

# Shops and Industries Act 1962 No 43

[1962-43]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Previously named**  
Factories, Shops and Industries Act 1962
- **Does not include amendments by**  
Secs 89E (3) and 89F (5) of this Act (not commenced — to commence on 27.12.2004)

### Authorisation

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# Shops and Industries Act 1962 No 43



New South Wales

## Contents

<b>Long title</b> .....	5
<b>Part 1 Preliminary</b> .....	5
1 Name of Act and commencement .....	5
2 (Repealed) .....	5
3 Repeals and savings .....	5
4 Definitions .....	6
<b>Part 2 Opening of banks on weekends</b> .....	6
5 Definition .....	6
6 Banks may apply to open on weekends .....	7
6A (Repealed) .....	8
7 Duration of approval .....	8
7A (Repealed) .....	8
8 Variation, suspension or cancellation of approval .....	8
9 Review by Administrative Decisions Tribunal of decisions relating to approval .....	9
<b>Part 3 (Repealed)</b> .....	9
<b>Part 4 Restriction of hours of trade or work in certain industries</b> .....	9
<b>Division 1 Preliminary</b> .....	10
74 Definitions .....	10
<b>Division 2 (Repealed)</b> .....	11

<b>Division 3 Opening and closing hours of shops and warehouses</b> .....	11
78 Definitions and application .....	11
78A Exemption from provisions of this Division .....	12
78AA Reviews by the Administrative Decisions Tribunal .....	13
78B Small shops .....	13
79 (Repealed) .....	14
79A Premium rates of pay for Saturday afternoons .....	14
80–81A (Repealed) .....	14
82 Closing time of mixed shops .....	15
83 (Repealed) .....	15
84 Trading hours of shops on Sunday .....	15
85 Trading on public holidays .....	16
86 Offences .....	16
87 Penalty for publishing certain statements .....	17
88 Division not to apply to sale of books etc at ferry bookstalls .....	18
88A Art and handicraft galleries .....	18
89 Power of suspension in certain cases .....	18
89A Sale of medicinal or surgical goods .....	19
89B Exemption of holiday resorts .....	19
89C Hairdresser’s shops at transport terminals .....	21
89D Sale of sporting requisites .....	21
89E Shops to be kept closed on Christmas Day 2004 .....	22
89F Shops to be kept closed on Boxing Day 2004 except in limited circumstances .....	22
90 Defences .....	23
90A (Repealed) .....	23
91 Leases of shops and warehouses .....	23
<b>Divisions 3A, 4 (Repealed)</b> .....	23
<b>Division 5 Day baking</b> .....	23
95 (Repealed) .....	23
96 Manufacture of pastry etc at certain times prohibited .....	23
97 Exemption .....	23
98 (Repealed) .....	24

<b>Division 6 (Repealed)</b> .....	24
<b>Division 7 General</b> .....	24
100 Powers of inspectors.....	24
101 Divisions 2 and 3 not to apply in certain cases .....	25
101A Disclosure of information.....	25
102 Regulations.....	25
<b>Parts 5-10 (Repealed)</b> .....	26
<b>Part 11 Miscellaneous provisions</b> .....	26
144 Regulations.....	26
145 Proceedings .....	27
145A Failure to pay penalty etc is offence.....	28
145B (Repealed).....	28
146 Service of order, notice or summons .....	28
147 Penalties .....	28
148 Evidentiary provisions .....	29
149 Contracting out.....	29
150 Power to revoke or vary notices etc .....	30
151 Penalty for forging certificates and false declaration .....	30
152 Penalty for destroying notices etc .....	30
152A Performance of Director-General's functions .....	30
153 Provisions consequent on the enactment of the Factories, Shops and Industries (Amendment) Act 1989 .....	30
154 Savings, transitional and other provisions.....	31
<b>Schedule 1</b> .....	31
<b>Schedule 2 Savings, transitional and other provisions</b> .....	32
<b>Schedule 3</b> .....	33
<b>Schedules 3A-5 (Repealed)</b> .....	34

# Shops and Industries Act 1962 No 43



New South Wales

An Act to make provisions with respect to the supervision and regulation of factories, shops, and certain other industries; and to the health, safety and welfare of persons employed therein; to restrict the hours on week days and Sundays during which shops may be opened and certain trades may be carried on; to control the advertising and description of goods; to regulate outdoor work in the clothing trades; to repeal the *Factories and Shops Act 1912* and certain other enactments; and for purposes connected therewith.

## Part 1 Preliminary

### 1 Name of Act and commencement

- (1) This Act may be cited as the *Shops and Industries Act 1962*.
- (2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

### 2 (Repealed)

### 3 Repeals and savings

- (1) The several Acts mentioned in Schedule 1 are to the extent therein expressed hereby repealed.
- (2) All proclamations, notices, exemptions, registrations, renewals of registrations, certificates including certificates of registration and renewals of registration, licences, permits, authorities, approvals, regulations and orders published, given, granted, issued or made under any enactment hereby repealed and re-enacted, with or without modification by this Act and being in force at the commencement of this Act, shall be and continue in force hereunder, and shall be deemed to have been published, given, granted, issued or made, as the case may be, under this Act.

All applications made and all proceedings and investigations commenced under any enactment hereby repealed, and not determined or completed at the commencement of this Act, may be dealt with, determined and completed as though made or commenced pursuant to this Act.

All persons appointed under any enactment hereby repealed, and holding office at the

commencement of this Act, shall remain in office as if this Act had been in force at the time they were appointed and they had been appointed hereunder, and this Act shall apply to them accordingly.

Nothing in this subsection shall be construed as extending the term for which any registration, certificate of registration, renewal of registration, certificate of renewal of registration, licence, permit or appointment was granted, issued or made under any enactment hereby repealed.

- (3) References in any Act, by-law, regulation or any other instrument or document whatsoever of the same or different kind or nature to provisions of any enactment hereby repealed which are re-enacted, with or without modification, by this Act shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted.

