed guards or does not constantly maintain such guards in an efficient state and properly adjusted he or she shall be guilty of an offence against this Act.
- (3) If any person operates a chaff-cutting machine (whether the same is in a factory or not) without any guard required by or in pursuance of this section to be provided for the same or when such guard is removed or not properly adjusted:
  - (a) in the case where such machine is not hired such person and the owner of such machine, and
  - (b) in the case where such machine is hired such person and the hirer of such machine,shall be severally guilty of an offence against this Act.
- (4) If any maker of a chaff-cutting machine or his or her agent or any seller of such machine (whether the same is to be used in a factory or not) delivers to a purchaser such a machine not equipped with the guards required by or in pursuance of this



section to be provided for the same, he or she shall be guilty of an offence against this Act.

## **Division 13 Regulations and orders**

### **68 Regulations**

- (1) The Governor may make regulations not inconsistent with this Act:
  - (a) prescribing all matters necessary or convenient to be prescribed for securing the safety or health of persons employed in factories,
  - (b) requiring the provision in factories of prescribed facilities for:
    - (i) medical or first-aid attention, including the appointment of personnel qualified to give medical, nursing or first-aid attention,
    - (ii) the welfare of persons employed, and
  - (c) prohibiting or restricting the employment of persons in lead processing areas in factories.
- (2) Regulations made under subsection (1):
  - (a) in relation to factories, may apply to all factories or prescribed classes of factories or prescribed parts thereof or any prescribed manufacture, machinery, plant, appliance, equipment, material, process, or description of manual labour used in factories or in any prescribed class of factories,
  - (b) in relation to an industry, may apply to that industry or prescribed classes of premises used in that industry, or any prescribed manufacture, machinery, plant, appliance, equipment, material, process, or description of manual labour used in that industry.

### **69 Orders**

- (1)
  - (a) Where the Minister is satisfied, upon the report of an inspector or otherwise, that any manufacture, machinery, plant, appliance, equipment, material, process, or description of manual labour, used in any factory, is of such a nature as to require special measures to be taken for securing the safety or health of persons employed in connection therewith, or any class of those persons, or that facilities for medical or first-aid attention, including the appointment of personnel qualified to give medical, nursing or first-aid attention, rest, recreation, meals, changing and protection of clothing, and washing are necessary or desirable in the interests of persons employed in any factory the Minister may, subject to the provisions of this Act, by order direct the occupier of such factory to make such provision or to

take such steps or to observe such prohibitions, restrictions, precautions, or obligations, or to provide such facilities, as appear to the Minister to be reasonably practicable and to meet the necessity of the case. Such order shall specify a time for compliance with the requirements thereof.

- (b) Where the requirements of an order made under this subsection have not been complied with within the time for compliance specified therein, the factory to which the order applies shall, while the failure to comply with those requirements continues, be deemed not to be kept in conformity with this Part.

(2) (Repealed)

- (3) If an inspector reports that loss of life or bodily injury to any person has been or is likely to be caused in any factory by the machinery used therein or by explosion or by escape of gas or metal or by electricity, or by acid or alkaline solutions, the Minister may direct the occupier of such factory and of any other factory where the like danger exists to take such steps as the Minister may, by order, direct to prevent the occurrence of accidents.

If such steps are not taken accordingly in any factory within such time as the Minister directs, then such factory shall be deemed not to be kept in conformity with this Part.

## **Division 14 Duties of occupiers and other persons**

### **70 Duties of occupiers**

Where the obligation to observe any of the provisions of this Part or any regulations thereunder which relate to factories or shops is not, by this Act, specifically imposed on any person then in the event of a contravention of any such provision in or in relation to a factory or shop the occupier of that factory or of that shop, as the case may be, shall be guilty of an offence against this Act.

Where by virtue of any provision of this Act a factory or shop is deemed not to be kept in conformity with this Part, the occupier of that factory or shop shall be guilty of an offence against this Act.

### **71 Duties of parents and guardians of young persons**

The parent or guardian having control of a person under 16 years of age shall, if such person is employed in a factory or shop contrary to the provisions of Division 7, be guilty of an offence against this Act and be liable to a penalty not exceeding 1 penalty unit, unless it appears that such offence was committed without the consent, connivance, or wilful default of the parent or guardian.

### **72 (Repealed)**

## Division 15 Powers of inspectors

### 73 Powers of entry of inspectors appointed under the *Occupational Health and Safety Act 1983*

- (1) Section 31A of the *Occupational Health and Safety Act 1983* applies to any premises or place (whether or not a place of work) that an inspector has reason to believe:
  - (a) are premises, or is a place, where any boiler, pressure vessel, engine, refrigerating system or chaff-cutting machine is in use or any industry or rural industry is carried on, or
  - (b) are premises, or is a place, where there is any vehicle containing a refrigerated compartment, or is such a vehicle, or
  - (c) is a vehicle containing a refrigerated compartment that is in or on a public road or other place to which the public (whether on payment of a fee or otherwise) ordinarily has access.
- (2) Accordingly, the other provisions of Division 4 of Part 3 of the *Occupational Health and Safety Act 1983* also apply in relation to any such premises or place.

## Part 4 Restriction of hours of trade or work in certain industries

### Division 1 Preliminary

#### 74 Definitions

- (1) In this Part, unless the context or subject matter otherwise indicates or requires:

**Area** means area to which the provisions of any State award or any award for the time being in force under any Commonwealth Act relating to industrial arbitration fixing the time for the commencement, or cessation, or the times for the commencement and cessation, of the ordinary hours of work by employees in shops therein apply.

**Close** means close to the admission of the public, and words derived therefrom have a corresponding meaning.

**Employ** means employ in any way or in any kind of work.

**Furniture factory** means a factory wherein any person is engaged in preparing, manufacturing, or assembling articles of furniture.

**Inspector** means an inspector appointed under the *Industrial Relations Act 1996*.

**Make or bake** in relation to pastry does not include any operations connected with the preparation of dough for pies, or with the preparation or cooking of meat required for pie-making, or with the firing of ovens.

**Medicinal or surgical goods** means drugs or medicines (including patent or proprietary drugs or medicines), surgical appliances, dressings and antiseptics.

**Pastry** includes cakes, biscuits, muffins and crumpets and any goods usually made by pastrycooks.

**State award** means an award within the meaning of the [Industrial Relations Act 1996](#).

**Warehouse** means place or building in which goods are sold or offered or exposed for sale by wholesale, and includes any portion of a building which is separated from the rest of the building by a substantial partition, and in which goods are sold or offered or exposed as aforesaid, and includes, where the context requires it, kind or class of warehouse.

**Week day** means any day of the week except Sunday.

- (2) For the purposes of this Act, a shop or warehouse shall be deemed to be open if:
- (a) it is not closed to the admission of the public, or
  - (b) any goods are sold or offered for sale therein, or
  - (c) any person is in attendance at the shop or warehouse for the receipt, by any means, of
    - (i) orders for goods, or
    - (ii) requests for the demonstration of goods, or the delivery of goods on approval.

