

Late Night and Saturday Rates

The SDA provides the following comments in relation to the background paper that the Research Unit of FWC has produced.

In any consideration of the previous penalty and casual loadings prior to the Modern Award there needs to be recognition of several factors:

There was no National Award in Retail. Awards applied State by State by Territory.

Under these various awards or NAPSA's there were restrictions on Ordinary hours of Work. For the majority of Retail operations there was a lesser span of ordinary hours either in the award or NAPSA or imposed by Shop Trading Legislation when compared to the GRIA.

Evening or Late night trading was generally limited to one night between 6pm and 9pm. The major exception to this was Victoria where late night ordinary hours were allowed Monday to Friday till 9pm. There were some exceptions for 'small' or 'special' retailers

The span of hours on a Saturday across Australia for the majority of retail ended at either 5pm or 6pm.

There are some incorrect statements in the paper which, on a State by State basis, the major issues are identified in the following pages. The SDA has provided details to the calculations that apply and the appropriate clause references and extracts from the specific award.

Appendix B is reproduced on the next pages, which has been amended to show the changes the SDA has identified. This we believe provides a more complete and accurate reflection of the historical terms and conditions that applied.

Appendix B—Penalty rates in pre-reform instruments (Amended)

NOTE: This comparison contains late night/evening and Saturday penalty rates only.

The analysis is for a simple comparison only – readers should refer to the instruments for details of monetary allowances and exceptions.

See also comparison provided by National Retail Association & another during Award Modernisation proceedings – [10 October 2008](#) at para 23, not an agreed document

		Evening rate (other than shiftworkers) (Monday-Friday)				Saturday rate (other than shiftworkers)		
		Ordinary casual loading	Span of <u>ordinary hours</u>	F/T & P/T	Casual (incl. casual loading)	F/T & P/T	Casual (incl. casual loading)	<u>Span of Ord hours</u>
Modern	<i>General Retail Industry Award 2010</i> [MA000004]	25%	After 6.00pm <u>to 9pm or 11pm every night</u>	125%	125%	125%	135% (7.00am–6.00pm) ¹	<u>Ends 6pm or 11pm</u>
Federal	Shop, Distributive and Allied Employees Association - Victorian Shops Interim Award 2000 AP796250 (clauses 10.4 & 18.1)	25% <u>33%</u>	After 6.00pm <u>Ended at 9pm</u>	125%	125% (some exceptions in clause 10.4) <u>133%</u>	Monetary allowance of approx. 36%	Various additional rates in clause 10.4; equivalent to loading of approx. 36%	<u>7am to 6pm</u>
	Retail, Wholesale and Distributive Employees (NT) Award 2000 AP794741 (clause 28.7)	20%	After 6.30pm <u>One late night only</u>	125%	145%	Monetary allowance	125% + Monetary allowance	<u>7am to 6.30pm</u>
	Retail and Wholesale Industry - Shop Employees - Australian Capital Territory - Award 2000 AP794740 (clauses 28 & 13.4)	15% <u>plus annual leave=</u> <u>24.53%</u>	After 6.00pm <u>Friday only</u>	125%	165% <u>172%</u>	Monetary allowance <u>Appro</u> <u>134%</u>	Loaded hourly rate x 115% = <u>154.3% plus annual leave</u>	<u>7am to 6pm</u>