#### 4 Definitions

- (1) In this Act, unless the context or subject matter otherwise indicates or requires:

**Bakehouse** means any building or place in which any bread, biscuits, cakes, confectionery, cereal food for human consumption, pastry, sweetmeats, sugar goods, muffins, crumpets or goods of a like kind are made or baked for trade or sale, and include any place or room used in connection with the bakehouse for storing such goods when made or baked or the ingredients and materials to be used in the manufacture of such goods.

**Contravention** includes, in relation to any provision, term or condition, a failure to comply with, observe or carry out that provision, term or condition, and the word “contravenes” shall be construed accordingly.

**Director-General** means the Director-General of the Department of Industrial Relations.

**Occupier** means, in relation to a shop, the person, partnership, association, or corporation employing persons in the shop, or occupying the shop, and includes any agent, manager, foreman, or other person acting or apparently acting in the general management or control of the shop and the owner or person deemed to be the occupier pursuant to subsection (2).

**Regulations** means regulations made or deemed to have been made under this Act.

- (2) (Repealed)

## Part 2 Opening of banks on weekends

### 5 Definition

In this Part, **bank** has the same meaning as in Part 3 of the [Banks and Bank Holidays Act](#)

1912.

## **6 Banks may apply to open on weekends**

- (1) A bank may apply to the Director-General for approval to open the bank, or one or more branches of the bank, in New South Wales on Saturdays or Sundays, or both, that are declared to be bank holidays under section 15A of the *Banks and Bank Holidays Act 1912*.
- (2) An application is:
  - (a) to be made in writing to the Director-General, and
  - (b) to be accompanied by such information as the Director-General requires to determine the application, and
  - (c) to be accompanied by the fee prescribed by the regulations.
- (3) The Director-General may:
  - (a) grant an approval unconditionally or subject to conditions, or
  - (b) refuse to grant an approval.
- (4) In determining an application for an approval, the Director-General is to consider whether granting the approval would be in the interests of the public, taking into account the likely effect of granting the approval on particular sections of the public, including customers of the bank concerned in any particular area (whether or not an area the subject of the application) and persons employed or engaged (whether or not by the bank) to perform services for the bank.
- (5) Nothing in subsection (4) limits the matters that the Director-General may consider in determining an application for approval.
- (6) For the purposes of determining an application for approval, the Director-General may request the applicant to provide such further information as the Director-General considers relevant to the determination of the application.
- (7) The Director-General may refuse to grant an approval if the applicant for approval does not comply with a request under subsection (6).
- (8) The Director-General may prepare guidelines relating to the type of information that may be required in connection with an application under this Part.
- (9) In preparing any such guidelines, the Director-General may consult with the banking industry.
- (10) If the Director-General grants an approval, the Director-General must issue the applicant with a written approval that sets out any conditions to which the approval is

subject.

- (11) If the Director-General refuses an application for approval, the Director-General must give notice of the refusal in writing to the applicant setting out the reasons for the refusal.
- (12) If the Director-General has not determined an application for approval before the expiration of the period of 40 days after the application was made to the Director-General (or such longer period as the Director-General determines with the consent in writing of the applicant), the Director-General is taken to have made a decision to refuse to grant the approval.

#### **6A (Repealed)**

#### **7 Duration of approval**

Except during any period of suspension, an approval under this Part remains in force for the period specified in the approval or, if no period is so specified, until the approval is cancelled.

#### **7A (Repealed)**

#### **8 Variation, suspension or cancellation of approval**

- (1) The Director-General may, at the request of the bank that holds the approval or on the Director-General's own initiative, vary the conditions of, or suspend or cancel, an approval under this Part.
- (2) An approval may be suspended or cancelled only if:
  - (a) the bank that holds the approval has contravened a condition of the approval, or
  - (b) the Director-General considers that it is no longer in the interests of the public for the approval to remain in force, or
  - (c) the bank has requested the suspension or cancellation.
- (3) The Director-General may only vary the conditions of, or suspend or cancel, an approval under this Part:
  - (a) after having given the bank concerned written reasons for the Director-General's intention to vary, suspend or cancel and an opportunity to make submissions, and
  - (b) after having considered any submissions duly made by the bank.
- (4) Subsection (3) does not apply to a variation of a condition of, or the suspension or cancellation of, an approval at the request of the bank that holds the approval.
- (5) A variation of the conditions of, or a suspension or cancellation of, an approval:



- (a) must be made by notice in writing served on the bank that holds the approval, and
  - (b) takes effect at the time at which the notice is served or at a later time specified in the notice.
- (6) Before determining to take action under this section in relation to an approval, the Director-General may (but need not) determine that the approval will be subject to a period of review.
- (7) The Director-General is to give written notice of a determination under subsection (6) to the bank that holds the approval concerned and is to include in the notice written reasons for the determination.

## **9 Review by Administrative Decisions Tribunal of decisions relating to approval**

- (1) A bank that is the applicant for an approval under this Part or the holder of such an approval may apply to the Administrative Decisions Tribunal for a review of any of the following decisions:
- (a) a decision of the Director-General to refuse to grant the approval,
  - (b) a decision of the Director-General to impose conditions on the approval,
  - (c) a decision of the Director-General to vary the conditions of the approval,
  - (d) a decision of the Director-General to suspend or cancel the approval.
- (2) A representative of an industrial organisation of which persons employed or engaged to perform services for a bank are entitled or eligible to belong may apply to the Administrative Decisions Tribunal for a review of any of the following decisions:
- (a) a decision of the Director-General to grant an approval under this Part to the bank (whether with or without conditions),
  - (b) a decision of the Director-General to vary the conditions of an approval granted to the bank under this Part.
- (3) In this section, **industrial organisation** means an industrial organisation within the meaning of the [Industrial Relations Act 1996](#), or an organisation registered under the [Workplace Relations Act 1996](#) of the Commonwealth.