## Division 2

**75-77 (Repealed)**

## Division 3 Opening and closing hours of shops and warehouses

### 78 Definitions and application

- (1) In this Division and in Schedule 3, unless the context or subject matter otherwise indicates or requires:

**General shop** means any shop (other than a scheduled shop) that is classified by the regulations as a general shop for the purposes of this definition.

**Hairdresser's shop** means shop in which the business of a hairdresser is carried on.

**Lease** includes sublease, tenancy, subtenancy or licence to use or occupy, whether in writing or not.

**Occupier** means person, partnership, association, or corporation occupying a

warehouse, directly or indirectly, as principal, and includes a person who continues to be the occupier of a warehouse under the provisions of section 91.

**Public holiday** means any day on which the following holidays are publicly observed:

- (a) New Year's Day,
- (b) Australia Day,
- (c) Good Friday,
- (d) Easter Sunday,
- (e) Anzac Day,
- (f) Christmas Day, and
- (g) Boxing Day.

**Scheduled shop** means shop of any of the classes specified in Schedule 3.

**Shop** means place, building, stall, tent, vehicle, boat, or pack in which goods are sold or offered or exposed for sale by retail, or from which goods are sold by retail, or in which the business of a hairdresser, pawnbroker or farrier is carried on, and includes any portion of a building which is separated from the rest of the building by a permanent and substantial partition or wall, and in which goods are sold or offered or exposed as aforesaid, or in which any such business as aforesaid is carried on, and includes where the context requires it, kind or class of shop.

**Shopkeeper** means person, partnership, association, or corporation occupying a shop, directly or indirectly as principal, and includes hawkers and pedlars, and also includes a person who continues to be a shopkeeper of a shop under the provisions of section 91, but does not include a commercial traveller bona fide engaged in selling goods to a shopkeeper by sample only.

**Small shop** means a shop which complies with section 78B.

- (2)-(4) (Repealed)
- (5) The Governor may, by order published in the Gazette, amend Schedule 3 by omitting therefrom a class of shops or by adding thereto a class of shops.

#### **78A Exemption from provisions of this Division**

- (1) The shopkeeper of a shop may make application to the Director-General for exemption from all or any of the provisions of this Division, and of the regulations made for the purposes of this Division, in relation to the shop.
- (2) An application under subsection (1) shall be made in such manner as may be

prescribed and shall be accompanied by the prescribed fee.

- (3) The Director-General may grant or refuse an exemption applied for under this section.
- (4) Where the Director-General grants an exemption under this section, the exemption may be granted:
  - (a) subject to conditions or unconditionally,
  - (b) to take effect from the date of the grant or from a later date, and
  - (c) for a specified period or indefinitely.
- (5) An exemption granted, and not withdrawn, under this section shall have effect according to its tenor.
- (6) Where the Director-General grants an exemption under this section in relation to a shop, the Director-General shall issue to the shopkeeper of the shop a certificate of the exemption which shall specify the conditions (if any) subject to which the exemption is granted, the date on which the exemption takes effect and the period (if any) for which the exemption is granted.
- (7) Where the Director-General is of the opinion that the conditions subject to which an exemption is granted under this section in relation to a shop have been breached, the Director-General may, by notice in writing to the shopkeeper of the shop, withdraw the exemption.
- (8) A notice under subsection (7) may be served on a shopkeeper of a shop personally or by posting it to the shopkeeper at the address of the shop.
- (9)-(12) (Repealed)

#### **78AA Reviews by the Administrative Decisions Tribunal**

Any shopkeeper or occupier of a shop who is aggrieved by any of the following decisions may apply to the Administrative Decisions Tribunal for a review of the decision:

- (a) a determination of the Director-General to refuse to grant an exemption, or
- (b) a determination of the Director-General as to the conditions subject to which, or the period for which, an exemption is granted, or
- (c) a determination of the Director-General to withdraw an exemption.

#### **78B Small shops**

- (1) A shop is a small shop for the purposes of this Act if it complies with the requirements of this section.
- (2) The shopkeeper or shopkeepers of a small shop is or are to be natural persons not

exceeding 2 in number (whether or not carrying on the business of the shop in partnership) or 1 corporation.

- (3) The shopkeeper or shopkeepers of a small shop is or are to be the owner or owners of the business of the shop and entitled to the profits of that business.
- (4) The number of persons engaged in a small shop as employees or otherwise in the conduct of the business of the shop on any day (either at the same time or at different times) is not to exceed 4.
- (5) The number of persons permitted to be engaged in a small shop as referred to in subsection (4) does not include:
  - (a) the shopkeeper or shopkeepers or, if the shopkeeper is a corporation, not more than 2 natural persons who are shareholders of the corporation, or
  - (b) any person so engaged in an emergency during the absence from the shop for part of a day of a person who is so engaged in the shop on that day, or
  - (c) any person so engaged outside the normal working hours of any person so engaged on a full-time basis.
- (6) Subsection (4) does not apply to a shop during a period of exemption specified in an order for the time being in force under section 89B in respect of an area or locality within which the shop is situated.
- (7) A shopkeeper of a small shop is not to be a person acting as the employee of or acting directly or indirectly as the agent of another person in the conduct of the business of the shop.
- (8) A shop is not a small shop if a direct or indirect interest in the business of the shop is held by:
  - (a) a corporation that is engaged in a business other than the business of the shop, or
  - (b) a director of a corporation that is engaged in a business other than the business of the shop, or
  - (c) any other person who is engaged, as an employee or otherwise, in a business other than the business of the shop, or
  - (d) any corporation (whether or not engaged in a business) that for the purposes of section 50 of the *Corporations Act 2001* of the Commonwealth is to be taken to be related to a corporation referred to in paragraph (a) or (b).
- (9) A reference in any other Act, award or instrument to a small shop as defined in section 76A of this Act is to be read as a reference to a small shop within the meaning of this section.

(10) In this section:

**business** means:

- (a) the business of the sale of goods by retail, or
- (b) the business of a hairdresser.

**shareholder**, in relation to a corporation, means a person having a relevant interest in a share in that corporation for the purposes of Part 6C.1 of the *Corporations Act 2001* of the Commonwealth.

## **79 (Repealed)**

### **79A Premium rates of pay for Saturday afternoons**

- (1) The regulations may amend any award made under the *Industrial Relations Act 1996* (whether or not published) which fixes the rates of pay of employees in shops by the substitution of the rate of time and a half for any other rate of pay specified in the award for ordinary hours worked by any such employees on a Saturday after 12 noon.
- (2) The regulations made under subsection (1) may also provide for the amendment of any award referred to in that subsection so as to apply the rate of time and a half to hours worked by casual employees in shops on Saturdays after 12 noon and for the omission of provision in the award for any loading in relation to those hours.