NSW	Retail Services Employees (State) Award AN120470 (Appx A, cl. 14) Shop Employees' State Award AN120499	15% ² <u>24.53% incl annual leave</u>	After <u>6.30pm</u> to <u>9pm</u> <u>Thursd or Friday</u>	125%	115% (per 'General shops') <u>124.53%</u>	125%	115% + \$5.90 per day (per 'General shops') <u>124.53% plus \$7 or \$14.40 which is approx. 131.93% to 142.29%</u>	<u>7am to 6pm</u>
Qld	Retail Industry Award - State 2004 AN140257 (clause 6.1)	23%	After 6.00pm to <u>9.30pm one late night (Non-Exempt)</u> <u>to midnight all nights (Exempt and independent)</u>	125%	123%	125%	123%	<u>Ended 5pm approx</u>
SA	Retail Industry (SA) Award AN150130 (clauses 6.3, 4.4, Sched 1 & 2) (<u>higher base rate applied</u>)	20% ¹	After 6.00pm to <u>9.30pm</u> Either one late night or 5 nights	125% ²	120% ³ 125% if employer does not usually trade evenings	125% ⁴	120 5% ⁵	<u>7am to 5.30pm</u>
Tas	Retail Trades Award AN170088 (clauses 12 & 21)	20%	After 6.30pm to <u>9.30pm</u> <u>Thursday and Friday</u>	Loaded rate	120% + loaded rate	Loaded rate	120% + loaded rate	<u>7am to 6.30pm</u>

¹ Higher base rate applied in 2008 this was approx. \$630 vs \$602 (applying other States)

² Ibid

³ Ibid

⁴ Ibid

⁵ Ibid

WA	Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977, The AN160292 (clauses 7, 9, 13 & 48)	<u>25 % for shifts under 7.6 hours, 20% for shifts more than 7.6 hours</u>	After 6.00pm to <u>9pm</u> <u>Only one late night.</u> <u>Special shops to 11pm but overtime applies after 6pm</u>	<u>\$3.394.29</u> per hour	120% + \$3.39 per hour <u>Total rate 140% to 145%</u>	Overtime may apply	120% applying to the average of weekday and Saturdays (see clause 7(5)) <u>Approx 140%</u>	<u>7am to 6pm</u>
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¹ Hours worked outside the ordinary span will be classified as Overtime and attract a loading of 150% for the first three hours and 200% thereafter.

² 1/12th annual leave loading may also apply.

³ This calculation is unclear in the award and is further complicated by the fact that the different schedules provide different base rates.

State and Territory Issues in Detail

Western Australia

There are some incorrect statements in the document that relate to conditions in Western Australia

Inaccuracies in Appendix B

1. Casual loading is 25% for shifts under 7.6 hours . 20% applies to shifts over 7.6 hours
2. Generally for most retail there was only 1 late night of trade in ordinary hours , 6pm -9pm. Special Shops could trade to 11.30pm M-F
3. Casual rate for 6pm-9pm on the 1 late night trade in ordinary hours is approx. 42%. For small shops it is either 40% or 45%
4. Casual Saturday Ordinary hours for most of retail were 7am – 6pm
5. Casual Saturday rate has a loading of about 40.7%

The background to these are detailed below.

The rate calculations have used the current WA Award rates as of May 2018. The approximate penalties would have changed over the years as they are based on weekly rates and in the WA system there have on occasion had flat dollar (rather than %) increases to the weekly rate. The percentages above are based on the current rates and as such, are almost certainly lower than what they would have been at the beginning of the Award

1. “Ordinary casual loading = 20%” is not correct.

Clause 7(4) of the Award states as follows:

(4) A casual worker shall be paid an additional loading in accordance with the following scale:

(a) where the casual engagement on any day is for a full day's work - a loading of twenty (20) per cent.

(b) where the casual engagement on any day is for less than a full day's work - a loading of twenty-five (25) per cent.

The Award does not specify what amounts to a full day's work. However, there is the standard 19 day month provisions for full timers and so it is generally accepted to be either 8 hours or 7.6 hours – with 7.6 hours being the most popular choice in practice. As such, any casual working a shift of less than 7.6 hours gets a 25% loading (except as shown below). The majority of casual shifts would be less than 7.6 hours.

2. Span of hours – after 6pm Monday to Friday.

This is quite complex with different provisions applying.

For general retail shops (eg Coles, clothing stores,etc), the span of hours, as per cl 9 Part II (1)(b) is:

"General Retail Shops" - the ordinary hours of work may be worked on any or all days of the week between the hours of 7.00 a.m. and 6.00 p.m. Monday to Saturday inclusive, excepting the day of late night trading when the ordinary hours of work may be worked between 7.00 a.m. and 9.00 p.m.

