



## ANALYSIS

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1990, No. 57

**An Act to repeal the Shop Trading Hours Act 1977, and for incidental matters** [3 July 1990]

BE IT ENACTED by the Parliament of New Zealand as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Shop Trading Hours Act Repeal Act 1990.

(2) This Act shall come into force on the 1st day of August 1990.

**2. Interpretation**—In this Act, unless the context otherwise requires,—

“Goods” includes all personal chattels other than liquor (within the meaning of the Sale of Liquor Act 1989), money, and things in action:

“Repealed Act” means the Shop Trading Hours Act 1977:

“Shop” means a building, place, or part of a building or place, where goods are kept, sold, or offered for sale, by retail; and includes an auction mart, and a barrow, stall, or other subdivision of a market; but does not include—

(a) A private home where the owner or occupier’s effects are being sold (by auction or otherwise); or

(b) A building or place where the only business carried on is that of selling by auction agricultural

products, pastoral products, and livestock, or any of them; or

(c) A building or place where the only business carried on is that of selling goods to people who are dealers, and buy the goods to sell them again.

**3. Shops to be closed on Anzac Day morning, Good Friday, Easter Sunday, and Christmas Day—**(1) Subject to section 4 of this Act, every shop shall remain closed—

- (a) Before 1 p.m. on Anzac Day; and
  - (b) All day on any day that is Good Friday, Easter Sunday, or Christmas Day.
- (2) For the purposes of subsection (1) of this section—
- (a) A shop that has a common entrance with a factory or warehouse is not closed at any time unless—
    - (i) The shop's entrance is then closed; and
    - (ii) No person in the shop is then selling goods, canvassing for orders of goods, or delivering goods; and
  - (b) Subject to paragraph (a) of this subsection, a shop is not closed at any time unless—
    - (i) The shop is then locked, or otherwise secured against entry by members of the public; and
    - (ii) No person in the shop is then selling goods, canvassing for orders of goods, or delivering goods.

**4. Certain shops may remain open—**(1) Section 3 (1) of this Act does not apply to a shop if it is—

- (a) A shop where—
  - (i) The goods for sale include nothing that is not food, drink, a household item, a personal item, an automotive fuel, an automotive lubricant, an automotive part, or an automotive accessory, of a kind that people may reasonably need to be able to buy at any time; and
  - (ii) The quantity of goods for sale is no greater than that sufficient to meet the demands of the people who live or are staying in the area where the shop is, and people (other than people travelling in order to buy goods at the shop) travelling through the area; or
- (b) A shop whose principal business is selling goods falling into one or other of the following categories:
  - (i) Goods intended to be bought as souvenirs;
  - (ii) Duty free goods (that is to say goods sold from or through any premises licensed as an export

warehouse under Part IV of the Customs Act 1966 to people intending to take the goods out of New Zealand):

(iii) Prepared or cooked food ready to be eaten immediately in the form in which it is sold; or

(c) A shop at any public passenger transport terminal, or at any station where public passenger transport services stop, whose principal business is selling goods falling into one or other of the following categories:

(i) Books, magazines, and newspapers:

(ii) The categories specified in paragraph (b) of this subsection; or

(d) A pharmacy; or

(e) A shop in premises where a bona fide exhibition or show devoted (entirely or primarily) to agriculture, art, industry, and science, or any of those matters, is being held.

(2) Section 3 (1) of this Act does not apply to a shop in respect of its remaining closed at any time on any day if—

(a) On the 31st day of July 1990 there was in force in respect of the area in which the shop is situated an order under section 20 of the repealed Act (applied for under section 18 (2) of that Act) authorising shops to be open at that time on that day; and

(b) All conditions (if any) subject to which the order was made are being (or, as the case may be, have been) complied with.

**5. Offence**—(1) The occupier of a shop that is not closed in accordance with section 3 of this Act commits an offence against this Act, and is liable, on summary conviction, to a fine not exceeding \$1,000.

