



Shop Trading Hours Amendment Act 2016

Public Act 2016 No 39
Date of assent 29 August 2016
Commencement see section 2

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Schedule
New Schedule 1AA inserted

12

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Shop Trading Hours Amendment Act 2016.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the Act that was previously called the Shop Trading Hours Act Repeal Act 1990 (the **principal Act**).

Part 1

Amendments to principal Act

4 Long Title repealed

Repeal the Long Title.

5 Name of principal Act changed

(1) As from the commencement of this section,—

(a) the Shop Trading Hours Act Repeal Act 1990 is called the Shop Trading Hours Act 1990:

(b) every reference in any enactment and in any document to the Shop Trading Hours Act Repeal Act 1990 must, unless the context otherwise requires, be read as a reference to the Shop Trading Hours Act 1990.

(2) In the heading to section 1, delete “**Short**”.

(3) In section 1(1), replace “may be cited as the Shop Trading Hours Act Repeal Act 1990” with “is the Shop Trading Hours Act 1990”.

6 New cross-heading above section 2 inserted

After section 1, insert:

Preliminary provisions

7 Section 2 amended (Interpretation)

In section 2, insert in their appropriate alphabetical order:

chief executive means the chief executive of the department that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

district has the same meaning as in section 5(1) of the Local Government Act 2002

employer has the meaning set out in section 5F

employment agreement has the meaning set out in section 5F

local Easter Sunday shop trading policy means a policy adopted by a territorial authority under subpart 1 of Part 2

publicly available has the same meaning as in section 5(1) of the Local Government Act 2002

shop employee has the meaning set out in section 5F

special consultative procedure has the same meaning as in section 5(1) of the Local Government Act 2002

territorial authority has the same meaning as in section 5(1) of the Local Government Act 2002.

8 New section 2A inserted (Transitional, savings, and related provisions)

After section 2, insert:

2A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

9 New Part 1 heading and cross-heading above section 3 inserted

Before section 3, insert:

Part 1
Restricted trading days

General rule

10 Section 3 amended (Shops to be closed on Anzac Day morning, Good Friday, Easter Sunday, and Christmas Day)

In section 3(1), replace “sections 4 and 4A” with “sections 4, 4A, and 4B”.

11 New cross-heading above section 4 inserted

After section 3, insert:

Exemptions

12 Section 4 amended (Certain shops may remain open)

In section 4(1)(b)(ii), replace “any premises licensed as an export warehouse under Part 4 of the Customs Act 1966” with “an export warehouse (within the meaning of section 2(1) of the Customs and Excise Act 1996)”.

13 New section 4B inserted (Shops in certain areas may remain open on Easter Sunday)

After section 4A, insert:

4B Shops in certain areas may remain open on Easter Sunday

Section 3(1) does not apply to a shop on Easter Sunday if the shop is located in a district, or part of a district, in which a local Easter Sunday shop trading policy permits shops to open on Easter Sunday.

14 New cross-heading above section 5 inserted

Before section 5, insert:

Offence

15 New Part 2 inserted

After section 5, insert:

Part 2
Trading on Easter Sunday

Subpart 1—Local Easter Sunday shop trading policies

5A Territorial authority may have local Easter Sunday shop trading policy

- (1) A territorial authority may have a local Easter Sunday shop trading policy to permit shops to open on Easter Sunday in an area comprising—
- (a) the whole of its district; or
 - (b) any part or parts of its district.
- (2) A local Easter Sunday shop trading policy under subsection (1) may not—
- (a) permit shops to open only for some purposes; or
 - (b) permit only some types of shops in the area to open; or
 - (c) specify times at which shops may or may not open; or
 - (d) include any other conditions as to the circumstances in which shops in the area may open.
- (3) Nothing in subsection (2) is intended to limit the territorial authority’s power to control any of the matters in subsection (2)(a) to (d) under any other enactment.

- (4) A local Easter Sunday shop trading policy under subsection (1)(b) must include either or both of the following:
 - (a) a map of the area;
 - (b) a clear description of the boundaries of the area so that they are easily identifiable in practice.
- (5) However, where a local Easter Sunday shop trading policy includes both a map and a description of the area and there is an inconsistency between the map and the description, the description prevails.