This means only one day of the week (usually Thursday) was observed for trading after 6pm before 2011.

If the employee is working on "the day of late night trading" they get an hourly allowance as per cl 48.2:

A casual worker employed in a "General Retail Shop" or "Special Retail Shop" who works ordinary hours between 6.00 p.m. and 9.00 p.m. on the day of late night trading shall be paid the amount of \$4.29 per hour in addition to the ordinary casual rate as laid down in paragraph (a) of subclause (4) of Clause 7. - Casual Workers.

Note that cl 7(4)(a) provides for the 20% loading – ie the "less than a full day's work" provision does not apply. As such, the casual in 2018 would get: $(\$20.31 \times 1.2) + \$4.29 = \$28.67$ per hour (effectively a loading of 41.1% of the base rate).

For small shops, trading is allowed until 11.30pm on every day – however, the provisions of cl 28 Part III (5)(a) state:

A worker (full time, part time or casual) who is required to work any of his or her ordinary hours between 6.00p.m. and 11.30p.m. Monday to Friday inclusive in a "small retail shop" as defined or a "special retail shop" (pharmacy) as defined shall be paid at a loading of 20% for each hour worked after 6.00p.m.

For casual workers such loading shall be paid in addition to the rates prescribed in Clause 7(4) of this award. The 20% is in addition to "the rates prescribed in cl 7(4) ie the 25% casual loading applies if less than a full day's work. So casuals in small shops would receive either 40% or 45% in total

For completeness, the Award also has a category of "special shop", which includes hardware, gift shops and a few others. Under the Award, their trading hours are 7am-6pm Monday to Sunday and 7am-9pm on the day of late night trading. As such, their late night provisions are the same as general shops. The kicker is that while the definition of special shops in the Award is the same as the definition of special shops in the Retail Trading Hours Act, the Act allows them to trade 6am-11.30pm every day. Working on these other days of late night trading the award overtime rates apply.

3. Saturday F/T and P/T Overtime may apply

There is a higher weekly rate for full timers who work on Saturdays. (ie a loaded weekly rate) Part timers get a higher hourly rate on Saturdays based on a complex calculation using the Full Time "working on Saturday" rate.

4. Casual Saturday: the rate for 2018:

Calculation of Saturday rates for casual workers is via a formula in the award.

The rate of pay for casual workers working on Saturdays during ordinary time shall be determined according to the following formula:-

$$\begin{array}{l} \text{Weekly rate for full time} \\ \text{worker Monday to} \\ \text{Friday/38} \end{array} + \begin{array}{l} \text{Weekly rate for ordinary hours between} \\ \text{Monday and Saturday with the} \\ \text{completion of ordinary hours after} \\ \text{1.00p.m. Saturday - weekly rate for} \\ \text{ordinary hours Monday to Friday/7.6} \end{array} \times 120\%$$

The rate at May 2018 would be :

$$\frac{\$771.90}{38} + \frac{\$798.50 - \$771.90}{7.6} \times 120\% = \$28.58$$

This shows an effective loading of 40.7% of the base rate.

Victoria

Inaccuracies in Appendix B

1. Casual loading is 33%
2. Ordinary hours on an evening finished at 9pm not 11pm
3. Saturday ordinary hours finished at 6pm

The background to these are detailed below.

1. The casual loading was higher as annual leave was also incorporated. The Clause in the Award providing this was as follows:

32.5 Payment of annual leave to casuals

The entitlement of a casual employee under 10.4.2(e) may, at the election of the employer, (such election to be notified in writing to the employee) be paid to the employee by increasing the hourly rate of pay by one-twelfth of the appropriate ordinary hourly rate payable to a weekly employee.

ACT

Inaccuracies in Appendix B

1. the ordinary casual loading was 15% but casual employees were also entitled to paid annual leave entitlements;
2. the evening rate after 6pm Monday to Thursday and Saturday was (R x 1.15) x 1.5. That was an effective loaded rate of 172.5% rather than 165%.