## **80-81A (Repealed)**

### **82 Closing time of mixed shops**

(1)

- (a) Where the trade carried on in a shop, not being a small shop, includes trade usually carried on in two or more classes of shops the shop shall be kept closed at all times when shops of any of such classes are required by this Act to be kept closed: Provided that it shall be lawful for the shop to be kept open at any such time if all goods therein, which are usually the subject of trade in a class or classes of shops required by this Act to be kept closed at that time, are partitioned off in the prescribed manner.
- (b) In any information alleging that a shop to which paragraph (a) applies was open at a time when it was required by this Act to be kept closed, it shall be a sufficient description of the offence charged to allege that the shop was of a specified class, being one of the classes included in the trade carried on in the shop, and was open at the time of the alleged offence, being a time when shops of such specified class are required by this Act to be kept closed.

(2)



- (a) Where a shopkeeper of a shop to which the provisions of subsection (1) apply has within a period of three years been convicted three times for offences under section 86, the Industrial Relations Commission in Court Session may order that in respect of the shop while occupied by such shopkeeper and of any other shop to which the business of such shopkeeper may be transferred the provisions of the said subsection shall for such period as the Commission may determine operate as though the proviso to paragraph (a) of the said subsection were omitted, and the said subsection shall for the period so determined operate in accordance with the order of the Commission.
- (b) An application for an order under paragraph (a) shall be made by the Minister or by an inspector authorised in that behalf by the Minister.

Any such application shall be made as prescribed by regulations made under the *Industrial Relations Act 1996*.

An authority to make such application purporting to have been signed by the Minister shall be prima facie evidence of such authority without proof of the Minister's signature.

### **83 (Repealed)**

### **84 Trading hours of shops on Sunday**

- (1) Shops (other than scheduled shops and small shops) are to be kept closed on Sundays, except for the two Sundays immediately preceding Christmas Day.
- (2), (3) (Repealed)
- (4) The provisions of any law, other than this Act and the regulations, to the extent to which it prohibits the opening of any shop or any trading or dealing in goods in any shop, have no force or effect.

### **85 Trading on public holidays**

- (1) General shops (other than small shops) shall be kept closed on public holidays.
- (2) The Minister may, by order published in the Gazette, suspend the operation of subsection (1) in relation to any specified public holiday:
- (a) within New South Wales generally, or
- (b) within any specified part of New South Wales,
- subject to such conditions as to hours of opening, or of trading in any classes of goods, or as to other matters, as may be specified in the order.
- (3) An order under subsection (2) shall not be made unless the Minister is satisfied that it will be of benefit to the public for general shops to be allowed to remain open on the

specified public holiday:

- (a) within New South Wales generally, or
- (b) within the specified part of New South Wales,

as the case may be, but nothing in this subsection affects the validity of any such order.

## **86 Offences**

(1) Where by or under this Act:

- (a) an opening time on any week day is fixed for or in respect of any shop, the shop shall be kept closed on that day until that opening time,
- (b) a closing time on any week day is fixed for or in respect of any shop or warehouse, the shop or warehouse shall be kept closed for the remainder of that day at and after that closing time.

(2) Subject to sections 89A and 90, where any shop or warehouse is open at a time when it is required by or under this Act to be kept closed, the shopkeeper of the shop or occupier of the warehouse, as the case may be, and any person acting or apparently acting in the management of the shop or warehouse, as the case may be, shall be guilty of an offence against this Act:

Provided that no such shopkeeper, occupier, or person shall be guilty of the said offence by reason only that within one half hour after the relevant closing time, or the first half hour of a period for which the shop or warehouse is required by or under this Act to be kept closed, as the case may require, goods have been offered for sale or sold to a customer who at the relevant closing time, or at the commencement of that period was in the shop or warehouse being served or waiting to be served.

(3) (Repealed)

(4) If in any hairdresser's shop any work is done for any customer at a time when such shop is required by or under this Act to be kept closed, the shopkeeper of the shop and any person acting or apparently acting in the management of the shop shall be guilty of an offence against this Act:

Provided that no such shopkeeper or person shall be guilty of the said offence by reason only that within the fifteen minutes after the closing time for that shop any work was done for a customer who at the closing time was in the hairdresser's shop being attended to or waiting to be attended to.

(5) A person guilty of an offence referred to in this section is liable:

- (a) in the case of a first or second offence—to a penalty not exceeding 10 penalty units, or

- (b) in the case of a third or subsequent offence—to a penalty not exceeding 100 penalty units.

### **87 Penalty for publishing certain statements**

- (1) Any person who publishes or causes to be published any statement which is intended or apparently intended to promote the business carried on in a shop or warehouse and which states, implies or suggests that at a time when that shop or warehouse is required by or under this Act to be kept closed:
  - (a) the shop or warehouse will be open to the admission of the public for any purpose of trade or the inspection of goods, or
  - (b) any goods will be sold or offered for sale in the shop or warehouse, or
  - (c) any person will be in attendance at the shop or warehouse or at any other place for the receipt, by any means, of
    - (i) orders for goods, or
    - (ii) requests for the demonstration of goods, or the delivery of goods on approval,shall be guilty of an offence against this Act.
- (1A) A person guilty of an offence referred to in this section is liable:
  - (a) in the case of a first or second offence—to a penalty not exceeding 10 penalty units, or
  - (b) in the case of a third or subsequent offence—to a penalty not exceeding 100 penalty units.
- (2) A statement shall be deemed to be published within the meaning of this Act if it is:
  - (a) inserted in any newspaper or any other publication printed and published in New South Wales, or
  - (b) publicly exhibited:
    - (a) in, on, over or under any building, vehicle or place (whether or not a public place and whether on land or water), or
    - (b) in the air in view of persons being or passing in or on any street or public place, or
  - (c) contained in any document gratuitously sent or delivered to any person or thrown or left upon premises in the occupation of any person, or
  - (d) broadcast by wireless transmission or by television, or

(e) made verbally.

### **88 Division not to apply to sale of books etc at ferry bookstalls**

Nothing in this Division shall apply to ferry bookstalls in respect of the sale of books, magazines, periodicals and newspapers.

### **88A Art and handicraft galleries**

Nothing in this Division applies to any art or handicraft gallery, or art and handicraft gallery, wherein goods that are:

- (a) works of art or of handicraft,
- (b) articles or materials for use in mounting, framing or displaying the works specified in paragraph (a),
- (c) books, catalogues or other publications relating to art or handicraft, or
- (d) other prescribed goods,

but no other goods, are sold or offered or exposed for sale.

### **89 Power of suspension in certain cases**

In cases of emergency caused by disease, or fire, tempest, flood or other calamity, the Minister may by notice published in the Gazette suspend the operation of such provisions of this Division and the regulations as he or she deems necessary in respect of any persons, class of persons, shops, classes of shops, warehouses, or classes of warehouses, for such period within such locality, and under and subject to the performance of such conditions as he or she may impose, and in like manner may alter or annul such order of suspension.

Any person who contravenes any condition imposed under this section shall be guilty of an offence against this Act.