5B Adoption, amendment, and revocation of local Easter Sunday shop trading policy

- (1) A territorial authority must use the special consultative procedure when deciding whether to—
 - (a) adopt a local Easter Sunday shop trading policy; or
 - (b) amend a local Easter Sunday shop trading policy; or
 - (c) revoke a local Easter Sunday shop trading policy.
- (2) Despite subsection (1)(b), a territorial authority may, by resolution made publicly available, make minor changes to, or correct errors in, a local Easter Sunday shop trading policy, but only if the changes or corrections do not affect an existing right of a person to whom the policy applies.
- (3) A territorial authority must,—
 - (a) as soon as practicable after adopting or amending a local Easter Sunday shop trading policy, make the policy publicly available; and
 - (b) as soon as practicable after deciding to revoke a local Easter Sunday shop trading policy, make publicly available the date on which the revocation is effective.

5C Review of local Easter Sunday shop trading policy

- (1) This section applies if a territorial authority has adopted a local Easter Sunday shop trading policy under section 5B.
- (2) The territorial authority must review the first local Easter Sunday shop trading policy adopted by the territorial authority no later than 5 years after adopting the policy.
- (3) Subsection (2) does not affect the ability of the territorial authority to review the policy, or any subsequent local Easter Sunday shop trading policy, at any other time.
- (4) A territorial authority that is reviewing a local Easter Sunday shop trading policy must use the special consultative procedure to decide whether to—
 - (a) amend the policy; or
 - (b) revoke the policy; or

- (c) replace the policy; or
 - (d) continue the policy without amendment.
- (5) A local Easter Sunday shop trading policy that is not reviewed as required by subsection (2) is, if not earlier revoked by the territorial authority concerned, revoked on the day that is 2 years after the date by which the policy is required to be reviewed under that subsection.

5D Delegation of power in relation to local Easter Sunday shop trading policies

- (1) A territorial authority may not delegate to a committee or other subordinate decision-making body, community board, or member or officer of the local authority the power to make a final decision whether to adopt, amend, revoke, or replace a local Easter Sunday shop trading policy, or to continue a local Easter Sunday shop trading policy without amendment following a review.
- (2) Nothing in this section restricts the power of a territorial authority to delegate to a committee or other subordinate decision-making body, community board, or member or officer of the territorial authority the power to do anything before the exercise by the territorial authority (after consultation with the committee or body or person) of the power to adopt, amend, revoke, or replace a local Easter Sunday shop trading policy, or to continue a local Easter Sunday shop trading policy without amendment following a review.

5E Chief executive to be notified of local Easter Sunday shop trading policy

A territorial authority must, within 10 working days after the date on which the territorial authority adopts, amends, or revokes a local Easter Sunday shop trading policy,—

- (a) notify the chief executive of the decision to adopt, amend, or revoke the policy; and
- (b) provide to the chief executive—
 - (i) a copy of the resolution to adopt, amend, or revoke the policy; and
 - (ii) in the case of an adoption or amendment of a policy, a copy of, or an electronic link to, the policy.

Subpart 2—Shop employee rights

5F Interpretation

In this subpart, unless the context otherwise requires,—

employer has the same meaning as in section 5 of the Employment Relations Act 2000

employment agreement has the same meaning as in section 5 of the Employment Relations Act 2000

shop employee means an employee within the meaning of section 6 of the Employment Relations Act 2000 who works in or from a shop.

5G Provision requiring shop employee to work, or be available to work, on Easter Sunday unenforceable

A provision in a shop employee's employment agreement (including an availability provision as defined in section 67D of the Employment Relations Act 2000) that requires the shop employee to work, or to be available to accept any work that the employer makes available, on Easter Sunday is unenforceable against the shop employee.

5H Shop employee's right to refuse to work on Easter Sunday

A shop employee—

- (a) may refuse to work on Easter Sunday; and
- (b) is not required to provide the employer with a reason for refusing to work on Easter Sunday.

5I Employer's obligation to notify shop employee of right to refuse to work on Easter Sunday

- (1) An employer who wants a shop employee to work on an Easter Sunday must give notice to the shop employee of his or her right to refuse to work on Easter Sunday.
- (2) A notice under subsection (1) must—
 - (a) be in writing; and
 - (b) be given,—
 - (i) in the case of a shop employee whose employment with the employer started more than 4 weeks before the relevant Easter Sunday, no earlier than 8 weeks and no later than 4 weeks before the relevant Easter Sunday; and
 - (ii) in the case of a shop employee whose employment with the employer started 4 weeks or less before the relevant Easter Sunday, as soon as is reasonably practicable after the shop employee's employment with the employer starts; and
 - (c) be—
 - (i) delivered in person to the shop employee; or
 - (ii) sent by email to the shop employee; or
 - (iii) if a manner of giving notices is specified in the shop employee's employment agreement, given in the manner specified.