## **Part 3**

### **10-73 (Repealed)**

## **Part 4 Restriction of hours of trade or work in certain industries**

## Division 1 Preliminary

### 74 Definitions

(1) In this Part, unless the context or subject matter otherwise indicates or requires:

**Area** means area to which the provisions of any State award or any award for the time being in force under any Commonwealth Act relating to industrial arbitration fixing the time for the commencement, or cessation, or the times for the commencement and cessation, of the ordinary hours of work by employees in shops therein apply.

**Close** means close to the admission of the public, and words derived therefrom have a corresponding meaning.

**Employ** means employ in any way or in any kind of work.

**Inspector** means an inspector appointed under the [Industrial Relations Act 1996](#).

**Make or bake** in relation to pastry does not include any operations connected with the preparation of dough for pies, or with the preparation or cooking of meat required for pie-making, or with the firing of ovens.

**Medicinal or surgical goods** means drugs or medicines (including patent or proprietary drugs or medicines), surgical appliances, dressings and antiseptics.

**Pastry** includes cakes, biscuits, muffins and crumpets and any goods usually made by pastrycooks.

**State award** means an award within the meaning of the [Industrial Relations Act 1996](#).

**Warehouse** means place or building in which goods are sold or offered or exposed for sale by wholesale, and includes any portion of a building which is separated from the rest of the building by a substantial partition, and in which goods are sold or offered or exposed as aforesaid, and includes, where the context requires it, kind or class of warehouse.

**Week day** means any day of the week except Sunday.

(2) For the purposes of this Act, a shop or warehouse shall be deemed to be open if:

- (a) it is not closed to the admission of the public, or
- (b) any goods are sold or offered for sale therein, or
- (c) any person is in attendance at the shop or warehouse for the receipt, by any means, of
  - (i) orders for goods, or

- (ii) requests for the demonstration of goods, or the delivery of goods on approval.

## **Division 2**

### **75-77 (Repealed)**

## **Division 3 Opening and closing hours of shops and warehouses**

### **78 Definitions and application**

- (1) In this Division and in Schedule 3, unless the context or subject matter otherwise indicates or requires:

**General shop** means any shop (other than a scheduled shop) that is classified by the regulations as a general shop for the purposes of this definition.

**Hairdresser's shop** means shop in which the business of a hairdresser is carried on.

**Lease** includes sublease, tenancy, subtenancy or licence to use or occupy, whether in writing or not.

**Occupier** means person, partnership, association, or corporation occupying a warehouse, directly or indirectly, as principal, and includes a person who continues to be the occupier of a warehouse under the provisions of section 91.

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

- (a) New Year's Day,
- (b) Australia Day,
- (c) Good Friday,
- (d) Easter Sunday,
- (e) Anzac Day,
- (f) Christmas Day, and
- (g) Boxing Day.

**Scheduled shop** means shop of any of the classes specified in Schedule 3.

**Shop** means place, building, stall, tent, vehicle, boat, or pack in which goods are sold or offered or exposed for sale by retail, or from which goods are sold by retail, or in which the business of a hairdresser, pawnbroker or farrier is carried on, and includes any portion of a building which is separated from the rest of the building by a permanent and substantial partition or wall, and in which goods are sold or offered or exposed as aforesaid, or in which any such business as aforesaid is carried on, and includes where the context requires it, kind or class of shop.

**Shopkeeper** means person, partnership, association, or corporation occupying a shop, directly or indirectly as principal, and includes hawkers and pedlars, and also includes a person who continues to be a shopkeeper of a shop under the provisions of section 91, but does not include a commercial traveller bona fide engaged in selling goods to a shopkeeper by sample only.

**Small shop** means a shop which complies with section 78B.

(2)-(4) (Repealed)

(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.

### **78A Exemption from provisions of this Division**

- (1) The shopkeeper of a shop may make application to the Director-General 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 Director-General may grant or refuse an exemption applied for under this section.
- (4) Where the Director-General 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.
- (6) Where the Director-General grants an exemption under this section in relation to a shop, the Director-General 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 Director-General 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 Director-General 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)-(12) (Repealed)

#### **78AA Reviews by the Administrative Decisions Tribunal**

Any shopkeeper or occupier of a shop who is aggrieved by any of the following decisions may apply to the Administrative Decisions Tribunal for a review of the decision:

- (a) a determination of the Director-General to refuse to grant an exemption, or
- (b) a determination of the Director-General as to the conditions subject to which, or the period for which, an exemption is granted, or
- (c) a determination of the Director-General to withdraw an exemption.

#### **78B Small shops**

- (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 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 section 50 of the *Corporations Act 2001* of the Commonwealth 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:

- (a) the business of the sale of goods by retail, or
- (b) the business of a hairdresser.

**shareholder**, in relation to a corporation, means a person having a relevant interest in a share in that corporation for the purposes of Part 6C.1 of the *Corporations Act 2001* of the Commonwealth.

## **79 (Repealed)**

### **79A Premium rates of pay for Saturday afternoons**

- (1) The regulations may amend any award made under the *Industrial Relations Act 1996* (whether or not published) which fixes the rates of pay of employees in shops by the substitution of the rate of time and a half for any other rate of pay specified in the award for ordinary hours worked by any such employees on a Saturday after 12 noon.
- (2) The regulations made under subsection (1) may also provide for the amendment of any award referred to in that subsection so as to apply the rate of time and a half to hours worked by casual employees in shops on Saturdays after 12 noon and for the omission of provision in the award for any loading in relation to those hours.

## **80-81A (Repealed)**

## **82 Closing time of mixed shops**

(1)

- (a) Where the trade carried on in a shop, not being a small shop, includes trade usually carried on in two or more classes of shops the shop shall be kept closed at all times when shops of any of such classes are required by this Act to be kept closed: Provided that it shall be lawful for the shop to be kept open at any such time if all goods therein, which are usually the subject of trade in a class or classes of shops required by this Act to be kept closed at that time, are partitioned off in the prescribed manner.
- (b) In any information alleging that a shop to which paragraph (a) applies was open at a time when it was required by this Act to be kept closed, it shall be a sufficient description of the offence charged to allege that the shop was of a specified class, being one of the classes included in the trade carried on in the shop, and was open at the time of the alleged offence, being a time when shops of such specified class are required by this Act to be kept closed.