3. the evening rate from 6pm to 9pm for Friday only was the ordinary casual rate of pay, otherwise it was 172.5%.
4. the evening rate after 5pm on Sunday was $(R \times 1.15) \times 2$. That was an effective loaded rate of 230%.
5. the Saturday rate during the day was $[(R + \{\$41.20/7.6\}) \times 115\%]$. That was an effective loaded rate of 154.3%.

The background to these inaccuracies are detailed below:

In the ACT prior to the introduction of the modern Award the base hourly rate of pay for an adult permanent shop assistant was \$15.845 per hour.

Casuals in the ACT working ordinary hours Monday to Friday received a rate of \$18.22. This was calculated as the base hourly rate of a permanent with a 15% loading:
 $(R \times 1.15)$

In addition to the 15% loading a casual employee was entitled to paid annual leave under the Annual Holidays Act 1973 (ACT).

On a Saturday an adult permanent employee was paid their normal hourly rate (R) and in addition a loading of between \$18.70 to \$41.20 depending on when they worked on a Saturday. If a permanent worked a standard day of 7.6 hours they received an additional \$41.20 which equated to \$5.42 per hour:

$(R + \$5.42)$
 This was an effective penalty rate of 34%.

On a Saturday an adult casual employee would be paid: $[(R + \{\$41.20/7.6\}) \times 115\%]$

This was \$24.455 per hour, or an effective combined penalty rate and loading of 54.3% plus annual leave. This has been the case since 1990. The Commission recognised that permanent employees and casuals should receive the same loading on a Saturday, with casuals still receiving their casual loading on top of the Saturday loading.

The Commission applied a similar approach in the ACT Award to Sunday work, but with a percentage penalty rate. Permanent employees received a percentage loading for Sunday work of 50%:
 $(R \times 1.5)$

Casual employees on a Sunday were paid:
 $[(R \times 1.15) \times 1.5]$

That is the permanent hourly rate of pay X the casual loading X the Sunday loading of 50%.

Tellingly the Full Bench in the 1990 decision (print J1694) said:

“In our opinion it is desirable that the Award should return to the position where all and not only some classes of employees are compensated for Saturday work by monetary loadings. It is internally, and logically, inconsistent to adopt a different approach to employees in this regard.”

The application of loadings to casual employees in the ACT has consistently been one where the

casual employee who receives a penalty loading (whether a percentage or fixed monetary loadings) also received their casual loading on top of the penalty loading; one loading was never absorbed into the other.

New South Wales

Inaccuracies in Appendix B

1. the key award was not the Retail Service Employees (State) Award, but rather the Shop Employees' (State) Award
2. the ordinary casual loading in the Award was 15% but employees were also entitled to paid annual leave entitlements that were paid in the hourly rate of pay. The calculation of the rate was $(R \times 1.15) \times 13/12$. That was an effective casual loaded rate of 24.53% not 15%.
3. the evening rate after 6pm Monday to Wednesday and Saturday was $[(R \times 1.15) \times 1.5] + [R \times 1/12]$ for the first 2 hours, which was an effective loaded rate of 181% rather than 115%. After 2 hours it was $[(R \times 1.15) \times 2] + [R \times 1/12]$ which was an effective loaded rate of 239% rather than 115%.
4. the evening rate from 6pm to 9pm for Thursday and Friday only was the ordinary casual rate of pay of 124.53% not 115%. After 9pm it was $[(R \times 1.15) \times 1.5] + [R \times 1/12]$ for the first 2 hours, which was an effective loaded rate of 181% rather than 115%. After 2 hours it was $[(R \times 1.15) \times 2] + [R \times 1/12]$ which was an effective loaded rate of 239% rather than 115%.
5. On Saturday it was 124.53% plus a fixed loading of \$7 or \$14.40 depending on the length of the shift, not 115% plus \$5.90. This gives an total loading of between 31.93% to 42.2%.