### **89A Sale of medicinal or surgical goods**

No person shall be guilty of an offence against this Act by reason only that a shop being a chemist's shop, or that a warehouse wherein medicinal or surgical goods were sold or offered or exposed for sale, was open on any day at a time (in this subsection referred to as a non-trading time) when such shops or warehouses are required by or under this Act to be kept closed, if:

- (a) the only purpose of such opening was the sale of medicinal or surgical goods in accordance with the order or prescription of a medical practitioner, the prescription of a nurse practitioner or required urgently, and no goods other than medicinal or surgical goods either:

- (i) specified in such an order or prescription produced by a person seeking to buy those goods to a person acting in the conduct of the business of the shop or warehouse, or
  - (ii) which a person seeking to buy those goods stated to a person so acting to be required for a specified urgent purpose,
- were sold in the shop or warehouse during the non-trading times on that day, and
- (b) the door of the shop or warehouse was kept closed and fastened at all non-trading times on that day except when:
    - (i) a person admitted to the shop or warehouse for the purpose of the sale of medicinal or surgical goods as referred to in paragraph (a),
    - (ii) a person referred to in paragraph (a) of subsection (1) of section 90, or
    - (iii) a customer referred to in the proviso to subsection (2) of section 86,was entering or leaving the shop or warehouse.

#### **89B Exemption of holiday resorts**

- (1) The Minister, on application being made pursuant to this section and where he or she is satisfied that all or part of an area (within the meaning of the [Local Government Act 1993](#)) outside the County of Cumberland, the City of Newcastle and the City of Wollongong:
  - (a) is, or is within, a holiday resort, and
  - (b) during the period or periods of the year specified in the application or any part of that period or those periods usually has a holiday population that is large by comparison with its normal resident population,may, subject to this section and for that period or those periods, or some part thereof, as he or she thinks fit, by order exempt the shops in that area or part thereof, as the case may be, from the provisions of this Division, and from specified provisions of the regulations, subject to such conditions as to hours of opening, or of trading in any classes of goods, or as to other matters, as may be specified in the order.
- (2) An application for an order under this section may be made to the Minister only by the council of the area or part thereof in respect of which the order is sought and shall:
  - (a) state the reasons therefor,
  - (b) specify the area or locality in respect of which, and the period or periods in each year for which, it is desired that the exemption shall be in force,
  - (c) specify 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 the exemption, and

- (d) state whether, and if so to what extent, the application has the support or concurrence of the shopkeepers of shops situated within the area or locality.

The period or periods specified pursuant to paragraph (b) shall be an unbroken period not longer than, or more than one period totalling not more than, fifteen weeks and shall be the same period or periods in each year.

- (3) The Minister shall not make an order under this section until he or she has obtained, and has considered, a report by the prescribed person as to whether or not the area or locality specified in the application for the order is, or is within, a holiday resort and, if so, whether during the period or periods so specified that area or locality usually has a holiday population that is large by comparison with its normal resident population.

In this subsection ***the prescribed person*** means the person for the time being holding, or acting in, the office of Director of Tourism or, where the holder of some other office is prescribed for the purposes of this subsection, the person for the time being holding or acting in that office.

- (4) An order under this section:

- (a) shall be published in the Gazette,
- (b) shall, until revoked and subject to any variation thereof that may from time to time be made, remain in force from year to year in respect of the period of exemption specified therein,

and any revocation or variation thereof shall also be so published.

- (5) No person shall 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 of exemption specified in that order and in accordance with the conditions, if any, so specified.

### **89C Hairdresser's shops at transport terminals**

- (1) The Minister, on application being made to him or her by the shopkeeper of a hairdresser's shop, and where he or she is satisfied that the shop:
- (a) is situated at or near a railway station, shipping wharf, air transport terminal, or other place to or from which persons are customarily conveyed by rail, ship, aircraft or other means of transport,
- (b) is bona fide conducted for the sole or major purpose of performing hairdressing services for persons requiring those services on the completion of or in preparation for journeys of long duration, and

(c) is so fitted out and equipped as to provide a suitable standard of comfort and amenity,

may by order exempt that shop from the provisions of this Division, and from specified provisions of the regulations, subject to such conditions, if any, as are specified in the order and either without limitation of time or for a period so specified.

**Editorial note—**

For orders under this subsection see Gazette No 9 of 29.1.1971, p 239.

(2) No person shall be guilty of an offence against this Act by reason only that a shop was open at a time when an order under this section in respect of that shop was in force and in accordance with the conditions, if any, specified in that order.

**89D Sale of sporting requisites**

Where, but for this section, a person would be guilty of an offence by reason only that a shop was open at a particular time, he or she is not guilty of the offence if:

(a) at that time:

(i) persons were taking part in a lawful game or sport, or

(ii) there were reasonable grounds for believing that persons were about to take part in a lawful game or sport,

upon the premises or land where the shop was situated at that time, and

(b) the goods sold or exposed or offered for sale in the shop at that time:

(i) consisted only of requisites for taking part in that game or sport upon the premises or land, or

(ii) consisted of those requisites and any other goods that could be sold or exposed or offered for sale upon the premises or land at that time without an offence being committed.

**89E (Repealed)**

**90 Defences**

(1) No person shall be convicted for an offence against this Act for not closing or for not keeping closed a shop or warehouse if he or she proves that the shop or warehouse was not closed or not kept closed only for the purposes of:

(a) persons visiting or resorting to the premises for purposes other than for purposes of or connected with trade in the shop or warehouse or the inspection of goods, or

(b) customers referred to in the proviso to subsection (2) or (4) of section 86, or

(c) (Repealed)

(d) in the case of a retail butcher, persons entering or leaving only in connection with the delivery of meat to the shop of such butcher.

(2) (Repealed)

**90A (Repealed)**

**91 Leases of shops and warehouses**

Where a shopkeeper or occupier leases to any other person his or her shop or warehouse, or any part thereof, for a term or period less than one week, he or she shall, notwithstanding such lease, continue to be the shopkeeper of the shop or the occupier of the warehouse, as the case may be, for the purposes of this Act.

**Divisions 3A, 4**

**91A-94A (Repealed)**

**Division 5 Day baking**

**95 (Repealed)**

**96 Manufacture of pastry etc at certain times prohibited**

Any person exercising the trade or calling of a pastrycook, whether an employer of labour or not, or any person employed in such trade or calling, who in any area makes or bakes for trade or sale any pastry before the time that may be fixed by a State award for the time being in force in such area for the commencement of the ordinary hours of work by employees engaged in the making or baking of pastry or after the time that may be so fixed for the cessation of the ordinary hours of work by employees so engaged, shall be guilty of an offence against this Act.

**97 Exemption**

The Minister may, in the case of any emergency or unforeseen circumstances, or in order to meet the exigencies of the trade carried on in a particular bakehouse, exempt any person exercising or employed in the trade or calling of a pastrycook from the operation of all or any of the provisions of section 96 for such period and subject to such conditions as the Minister may impose.

Any person who contravenes any conditions imposed pursuant to this section shall be guilty of an offence against this Act.

