

**FACTORIES, SHOPS AND INDUSTRIES (AMENDMENT) ACT
1989 No. 200**

NEW SOUTH WALES



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SCHEDULE 1 - AMENDMENTS

**FACTORIES, SHOPS AND INDUSTRIES (AMENDMENT) ACT
1989 No. 200**

NEW SOUTH WALES



Act No. 200, 1989

An Act to amend the Factories, Shops and Industries Act 1962 to remove the requirements for the registration of shops and to enable certain corporations to gain small shop status; to repeal the Factories, Shops and Industries (Further Amendment) Act 1985; and for other purposes. [Assented to 21 December 1989]

Factories, Shops and Industries (Amendment) 1989

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Factories, Shops and Industries (Amendment) Act 1989.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Factories, Shops and Industries Act 1962 No. 43

3. The Factories, Shops and Industries Act 1962 is amended as set out in Schedule 1.

Repeal of Factories, Shops and Industries (Further Amendment) Act 1985 No. 162

4. The Factories, Shops and Industries (Further Amendment) Act 1985 is repealed.

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(Sec. 3)

(1) Part 4, Division 2 (**Registration of shops**):

Omit the Division.

(2) Section 78 (**Definitions and application**):

(a) Omit the definition of "Public holiday" in section 78 (1), insert instead:

"Public holiday" means any day on which the following holidays are publicly observed:

- (a) New Year's Day,
- (b) Australia Day,
- (c) Good Friday,

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- (d) Easter Sunday;
 - (e) Anzac Day;
 - (f) Christmas Day; and
 - (g) Boxing Day.
- (b) Omit the definitions of "Small shop", "Vehicle accessories", "Vehicle service shop" and "Vehicle shop" from section 78 (1), insert instead:
 "**Small shop**" means a shop which complies with section 78B.
- (c) Omit section 78 (4).
- (3) Section 78A (**Exemption from provisions of this Division**):
 After section 78A (9), insert:
- (10) Any shopkeeper or occupier of a shop who is aggrieved by a determination of the Under Secretary:
 - (a) to refuse to grant an exemption; or
 - (b) as to the conditions subject to which, or the period for which, an exemption is granted; or
 - (c) to withdraw an exemption,may, in accordance with the regulations and within the time prescribed by the regulations, appeal against the determination to the Industrial Commission of New South Wales.
 - (11) The Industrial Commission, 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.
 - (12) The determination of the Industrial Commission under this section in respect of an appeal is final and conclusive and is to be taken to be the determination of the Under Secretary.

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SCHEDULE 1 - AMENDMENTS - *continued*

(4) Section 78B:

After section 78A, insert:

Small shops

78B. (1) A shop is a small shop for the purposes of this Act if it complies with the requirements of this section.

(2) The shopkeeper or shopkeepers of a small shop is or are to be natural persons not exceeding 2 in number (whether or not carrying on the business of the shop in partnership) or 1 corporation.

(3) The shopkeeper or shopkeepers of a small shop is or are to be the owner or owners of the business of the shop and entitled to the profits of that business.

(4) The number of persons engaged in a small shop as employees or otherwise in the conduct of the business of the shop on any day (either at the same time or at different times) is not to exceed 4.

(5) The number of persons permitted to be engaged in a small shop as referred to in subsection (4) does not include:

- (a) the shopkeeper or shopkeepers or, if the shopkeeper is a corporation, not more than 2 natural persons who are shareholders of the corporation; or
- (b) any person so engaged in an emergency during the absence from the shop for part of a day of a person who is so engaged in the shop on that day; or
- (c) any person so engaged outside the normal working hours of any person so engaged on a full-time basis.

(6) Subsection (4) does not apply to a shop during a period of exemption specified in an order for the time being in force under section 89B in respect of an area or locality within which the shop is situated.

(7) A shopkeeper of a small shop is not to be a person acting as the employee of or acting directly or indirectly as

SCHEDULE 1 - AMENDMENTS - *continued*

the agent of another person in the conduct of the business of the shop.

(8) A shop is not a small shop if a direct or indirect interest in the business of the shop is held by:

- (a) a corporation that is engaged in a business other than the business of the shop; or
- (b) a director of a corporation that is engaged in a business other than the business of the shop; or
- (c) any other person who is engaged, as an employee or otherwise, in a business other than the business of the shop; or
- (d) any corporation (whether or not engaged in a business) that for the purposes of the Companies (New South Wales) Code is to be taken to be related to a corporation referred to in paragraph (a) or (b).

(9) A reference in any other Act, award or instrument to a small shop as defined in section 76A of this Act is to be read as a reference to a small shop within the meaning of this section.

(10) In this section:

"business" means the business of the sale of goods by retail;

"shareholder", in relation to a corporation, means a person having a relevant interest in a share in that corporation for the purposes of Division 4 of Part 4 of the Companies (New South Wales) Code.

(5) Section 79 (**Opening and closing times of shops on week days**):

Omit the section.

(6) Section 90 (**Defences**):

Omit section 90 (2).

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SCHEDULE 1 - AMENDMENTS - *continued*

- (7) Division 3A (**Appeals relating to retail shops**) of Part 4:
Omit the Division.
- (8) Section 100 (**Powers of inspectors**):
Omit section 100 (1) (d).
- (9) Section 102 (**Regulations**):
Omit "for registration of a shop as a small shop or" from section 102 (e).
- (10) Section 145 (**Proceedings**):
Omit "\$5,000" from section 145 (3A), insert instead "\$10,000".
- (11) Part 9 (**Home deliveries of certain commodities**):
Omit the Part.
- (12) Section 148 (**Evidentiary provisions**):
 - (a) Omit "or shop" wherever occurring from section 148 (2) (b).
 - (b) Omit "or shopkeeper" from section 148 (2) (b).
- (13) Section 151 (**Penalty for forging certificate etc. and false declaration**):
Omit "or shop" from section 151.
- (14) Section 153:
After section 152, insert:
Provisions consequent on the enactment of the Factories, Shops and Industries (Amendment) Act 1989
153. (1) In this section:
"the amending Act" means the Factories, Shops and Industries (Amendment) Act 1989.

SCHEDULE 1 - AMENDMENTS - *continued*

(2) Section 90 (2), as in force immediately before the commencement of Schedule 1 (6) to the amending Act, continues to apply in relation to offences alleged to have been committed before that commencement.

(3) Appeals pending under section 91D (b), (c) or (d) at the commencement of Schedule 1 (7) to the amending Act are to be taken to be appeals made under section 78A, as amended by that Act.

(4) Section 148, as in force immediately before the commencement of Schedule 1 (12) to the amending Act, continues to apply in relation to offences alleged to have been committed before that commencement.

[*Minister's second reading speech made in -
Legislative Assembly on 22 November 1989
Legislative Council on 8 December 1989*]