The background to these are detailed below.

The Background Paper misses some important information on the history and regulation of wages in the retail industry in NSW. The Paper focuses on a 1985 decision of the Full Court of the Industrial Relations Commission of NSW that changed penalty rates in the Shop Employees' (State) Award for Saturday work. Below is the history on the penalty rates pre 1985 until the Modern Award came into operation.

In 1985 the regulation of retail wages in the NSW retail industry was covered by either the Shop Employees' (State) Award; or the Shop Employees' (Major General Shops) (State) Agreement (that in 1986 became an Interim Award) and the Annual Holiday Act 1944.

Prior to the 1985 IRC decision

Prior to the 1985 IRC decision adult casuals under the Award were paid ordinary hours Monday to Friday in accordance with the following formula:

$$(R \times 1.15) \times 13/12.$$

Where R was the permanent hourly rate, 1.15 was the 15% casual loading and 13/12 represents payment for annual leave required by the Annual Holiday Act 1944. This combined to give an effective casual loading of 24.53%.

On a Saturday morning shops could open from 8am to 12 noon and the minimum casual shift was 4 hours. On a Saturday morning an adult casual was paid a fixed dollar loadings of \$2 per shift for the 4 hours they worked. That equated to a fixed loading of 50c per hour.

$$[(R \times 1.15) \times 13/12] + [\text{fixed loading}]$$

This was an effective combined casual loading and penalty rate of 31.93% (Adult Casual rate on Saturday was \$8.965 per hour versus permanent base rate of \$6.795). Permanent employees received a 25% penalty rate for work before noon. Shops could not trade on Saturday afternoon. Work after noon was at overtime rates.

Both permanent and casual employees employed under the Shop Employees' (Major General Shops) (State) Agreement, later the Interim Award, were paid a penalty rate of 50% for work on a Saturday morning and afternoon. Where R = permanent hourly rate a permanent on a Saturday was paid:

$(R \times 1.5)$.

A casual on a Saturday was paid:

$[(R \times 1.5) \times 1.15] + (R \times 1/12)$

This was an effective penalty rate of 82% inclusive of casual loading and annual leave payments. The casual received the penalty rate and the casual loading on top of the penalty rate. This Agreement/Interim Award stayed in place until 1987. It was eventually incorporated into, the Shop Employees (State) Award with savings provisions.

The effect of the 1985 IRC decision and subsequent legislation

In the 1985 IRC decision the Full Bench decision effectively cut the Saturday afternoon rate of pay for permanent employees from a 50% loading to a 25% loading. It also inserted an additional fixed monetary allowance for casuals working for more than 4 hours on a Saturday (\$6, versus \$2 for 4 hours or less).

The IRC decision only remained effective in a practical sense from August to December of 1985. The Parliament of NSW, legislated Saturday afternoon rates of pay in the retail industry, passing the Factories, Shops and Industries (Further Amendments) Act 1985 and making the Shops (Premium Rates of Pay) Regulation 1985. The legislation required that work on Saturday afternoon in the retail industry be paid at a 50% penalty rate.

As a result of the legislation work covered by the Shop Employees' (State) Award on Saturday was paid in this manner:

Permanent employee:	Up to 12 noon	$(R \times 1.25)$
	12 noon to 4pm	$(R \times 1.5)$
Casual employee:	Up to 12 noon	$[(R \times 1.15) \times 13/12] + [\text{fixed loading}]$
	Effectively this was a combined loading of 31.93%	
	12 noon to 4pm	$[(R \times 1.5) \times 1.15] + [(R \times 1.15) \times 1/12]$
	Effectively this was a combined loading of 81%	

These effective penalty rates remained in place until 25 August 1989, by which time the regulation ceased to operate and the Award took effect for Saturday afternoons.

From 1989 until the modern award came into effect

From 1989 until the modern award came into effect Casual employees in NSW employed under the Shop Employees (State) Award were paid under a combination of the Award requirements and legislative requirements. The Award set out base rates of pay, penalty rates, casual loadings and various allowances. The legislative component was the additional payment for annual leave, paid to casuals in NSW for each hour worked.

