

**FACTORIES, SHOPS AND INDUSTRIES (RETAIL TRADE)  
AMENDMENT ACT, 1983, No. 160**

**New South Wales**



ANNO TRICESIMO SECUNDO

**ELIZABETHÆ II REGINÆ**

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**Act No. 160, 1983.**

An Act to amend the Factories, Shops and Industries Act, 1962, in relation to shop trading hours and in other respects. [Assented to 31st December, 1983.]

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See also Industrial Arbitration (Retail Trade) Amendment Act, 1983.

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*Factories, Shops and Industries (Retail Trade) Amendment.*

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**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:—

**Short title.**

1. This Act may be cited as the "Factories, Shops and Industries (Retail Trade) Amendment Act, 1983".

**Commencement.**

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

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Principal Act.**

3. The Factories, Shops and Industries Act, 1962, is referred to in this Act as the Principal Act.

**Amendment of Act No. 43, 1962.**

4. The Principal Act is amended in the manner set forth in Schedule 1.

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*Factories, Shops and Industries (Retail Trade) Amendment.*

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SCHEDULE 1.

(Sec. 4.)

AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 2—

Omit the matter relating to Division 3A of Part IV, insert instead:—

DIVISION 3A.—*Functions of Retail Trade Industrial Tribunal under this Part—ss. 91A–91D.*

(2) (a) Section 76 (4)—

Omit the subsection, insert instead:—

(4) The determination of the Under Secretary as to the class to which any shop belongs shall, subject to any appeal under section 91D, be final.

(b) Section 76 (8)–(12)—

After section 76 (7), insert:—

(8) Where the Under Secretary is satisfied that a shop registered as belonging to a particular class has ceased to belong to that class, the Under Secretary may determine the class to which the shop belongs and shall give notice in writing to the shopkeeper of the shop of that determination.

(9) A notice under subsection (8) may be served on a shopkeeper of a shop personally or by posting it to the shopkeeper at the address of the shop.

(10) A determination under subsection (8) of the class to which a shop belongs has no force or effect until the time limited for appealing against the determination has expired and, where within that time an appeal against that determination has been made under section 91D, until the appeal has been dealt with or withdrawn.

(11) Where a determination under subsection (8) as to the class to which a shop belongs takes effect, the Under Secretary shall amend the registration of the shop accordingly.

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*Factories, Shops and Industries (Retail Trade) Amendment.*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(12) Where the Under Secretary makes a determination under subsection (8) as the class to which a shop belongs, the shopkeeper of the shop shall, forthwith after the determination takes effect, return the certificate of registration, or the certificate of renewal of registration, last issued under this section in respect of the shop to the Under Secretary for amendment of the certificate or the issue of a new certificate.

Penalty (subsection (12)): \$500.

(3) (a) Section 76A (1), definition of "Small shop"—

- (i) From paragraph (c), omit "two" where firstly occurring, insert instead "4".
- (ii) From paragraph (c), omit "each shopkeeper", insert instead "the shopkeeper or shopkeepers".
- (iii) Omit paragraph (c) (ii), insert instead:—
  - (ii) outside the normal working hours of any person so engaged on a full-time basis.

(b) Section 76A (3) (b) (ii) (b)—

Omit "twenty-one days after such refusal no appeal has been commenced under subsection (7), or if an appeal having been so commenced be not upheld", insert instead "the time limited for appealing against the determination to refuse the registration no appeal has been made under section 91D, or if an appeal having been so made is withdrawn or not upheld".

(c) Section 76A (7)—

Omit the subsection, insert instead:—

(7) The termination under subsection (6) of the registration of a shop as a small shop has no force or effect until the time limited for appealing against the determination of the Under Secretary to terminate the registration has expired and, where

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*Factories, Shops and Industries (Retail Trade) Amendment.*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

within that time an appeal against that determination has been made under section 91D, until the appeal has been dealt with or withdrawn.

(4) Section 78A—

After section 78, insert:—

**Exemption from provisions of this Division.**

78A. (1) The shopkeeper of a shop may make application to the Under Secretary 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 Under Secretary may grant or refuse an exemption applied for under this section.

(4) Where the Under Secretary 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.

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*Factories, Shops and Industries (Retail Trade) Amendment.*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(6) Where the Under Secretary grants an exemption under this section in relation to a shop, the Under Secretary 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 Under Secretary 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 Under Secretary 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) The withdrawal of an exemption under this section has no force or effect until the time limited for appealing against the determination of the Under Secretary to withdraw the exemption has expired and, where within that time an appeal against that determination has been made under section 91D, until the appeal has been dealt with or withdrawn.

(5) Section 79 (3)—

After section 79 (2), insert:—

(3) For the purposes of subsection (1), the regulations may provide for the determination of the class to which any shop for the time being not registered under Division 2 belongs.