**98 (Repealed)**

**Division 6**

**99 (Repealed)**



## **Division 7 General**

### **100 Powers of inspectors**

- (1) An inspector may:
  - (a) enter or demand entrance at any time, by day or night, into any place or premises when he or she knows or has reasonable cause to believe that any person is exercising therein the trade or calling of a pastrycook, whether as an employer of labour or not or is employed therein in such trade or calling,
  - (b) enter or demand entrance at any time, by day or night, into any furniture factory or any place or premises which he or she has reasonable cause to believe is a furniture factory,
  - (c) enter at any reasonable time any shop or warehouse or any place which he or she has reason to believe is used as a shop or warehouse,
  - (d) (Repealed)
  - (e) make such examination and inquiries as he or she thinks necessary to ascertain whether the requirements of this Part are being complied with,
  - (f) examine with respect to matters under this Part, any person employed in or about a shop, warehouse, or furniture factory, or any person whom he or she finds in any bakehouse or whom he or she has reasonable cause to believe exercises the trade or calling of a pastrycook, or is employed in such trade or calling.
- (2) The occupier of any furniture factory, or any premises wherein the trade or calling of a pastrycook is being carried on, shall make such provision as may be required by the Minister, by notice in writing served on such occupier, to enable an inspector to effect an entry into such premises or to exercise his or her powers under this Part.
- (3) If the admission of an inspector pursuant to subsection (1) is refused or unreasonably delayed, such inspector, if accompanied by a member of the police force, may make such entry, as he or she is authorised under such subsection to make, with such assistance as may be deemed requisite.
- (4) Any person who:
  - (a) refuses or wilfully delays the admission of any inspector as aforesaid, or
  - (b) wilfully obstructs any inspector in the exercise by him or her of his or her powers under this Part, or
  - (c) fails to comply with the request of an inspector made under any such power, or
  - (d) conceals any person from an inspector or prevents any person from appearing

before or being examined by an inspector or attempts so to conceal or prevent any person, or

(e) fails to make any provision required by the Minister pursuant to subsection (2),

shall be guilty of an offence against this Act and be liable to a penalty not exceeding 50 penalty units.

(5) (Repealed)

### **101 Divisions 2 and 3 not to apply in certain cases**

Nothing in Division 2 or in Division 3 shall apply to:

- (a) railway or tramway refreshment rooms or railway or tramway bookstalls, or
- (b) any premises in respect of which a hotelier's licence is in force, by reason only of the sale or exposing or offering for sale, in or upon those premises, of liquor as defined by the [Liquor Act 1982](#) or of meals or refreshments, or
- (c) any bazaar or fair where goods are sold or exposed for sale in order that the net proceeds of the sale of goods may be devoted to religious, charitable, or public purposes only, or
- (d) any agricultural, pastoral or horticultural society's show approved by the Minister, or any trade exhibition or trade fair so approved.

### **101A Disclosure of information**

Section 389 of the [Industrial Relations Act 1996](#) is taken to apply to an inspector who obtains information relating to any manufacturing or commercial secrets or working processes in connection with the administration of this Act.

### **102 Regulations**

The Governor may make regulations not inconsistent with this Part:

- (a) prescribing the nature, method of construction, and requisites of partitions to partition off goods in a shop, and the manner in which the same shall be maintained and secured,
- (b) prescribing in respect of any class of shops what trade shall, for the purposes of this Part, be deemed to be that usually carried on in such class of shops, and providing that such trade, and no other, shall be deemed to be the trade usually carried on in such class of shops,
- (c) requiring the shopkeeper of a chemist's shop to exhibit whenever the shop is closed, a notice containing the prescribed information as to a place where and means whereby medicinal and surgical goods may be obtained, and prescribing the place and manner

in which any such notice shall be exhibited, and

(d) (Repealed)

(e) relating to the publication or advertising of applications for exemption under section 78A, or of information relating to any such applications.

## Part 5

103 (Repealed)

## Part 6 Regulation of the hairdressing trade

### Division 1 Preliminary

#### 104 Definitions

In this Part, unless the context or subject matter otherwise indicates or requires:

**Apprentice** means apprentice within the meaning of the *Industrial and Commercial Training Act 1989*.

**Hairdresser** means a person engaged in:

- (a) arranging, dressing, curling, waving, cleansing, cutting, trimming, shaving, singeing, bleaching, tinting, colouring or otherwise treating the hair or beard of any person, whether by hand, or by any mechanical or electrical apparatus or appliances, or
- (b) massaging, cleansing or stimulating the scalp, face or neck of any person, whether with the use of cosmetic, antiseptic or similar preparations, or of tonics, lotions, or cream or otherwise, or
- (c) carrying out any beauty treatment on the premises of a hairdresser,

and **hairdressing** shall have a corresponding meaning.

**Inspector** means an inspector appointed under the *Industrial Relations Act 1996*.

**Licence** means a licence or any renewal thereof issued pursuant to this Part.

**Licensee** means a person who is the holder of a licence.

**Trainee apprentice** means trainee apprentice within the meaning of the *Industrial and Commercial Training Act 1989*.

### Division 2

105, 106 (Repealed)

## **Division 3 Licensing of hairdressers**

### **107 Exemption from application of Division**

Nothing in this Division shall extend or apply to any legally qualified medical practitioner or nurse or physiotherapist when engaged in the practice of his or her profession, or an apprentice or a probationer for apprenticeship or trainee apprentice engaged in hairdressing under the direct personal control and supervision of a hairdresser licensed under this Division.

### **108 Hairdressers to be licensed**

- (1) No person shall:
  - (a) for fee, gain or reward act as a hairdresser unless he or she is the holder of a hairdresser's licence granted under this Division,
  - (b) employ, instruct or allow any person not the holder of a licence to act for fee, gain or reward as a hairdresser.
- (2) An application for a licence shall be made to the Director-General, shall be in a form approved by the Director-General and shall be accompanied by the prescribed fee.
- (3) A licence shall, subject to this Division, remain in force for a period of one year from the date of the issue thereof and may upon payment of the prescribed fee be renewed from time to time for a like period.
- (4) Subject to this Division, but notwithstanding subsection (3):
  - (a) where the date of issue of a licence is after 31 December 1977, the licence shall remain in force until cancelled, and
  - (b) where the date on which a renewal of a licence takes effect is after 31 December 1977, the renewal shall remain in force until cancelled.
- (5) The holder of a hairdresser's licence shall, when required so to do by a person prescribed by the regulations for the purposes of this subsection, or a person who is within a class of persons so prescribed, produce his or her licence for inspection by that person.

### **109 Grant, refusal, cancellation or suspension of licence**

- (1) The Director-General may:
  - (a) grant any application for a licence either unconditionally or subject to such terms and conditions as the Director-General may impose,
  - (b) cancel any licence or suspend any licence for such period as he or she may determine,

(c) during the currency of a licence vary the terms and conditions thereof or impose additional terms and conditions therein.

(2) (Repealed)

(3) Any applicant for, or holder of, a licence who is dissatisfied with any decision of the Director-General to grant an application for a licence subject to terms and conditions, to vary any such terms and conditions, to impose additional terms and conditions on a licence, to cancel a licence or to suspend a licence may apply to the Administrative Decisions Tribunal for the review of the decision.