The way ordinary hourly rates were calculated for casual employees under the Shop Employees (State) Award inclusive of annual leave payments was as follows:

“

R = adult full-time weekly rate / 38

C = casual hourly rate for the relevant time

1/12 or 13/12 = annual holiday payment

1. Ordinary hours Monday to Friday:

$C = (R \times 1.15) \times 13/12$

Effective combined loading of 24.583%

2. Ordinary hours Saturday

$C = [(R \times 1.15) \times 13/12] \times \text{hours worked} + [\text{fixed loading}]$

Effective combined loading of between 31.93% to 42.2% depending on the number of hours worked

3. Ordinary hours on Sunday

$C = [(R \times 1.15) \times 1.5] + [(R \times 1.15) \times 1/12]$

Effective combined loading of 82%

As can be seen from the above, in each calculation the relevant penalty rate or loading that the Commission determined was appropriate for work at a given time was cumulative, or multiplicative, to the casual loading.

South Australia

Inaccuracies in Appendix B

This award had a higher base rate, which then had the penalties described in Appendix B. There was also a lower base rate for more limited trading hours but it had higher penalty rates applying.

At the time of award modernisation this was approximately \$630 a week compared to all other States where the rate was around \$602 a week. This should be noted as it needs to be considered in the comparison of loadings and penalties.

NEW SOUTH WALES



REGULATION

FACTORIES, SHOPS AND INDUSTRIES ACT 1962

[Published in Gazette No. 166 of 6 December 1985]

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Factories, Shops and Industries Act 1962, has been pleased to make the Regulation set forth hereunder.

P. D. HILLS,
Minister for Industrial Relations.

Citation

1. This Regulation may be cited as the "Shops (Premium Rates of Pay) Regulation 1985".

Awards to which this Regulation applies

2. This Regulation applies to the following awards made under the Industrial Arbitration Act 1940:

- (a) The Shop Employees (State) Award, published in the New South Wales Industrial Gazette on 1 September 1982, as varied.
- (b) The Shop Employees (General Shops)—Interim (State) Award, published in the New South Wales Industrial Gazette on 19 December 1984, as varied.
- (c) The Shop Employees (State) Award (Nos. 1682 and 2203 of 1984) made by the Industrial Commission of New South Wales in court session on 16 August 1985.

Amendment of awards

3. Each award to which this Regulation applies is amended by inserting the following subclause (appropriately numbered) at the end of the clause in the award relating to penalty rates and loadings for ordinary hours worked on Saturdays:

Notwithstanding anything to the contrary in this award, the following provisions apply to work on a Saturday after 12 noon (but without affecting the rate of pay for work on holidays under this award or for overtime):

- (a) Weekly and part-time employees shall be paid for all ordinary hours worked on a Saturday after 12 noon at the rate of time and one-half;
- (b) Casual employees shall be paid for all hours worked on a Saturday after 12 noon at the rate of time and one-half of the rate payable to them for hours worked on days other than Saturdays, Sundays or holidays under this award; and
- (c) Fixed loadings payable to casual employees generally for work on a Saturday shall not be payable in respect of any hours worked after 12 noon on that day.

Industrial Arbitration Act 1940 not affected

4. The Industrial Arbitration Act 1940 applies to an award to which this Regulation applies, as amended by clause 3, in the same way as it applies to any such award, as varied by a further award under that Act.

Commencement of amendments to awards

5. The amendments made by clause 3 take effect on the first Saturday after the commencement of this Regulation. (7517)

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

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ

* * * * *

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

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).

Factories, Shops and Industries (Further Amendment) 1985

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”.

*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.

Factories, Shops and Industries (Further Amendment) 1985

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.

Factories, Shops and Industries (Further Amendment) 1985

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

SCHEDULE I—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(7) Section 90 (2)—

Omit the subsection.
