

**FACTORIES, SHOPS AND INDUSTRIES (FURTHER  
AMENDMENT) BILL 1985**

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**EXPLANATORY NOTE**

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The object of this Bill is to amend the Factories, Shops and Industries Act 1962 so as—

- (a) to clarify the requirements relating to the shopkeepers of small shops and the restrictions on persons other than shopkeepers having interests in small shops (a small shop which meets those requirements is currently unrestricted as to trading hours);
  - (b) to make it clear that scheduled shops (which are set out in Schedule 3 to the Principal Act and are currently unrestricted as to trading hours) may not trade outside normal trading hours unless they are carrying on the trade which is prescribed as that usually carried on in that class of shop;
  - (c) to enable regulations to be made amending awards relating to shop employees by applying the rate of time and a half instead of any different rate of pay or provision as to loading specified in those awards for ordinary hours worked after 12 noon on Saturday by shop employees; and
  - (d) to prevent small shops from trading on Sundays and public holidays unless they are licensed to do so.
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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on a day or days appointed by the Governor-in-Council.

Clause 3 defines the Principal Act.

Clause 4 is a formal provision that gives effect to the Schedule of amendments to the Principal Act.

Clause 5 is a transitional provision which allows shops currently registered as small shops to continue trading on Sundays and public holidays until an application for a licence to trade at those times lodged within a specified time has been determined.

#### SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT

Schedule 1 (1) enables particulars of the goods to be sold in a shop to be required to be furnished with an application for shop registration so that the Secretary of the Department of Industrial Relations can determine appropriate classification of the shop.

Schedule 1 (2) amends section 76A of the Principal Act to provide that a small shop may have either 2 shopkeepers who are natural persons (whether or not partners) or 1 shopkeeper which is an exempt proprietary company in respect of which the shareholders are natural persons not exceeding 2 in number. The amendments to that section also make it clear that no other person or corporation may have a direct or indirect interest in the business of the shop.

Schedule 1 (3) (a) amends the definition of "Scheduled shop" in section 78 (1) of the Principal Act to prevent shops from trading unlimited hours as scheduled shops unless they are registered as such.

Schedule 1 (3) (b) and (c) are consequential amendments which delete definitions and a subsection made unnecessary by the amendment effected by Schedule 1 (3) (a).

Schedule 1 (4) enables regulations to be made amending awards under the Industrial Arbitration Act 1940 relating to the rates of pay of shop employees so as to apply the rate of pay of time and a half to ordinary hours worked by shop employees on a Saturday after 12 noon. The regulations may, in applying that rate to casual employees, delete existing provisions for loading in respect of Saturday afternoon work.

Schedule 1 (5) prevents a shop (other than a scheduled shop) from trading on Sundays and public holidays unless it is licensed under proposed section 85A.

Schedule 1 (6) inserts proposed section 85A into the Principal Act which provides for licences to be issued to small shops to trade on Sundays and public holidays where it is in the public interest to do so.

Schedule 1 (7) deletes section 90 (2) of the Principal Act which provides a defence against a conviction for opening a shop outside the permitted trading hours for the shop where at the time of the alleged offence registration of the shop as a small shop was being sought but had not been obtained.

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**FACTORIES, SHOPS AND INDUSTRIES (FURTHER  
AMENDMENT) BILL 1985**

No.           , 1985

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**A BILL FOR**

**An Act to amend the Factories, Shops and Industries Act 1962 with respect  
to the registration and trading hours of shops, and for other purposes.**

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*Factories, Shops and Industries (Further Amendment) 1985*

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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:

**5 Short title**

1. This Act may be cited as the "Factories, Shops and Industries (Further Amendment) Act 1985".

**Commencement**

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

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

**Principal Act**

15 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.

**Transitional provision**

20 5. (1) In subsections (2) and (3), references to sections shall be read as references to sections of the Principal Act.

(2) Notwithstanding anything in the Principal Act, as amended by this Act, where the shopkeeper of a shop registered as a small shop under section 76A at the commencement of Schedule 1 (5) makes an application for a  
25 licence in respect of the shop under section 85A (as inserted by this Act) within 28 days after that commencement, the shopkeeper may open the shop on Sundays and public holidays until the application has been determined.

(3) A person is not guilty of an offence under section 86 for doing anything authorised by subsection (2).

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## SCHEDULE 1

(Sec. 4)

## AMENDMENTS TO THE PRINCIPAL ACT

## (1) Section 76 (3)—

5 After “particulars”, insert “(including particulars of the goods to be sold in the shop)”.

## (2) (a) Section 76A (1), definition of “Exempt proprietary company”—

After the definition of “Business”, insert:

10 “Exempt proprietary company” has the same meaning as it has in the Companies (New South Wales) Code.

