



SHOP TRADING HOURS ACT 1981

No. 32 of 1981

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AN ACT to provide for the regulation of the trading hours of certain retail shops and for related matters.

[Royal Assent 6 May 1981]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—This Act may be cited as the *Shop Trading Hours Act 1981*. Short title.

Commence-
ment.

2—(1) This section and section 1 shall commence on the date of assent to this Act.

(2) Except as provided in subsection (1), this Act shall commence on such date as may be fixed by proclamation.

Interpretation.

3—In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

“goods” includes all chattels other than money and things in action;

“inspector” means a person for the time being holding an appointment under section 5 of the *Industrial Relations Act 1975* as an inspector for the purposes of that Act;

“occupier”, in relation to a shop, or a building, part of a building, or place which an inspector has reason to believe is a shop, means the person who occupies the shop, building, part of a building, or place, and includes any agent, manager, foreman, or other person acting or apparently acting in the general management or control of the shop, building, part of a building, or place;

“shop” means a building, part of a building, or place in or at which a business of selling goods by retail is carried on, but does not include—

(a) a building, part of a building, or place in or at which any regatta, race meeting, sports meeting, agricultural, pastoral, or horticultural society's show, bazaar, fete, fair, market, or trade exhibition is held and in or at which persons occupy or have the use of barrows, stalls, tables, or other subdivisions from or at which goods are sold, or exposed or offered for sale, by retail;

(b) premises at which an auction is conducted by the holder of an auctioneer's licence under the *Auctioneers and Estate Agents Act 1959*;

(c) a warehouse;

(d) premises in respect of which a licence under the *Licensing Act 1976* is in force;

- (e) a restaurant, refreshment room, or snack bar, or other premises at which meals or refreshments are sold or prepared, exposed, or offered for sale, whether for consumption on the premises or elsewhere;
- (f) a service station within the meaning of the *Service Stations (Trading Hours) Act 1975*;
- (g) premises in respect of which a licence granted under section 8 of the *Hairdressers' Registration Act 1975* is in force;
- (h) premises at which only motor vehicles, or motor vehicles and replacement parts and accessories for motor vehicles, are sold, or exposed or offered for sale; or
- (i) premises at which the only or principal business carried on is that of selling by retail, trees, shrubs, plants, and gardening requisites, utensils, and aids;

“warehouse” means any building, part of a building, or place in which is carried on exclusively the business of selling goods to persons who are dealers in those goods and who buy goods for the purpose of selling them again.

4—(1) Where a person, or a group of persons, carries on a business or businesses of selling goods by retail at a shop or shops located in Tasmania and the number of persons employed, whether in a full-time capacity or a non-full-time capacity, in that business or those businesses at any time, during the period beginning at 8 a.m. on the Monday of any week and ending at 6 p.m. on Friday of the same week exceeds 100, section 5 applies to that shop, or as the case may be, each of those shops, in relation to the immediately succeeding Saturday and Sunday.

Shops to which section 5 applies.

(2) The question of whether or not a group of persons is constituted for the purpose of subsection (1), or of whether or not a person is a member of such a group, shall be determined in accordance with Schedule 1.

5—(1) Subject to the provisions of this Act, a shop to which this section applies shall not be kept open on a Sunday or between noon and midnight on a Saturday.

Certain shops prohibited from opening on certain occasions.

(2) For the purposes of subsection (1), a shop shall be deemed to be open if it is not locked or otherwise closed against admission to the public or if any person in the shop is engaged in the sale of goods, canvassing for orders, or delivering goods to customers, except that where a shop has a common entrance with a factory or warehouse, it shall be deemed not to be open if the entrance is closed but not locked.

(3) The occupier of a shop that is kept open in contravention of subsection (1) is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$5 000.

Occupier of
shop to keep
record of
employees.

6—(1) The occupier of a shop shall cause to be kept at the shop or at such other place as may be approved by the Secretary for Labour a written record containing particulars of—

- (a) the name and address of each person employed in the shop;
- (b) the class of work performed by him; and
- (c) the number of hours worked by him during each day and week and the times during each of those periods at which he started and ceased work.

(2) If the occupier of a shop to which subsection (1) applies fails to comply with that subsection, he is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$5 000.

(3) Subject to subsection (4), any person who in keeping a record in accordance with subsection (1) makes an entry in the record that is false or misleading in a material particular is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$1 000 or to imprisonment for a term not exceeding 3 months, or both.

(4) It is a defence to a charge under subsection (3) if it is proved that, at the time when the entry was made, the defendant believed on reasonable grounds that it was neither false nor misleading.

(5) The occupier of a shop referred to in subsection (1) shall be deemed to have complied with that subsection if he keeps at that shop or at a place approved by the Secretary for Labour a record that complies with section 54 of the *Industrial Relations Act 1975*.