(2)

- (a) Where a shopkeeper of a shop to which the provisions of subsection (1) apply has within a period of three years been convicted three times for offences under section 86, the Industrial Relations Commission in Court Session may order that in respect of the shop while occupied by such shopkeeper and of any other shop to which the business of such shopkeeper may be transferred the provisions of the said subsection shall for such period as the Commission may determine operate as though the proviso to paragraph (a) of the said subsection were omitted, and the said subsection shall for the period so determined operate in accordance with the order of the Commission.
- (b) An application for an order under paragraph (a) shall be made by the Minister or by an inspector authorised in that behalf by the Minister.

Any such application shall be made as prescribed by regulations made under the [Industrial Relations Act 1996](#).

An authority to make such application purporting to have been signed by the Minister shall be prima facie evidence of such authority without proof of the Minister's signature.

## **83 (Repealed)**

## **84 Trading hours of shops on Sunday**

- (1) Shops (other than scheduled shops and small shops) are to be kept closed on Sundays, except for the two Sundays immediately preceding Christmas Day.

(2), (3) (Repealed)

(4) The provisions of any law, other than this Act and the regulations, to the extent to which it prohibits the opening of any shop or any trading or dealing in goods in any shop, have no force or effect.

### **85 Trading on public holidays**

(1) General shops (other than small shops) shall be kept closed on public holidays.

(2) The Minister may, by order published in the Gazette, suspend the operation of subsection (1) in relation to any specified public holiday:

(a) within New South Wales generally, or

(b) within any specified part of New South Wales,

subject to such conditions as to hours of opening, or of trading in any classes of goods, or as to other matters, as may be specified in the order.

(3) An order under subsection (2) shall not be made unless the Minister is satisfied that it will be of benefit to the public for general shops to be allowed to remain open on the specified public holiday:

(a) within New South Wales generally, or

(b) within the specified part of New South Wales,

as the case may be, but nothing in this subsection affects the validity of any such order.

### **86 Offences**

(1) Where by or under this Act:

(a) an opening time on any week day is fixed for or in respect of any shop, the shop shall be kept closed on that day until that opening time,

(b) a closing time on any week day is fixed for or in respect of any shop or warehouse, the shop or warehouse shall be kept closed for the remainder of that day at and after that closing time.

(2) Subject to sections 89A and 90, where any shop or warehouse is open at a time when it is required by or under this Act to be kept closed, the shopkeeper of the shop or occupier of the warehouse, as the case may be, and any person acting or apparently acting in the management of the shop or warehouse, as the case may be, shall be guilty of an offence against this Act:

Provided that no such shopkeeper, occupier, or person shall be guilty of the said offence by reason only that within one half hour after the relevant closing time, or the



first half hour of a period for which the shop or warehouse is required by or under this Act to be kept closed, as the case may require, goods have been offered for sale or sold to a customer who at the relevant closing time, or at the commencement of that period was in the shop or warehouse being served or waiting to be served.

(3) (Repealed)

(4) If in any hairdresser's shop any work is done for any customer at a time when such shop is required by or under this Act to be kept closed, the shopkeeper of the shop and any person acting or apparently acting in the management of the shop shall be guilty of an offence against this Act:

Provided that no such shopkeeper or person shall be guilty of the said offence by reason only that within the fifteen minutes after the closing time for that shop any work was done for a customer who at the closing time was in the hairdresser's shop being attended to or waiting to be attended to.

(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 10 penalty units, or
- (b) in the case of a third or subsequent offence—to a penalty not exceeding 100 penalty units.

### **87 Penalty for publishing certain statements**

(1) Any person who publishes or causes to be published any statement which is intended or apparently intended to promote the business carried on in a shop or warehouse and which states, implies or suggests that at a time when that shop or warehouse is required by or under this Act to be kept closed:

- (a) the shop or warehouse will be open to the admission of the public for any purpose of trade or the inspection of goods, or
  - (b) any goods will be sold or offered for sale in the shop or warehouse, or
  - (c) any person will be in attendance at the shop or warehouse or at any other place for the receipt, by any means, of
    - (i) orders for goods, or
    - (ii) requests for the demonstration of goods, or the delivery of goods on approval,
- shall be guilty of an offence against this Act.

(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 10 penalty

units, or

(b) in the case of a third or subsequent offence—to a penalty not exceeding 100 penalty units.

(2) A statement shall be deemed to be published within the meaning of this Act if it is:

(a) inserted in any newspaper or any other publication printed and published in New South Wales, or

(b) publicly exhibited:

(a) in, on, over or under any building, vehicle or place (whether or not a public place and whether on land or water), or

(b) in the air in view of persons being or passing in or on any street or public place, or

(c) contained in any document gratuitously sent or delivered to any person or thrown or left upon premises in the occupation of any person, or

(d) broadcast by wireless transmission or by television, or

(e) made verbally.

### **88 Division not to apply to sale of books etc at ferry bookstalls**

Nothing in this Division shall apply to ferry bookstalls in respect of the sale of books, magazines, periodicals and newspapers.

### **88A Art and handicraft galleries**

Nothing in this Division applies to any art or handicraft gallery, or art and handicraft gallery, wherein goods that are:

(a) works of art or of handicraft,

(b) articles or materials for use in mounting, framing or displaying the works specified in paragraph (a),

(c) books, catalogues or other publications relating to art or handicraft, or

(d) other prescribed goods,

but no other goods, are sold or offered or exposed for sale.