### **110 Qualifications for licences**

(1) Any person who applies to be licensed under this Act as a hairdresser shall be entitled to be licensed if the Director-General is satisfied that such person has completed the prescribed course of training and passed the prescribed examinations or is otherwise qualified to be licensed.

(2) Any person whose application for a licence under this Division is refused by the Director-General may apply to the Administrative Decisions Tribunal for a review of the refusal.

## **Division 4 Teachers of the trade of hairdressing**

### **111 Teachers of trade of hairdressing**

No person shall, for fee, gain or reward, teach or undertake to teach any person the trade or calling of hairdressing.

This section shall not apply to or in respect of:

(a) the teaching of the trade or calling of hairdressing by a hairdresser licensed under Division 3 to any person employed by such hairdresser under conditions prescribed by an award made under the *Industrial Relations Act 1996*, in respect of the trade or calling of hairdressing,

(b) any person engaged in the teaching of hairdressing under the direction, control or supervision of the TAFE Commission.

## **Division 5 General**

### **112 Regulations**

The Governor may make regulations not inconsistent with this Act:

(a) requiring licensees to keep records and registers as prescribed,

(b) prescribing the fees to be paid on applications for licences,

- (c) prescribing the course of training to be completed by applicants for licences and the qualifications the possession of which shall entitle a person to be licensed,
- (d) providing for the establishment of a Hairdressers Examination Board,
- (e) relating to the powers, authorities, duties and functions of the Hairdressers Examination Board,
- (f) prescribing the fees to be paid for examinations for licences for hairdressers.
- (g) (Repealed)

### **113 Offences**

A person who contravenes any of the provisions of this Part or the terms and conditions of any licence shall be guilty of an offence against this Act.

### **114 Powers of inspectors**

An inspector may:

- (a) enter at any reasonable time any premises or place in which he or she knows or has reasonable cause to believe any person is acting for fee, gain or reward as a hairdresser,
- (b) require any person so acting to produce his or her licence for examination by the inspector,
- (c) examine with respect to matters under this Part any person so acting or whom he or she has reasonable cause to believe to be so acting,
- (d) make such examination and inquiries as he or she thinks necessary to ascertain whether the requirements of this Part are being complied with.

### **114A Disclosure of information**

Section 389 of the *Industrial Relations Act 1996* is taken to apply to an inspector who obtains information relating to any manufacturing or commercial secrets or working processes in connection with the administration of this Act.

## **Parts 7-10**

### **115-143 (Repealed)**

## **Part 11 Miscellaneous provisions**

### **144 Regulations**

- (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are

necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Without prejudice to the generality of the foregoing power, the Governor may make regulations:

- (a) prescribing forms of notices to be given and of applications, returns, registers and records to be made or kept under this Act, and the particulars to be set forth therein,
- (b) prescribing such other forms as may be necessary or convenient for the administration of this Act,
- (c) requiring the exhibition of certificates, permits and licences issued pursuant to this Act and of other prescribed documents and regulating the manner of exhibition,
- (d) imposing on prescribed persons or classes of persons the obligation to comply with provisions of the regulations,
- (e) imposing a penalty for a contravention of the regulations:
  - (i) in the case of a regulation made under Part 3—not exceeding 250 penalty units, or
  - (ii) in any other case—not exceeding 50 penalty units.

(2) The regulations may:

- (a) make different provision to meet different circumstances,
- (b) exempt persons or classes of persons, either absolutely or subject to conditions, from provisions of the regulations or provide for the grant of such absolute or conditional exemptions by the Authority or other prescribed person,
- (c) provide that any act or thing required by the regulations to be done shall be done to the satisfaction of the Authority or other prescribed person.
- (d) (Repealed)

(3) (Repealed)

#### **145 Proceedings**

(1) Proceedings for an offence against this Act or the regulations may be taken and prosecuted by:

- (a) an inspector (in the case of an offence under the Act and the regulations other than Part 4 or 6 or the regulations under those Parts), or
  - (a1) a person acting with the authority of the Minister, or

- (a2) an inspector appointed under the *Industrial Relations Act 1996* (in the case of an offence under section 7 (5) involving such an inspector or an offence under Part 4 or 6 or the regulations under those Parts), or
  - (b) the person specified in a certificate issued by the Industrial Registrar under the *Industrial Relations Act 1996* as secretary of a union (but only in the case of a union the members of which are engaged in the industry concerned).
- (2) In a prosecution for any such offence, 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.
- (3) Proceedings for an offence against this Act or the regulations are to be dealt with summarily:
- (a) before a Local Court constituted by a Magistrate sitting alone, or
  - (b) before the Industrial Relations Commission in Court Session.
- (3A) The maximum monetary penalty that may be imposed in those proceedings by a Local Court is 500 penalty units or the maximum monetary penalty provided in respect of the offence, whichever is the lesser.
- (3B) The maximum penalty that may be imposed in those proceedings by the Industrial Relations Commission in Court Session is the maximum penalty provided in respect of the offence.
- (4) The provisions of the *Industrial Relations Act 1996*, and of the regulations under that Act, relating to appeals from a Local Court to the Industrial Relations Commission in Court Session apply to proceedings before a Local Court for offences against this Act or the regulations.
- (4A) The amount of any penalty recovered from a shopkeeper or other person under Part 4 shall be paid into the Treasury and carried to the Consolidated Fund.
- (5) The informant may conduct his or her case himself or herself or by his or her counsel, attorney or an agent duly authorised by him or her in writing or, in a case where the informant is an inspector, by an officer of the WorkCover Authority or, in a case where the informant is an inspector appointed under the *Industrial Relations Act 1996*, by an officer of the Department of Industrial Relations, Employment, Training and Further Education.
- (6) Notwithstanding anything in any other Act, proceedings for an offence against a provision of Part 3 or the regulations thereunder may be instituted within the period of 2 years after the act or omission alleged to constitute the offence.



#### **145A Failure to pay penalty etc is offence**

- (1) Where, by a conviction or order in respect of an offence against this Act specified in Division 3 of Part 4, a person is adjudged to pay any penalty or costs, or any penalty and costs, the Supreme Court or the Magistrate making the conviction or order shall order payment of the penalty or costs or the penalty and costs, as the case may be, within a specified period, being not less than 7 days.
- (2) A person who fails to comply with an order made under subsection (1) that is applicable to him or her is guilty of an offence against this Act.

#### **145B Payment of certain penalties enforceable as a debt**

Notwithstanding anything in any Act, where a person other than a corporate body is, by a conviction or order in respect of an offence against this Act specified in Division 3 of Part 4 or section 145A (2), adjudged to pay any penalty or costs, or any penalty and costs, section 82 of the *Justices Act 1902*:

- (a) operates in respect of that person in the same way as it would operate if that person were a corporate body, and
- (b) except as provided by paragraph (a), has no operation in respect of that person.

#### **146 Service of order, notice or summons**

Any order or notice to be served under this Act or the regulations, and any summons to be served in respect of any alleged offence against this Act or the regulations shall be deemed to be duly served upon the occupier or shopkeeper of a factory, warehouse, or shop, if such order, notice, or summons be affixed to the door or some other conspicuous part of the factory, warehouse, or shop.