Powers of
inspectors.

7—(1) Whenever an inspector has reason to believe that a building, part of a building, or place is a shop to which section 5 applies and that the building, part of a building, or place is open for business as such, he may, for the purposes of this Act, enter and remain in the building, part of a building, or place.

(2) Where an inspector enters a building, part of a building, or place pursuant to subsection (1), he may—

- (a) if the building, part of a building, or place is in fact a shop, require the occupier of the shop to produce the record required to be kept in relation to the shop in accordance with section 6 and inspect any record so kept;
- (b) make a copy of any such record or of any part of any such record;
- (c) make such inspections, examinations, and inquiries as he thinks necessary to ascertain whether or not a provision of this Act is being or has been contravened or complied with; and
- (d) examine, with respect to matters with which this Act is concerned, any person apparently employed in or in connection with a shop carried on within or at the building, part of a building, or place.

(3) Any person who—

- (a) refuses or deliberately delays the admission of an inspector to a building, part of a building, or place which he is seeking to enter pursuant to subsection (1);
- (b) without reasonable excuse, fails to comply with a requirement made of him under subsection (2) (a);
- (c) obstructs or hinders an inspector in the exercise by him of his powers under this Act; or
- (d) without reasonable excuse, fails to answer a question put by the inspector during the course of an examination under subsection (2) or gives an answer which, to the knowledge of that person, is false or misleading as to a material particular,

is guilty of an offence and is liable on summary conviction to a penalty not exceeding \$1 000.

(4) Where in the course of an examination or inquiry under subsection (2), an answer is given to an inspector by an officer of a corporation within the meaning of the *Companies Act* 1962 which is carrying on or has carried on the business of a shop in the building, part of a building, or place where the question was put, the answer is, for the purposes of any proceedings against the corpora-

tion under this Act, admissible in evidence against the corporation unless it is proved that the answer was given in relation to a matter in respect of which the officer had no authority to bind the corporation.

(5) The provisions of subsection (4) are in addition to any rule of law relating to the admissibility in evidence of statements made by any officer or employee of a corporation.

(6) An inspector is not entitled to enter a building, part of a building, or place under subsection (1) if he fails to produce, at the time of entry, evidence of his appointment as an inspector to the occupier of that building, part of a building, or place.

Person not to be required to work in shop on Saturday afternoon or Sunday contrary to an award or industrial agreement.

8—A person, whether an employer or not, shall not require or attempt to persuade another person to work on a Sunday or between noon and midnight on a Saturday as an employee in a shop contrary to an award or industrial agreement that is applicable to that other person.

Penalty: \$1 000.

Procedure and evidence in respect of offences.

9—(1) In any proceedings for an offence under this Act against the occupier of a shop, it is sufficient in the complaint in respect of the offence to allege that a building, a part of a building, or place is a shop and to state the name of its ostensible occupier or the style or title under which the occupier is usually known or carries on business, and the complaint may from time to time be amended as to the name of the actual occupier.

(2) If the court hearing a complaint under this Act thinks fit, several complaints relating to offences under this Act or, with the consent of the parties, complaints laid against several parties in respect of such offences, may be heard together, and in any such case, a witness sworn to give evidence in respect of the complaint shall for all purposes be deemed to be a witness in respect of each complaint.

(3) A copy of a record or part of a record made under section 7 (2) (b) is admissible in proceedings for an offence against section 5 as evidence of the matters specified in the record or part of the record.

Expiry.

10—This Act shall expire on 30th June 1983.

SCHEDULE 1

Section 4

GROUPING PROVISIONS

1. For the purposes of section 4 (1), 2 corporations constitute a group if they are, by reason of section 6 (5) of the *Companies Act* 1962, to be deemed, for the purposes of that Act, to be related to each other. Grouping of corporations.

2. (1) A reference in this clause to 2 businesses does not include a reference to 2 businesses both of which are owned by the same person, not being a trustee, or by the trustee or trustees of a trust. Grouping of commonly controlled businesses.

(2) For the purposes of section 4 (1), where the same person has, or the same persons have together, a controlling interest under subclause (3) in each of 2 businesses, the persons who carry on those businesses constitute a group.

