

**FACTORIES, SHOPS AND INDUSTRIES
(AMENDMENT) ACT, 1979, No. 42**

New South Wales



ANNO VICESIMO OCTAVO

ELIZABETHÆ II REGINÆ

Act No. 42, 1979.

An Act to amend the Factories, Shops and Industries Act, 1962,
with respect to the trading hours of shops and warehouses.
[Assented to, 9th May, 1979.]

Factories, Shops and Industries (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the "Factories, Shops and Industries (Amendment) Act, 1979". Short title.

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

(2) Section 4 shall, in its application to a provision of Schedules 1 and 2, commence on the day on which that provision commences.

(3) The several provisions of Schedules 1 and 2 shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3. This Act contains the following Schedules :— Schedules.

SCHEDULE 1.—AMENDMENTS TO THE FACTORIES, SHOPS AND INDUSTRIES ACT, 1962.

SCHEDULE 2.—AMENDMENTS TO THE FACTORIES, SHOPS AND INDUSTRIES ACT, 1962, RELATING TO INSPECTORS.

4. The Factories, Shops and Industries Act, 1962, is amended in the manner set forth in Schedules 1 and 2. Amend-
ment
of Act No.
43, 1962.

Factories, Shops and Industries (Amendment).

Sec. 4.

SCHEDULE 1.

AMENDMENTS TO THE FACTORIES, SHOPS AND INDUSTRIES
ACT, 1962.

- (1) (a) Section 76 (5A)—
Omit “sections 76A and 76B”, insert instead “section 76A”.
- (b) Section 76 (5A)—
Omit “or subsection (2) of the said section 76B”.
- (c) Section 76 (6) (a)—
Omit “, 76B”.
- (2) (a) Section 76A (1), definition of “Small shop”—
After “a shop” where firstly occurring, insert “(other than a hairdresser’s shop as defined in section 78 (1) or a butcher’s shop)”.
- (b) Section 76A (1), definition of “Small shop”, paragraph (c)—
Omit “including”, insert instead “in addition to”.
- (c) Section 76A (1), definition of “Small shop”, paragraph (e)—
Omit the paragraph, insert instead :—
- (e) A direct or indirect interest in the business of the shop shall not be held by—
- (i) a corporation that is engaged in a business other than the business of the shop;
 - (ii) a director of a corporation that is engaged in a business other than the business of the shop;
 - (iii) any other person who is engaged, as an employee or otherwise, in a business other than the business of the shop; or

Factories, Shops and Industries (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE FACTORIES, SHOPS AND INDUSTRIES
ACT, 1962—*continued.*

- (iv) any corporation (whether or not engaged in a business) that, by the operation of section 6 (5) of the Companies Act, 1961, is deemed to be related to a corporation referred to in subparagraph (i) or (ii).
- (d) Section 76A (1), definition of “Small shop”, paragraphs (f) and (g)—
Omit the paragraphs.
- (e) Section 76A (2)—
Omit the subsection.
- (3) Section 76B—
Omit the section.
- (4) (a) Section 78 (1), definitions of “After-hours pharmacy”, “Chemist’s shop”, “Special pharmacy” and “The town of Tweed Heads”—
Omit the definitions.
- (b) Section 78 (1), definition of “Lease”—
Omit “, and ‘to lease’, ‘leasing’, ‘lessor’ and ‘lessee’, and derivatives thereof, have a corresponding meaning”.
- (c) Section 78 (2)—
Omit the subsection.

Factories, Shops and Industries (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE FACTORIES, SHOPS AND INDUSTRIES
ACT, 1962—*continued.*

(d) Section 78 (3)—

Omit the subsection.

(e) Section 78 (5)—

After section 78 (4), insert :—

(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.

(5) Section 79—

Omit the section, insert instead :—

Opening
and closing
times of
shops on
week days.

79. (1) The opening or closing time, or both the opening and closing times, for a class of shops (other than small shops and scheduled shops) or warehouses shall be the time or times prescribed by the regulations in respect of that class of shops or warehouses, as the case may be.

(2) Regulations referred to in subsection (1) may be made to differ in their application according to, and times may be prescribed therein by reference to, such factors as are specified in the regulations.

(6) Section 81A—

Omit the section.

(7) (a) Section 82 (1) (a)—

Omit “after-hours pharmacy or special pharmacy.”.

Factories, Shops and Industries (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE FACTORIES, SHOPS AND INDUSTRIES
ACT, 1962—*continued.*

(b) Section 82 (1) (a)—

Omit “For the purposes of this paragraph the class consisting of after-hours pharmacies shall be deemed not to be a class of shops.”.

(8) Section 83—

Omit the section.

(9) (a) Section 84 (1)—

Omit “, small shops and vehicle service shops”, insert instead “and small shops”.

(b) Section 84 (2)—

Omit the subsection.

(c) Section 84 (4)—

Omit “any State award”, insert instead “the regulations”.

(d) Section 84 (4)—

Omit “on Sunday” wherever occurring.

(e) Section 84 (4)—

Omit “shall, as from the commencement of this Act, cease to be of any”, insert instead “have no”.

(10) Section 85—

Omit the section.