#### **147 Penalties**

- (1) Any person who is guilty of an offence against this Act shall, where no other penalty is expressly provided, be liable:
  - (a) in the case of an offence against any of the provisions of Part 3—to a penalty not exceeding 500 penalty units in the case of a corporation or 250 penalty units in any other case, or
  - (b) in the case of any other offence under this Act—to a penalty not exceeding 25 penalty units.
- (2) Where an occupier of a factory or shop or an employer is convicted of an offence against any of those provisions of Part 3 or of any regulations thereunder which relate to the physical state or condition in which any factory, shop, premises or place or any plant, fixture, or equipment therein shall be, or shall be kept or maintained, or to the manner of construction or erection of any building, structure, or part thereof or to the

provision of any facilities, equipment, or convenience in any factory, shop, premises, or place, the Magistrate, in addition to or instead of inflicting a penalty, may order certain means to be adopted by such occupier or employer within some time to be named in the order for the purpose of bringing the factory, shop, premises, place, plant, fixture, equipment, building, structure, or part thereof into compliance with the said provisions, or for the purpose of providing the said facilities, equipment, or convenience, as the case may be, and may upon application enlarge the time so named, and if, after the expiration of the time originally named or enlarged upon subsequent application, the said order is not complied with, the person so convicted shall be liable to a penalty not exceeding 1 penalty unit for every day that such non-compliance continues:

Provided that nothing in this subsection shall apply to or in respect of a conviction for an offence against Division 5 of the said Part, or against any such provisions of the regulations as relate to the guarding or fencing of machines or of materials or articles in motion in machines.

- (3) Where a person convicted of an offence against this Act or the regulations is a body corporate, every person who at the time of the commission of the offence was a director or officer of the body corporate shall be deemed to have committed the like offence and be liable to the pecuniary penalty or imprisonment provided by this Act or the regulations for such offence accordingly, unless he or she proves that the offence was committed without his or her knowledge or that he or she used all due diligence to prevent the commission of the offence.
- (4) Where an unincorporated association being an employer or being the occupier or shopkeeper of a factory, shop or warehouse is guilty as such employer, occupier, or shopkeeper of an offence against this Act or the regulations, then every person (whether a member of the association or not) who at the time of the commission of the offence was a member of the committee of management or other governing body of the association shall be deemed to have committed that offence and be liable to the penalty provided by this Act or the regulations for such offence accordingly, and in any information laid in respect of the offence may be described as such employer, occupier, or shopkeeper, as the case may be.

In this subsection **association** means any association, club or society, however described, but does not include a partnership.

#### **148 Evidentiary provisions**

- (1) In a prosecution for an offence against this Act or the regulations a statement purporting to be signed by the prescribed person:
  - (a) that a certificate, permit or licence of the description specified in the statement has or has not been issued pursuant to this Act or the regulations to any person, or in respect of any premises, boiler, or pressure vessel, specified in the

statement, and, in the case of a certificate or permit which has been so issued, as to the date of issue of and particulars contained in such certificate or permit, or

- (b) that at any date or during any period specified in the statement a certificate, permit or licence of the description specified in the statement issued pursuant to this Act or the regulations to any person, or in respect of any premises, boiler, or pressure vessel specified in the statement was or was not in force or operative, or
- (c) that at any date specified in the statement a notice as to any matter so specified, being a matter of which notice is required by this Act or the regulations to be given to or served on the General Manager, had or had not been given to or served on the General Manager by any person so specified, and, where a notice has been so given or served, as to the date when it was so given or served and as to particulars contained in such notice,
- (d) (Repealed)

shall be prima facie evidence of the matter contained in such statement without proof of the signature or of the official character of the person by whom the statement purports to have been signed.

In this subsection ***the prescribed person*** means the officer having ordinarily the custody of the documents and records relating to the registrations, or the issue of the certificates, permits, or licences, or the receipt of the notices, as the case may be, which are of the class to which the registration, certificate, permit, licence, or notice, as the case may be, referred to in the statement belongs.

(2) In any such prosecution:

- (a) where a male or female employee is in the opinion of the Magistrate apparently of the age alleged by the informant, it shall lie on the defendant to prove that such employee is not of that age,
- (b) where the offence is alleged to have been committed in or in relation to a factory situated at an address or location specified in the information and the defendant is proved to have been at the time of the alleged offence a person named as an occupier of a factory in a certificate of registration or renewal of registration issued pursuant to this Act in respect of a factory situated at that address or location and for the time being in force or operative, then the averment of the informant in the information that the defendant was the occupier of the factory in or in relation to which the offence is alleged to have been committed shall be prima facie evidence of the matter so averred.

### **149 Contracting out**

No occupier of a factory or shop and no employer shall contract with any employee against any liability under this Act or the regulations.

### **150 Power to revoke or vary notices etc**

Any power conferred by or under this Act on any person to give any notice or make any order or grant any exemption shall be deemed to include a power to revoke that notice, order or exemption or to vary or alter the same.

### **151 Penalty for forging certificate etc and false declaration**

Any person who forges or counterfeits any certificate, permit, or licence for the purposes of this Act (for the forgery or counterfeiting of which no other punishment is provided), or who knowingly utters or makes use of any certificate, permit, or licence so forged or counterfeited, or who personates any person named in a certificate, permit, or licence, or who falsely pretends to be an inspector shall be guilty of an offence against this Act and be liable to imprisonment for a term not exceeding twelve months.

Any person who wilfully makes a false entry in any book, register, notice, certificate, list, record, or document required by this Act to be kept or served, or who wilfully makes or signs a false declaration or return under this Act, or who in any application for the registration under this Act of any premises as a factory or for a hairdresser's licence or in any notice required to be given by him or her under this Act wilfully makes or signs any false statement, or who knowingly makes use of any false entry or false declaration or return, shall be guilty of an offence against this Act and be liable to a penalty not exceeding 5 penalty units for each offence, or to be imprisoned for a term not exceeding three months.

### **152 Penalty for destroying notices etc**

Any person who wilfully destroys, damages, defaces, or pulls down any notice, certificate, permit, licence, or other document posted or exhibited in any factory, shop, premises, or place pursuant to this Act or the regulations shall be guilty of an offence against this Act and be liable to a penalty not exceeding 2 penalty units.

### **152A Performance of Director-General's functions**

- (1) Anything authorised or required under Part 4 or 6 to be done by, lodged with or paid to the Director-General may be done by, lodged with or paid to any officer of the Department of Industrial Relations who is authorised generally or specifically in that behalf in writing by the Director-General.
- (2) Anything purporting to have been done by, lodged with or paid to an officer authorised under this section is taken to have been done by, lodged with or paid to the Director-General.
- (3) (Repealed)

### **153 Provisions consequent on the enactment of the [Factories, Shops and Industries](#)**

**(Amendment) Act 1989**

(1) In this section:

**the amending Act** means the *Factories, Shops and Industries (Amendment) Act 1989*.

(2) Section 90 (2), as in force immediately before the commencement of Schedule 1 (6) to the amending Act, continues to apply in relation to offences alleged to have been committed before that commencement.