5J Shop employee's obligation to notify employer of intention to refuse to work on Easter Sunday

- (1) A shop employee who intends to refuse to work on Easter Sunday must give notice to his or her employer of that intention.
- (2) A notice under subsection (1) must—
 - (a) be in writing; and
 - (b) be given,—
 - (i) in the case of a shop employee whose employment with the employer started more than 14 days before the relevant Easter Sunday, no later than 14 days after the date on which the shop employee receives a notice under section 5I; and
 - (ii) in the case of a shop employee whose employment with the employer started 14 days or less before the relevant Easter Sunday, as soon as is reasonably practicable after the shop employee receives a notice under section 5I; and
 - (c) be—
 - (i) delivered in person to the shop employee's employer; or
 - (ii) sent by email to the shop employee's employer; or
 - (iii) if a manner of giving notices is specified in the shop employee's employment agreement, given in the manner specified.

5K Employer's obligation not to take certain actions

- (1) A shop employee's employer, or a representative of that employer, must not—
 - (a) compel the shop employee to work on an Easter Sunday; or
 - (b) treat the shop employee adversely because the shop employee refuses to work on an Easter Sunday.
- (2) For the purposes of subsection (1)(a), an employer or a representative of an employer **compels** a shop employee to work on an Easter Sunday if the employer or a representative of the employer—
 - (a) makes working on an Easter Sunday a condition of the employer continuing to employ the shop employee; or
 - (b) exerts undue influence on the shop employee with a view to inducing the shop employee to work on an Easter Sunday; or
 - (c) requires the shop employee to work on Easter Sunday without giving the shop employee notice under section 5I of the shop employee's right to refuse under section 5H.
- (3) For the purposes of subsection (1)(b), **treat the shop employee adversely** has the same meaning as **treats an employee adversely** in section 67F of the Employment Relations Act 2000 as if references to an employee in that section were references to the shop employee.

5L Personal grievance

- (1) A claim by a shop employee that the shop employee's employer, former employer, or a representative of the employer has contravened section 5K—
 - (a) is a grievance that the shop employee may have against the employer or the former employer; and
 - (b) is a personal grievance as if the claim were a claim listed in section 103(1) of the Employment Relations Act 2000.
- (2) The Employment Relations Act 2000 applies accordingly.

16 New Part 3 heading inserted

Before section 6, insert:

Part 3
Miscellaneous matters

17 Section 7 amended (Consequential protection for certain workers)

- (1) In section 7(1) and (7), replace “the Schedule” with “Schedule 1” in each place.
- (2) In section 7(1), definition of **subsequent document**, replace “sections 2(2) and 2(3)” with “section 2(2) and (3)”.

18 Section 7A repealed (Further consequential protection for certain workers)

Repeal section 7A.

19 Section 8 amended (Effect of certain provisions in leases, etc)

After section 8(2B), insert:

- (2C) A mandatory opening provision in a lease, licence, contract, covenant, or agreement that was entered into or made before the commencement of the Shop Trading Hours Amendment Act 2016 must not be interpreted as requiring a shop to which section 4B applies to open on Easter Sunday.
- (2D) Subsection (2C) does not apply to a shop that, before the commencement of the Shop Trading Hours Amendment Act 2016, was entitled to open on Easter Sunday under section 4 or 4A.

Part 2
Transitional, savings, and related provisions

20 New Schedule 1AA inserted

Insert the Schedule 1AA set out in the Schedule of this Act as the first schedule to appear after the last section of the principal Act.

21 Schedule amended

In the Schedule heading, replace “**Schedule**” with “**Schedule 1**”.

Schedule
New Schedule 1AA inserted

s 20

Schedule 1AA
Transitional, savings, and related provisions

s 2A

Part 1
Provisions relating to Shop Trading Hours Amendment Act 2016

1 Interpretation

In this Part, **2016 Act** means the Shop Trading Hours Amendment Act 2016.

2 Prosecutions initiated before the commencement of 2016 Act

The amendments made by the 2016 Act do not apply to prosecutions initiated under section 5 by a charge laid before the commencement of the 2016 Act.

Legislative history

22 October 2015	Introduction (Bill 81–1)
3 November 2015	First reading and referral to Commerce Committee
12 May 2016	Reported from Commerce Committee
28 June 2016	Second reading
17 August 2016	Committee of the whole House (Bill 81–2)
25 August 2016	Third reading
29 August 2016	Royal assent

This Act is administered by the Ministry of Business, Innovation, and Employment.