Factories, Shops and Industries (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE FACTORIES, SHOPS AND INDUSTRIES
ACT, 1962—*continued.*

- (11) (a) Section 86 (1) (a)—
Omit “, other than an after-hours pharmacy”.
- (b) Section 86 (1) (b)—
Omit “or Sunday”.
- (c) Section 86 (1) (b)—
Omit “(other than an after-hours pharmacy)”.
- (d) Section 86 (1) (b)—
Omit “: Provided that where, in the case of chemists’ shops, provision is made for the reopening of such shops on any day, every such shop shall be kept closed during the remainder of that day other than such period as may be allowed for the reopening”.
- (e) Section 86 (5)—
After section 86 (4), insert :—

(5) A person guilty of an offence referred to in this section is liable to a penalty not exceeding \$1,000.
- (12) Section 87 (1)—
After “Act” where secondly occurring, insert “and liable to a penalty not exceeding \$1,000”.
- (13) Section 89—
After “Division”, insert “and the regulations”.

Factories, Shops and Industries (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE FACTORIES, SHOPS AND INDUSTRIES
ACT, 1962—*continued.*

(14) Section 89A—

Omit “or after-hours pharmacy”.

(15) Section 89B (1)—

After “Division”, insert “, and from specified provisions of the regulations,”.

(16) Section 89C (1)—

After “Division”, insert “, and from specified provisions of the regulations,”.

(17) Section 89D—

Omit the section, insert instead :—

89D. 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 is not guilty of the offence if—

Sale of
sporting
requisites.

(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

Factories, Shops and Industries (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE FACTORIES, SHOPS AND INDUSTRIES
ACT, 1962—*continued.*

- (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.

(18) Section 89E—

Omit the section.

(19) (a) Section 90 (2)—

Omit “or as a special pharmacy pursuant to section 76B”.

(b) Section 90 (2)—

Omit “or was a special pharmacy as defined in subsection (1) of the said section 76B”.

(c) Section 90 (2) (a)—

Omit “or in accordance with that subsection as applied and modified by the said section 76B”.

(20) Section 90A—

Omit the section.

Factories, Shops and Industries (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE FACTORIES, SHOPS AND INDUSTRIES
ACT, 1962—*continued.*

(21) Section 91—

Omit “, section 90A excepted”.

(22) (a) Section 94 (1)—

After “Act” where secondly occurring, insert “and liable to a penalty not exceeding \$1,000”.

(b) Section 94 (1)—

Omit “, after-hours pharmacies as defined by section 78 or special pharmacies as defined by section 76B”, insert instead “or scheduled shops as defined by section 78 (1)”.

(c) Section 94 (2)—

Omit the subsection.

(23) Section 102 (c)—

Omit “shop, being a chemist’s shop, after-hours pharmacy as defined by section 78 or special pharmacy as defined by section 76B,”, insert instead “chemist’s shop”.

(24) (a) Section 145 (4)—

Omit “The”, insert “Subject to sections 145A and 145B, the”.

Factories, Shops and Industries (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE FACTORIES, SHOPS AND INDUSTRIES
ACT, 1962—*continued.*

(b) Section 145 (4A)—

After “shopkeeper”, insert “or other person”.

(25) Sections 145A, 145B—

After section 145, insert :—

Failure
to pay
penalty,
etc., is
offence.

145A. (1) Where, by a conviction or order in respect of an offence against this Act specified in Division 3 of Part IV or section 94, a person is adjudged to pay any penalty or costs, or any penalty and costs, the stipendiary or industrial 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 under subsection (1) that is applicable to him is guilty of an offence against this Act.

Payment of
certain
penalties
enforceable
as a debt.

145B. 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 IV, section 94 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.

Factories, Shops and Industries (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE FACTORIES, SHOPS AND INDUSTRIES
ACT, 1962—*continued.*

(26) Schedule 3—

Omit the Schedule, insert instead :—

SCHEDULE 3.

Sec.
78 (1)
and (5).

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.

Factories, Shops and Industries (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE FACTORIES, SHOPS AND INDUSTRIES
ACT, 1962—*continued.*

- (27) Schedule 3A—
Omit the Schedule.

Sec. 4.

SCHEDULE 2.

AMENDMENTS TO THE FACTORIES, SHOPS AND
INDUSTRIES ACT, 1962, RELATING TO INSPECTORS.

- (1) Section 4 (1), definition of “Chief Inspector of Boilers”—
After the definition of “Chief Inspector”, insert :—

“Chief Inspector of Boilers” means the person who for
the time being holds the office of Chief Inspector
of Boilers or the inspector for the time being acting
in his place.

- (2) Section 7 (1)—
After “Industries”, insert “and another shall be
appointed Chief Inspector of Boilers”.
- (3) (a) Section 65 (1) (e)—
After “Chief Inspector”, insert “of Boilers”.
- (b) Section 65 (1) (f)—
After “Chief Inspector”, insert “of Boilers”.

Factories, Shops and Industries (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE FACTORIES, SHOPS AND INDUSTRIES ACT,
1962, RELATING TO INSPECTORS—*continued.*

(c) Section 65 (1) (j)—

After “Chief Inspector” wherever occurring, insert
“of Boilers”.

(d) Section 65 (2) (a) (vii)—

After “Chief Inspector” wherever occurring, insert
“of Boilers”.

(e) Section 65 (2) (a) (x)—

After “Chief Inspector”, insert “of Boilers”.