(3) For the purposes of subclause (2), the same person has, or the same persons have together, a controlling interest in each of 2 businesses if that person has, or those persons have together, a controlling interest under any of the following paragraphs in one of the businesses and a controlling interest under the same or another of the following paragraphs in the other business:—

- (a) a person has, or persons have together, a controlling interest in a business, being a business carried on by a corporation, if the directors, or a majority of the directors, or one or more of the directors, (being a director or directors who is or are entitled to exercise a majority of voting power at meetings of the directors), of the corporation are or is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions, or wishes of that person or of those persons acting together;
- (b) a person has, or persons have together, a controlling interest in a business, being a business carried on by a corporation that has a share capital, if that person or those persons acting together may (whether directly or indirectly) exercise, control the exercise of, or substantially influence the exercise of, 50 per cent or more of the voting power attached to voting shares issued by the corporation;
- (c) a person has, or persons have together, a controlling interest in a business, being a business carried on by a partnership, if that person or those persons—
 - (i) owns, or own together (whether or not beneficially), 50 per cent or more of the capital of the partnership;
or
 - (ii) is, or are together, entitled (whether or not beneficially) to 50 per cent or more of any profits of the partnership;

- (d) a person has, or persons have together, a controlling interest in a business carried on under a trust, if that person (whether or not as the trustee of another trust) is the beneficiary, or those persons (whether or not as the trustees of another trust) are together the beneficiaries, in respect of 50 per cent or more of the value of the interests in the trust first-mentioned in this paragraph;
- (e) a person has a controlling interest in a business if, whether or not he is a trustee of a trust, he is the sole owner of the business or persons, being 2 or more trustees of a trust, have a controlling interest in a business if they are the owners of the business.

(4) Where a corporation has a controlling interest under subclause (3) in a business, it shall, for the purposes of subclause (3), be deemed to have a controlling interest in any other business in which another corporation that is, by reason of section 6 (5) of the *Companies Act* 1962, to be deemed, for the purposes of that Act, to be related to it has a controlling interest.

(5) Where—

- (a) a person has, or persons have together, a controlling interest under subclause (3) in a business; and
 - (b) the person or persons who carries or carry on that business has or have such a controlling interest in another business,
- the person or persons referred to in paragraph (a) shall, for the purposes of subclause (3), be deemed to have a controlling interest in the business referred to in paragraph (b).

(6) Where—

- (a) a person is a beneficiary under a trust; or
 - (b) two or more persons together are beneficiaries under a trust,
- in respect of 50 per cent or more of the value of the interests in that trust and the trustee or trustees of that trust has or have under subclause (3) a controlling interest in a business, that beneficiary or those beneficiaries shall, for the purposes of subclause (3), be deemed to have a controlling interest in that business.

(7) For the purposes of this clause, “voting share”, in relation to a corporation, means an issued share in the corporation, not being—

- (a) a share to which, in no circumstances, is there attached a right to vote; or
- (b) a share to which there is attached a right to vote only in one or more of the following circumstances:—
 - (i) during a period during which a dividend (or part of a dividend) in respect of the share is in arrear;
 - (ii) on a proposal to reduce the share capital of the corporation;
 - (iii) on a proposal that affects rights attached to the share;
 - (iv) on a proposal to wind up the corporation;

- (v) on a proposal for the disposal of the whole of the property, business, and undertaking of the corporation;
- (vi) during the winding up of the corporation.

3. (1) Notwithstanding any other provision of this Schedule (except subclause (2)), where a person is, whether or not by virtue of this subclause, a member of 2 or more groups (each of which is in subclause (2) referred to as a smaller group), all of the members of those groups constitute, for the purposes of section 4 (1), one group.

Smaller groups subsumed into larger groups.

(2) Except for the purpose of determining whether a group is constituted under subclause (1), a group which, but for this subclause, would be a smaller group ceases to be a group if its members are members of a group constituted under subclause (1).

4. The fact that a person is not a member of a group constituted under a provision of this Schedule does not prevent that person from being a member of a group constituted under another provision of this Schedule.

Grouping provisions to operate independently.

5. A person who, as the result of the exercise of a power or discretion by the trustee of a discretionary trust or by any other person or by that trustee and other person, may benefit under that trust shall be deemed, for the purposes of this Schedule, to be a beneficiary in respect of 50 per cent or more of the value of the interests in that trust.

Beneficiaries under discretionary trusts.

6. (1) Where the Minister is satisfied, having regard to the nature and degree of ownership or control of the businesses, the nature of the businesses and any other matters that he considers relevant, that a business carried on by a member of a group is carried on substantially independently of, and is not substantially connected with the carrying on of, a business carried on by any other member of that group, the Minister may, by order in writing served on that first-mentioned member, exclude him from that group.

Exclusion of persons from groups.

(2) The Minister shall not, under subclause (1), make an order so as to exclude a person from a group on and from a date if that person is or was on that date a corporation which, by reason of section 6 (5) of the *Companies Act* 1962, is to be deemed, for the purposes of that Act, to be related to another corporation which is a member of that group.

(3) Notwithstanding any other provision of this Schedule, an order under subclause (1) shall have effect according to its tenor on and from the date specified in the order (being a date that is the date of the order or before the date of the order) as the date on and from which the person referred to in the order is or shall be deemed to have been excluded from the group so referred to.