### **89 Power of suspension in certain cases**

In cases of emergency caused by disease, or fire, tempest, flood or other calamity, the Minister may by notice published in the Gazette suspend the operation of such provisions of this Division and the regulations as he or she deems necessary in respect of any

persons, class of persons, shops, classes of shops, warehouses, or classes of warehouses, for such period within such locality, and under and subject to the performance of such conditions as he or she may impose, and in like manner may alter or annul such order of suspension.

Any person who contravenes any condition imposed under this section shall be guilty of an offence against this Act.

#### **89A Sale of medicinal or surgical goods**

No person shall be guilty of an offence against this Act by reason only that a shop being a chemist's shop, or that a warehouse wherein medicinal or surgical goods were sold or offered or exposed for sale, was open on any day at a time (in this subsection referred to as a non-trading time) when such shops or warehouses are required by or under this Act to be kept closed, if:

- (a) the only purpose of such opening was the sale of medicinal or surgical goods in accordance with the order or prescription of a medical practitioner, the prescription of a nurse practitioner or a midwife practitioner or required urgently, and no goods other than medicinal or surgical goods either:
  - (i) specified in such an order or prescription produced by a person seeking to buy those goods to a person acting in the conduct of the business of the shop or warehouse, or
  - (ii) which a person seeking to buy those goods stated to a person so acting to be required for a specified urgent purpose,were sold in the shop or warehouse during the non-trading times on that day, and
- (b) the door of the shop or warehouse was kept closed and fastened at all non-trading times on that day except when:
  - (i) a person admitted to the shop or warehouse for the purpose of the sale of medicinal or surgical goods as referred to in paragraph (a),
  - (ii) a person referred to in paragraph (a) of subsection (1) of section 90, or
  - (iii) a customer referred to in the proviso to subsection (2) of section 86,was entering or leaving the shop or warehouse.

#### **89B Exemption of holiday resorts**

- (1) The Minister, on application being made pursuant to this section and where he or she is satisfied that all or part of an area (within the meaning of the [Local Government Act 1993](#)) outside the County of Cumberland, the City of Newcastle and the City of Wollongong:

- (a) is, or is within, a holiday resort, and
- (b) during the period or periods of the year specified in the application or any part of that period or those periods usually has a holiday population that is large by comparison with its normal resident population,

may, subject to this section and for that period or those periods, or some part thereof, as he or she thinks fit, by order exempt the shops in that area or part thereof, as the case may be, from the provisions of this Division, and from specified provisions of the regulations, subject to such conditions as to hours of opening, or of trading in any classes of goods, or as to other matters, as may be specified in the order.

- (2) An application for an order under this section may be made to the Minister only by the council of the area or part thereof in respect of which the order is sought and shall:
  - (a) state the reasons therefor,
  - (b) specify the area or locality in respect of which, and the period or periods in each year for which, it is desired that the exemption shall be in force,
  - (c) specify the times at which it is desired that shops be allowed to remain open, or to trade in any class or classes of goods, pursuant to the exemption, and
  - (d) state whether, and if so to what extent, the application has the support or concurrence of the shopkeepers of shops situated within the area or locality.

The period or periods specified pursuant to paragraph (b) shall be an unbroken period not longer than, or more than one period totalling not more than, fifteen weeks and shall be the same period or periods in each year.

- (3) The Minister shall not make an order under this section until he or she has obtained, and has considered, a report by the prescribed person as to whether or not the area or locality specified in the application for the order is, or is within, a holiday resort and, if so, whether during the period or periods so specified that area or locality usually has a holiday population that is large by comparison with its normal resident population.

In this subsection **the prescribed person** means the person for the time being holding, or acting in, the office of Director of Tourism or, where the holder of some other office is prescribed for the purposes of this subsection, the person for the time being holding or acting in that office.

- (4) An order under this section:
  - (a) shall be published in the Gazette,
  - (b) shall, until revoked and subject to any variation thereof that may from time to time be made, remain in force from year to year in respect of the period of exemption specified therein,

and any revocation or variation thereof shall also be so published.

- (5) No person shall be guilty of an offence against this Act by reason only that a shop within an area or locality in respect of which an order under this section was for the time being in force was open at a time within the period of exemption specified in that order and in accordance with the conditions, if any, so specified.

### **89C Hairdresser's shops at transport terminals**

- (1) The Minister, on application being made to him or her by the shopkeeper of a hairdresser's shop, and where he or she is satisfied that the shop:
- (a) is situated at or near a railway station, shipping wharf, air transport terminal, or other place to or from which persons are customarily conveyed by rail, ship, aircraft or other means of transport,
  - (b) is bona fide conducted for the sole or major purpose of performing hairdressing services for persons requiring those services on the completion of or in preparation for journeys of long duration, and
  - (c) is so fitted out and equipped as to provide a suitable standard of comfort and amenity,

may by order exempt that shop from the provisions of this Division, and from specified provisions of the regulations, subject to such conditions, if any, as are specified in the order and either without limitation of time or for a period so specified.

- (2) No person shall be guilty of an offence against this Act by reason only that a shop was open at a time when an order under this section in respect of that shop was in force and in accordance with the conditions, if any, specified in that order.

### **89D Sale of sporting requisites**

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 or she is not guilty of the offence if:

- (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
- (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.

**89E Shops to be kept closed on Christmas Day 2004**

- (1) Shops (other than scheduled shops and small shops) are to be kept closed on Saturday 25 December 2004.
- (2) This section has effect despite:
  - (a) any exemption granted under section 78A or 89B, or
  - (b) any order made under section 85 (2),before or after the commencement of this section.
- (3) This section is repealed at the beginning of 27 December 2004.

