



**SHOP TRADING HOURS AMENDMENT ACT (No. 2)
1987**

No. 114 of 1987

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AN ACT to amend the Shop Trading Hours Act 1984.

[Royal Assent 11 February 1988]

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* Short title. *Amendment Act (No. 2) 1987.*

Commencement. **2**—This Act shall commence on the day on which it receives the Royal assent.

Principal Act. **3**—In this Act, the *Shop Trading Hours Act 1984** is referred to as the Principal Act.

Amendment of
section 3 of
Principal Act
(Interpretation).

4—Section 3 of the Principal Act is amended as follows:—

(a) by inserting “(1)” before “In this Act”;

(b) by inserting the following definitions after the definition of “cup part holiday”:—

“franchise agreement” means any contract, arrangement, or understanding, whether or not enforceable at law or in equity, containing a provision, whether express or implied, under or by virtue of which one party (in this definition referred to as the “franchisor”) grants or agrees to grant to another party (in this definition referred to as the “franchisee”) for reward, whether calculated by reference to gross or net revenue or otherwise and whether payable directly or indirectly, the right to use, in connection with the sale by retail of goods by the franchisee, any name, logo, style, or colours owned by, or commonly associated with or controlled by, the franchisor;

“franchisee” means a party to a franchise agreement, being the party referred to as the franchisee in the definition of “franchise agreement” in this subsection;

“franchisor” means a party to a franchise agreement, being the party referred to as the franchisor in the definition of “franchise agreement” in this subsection;

* No. 61 of 1984. Amended by No. 62 of 1984, No. 51 of 1985, No. 110 of 1986, No. 113 of 1987, and S.R. 1987, No. 167.

(c) by inserting the following definition after the definition of “local holiday”:

“major retailer” means—

(a) a person, or a group of persons as determined in accordance with Schedule 2, who or which carries on a business or businesses of selling goods by retail at a shop or shops to which section 5 applies; or

(b) a person who would be a member of a group referred to in paragraph (a) except only for the fact that that person does not carry on a business or businesses of selling goods by retail;

(d) by adding the following subsection as subsection (2) of that section:—

(2) Without limiting the generality of the definition of “franchise agreement” in subsection (1), payment for the use or occupation of a shop by a franchisee to, on behalf of, or at the direction of, a franchisor, being payment by way of rent or licence fee under a lease, sub-lease, licence or other contract, arrangement, or understanding, shall be deemed to constitute payment also for the right to use, in connection with the sale by retail of goods by the franchisee, any name, logo, style, or colours owned by, or commonly associated with or controlled by, the franchisor.

5—Section 4 of the Principal Act is amended as follows:—

(a) by inserting the following subsection after subsection (1):—

(1A) 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 a franchise agreement is in force between a major retailer and that person or group of persons, section 5 applies to that shop, or, as the case may be, to each of those shops.

(1B) The reference in subsection (1A) to a franchise agreement includes a reference to a franchise agreement entered into or in existence before the commencement of the *Shop Trading Hours Amendment Act (No. 2) 1987*.

Amendment of section 4 of Principal Act (Shops to which section 5 applies).

(b) by inserting in subsection (2) “or (1A)”, after “subsection (1)”.

Amendment of section 6 of Principal Act (Occupier of shop to keep record of employees).

6—Section 6 of the Principal Act is amended as follows:—

(a) by inserting the following subsections after subsection (1):—

(1A) 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 true copy of any franchise agreement in relation to the operation of the shop.

(1B) A franchisor shall cause a true copy of the franchise agreement in respect of which he is the franchisor—

(a) to be kept, in the case of a franchisor which is a body corporate, at its registered office in Tasmania, its place or principal place of business in Tasmania, or at such other place in Tasmania as may be approved by the Secretary for Labour; or

(b) to be kept, in the case of any other franchisor, at his place or principal place of business in Tasmania or at such other place in Tasmania as may be so approved.

(b) by inserting the following subsections after subsection (2):—

(2A) Where a person to whom subsection (1A) or (1B) applies fails to comply with the appropriate subsection, that person is guilty of an offence, punishable on summary conviction, in accordance with subsection (2B).

(2B) A person convicted of an offence under subsection (2A) is liable to a fine not exceeding 50 penalty units, and a person who is so convicted in respect of a continuing failure to comply with subsection (1A) or (1B) is liable, in addition to the penalty otherwise applicable to that offence, to a fine not exceeding 10 penalty units for each day during which the failure continued.

7—Section 7 of the Principal Act is amended as follows:—

Amendment of
section 7 of
Principal Act
(Powers of
inspectors).

(a) by inserting the following paragraph after subsection (2) (a):—

(ab) require the occupier to produce for inspection a true copy of any franchise agreement in force in relation to the operation of the shop that is required to be kept in accordance with section 6;

(b) by omitting paragraph (b) of subsection (2) and substituting the following paragraph:—

(b) inspect any record produced pursuant to paragraph (a) or any document produced pursuant to paragraph (ab) and make a copy of any such record or document or of any part of any such record or document;

(c) by inserting the following subsections after subsection (2):—

(2A) Wherever an inspector has reason to believe that a franchise agreement is in force in relation to the operation of a shop, he may, for the purposes of this Act, enter and remain in—

(a) the registered office in Tasmania or place or principal place of business in Tasmania of the franchisor; or

(b) such other place as the Secretary for Labour has, pursuant to section 6 (1B), approved as a place in Tasmania at which the franchisor is required to cause a copy of the franchise agreement to be kept.

(2B) Where an inspector enters an office or other place pursuant to subsection (2A), he may—

(a) require the person in charge or apparently in charge of that office or other place to produce for inspection a true copy of the franchise agreement required to be kept at that office or other place pursuant to section 6;

(b) inspect any document produced pursuant to paragraph (a) and make a copy of any such document or of any part of any such document; and

- (c) make such inspections, examinations, and inquiries as he thinks necessary to ascertain whether or not section 6 (1B) is being complied with.
- (d) by omitting paragraph (a) of subsection (3) and substituting the following paragraph:—
- (a) refuses or deliberately delays the admission of an inspector—
- (i) to a building, part of a building, or place, or other premises which he is seeking to enter pursuant to subsection (1); or
- (ii) to a registered office or other place which he is seeking to enter pursuant to subsection (2A);
- (e) by inserting in subsection (3) (b) “, (2) (ab), or (2B) (a)” after “subsection (2) (a)”;
- (f) by inserting in subsection (3) (d) “or (2B)” after “subsection (2)”;
- (g) by omitting subsection (4) and substituting the following subsection :—
- (4) Where, in the course of an examination or inquiry—
- (a) under subsection (2), an answer is given to an inspector by an officer of a corporation within the meaning of the *Companies (Tasmania) Code* which is carrying on or has carried on the business of a shop in the building, part of a building, or place or other premises where the question was put; or
- (b) under subsection (2B), an answer is given to an inspector by an officer of a corporation within the meaning of that Act at the registered office of the corporation, or other place, where the question was put,
- the answer is, for the purposes of any proceedings against the corporation 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.

(h) by inserting in subsection (6) “or to enter any registered office or other place under subsection (2A)” after “subsection (1)”.

NOTES