## (b) Section 76A (1), definition of “Shareholder”—

After the definition of “Registered shop”, insert:

15 “Shareholder”, in relation to an exempt proprietary company, means a person having a relevant interest in a share in that company for the purposes of Division 4 of Part IV of the Companies (New South Wales) Code.

## (c) Section 76A (1), definition of “Small shop”—

(i) Omit paragraph (a), insert instead:

20 (a) The shopkeeper or shopkeepers of the shop shall be—

(i) natural persons not exceeding 2 in number, whether or not carrying on the business of the shop in partnership; or

25 (ii) an exempt proprietary company in respect of which the shareholders are natural persons not exceeding 2 in number.

(a1) The shopkeeper or shopkeepers of the shop shall be the owner or owners of the business of the shop and entitled to the profits of that business.

30 (ii) From paragraph (b), omit “Every shopkeeper of such a shop”, insert instead “Every shopkeeper of the shop or, where the shopkeeper is an exempt proprietary company, every shareholder of the company”.

*Factories, Shops and Industries (Further Amendment) 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(iii) After “shopkeeper or shopkeepers” in paragraph (c), insert  
“or the shareholders”.

(iv) After “shopkeeper of the shop” in paragraph (d), insert  
“or, where the shopkeeper is an exempt proprietary  
company, no shareholder of the company”.

(v) Omit paragraph (e), insert instead:

(e) A direct or indirect interest in the business of the  
shop, whether under an agency, trust or other  
agreement or arrangement, shall not be held by—

(i) a corporation, other than an exempt  
proprietary company which is the  
shopkeeper of the shop; or

(ii) any person other than a shopkeeper of the  
shop or, where the shopkeeper is an exempt  
proprietary company, a shareholder of the  
company.

(3) (a) Section 78 (1), definition of “Scheduled shop”—

Omit the definition, insert instead:

“Scheduled shop” means a shop of a class specified in Schedule  
3—

(a) being a shop which carries on the trade prescribed  
by regulations under section 102 (b) as the trade  
usually carried on in that class of shop; and

(b) being a shop for the time being registered under  
section 76 as belonging to that class.

(b) Section 78 (1), definitions of “Vehicle accessories”, “Vehicle  
service shop”, “Vehicle shop”—

Omit the definitions.

(c) Section 78 (4)—

Omit the subsection.

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

## (4) Section 79A—

After section 79, insert:

**Premium rates of pay for Saturday afternoons**

5 79A. (1) The regulations may amend any award made under the Industrial Arbitration Act 1940 (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.

10 (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  
15 in relation to those hours.

## (5) Sections 84 (1), 85 (1)—

After “small shops” wherever occurring, insert “licensed under section 85A”.

## (6) Section 85A—

20 After section 85, insert:

**Small shops—licence to trade on Sundays and public holidays**

85A. (1) The shopkeeper of a small shop may make application to the Under Secretary for a licence to open the shop on Sundays and public holidays.

25 (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) Subject to subsection (4), the Under Secretary may issue or refuse to issue a licence applied for under this section.

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

(4) The Under Secretary shall refuse to issue a licence under this section unless—

(a) the shopkeeper of the shop satisfies the Under Secretary that it is in the public interest to issue the licence; and

5 (b) the shop is for the time being registered as a small shop pursuant to section 76A.

(5) Where the Under Secretary issues a licence under this section, the licence may be issued—

(a) subject to conditions or unconditionally;

10 (b) to take effect from the date of issue or from a later date; and

(c) for a specified period.

15 (6) A licence issued under this section shall specify the conditions (if any) subject to which the licence is issued, the date on which the licence takes effect and the period for which the licence is issued.

20 (7) Where the Under Secretary is of the opinion that the conditions subject to which a licence issued under this section in relation to a shop have been breached or that the shop has ceased to be a small shop, the Under Secretary may, by notice in writing to the shopkeeper of the shop, cancel the licence.

(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.



