



ANALYSIS

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1959, No. 14

An Act to amend the Shops and Offices Act 1955

[24 September 1959]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Shops and Offices Amendment Act 1959, and shall be read together with and deemed part of the Shops and Offices Act 1955 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the first day of November, nineteen hundred and fifty-nine.

2. Definition of "Tribunal"—Subsection one of section two of the principal Act is hereby amended by inserting, after the definition of the term "store assistant", the following definition:

“ 'Tribunal' means the Shops and Offices Exemptions Tribunal established by this Act: ”.

3. Shops and Offices Exemptions Tribunal—The principal Act is hereby amended by repealing section ten, and substituting the following section:

“10. (1) There is hereby established a Tribunal to be called the Shops and Offices Exemptions Tribunal.

“(2) The Tribunal shall consist of one member appointed by the Governor-General on the recommendation of the Minister.

“(3) A person shall not be appointed to the Tribunal unless he is qualified under the Magistrates' Courts Act 1947 to be appointed as a Stipendiary Magistrate or has held office as a Stipendiary Magistrate.

“(4) Any person appointed to the Tribunal may hold that office concurrently with any other office held by him.

“(5) There shall be paid out of money appropriated by Parliament for the purpose to any person appointed to the Tribunal remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951 and the Tribunal is hereby declared to be a statutory Board within the meaning of that Act.

“(6) Proceedings before the Tribunal shall not be held bad for want of form and no appeal shall lie from any decision of the Tribunal.”

4. Exemption from closing provisions—The principal Act is hereby amended by inserting, after section ten, as substituted by section three of this Act, the following section:

“10A. (1) The occupier of any shop, other than a chemist's shop, which is required to be closed at any time by any provision of this Act or of any award may apply to the Tribunal for total or partial exemption from that provision.

“(2) Every such application shall be filed in the office of the Magistrate's Court most convenient of access to the shop to which the application relates.

“(3) Notice of the date and place of the hearing of the application shall be given to the applicant by the Registrar of the Court where the application is filed not less than fourteen days before the date fixed for the hearing.

“(4) Within three days after notice has been given to him under subsection three of this section, the applicant shall cause notice of the application to be published in some newspaper approved for the purpose by the Registrar of the Court where the application was filed, and to be sent to the Inspector, and to every industrial union of workers registered in respect of shop assistants employed in the particular trade in the locality, and to every industrial union of employers registered or organisation of employers functioning in respect of the occupiers of shops in the particular trade in the locality.

“(5) Every notice under subsection four of this section shall be in a form approved by the aforesaid Registrar, and shall show the following particulars:

- “(a) The name of the applicant:
- “(b) The situation of the shop:
- “(c) The class or classes of business substantially carried on in the shop:
- “(d) The provision from which exemption is sought:
- “(e) The nature of the exemption sought:
- “(f) The grounds of the application:
- “(g) Such other particulars as may be prescribed.”

5. Applications and orders—The principal Act is hereby amended by inserting, after section ten A, as inserted by section four of this Act, the following section:

“10B. (1) At the hearing of any application under section ten A of this Act—

- “(a) Any occupier of a shop affected, and any representative of a union of workers or of a union or organisation of employers referred to in subsection four of section ten A of this Act, and any Inspector, shall be entitled to appear and to be heard:
- “(b) Any organisation shall be entitled to appear and to be heard if in the opinion of the Tribunal the organisation or the members thereof may be affected by any result of the proceeding.

“(2) Subject to subsection three of this section, the Tribunal, in its discretion, may refuse any application for exemption, or may by order grant the application either wholly or in part and either unconditionally or upon or subject to such conditions as the Tribunal thinks fit.

“(3) The Tribunal may make an order granting exemption as aforesaid if the Tribunal is satisfied that it is desirable in the public interest to do so. In determining whether or not to make an order, and in making the order, the Tribunal shall have regard to the interest of the occupier of any other shop that may be affected, but shall also have regard to the desirability of providing service to the public at all reasonable times, particularly in the case of any shop situated at a holiday resort.

“(4) Any order made under this section may at any time be revoked or varied by the Tribunal on application by the occupier of any shop affected by the order or by any union of workers or union or organisation of employers referred to in

subsection four of section ten A of this Act, and all the provisions of this Act, as far as they are applicable and with the necessary modifications, shall apply to an application under this subsection as if it were an application under the said section ten A.

“(5) Subject to the provisions of subsection four of this section, any order made under this section in respect of any shop shall continue to apply to that shop, notwithstanding that the occupier for the time being of the shop may not be the person who was the occupier when the order was made, and, in the case of an order relating to an award, notwithstanding the provisions of any award in substitution therefor:

“Provided that if any occupier carries on in the shop any class of business which was not carried on in the shop when the order was made the order shall thereupon cease to apply to the shop.

“(6) For the purposes of this Act the Tribunal shall have, in respect of any application and the hearing thereof, the powers of a Magistrate under the Magistrates’ Courts Act 1947 to the same extent as if the application were an originating application under the rules of procedure for the time being in force under that Act, and the provisions of those rules shall apply accordingly.

“(7) All Courts and persons acting judicially shall take judicial notice of the signature of the member of the Tribunal attached to any order under this section.

“(8) Where an exemption has been granted under this section or under section seven of this Act, the occupier of the shop in respect of which the exemption was granted shall, while the exemption remains in force, keep a notice setting out the full terms of the exemption prominently displayed in the shop in such a position that the notice may be seen by any person in the shop without having to ask for its production or without having to obtain permission to see it. No occupier shall display any such notice unless the exemption to which it relates is for the time being in force and unless the notice gives an accurate description of the terms of the exemption.”

6. Transition provisions—(1) Notwithstanding the repeal of section ten of the principal Act, any application under that section not finally disposed of at the commencement of this Act may be dealt with by the Tribunal in all respects as if the application had originally been made to the Tribunal.

(2) Any order made under section ten of the principal Act, as repealed by section three of this Act, and in force at the commencement of this Act shall enure for the purposes of the principal Act, as amended by this Act, as fully and effectually as if the order had been made under section ten B of the principal Act, and for all purposes shall be deemed to have been made under that section.

(3) Notwithstanding the provisions of this section—

(a) Any application under section ten of the principal Act, as repealed by section three of this Act, made in respect of a chemist's shop and not finally disposed of at the commencement of this Act shall be deemed to have lapsed; and

(b) Any order of exemption made under the said section ten in respect of a chemist's shop and in force at the date of the commencement of this Act shall remain in force for a period of three months after that date and shall, at the expiration of that period, be deemed to be revoked.

7. Consequential amendment—Section twelve of the principal Act is hereby amended by omitting the words “section seven or section ten or section eleven of”.

8. Sale of parts for farm machinery—Section eight of the principal Act is hereby amended by inserting, after the words “motor vehicle”, the words “or to sell parts or accessories that are urgently and necessarily required for the functioning of machinery or implements used for farming purposes”.