**89F Shops to be kept closed on Boxing Day 2004 except in limited circumstances**

- (1) Shops (other than scheduled shops and small shops) are to be kept closed on Sunday 26 December 2004, except as provided by subsection (2).
- (2) A shop (other than a scheduled shop or a small shop) is permitted to open on Sunday 26 December 2004 if the following conditions are satisfied:
  - (a) the shop is located in an area or part of an area that is subject to an exemption under section 89B in force immediately before the commencement of this section that would, but for this section, allow the shop to open on Sunday 26 December 2004,
  - (b) the shop opens only in accordance with the conditions of the exemption,
  - (c) the shop is staffed on that day only by persons who have freely elected to work on the day, without any coercion, harassment, threat or intimidation by their employer.
- (3) For the purposes of subsection (2) (c), a person is not taken to have freely elected to work on Sunday 26 December 2004 merely because that person is rostered to work on that day.
- (4) This section has effect despite:
  - (a) any exemption granted under section 78A or 89B, or
  - (b) any order made under section 85 (2),before or after the commencement of this section.

(5) This section is repealed at the beginning of 27 December 2004.

## **90 Defences**

- (1) No person shall be convicted for an offence against this Act for not closing or for not keeping closed a shop or warehouse if he or she proves that the shop or warehouse was not closed or not kept closed only for the purposes of:
- (a) persons visiting or resorting to the premises for purposes other than for purposes of or connected with trade in the shop or warehouse or the inspection of goods, or
  - (b) customers referred to in the proviso to subsection (2) or (4) of section 86, or
  - (c) (Repealed)
  - (d) in the case of a retail butcher, persons entering or leaving only in connection with the delivery of meat to the shop of such butcher.
- (2) (Repealed)

## **90A (Repealed)**

## **91 Leases of shops and warehouses**

Where a shopkeeper or occupier leases to any other person his or her shop or warehouse, or any part thereof, for a term or period less than one week, he or she shall, notwithstanding such lease, continue to be the shopkeeper of the shop or the occupier of the warehouse, as the case may be, for the purposes of this Act.

## **Divisions 3A, 4**

## **91A-94A (Repealed)**

## **Division 5 Day baking**

## **95 (Repealed)**

## **96 Manufacture of pastry etc at certain times prohibited**

Any person exercising the trade or calling of a pastrycook, whether an employer of labour or not, or any person employed in such trade or calling, who in any area makes or bakes for trade or sale any pastry before the time that may be fixed by a State award for the time being in force in such area for the commencement of the ordinary hours of work by employees engaged in the making or baking of pastry or after the time that may be so fixed for the cessation of the ordinary hours of work by employees so engaged, shall be guilty of an offence against this Act.

## **97 Exemption**

The Minister may, in the case of any emergency or unforeseen circumstances, or in order

to meet the exigencies of the trade carried on in a particular bakehouse, exempt any person exercising or employed in the trade or calling of a pastrycook from the operation of all or any of the provisions of section 96 for such period and subject to such conditions as the Minister may impose.

Any person who contravenes any conditions imposed pursuant to this section shall be guilty of an offence against this Act.

**98 (Repealed)**

**Division 6**

**99 (Repealed)**

**Division 7 General**

**100 Powers of inspectors**

(1) An inspector may:

- (a) enter or demand entrance at any time, by day or night, into any place or premises when he or she knows or has reasonable cause to believe that any person is exercising therein the trade or calling of a pastrycook, whether as an employer of labour or not or is employed therein in such trade or calling,
- (b) (Repealed)
- (c) enter at any reasonable time any shop or warehouse or any place which he or she has reason to believe is used as a shop or warehouse,
- (d) (Repealed)
- (e) make such examination and inquiries as he or she thinks necessary to ascertain whether the requirements of this Part are being complied with,
- (f) examine with respect to matters under this Part, any person employed in or about a shop or warehouse, or any person whom he or she finds in any bakehouse or whom he or she has reasonable cause to believe exercises the trade or calling of a pastrycook, or is employed in such trade or calling.

(2) The occupier of any premises wherein the trade or calling of a pastrycook is being carried on, shall make such provision as may be required by the Minister, by notice in writing served on such occupier, to enable an inspector to effect an entry into such premises or to exercise his or her powers under this Part.

(3) If the admission of an inspector pursuant to subsection (1) is refused or unreasonably delayed, such inspector, if accompanied by a member of the police force, may make such entry, as he or she is authorised under such subsection to make, with such assistance as may be deemed requisite.



(4) Any person who:

- (a) refuses or wilfully delays the admission of any inspector as aforesaid, or
- (b) wilfully obstructs any inspector in the exercise by him or her of his or her powers under this Part, or
- (c) fails to comply with the request of an inspector made under any such power, or
- (d) conceals any person from an inspector or prevents any person from appearing before or being examined by an inspector or attempts so to conceal or prevent any person, or
- (e) fails to make any provision required by the Minister pursuant to subsection (2),

shall be guilty of an offence against this Act and be liable to a penalty not exceeding 50 penalty units.

(5) (Repealed)

#### **101 Divisions 2 and 3 not to apply in certain cases**

Nothing in Division 2 or in Division 3 shall apply to:

- (a) railway or tramway refreshment rooms or railway or tramway bookstalls, or
- (b) any premises in respect of which a hotelier's licence is in force, by reason only of the sale or exposing or offering for sale, in or upon those premises, of liquor as defined by the *Liquor Act 1982* or of meals or refreshments, or
- (c) any bazaar or fair where goods are sold or exposed for sale in order that the net proceeds of the sale of goods may be devoted to religious, charitable, or public purposes only, or
- (d) any agricultural, pastoral or horticultural society's show approved by the Minister, or any trade exhibition or trade fair so approved.

#### **101A Disclosure of information**

Section 389 of the *Industrial Relations Act 1996* is taken to apply to an inspector who obtains information relating to any manufacturing or commercial secrets or working processes in connection with the administration of this Act.