*Factories, Shops and Industries (Further Amendment) 1985*

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SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

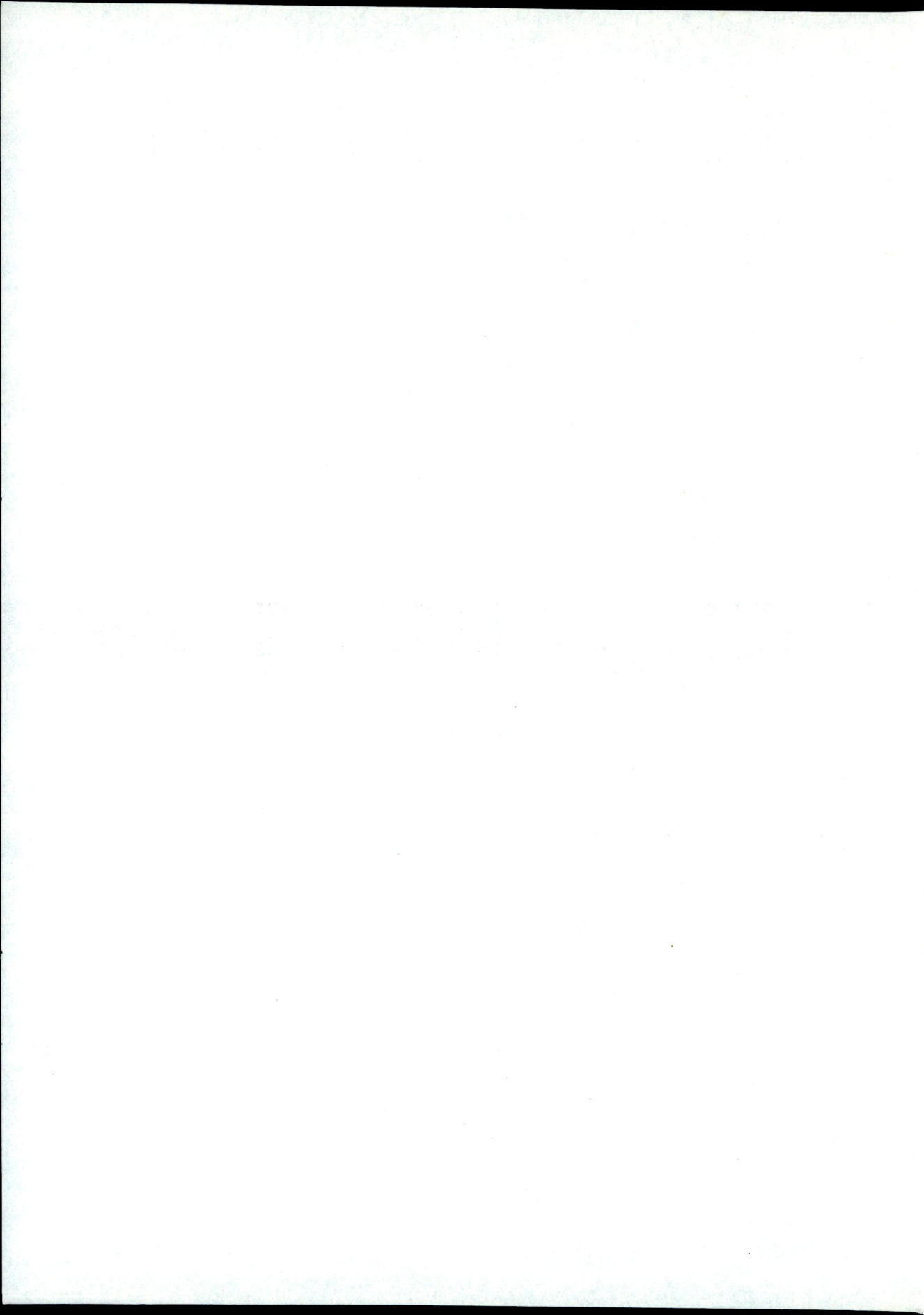
(7) Section 90 (2)—

Omit the subsection.

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BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1985







**FACTORIES, SHOPS AND INDUSTRIES (FURTHER  
AMENDMENT) ACT 1985 No. 162**

*New South Wales*



ANNO TRICESIMO QUARTO

**ELIZABETHÆ II REGINÆ**

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**Act No. 162, 1985**

An Act to amend the Factories, Shops and Industries Act 1962 with respect to the registration and trading hours of shops, and for other purposes.  
[Assented to, 3rd December, 1985.]

*Factories, Shops and Industries (Further Amendment) 1985*

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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 (Further Amendment) Act 1985".

**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 or days as may be appointed by the Governor and 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.

**Transitional provision**

5. (1) In subsections (2) and (3), references to sections shall be read as references to sections of the Principal Act.

(2) Notwithstanding anything in the Principal Act, as amended by this Act, where the shopkeeper of a shop registered as a small shop under section 76A at the commencement of Schedule 1 (5) makes an application for a licence in respect of the shop under section 85A (as inserted by this Act) within 28 days after that commencement, the shopkeeper may open the shop on Sundays and public holidays until the application has been determined.