(3) Appeals pending under section 91D (b), (c) or (d) at the commencement of Schedule 1 (7) to the amending Act are to be taken to be appeals made under section 78A, as amended by that Act.

(4) Section 148, as in force immediately before the commencement of Schedule 1 (12) to the amending Act, continues to apply in relation to offences alleged to have been committed before that commencement.

**154 Savings, transitional and other provisions**

Schedule 2 has effect.

**Schedule 1**

(Section 3)

No of Act	Name of Act	Extent of repeal
1912 No 39	<a href="#">Factories and Shops Act 1912</a>	The whole
1915 No 1	<a href="#">White Phosphorus Matches Prohibition Act 1915</a>	The words "This definition shall be inserted at the end of section three of the <a href="#">Factories and Shops Act 1912</a> " in section two Section five
1927 No 12	<a href="#">Factories and Shops (Amendment) Act 1927</a>	The whole
1931 No 55	<a href="#">Factories and Shops (Amendment) Act 1931</a>	The whole
1935 No 11	<a href="#">Factories and Shops (Amendment) Act 1935</a>	The whole
1936 No 37	<a href="#">Factories and Shops (Amendment) Act 1936</a>	The whole
1937 No 35	<a href="#">Statute Law Revision Act 1937</a>	So much of Second Schedule as amends Act No 39, 1912
1902 No 50	<a href="#">Butchers' Shops Sunday Closing Act 1902</a>	The whole
1916 No 19	<a href="#">Sunday Trading (Refreshment Rooms) Act 1916</a>	The whole
1941 No 34	<a href="#">Factories and Shops (Amendment) Act 1941</a>	The whole

1941 No 42	<a href="#">Factories and Shops (Further Amendment) Act 1941</a>	The whole
1943 No 16	<a href="#">Factories and Shops (Amendment) Act 1943</a>	The whole
1946 No 17	<a href="#">Factories and Shops (Amendment) Act 1946</a>	The whole
1948 No 12	<a href="#">Factories and Shops (Home Deliveries) Amendment Act 1948</a>	The whole
1950 No 21	<a href="#">Factories and Shops (Hairdressers) Amendment Act 1950</a>	The whole
1954 No 42	<a href="#">Factories and Shops (Amendment) Act 1954</a>	The whole
1956 No 31	<a href="#">Factories and Shops (Amendment) Act 1956</a>	The whole
1957 No 23	<a href="#">Industrial Arbitration (Amendment) Act 1957</a>	Section one, subsection three Section three
1960 No 17	<a href="#">Factories and Shops and Local Government (Amendment) Act 1960</a>	Section one, subsection two Section two

## Schedule 2 Savings, transitional and other provisions

(Section 154)

### Part 1 Savings and transitional provisions consequent on enactment of certain Acts

#### 1 Regulations

- (1) The regulations may make regulations containing provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

[Occupational Health and Safety Legislation \(Amendment\) Act 1994](#)

[WorkCover Legislation Amendment Act 1995](#)

- (2) Any such provision may, if the regulations so provide, take effect as from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its

publication.

## **Part 2 Provisions consequent on enactment of Occupational Health and Safety Legislation (Amendment) Act 1994**

### **2 Definitions**

In this Part:

**amending Act** means the *Occupational Health and Safety Legislation (Amendment) Act 1994*.

**Chief Inspector** means the person who held the office of Chief Inspector of Factories, Shops and Industries immediately before the repeal of section 7 by Schedule 3 (2) to the amending Act.

**Chief Inspector of Boilers** means the person who held the office of Chief Inspector of Boilers immediately before the repeal of section 7 by Schedule 3 (2) to the amending Act.

**Deputy Chief Inspector** means the person who held the office of Deputy Chief Inspector of Factories, Shops and Industries immediately before the repeal of section 7 by Schedule 3 (2) to the amending Act.

### **3 Chief Inspector, Chief Inspector of Boilers and Deputy Chief Inspector**

- (1) The Chief Inspector, Chief Inspector of Boilers and Deputy Chief Inspector are taken to hold office as inspectors under the *Occupational Health and Safety Act 1983* (as amended by Schedule 1 (4) to the amending Act).
- (2) Nothing in the amending Act or this clause is taken to affect the terms and conditions of employment of the Chief Inspector, Chief Inspector of Boilers and Deputy Chief Inspector under the *Public Sector Management Act 1988*.
- (3) The Authority may, under the *WorkCover Administration Act 1989*, delegate to the Chief Inspector, Chief Inspector of Boilers or Deputy Chief Inspector the exercise on its behalf of such of its functions under this Act as it thinks fit.

### **4 Transfer of functions to Authority**

- (1) Anything done by or in relation to the Chief Inspector, Chief Inspector of Boilers or Deputy Chief Inspector in the exercise of a function conferred or imposed on the Chief Inspector, the Chief Inspector of Boilers or Deputy Chief Inspector under this Act is taken, after the commencement of Schedule 3 (2) to the amending Act, to have been done by or in relation to the Authority and the functions under this Act are to be exercised by the Authority.
- (2) Any proceedings to which the Chief Inspector, the Chief Inspector of Boilers or Deputy Chief Inspector is a party immediately before the commencement of the amendment

to this Act made by Schedule 3 (2) to the amending Act are not affected by that amendment.

- (3) However, on the commencement of that amendment, the Authority is taken to be a party to those proceedings instead of the Chief Inspector, Chief Inspector of Boilers or Deputy Chief Inspector, as the case may be.

#### **5 References to Chief Inspector, Chief Inspector of Boilers and Deputy Chief Inspector**

A reference in any other Act, in an instrument made under any Act or in any document of any kind to the Chief Inspector, the Chief Inspector of Boilers or the Deputy Chief Inspector is to be read as a reference to the Authority.

#### **6 Proceedings for penalties**

Section 145, as in force immediately before the commencement of Schedule 3 (24) to the amending Act, continues to apply in relation to proceedings pending immediately before that commencement.

### **Part 3 Provisions consequent on enactment of the [WorkCover Legislation Amendment Act 1995](#)**

#### **7 Increase in penalty that may be imposed by Local Court**

- (1) The amendment made to section 145 (3A) of this Act by the [WorkCover Legislation Amendment Act 1995](#) does not apply in respect of proceedings for an offence against this Act or the regulations that were commenced in a Local Court before the commencement of that amendment.
- (2) In respect of proceedings commenced on or after the commencement of that amendment, the amendment applies whether the offence was committed before or after that commencement.

### **Schedule 3**

(Section 78 (1) and (5))

Audio shops

Book shops

Chemists' shops

Confectioners' shops

Cooked food shops, being:

(a) cake and pastry shops,

(b) cooked provision shops,

(c) refreshment shops,

(d) restaurants, and



(e) take-away food shops

Fish shops

Flower shops

Fruit and vegetable shops

Garden plant shops

Newsagencies

Pet shops

Souvenir shops

Tobacconists' shops

Vehicle service shops

Vehicle shops

Video shops

### **Schedules 3A-5 (Repealed)**