#### **102 Regulations**

The Governor may make regulations not inconsistent with this Part:

- (a) prescribing the nature, method of construction, and requisites of partitions to partition off goods in a shop, and the manner in which the same shall be maintained and secured,

- (b) prescribing in respect of any class of shops what trade shall, for the purposes of this Part, be deemed to be that usually carried on in such class of shops, and providing that such trade, and no other, shall be deemed to be the trade usually carried on in such class of shops,
- (c) requiring the shopkeeper of a chemist's shop to exhibit whenever the shop is closed, a notice containing the prescribed information as to a place where and means whereby medicinal and surgical goods may be obtained, and prescribing the place and manner in which any such notice shall be exhibited, and
- (d) (Repealed)
- (e) relating to the publication or advertising of applications for exemption under section 78A, or of information relating to any such applications.

## **Parts 5-10**

### **103-143 (Repealed)**

## **Part 11 Miscellaneous provisions**

### **144 Regulations**

- (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Without prejudice to the generality of the foregoing power, the Governor may make regulations:

- (a) prescribing forms of notices to be given and of applications, returns, registers and records to be made or kept under this Act, and the particulars to be set forth therein,
- (b) prescribing such other forms as may be necessary or convenient for the administration of this Act,
- (c) requiring the exhibition of certificates issued pursuant to this Act and of other prescribed documents and regulating the manner of exhibition,
- (d) imposing on prescribed persons or classes of persons the obligation to comply with provisions of the regulations,
- (e) imposing a penalty for a contravention of the regulations:
  - (i) (Repealed)
  - (ii) in any other case—not exceeding 50 penalty units.

(2), (3) (Repealed)

#### **145 Proceedings**

- (1) Proceedings for an offence against this Act or the regulations may be taken and prosecuted by:
  - (a) (Repealed)
  - (a1) a person acting with the authority of the Minister, or
  - (a2) an inspector appointed under the *Industrial Relations Act 1996* (in the case of an offence under section 7 (5) involving such an inspector or an offence under Part 4 or the regulations under that Part), or
  - (b) the person specified in a certificate issued by the Industrial Registrar under the *Industrial Relations Act 1996* as secretary of a union (but only in the case of a union the members of which are engaged in the industry concerned).
- (2) In a prosecution for any such offence, an authority to prosecute, purporting to have been signed by the Minister, shall be prima facie evidence of such authority without proof of the Minister's signature.
- (3) Proceedings for an offence against this Act or the regulations are to be dealt with summarily:
  - (a) before a Local Court, or
  - (b) before the Industrial Relations Commission in Court Session.
- (3A) The maximum monetary penalty that may be imposed in those proceedings by a Local Court is 500 penalty units or the maximum monetary penalty provided in respect of the offence, whichever is the lesser.
- (3B) The maximum penalty that may be imposed in those proceedings by the Industrial Relations Commission in Court Session is the maximum penalty provided in respect of the offence.
- (4) The provisions of the *Industrial Relations Act 1996*, and of the regulations under that Act, relating to appeals from a Local Court to the Industrial Relations Commission in Court Session apply to proceedings before a Local Court for offences against this Act or the regulations.
- (4A) The amount of any penalty recovered from a shopkeeper or other person under Part 4 shall be paid into the Treasury and carried to the Consolidated Fund.
- (5) The informant may conduct his or her case himself or herself or by his or her counsel, attorney or an agent duly authorised by him or her in writing or, in a case where the informant is an inspector appointed under the *Industrial Relations Act 1996*, by an

officer of the Department of Industrial Relations, Employment, Training and Further Education.

(6) (Repealed)

**145A Failure to pay penalty etc is offence**

- (1) Where, by a conviction or order in respect of an offence against this Act specified in Division 3 of Part 4, a person is adjudged to pay any penalty or costs, or any penalty and costs, the Supreme Court or the Local Court 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 made under subsection (1) that is applicable to him or her is guilty of an offence against this Act.

**145B (Repealed)**

**146 Service of order, notice or summons**

Any order or notice to be served under this Act or the regulations, and any summons to be served in respect of any alleged offence against this Act or the regulations shall be deemed to be duly served upon the occupier or shopkeeper of a warehouse, or shop, if such order, notice, or summons be affixed to the door or some other conspicuous part of the warehouse, or shop.

**147 Penalties**

- (1) Any person who is guilty of an offence against this Act shall, where no other penalty is expressly provided, be liable:
  - (a) (Repealed)
  - (b) in the case of any other offence under this Act—to a penalty not exceeding 25 penalty units.
- (2) (Repealed)
- (3) Where a person convicted of an offence against this Act or the regulations is a body corporate, every person who at the time of the commission of the offence was a director or officer of the body corporate shall be deemed to have committed the like offence and be liable to the pecuniary penalty or imprisonment provided by this Act or the regulations for such offence accordingly, unless he or she proves that the offence was committed without his or her knowledge or that he or she used all due diligence to prevent the commission of the offence.
- (4) Where an unincorporated association being an employer or being the occupier or shopkeeper of a shop or warehouse is guilty as such employer, occupier, or

shopkeeper of an offence against this Act or the regulations, then every person (whether a member of the association or not) who at the time of the commission of the offence was a member of the committee of management or other governing body of the association shall be deemed to have committed that offence and be liable to the penalty provided by this Act or the regulations for such offence accordingly, and in any information laid in respect of the offence may be described as such employer, occupier, or shopkeeper, as the case may be.

In this subsection **association** means any association, club or society, however described, but does not include a partnership.

#### **148 Evidentiary provisions**

- (1) In a prosecution for an offence against this Act or the regulations a statement purporting to be signed by the prescribed person:
  - (a) that a certificate of the description specified in the statement has or has not been issued pursuant to this Act or the regulations to any person, or in respect of any premises specified in the statement, and, in the case of a certificate which has been so issued, as to the date of issue of and particulars contained in such certificate, or
  - (b) that at any date or during any period specified in the statement a certificate of the description specified in the statement issued pursuant to this Act or the regulations to any person, or in respect of any premises specified in the statement was or was not in force or operative, or
  - (c), (d) (Repealed)

shall be prima facie evidence of the matter contained in such statement without proof of the signature or of the official character of the person by whom the statement purports to have been signed.