(3) A person is not guilty of an offence under section 86 for doing anything authorised by subsection (2).

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## SCHEDULE 1

(Sec. 4)

## AMENDMENTS TO THE PRINCIPAL ACT

## (1) Section 76 (3)—

After “particulars”, insert “(including particulars of the goods to be sold in the shop)”.

## (2) (a) Section 76A (1), definition of “Exempt proprietary company”—

After the definition of “Business”, insert:

“Exempt proprietary company” has the same meaning as it has in the Companies (New South Wales) Code.

## (b) Section 76A (1), definition of “Shareholder”—

After the definition of “Registered shop”, insert:

“Shareholder”, in relation to an exempt proprietary company, means a person having a relevant interest in a share in that company for the purposes of Division 4 of Part IV of the Companies (New South Wales) Code.

## (c) Section 76A (1), definition of “Small shop”—

## (i) Omit paragraph (a), insert instead:

(a) The shopkeeper or shopkeepers of the shop shall be—

(i) natural persons not exceeding 2 in number, whether or not carrying on the business of the shop in partnership; or

(ii) an exempt proprietary company in respect of which the shareholders are natural persons not exceeding 2 in number.

(a1) The shopkeeper or shopkeepers of the shop shall be the owner or owners of the business of the shop and entitled to the profits of that business.

(ii) From paragraph (b), omit “Every shopkeeper of such a shop”, insert instead “Every shopkeeper of the shop or, where the shopkeeper is an exempt proprietary company, every shareholder of the company”.

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

- (iii) After “shopkeeper or shopkeepers” in paragraph (c), insert “or the shareholders”.
  - (iv) After “shopkeeper of the shop” in paragraph (d), insert “or, where the shopkeeper is an exempt proprietary company, no shareholder of the company”.
  - (v) Omit paragraph (e), insert instead:
    - (e) A direct or indirect interest in the business of the shop, whether under an agency, trust or other agreement or arrangement, shall not be held by—
      - (i) a corporation, other than an exempt proprietary company which is the shopkeeper of the shop; or
      - (ii) any person other than a shopkeeper of the shop or, where the shopkeeper is an exempt proprietary company, a shareholder of the company.
- (3) (a) Section 78 (1), definition of “Scheduled shop”—
- Omit the definition, insert instead:
- “Scheduled shop” means a shop of a class specified in Schedule 3—
- (a) being a shop which carries on the trade prescribed by regulations under section 102 (b) as the trade usually carried on in that class of shop; and
  - (b) being a shop for the time being registered under section 76 as belonging to that class.
- (b) Section 78 (1), definitions of “Vehicle accessories”, “Vehicle service shop”, “Vehicle shop”—
- Omit the definitions.
- (c) Section 78 (4)—
- Omit the subsection.



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

## (4) Section 79A—

After section 79, insert:

**Premium rates of pay for Saturday afternoons**

79A. (1) The regulations may amend any award made under the Industrial Arbitration Act 1940 (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.

## (5) Sections 84 (1), 85 (1)—

After “small shops” wherever occurring, insert “licensed under section 85A”.

## (6) Section 85A—

After section 85, insert:

**Small shops—licence to trade on Sundays and public holidays**

85A. (1) The shopkeeper of a small shop may make application to the Under Secretary for a licence to open the shop on Sundays and public holidays.

(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) Subject to subsection (4), the Under Secretary may issue or refuse to issue a licence applied for under this section.

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

(4) The Under Secretary shall refuse to issue a licence under this section unless—

- (a) the shopkeeper of the shop satisfies the Under Secretary that it is in the public interest to issue the licence; and
- (b) the shop is for the time being registered as a small shop pursuant to section 76A.

(5) Where the Under Secretary issues a licence under this section, the licence may be issued—

- (a) subject to conditions or unconditionally;
- (b) to take effect from the date of issue or from a later date; and
- (c) for a specified period.

(6) A licence issued under this section shall specify the conditions (if any) subject to which the licence is issued, the date on which the licence takes effect and the period for which the licence is issued.

(7) Where the Under Secretary is of the opinion that the conditions subject to which a licence issued under this section in relation to a shop have been breached or that the shop has ceased to be a small shop, the Under Secretary may, by notice in writing to the shopkeeper of the shop, cancel the licence.

(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.

*Factories, Shops and Industries (Further Amendment) 1985*

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SCHEDULE I—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(7) Section 90 (2)—

Omit the subsection.

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BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1985