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*Factories, Shops and Industries (Retail Trade) Amendment.*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(6) Section 86 (5)—

Omit the subsection, insert instead:—

(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 \$1,000; or

(b) in the case of a third or subsequent offence—to a penalty not exceeding \$10,000.

(7) (a) Section 87 (1)—

Omit “and liable to a penalty not exceeding \$1,000”.

(b) Section 87 (1A)—

After section 87 (1), insert:—

(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 \$1,000; or

(b) in the case of a third or subsequent offence—to a penalty not exceeding \$10,000.

(8) Section 90 (2) (a)—

Omit “within the previous twenty-one days, or an appeal against its refusal was pending”, insert instead “and the time limited for appealing against the determination to refuse the registration had not expired, or an appeal against that determination was pending”.

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*Factories, Shops and Industries (Retail Trade) Amendment.*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

## (9) Part IV, Division 3A—

Omit the Division, insert instead:—

DIVISION 3A.—*Functions of Retail Trade Industrial Tribunal under this Part.*

**Interpretation.**

91A. In this Division—

“shop” and “shopkeeper” have the meanings respectively ascribed thereto by section 75;

“Tribunal” means the Retail Trade Industrial Tribunal constituted by the Industrial Arbitration Act, 1940.

**Functions of Tribunal.**

91B. The Tribunal—

(a) shall—

(i) consider and report to the Minister on any matter concerning trading hours for shops which is referred to it by the Minister; and

(ii) determine appeals referred to in section 91D; and

(b) may investigate and make recommendations to the Minister in relation to—

(i) the making, amendment and repeal of regulations under section 102;

(ii) the amendment of this Act in relation to any of the matters regulated or dealt with by this Part (Division 5 excepted); and

(iii) any other matter relating to the sale or exposing or offering for sale of goods by retail in shops.



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*Factories, Shops and Industries (Retail Trade) Amendment.*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.***Special provisions relating to reports by Tribunal.**

91C. Where the Minister refers to the Tribunal a matter concerning the extension of trading hours for any shop or class or classes of shops, the Tribunal—

- (a) shall have regard to the public interest in the matter, including—
  - (i) the consequences upon other traders of extending the trading hours;
  - (ii) the consequences on persons engaged as employees, or to be engaged as employees, in the shop or shops; and
  - (iii) the number of full-time jobs which would be provided if the trading hours were extended; and
- (b) may, in its report to the Minister, recommend that the extension of trading hours be permitted or refused.

**Appeals to Tribunal.**

91D. (1) Any shopkeeper of a shop who is aggrieved by a determination of the Under Secretary—

- (a) as to the class to which the shop belongs;
  - (b) to refuse to grant an exemption under section 78A;
  - (c) as to the conditions subject to which, or the period for which, such an exemption is granted;
  - (d) to withdraw such an exemption;
  - (e) to refuse an application for a certificate of registration of the shop as a small shop; or
  - (f) to terminate the registration of the shop as a small shop,
- may, in accordance with the regulations and within the time prescribed by the regulations, appeal against the determination to the Tribunal.

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*Factories, Shops and Industries (Retail Trade) Amendment.*

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(2) Proceedings on an appeal under this section shall be held as in open court before the Tribunal.

(3) The Tribunal, in deciding an appeal under this section, may confirm the determination of the Under Secretary appealed against or substitute for that determination any determination that the Under Secretary might have made.

(4) The determination of the Tribunal under this section in respect of an appeal shall be final and conclusive and shall be deemed to be the determination of the Under Secretary.

(10) (a) Section 102 (d)—

Omit “devices.”, insert instead “devices; and”.

(b) Section 102 (e)—

After section 102 (d), insert:—

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

(11) Section 145 (3)—(3B)—

Omit section 145 (3), insert instead:—

(3) Proceedings for an offence against this Act or the regulations shall be disposed of summarily—

(a) before a court of petty sessions constituted by a stipendiary magistrate;

(b) before an industrial magistrate; or

(c) before the Supreme Court in its summary jurisdiction.

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*Factories, Shops and Industries (Retail Trade) Amendment.*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(3A) If proceedings for an offence against this Act or the regulations are brought before a court of petty sessions constituted by a stipendiary magistrate or before an industrial magistrate, the maximum penalty that the court of petty sessions or industrial magistrate may impose in respect of the offence is, notwithstanding any other provision of this Act, \$5,000 or the maximum penalty provided by this Act or the regulations in respect of the offence, whichever is the lesser.

(3B) If proceedings for an offence against this Act or the regulations are brought before the Supreme Court in its summary jurisdiction, that Court may impose a penalty not exceeding the maximum penalty provided by this Act or the regulations in respect of the offence.

(12) Section 145A (1)—

After "costs," where secondly occurring, insert "the Supreme Court or".

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