In this subsection **the prescribed person** means the officer having ordinarily the custody of the documents and records relating to the registrations, or the issue of the certificates, or the receipt of the notices, as the case may be, which are of the class to which the registration, certificate, or notice, as the case may be, referred to in the statement belongs.

- (2) (Repealed)

#### **149 Contracting out**

No occupier of a shop and no employer shall contract with any employee against any liability under this Act or the regulations.

### **150 Power to revoke or vary notices etc**

Any power conferred by or under this Act on any person to give any notice or make any order or grant any exemption shall be deemed to include a power to revoke that notice, order or exemption or to vary or alter the same.

### **151 Penalty for forging certificates and false declaration**

Any person who forges or counterfeits any certificate for the purposes of this Act (for the forgery or counterfeiting of which no other punishment is provided), or who knowingly utters or makes use of any certificate so forged or counterfeited, or who personates any person named in a certificate, or who falsely pretends to be an inspector shall be guilty of an offence against this Act and be liable to imprisonment for a term not exceeding twelve months.

Any person who wilfully makes a false entry in any book, register, notice, certificate, list, record, or document required by this Act to be kept or served, or who wilfully makes or signs a false declaration or return under this Act, or who in any notice required to be given by him or her under this Act wilfully makes or signs any false statement, or who knowingly makes use of any false entry or false declaration or return, shall be guilty of an offence against this Act and be liable to a penalty not exceeding 5 penalty units for each offence, or to be imprisoned for a term not exceeding three months.

### **152 Penalty for destroying notices etc**

Any person who wilfully destroys, damages, defaces, or pulls down any notice, certificate or other document posted or exhibited in any shop, premises, or place pursuant to this Act or the regulations shall be guilty of an offence against this Act and be liable to a penalty not exceeding 2 penalty units.

### **152A Performance of Director-General's functions**

- (1) Anything authorised or required under Part 2 or 4 to be done by, lodged with or paid to the Director-General may be done by, lodged with or paid to any officer of the Department of Industrial Relations who is authorised generally or specifically in that behalf in writing by the Director-General.
- (2) Anything purporting to have been done by, lodged with or paid to an officer authorised under this section is taken to have been done by, lodged with or paid to the Director-General.
- (3) (Repealed)

### **153 Provisions consequent on the enactment of the [Factories, Shops and Industries \(Amendment\) Act 1989](#)**

- (1) In this section:

**the amending Act** means the *Factories, Shops and Industries (Amendment) Act 1989*.

- (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.

#### 154 Savings, transitional and other provisions

Schedule 2 has effect.

### Schedule 1

(Section 3)

No of Act	Name of Act	Extent of repeal
1912 No 39	<a href="#">Factories and Shops Act 1912</a>	The whole
1915 No 1	<a href="#">White Phosphorus Matches Prohibition Act 1915</a>	The words "This definition shall be inserted at the end of section three of the <a href="#">Factories and Shops Act 1912</a> " in section two Section five
1927 No 12	<a href="#">Factories and Shops (Amendment) Act 1927</a>	The whole
1931 No 55	<a href="#">Factories and Shops (Amendment) Act 1931</a>	The whole
1935 No 11	<a href="#">Factories and Shops (Amendment) Act 1935</a>	The whole
1936 No 37	<a href="#">Factories and Shops (Amendment) Act 1936</a>	The whole
1937 No 35	<a href="#">Statute Law Revision Act 1937</a>	So much of Second Schedule as amends Act No 39, 1912
1902 No 50	<a href="#">Butchers' Shops Sunday Closing Act 1902</a>	The whole
1916 No 19	<a href="#">Sunday Trading (Refreshment Rooms) Act 1916</a>	The whole
1941 No 34	<a href="#">Factories and Shops (Amendment) Act 1941</a>	The whole
1941 No 42	<a href="#">Factories and Shops (Further Amendment) Act 1941</a>	The whole
1943 No 16	<a href="#">Factories and Shops (Amendment) Act 1943</a>	The whole

1946 No 17	<a href="#">Factories and Shops (Amendment) Act 1946</a>	The whole
1948 No 12	<a href="#">Factories and Shops (Home Deliveries) Amendment Act 1948</a>	The whole
1950 No 21	<a href="#">Factories and Shops (Hairdressers) Amendment Act 1950</a>	The whole
1954 No 42	<a href="#">Factories and Shops (Amendment) Act 1954</a>	The whole
1956 No 31	<a href="#">Factories and Shops (Amendment) Act 1956</a>	The whole
1957 No 23	<a href="#">Industrial Arbitration (Amendment) Act 1957</a>	Section one, subsection three Section three
1960 No 17	<a href="#">Factories and Shops and Local Government (Amendment) Act 1960</a>	Section one, subsection two Section two

## Schedule 2 Savings, transitional and other provisions

(Section 154)

### Part 1 Savings and transitional provisions consequent on enactment of certain Acts

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

[Occupational Health and Safety Legislation \(Amendment\) Act 1994](#)

[WorkCover Legislation Amendment Act 1995](#)

[Bank Holidays Legislation Amendment Act 2002](#)

- (2) Any such provision may, if the regulations so provide, take effect as from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.



## Part 2

### 2-6 (Repealed)

## Part 3 Provisions consequent on enactment of the [WorkCover Legislation Amendment Act 1995](#)

### 7 Increase in penalty that may be imposed by Local Court

- (1) The amendment made to section 145 (3A) of this Act by the [WorkCover Legislation Amendment Act 1995](#) does not apply in respect of proceedings for an offence against this Act or the regulations that were commenced in a Local Court before the commencement of that amendment.
- (2) In respect of proceedings commenced on or after the commencement of that amendment, the amendment applies whether the offence was committed before or after that commencement.

## Schedule 3

(Section 78 (1) and (5))

Audio shops

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

Video shops

## **Schedules 3A-5 (Repealed)**