(2) For the purposes of subsection (1) of this section,—

(a) The occupier of a shop,—

(i) Includes any agent, manager, supervisor, or other person acting or apparently acting in general management or control of the shop; and

(ii) Where the shop is occupied by a corporation or body of persons (whether incorporated or not), includes the shop's working manager:

(b) A hawker or other person carrying on business by selling goods, or offering goods for sale by retail, otherwise than in a shop who—

(i) Sells goods otherwise than in a shop; or

- (ii) Offers goods for sale otherwise than in a shop; or
  - (iii) Delivers goods to a customer otherwise than in a shop,—
- is deemed to be the occupier of a shop that is not closed.
- (3) In any proceedings for an offence against this Act,—
- (a) It is sufficient to allege in the information that a place is a shop and to state in the information the name of its ostensible occupier, or a style or title under which its occupier is usually known or carries on business; and
  - (b) The information may from time to time be amended as to the actual name of the occupier of the place.

**6. Shop Trading Hours Act 1977 repealed—**(1) The following enactments are hereby repealed:

- (a) The Shop Trading Hours Act 1977;
  - (b) The Shop Trading Hours Amendment Act 1979;
  - (c) The Shop Trading Hours Amendment Act 1980;
  - (d) The Shop Trading Hours Amendment Act 1982;
  - (e) The Shop Trading Hours Amendment Act 1989.
- (2) Section 3 (2) of the Anzac Day Act 1966 is hereby consequentially amended by omitting the words “Subject to section 11 (1) of the Shop Trading Hours Act 1977, where” (as substituted by section 4 (2) of the Shop Trading Hours Amendment Act 1980), and substituting the word “Where”.
- (3) Section 4 (2) of the Waitangi Day Act 1976 is hereby consequentially amended by omitting the words “Subject to section 11 (1) of the Shop Trading Hours Act 1977, where” (as substituted by section 4 (3) of the Shop Trading Hours Amendment Act 1980), and substituting the word “Where”.
- (4) The Factories and Commercial Premises Act 1981 is hereby consequentially amended by repealing so much of the Schedule as relates to the repealed Act.
- (5) The Official Information Amendment Act 1987 is hereby consequentially amended by repealing so much of the Third Schedule as relates to the repealed Act.
- (6) Every—
    - (a) Order under section 17A or section 20 of the repealed Act; and
    - (b) Authority under section 13 (2) or section 15 of the repealed Act; and
    - (c) Order or exemption under the Shops and Offices Act 1955 or under any enactment repealed by that Act,—
 is hereby consequentially revoked.

(7) The Shop Trading Hours (Approved Goods Extension) Notice 1990 is hereby consequentially revoked.

(8) The Shop Trading Hours Commission established by section 4 (1) of the repealed Act is hereby abolished.

(9) On the commencement of this Act,—

(a) The files and records of the said Shop Trading Hours Commission shall be deemed to have become files and records of the Department of Labour; and the Secretary of Labour shall deal with them accordingly; and

(b) Its debts, assets, liabilities, and other property shall become debts, assets, liabilities, and other property of the Minister of Labour.

**7. Consequential protection for certain workers**—(1) In this section, and (both as part of this Act and when deemed by this section to have been inserted into any industrial document) in the provisions set out in the Schedule to this Act, unless the context otherwise requires,—

“At night” means at any time between 9 p.m. on any day and 7 a.m. the next day:

“Existing document” means an industrial document applying to shop workers that, on the 1st day of August 1990, was current or in force under the Labour Relations Act 1987:

“Industrial document” means an award or agreement within the meaning of the Labour Relations Act 1987:

“Protected day” means a day that is a Sunday, New Year’s Day, the day after New Year’s Day, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign’s birthday, Labour Day, Christmas Day, Boxing Day, or the day observed as anniversary day in the locality concerned:

“Protected worker”, in relation to an employer on any day, means a worker who has or had been employed by the employer (or persons whose successor the employer is) for the continuous period including all or part of that day and beginning before the 1st day of August 1990 (whether or not the location or designation of the worker has or had changed during that period):

“Protective provisions” means the provisions set out in the Schedule to this Act:

“Shop worker” means a person who is employed to work in or from any shop or shops, or whose employment

at any time is dependent on any shop's being open at that time:

"Subsequent document", in relation to an existing document or a subsequent document, means an industrial document that is (in terms of sections 2 (2) and 2 (3) of the Labour Relations Act 1987) subsequent to that existing or subsequent document.

(2) In any provision deemed by this section to have been inserted in any industrial document, the term "shop", unless the context otherwise requires, has the meaning assigned to it by section 2 of this Act.

(3) After the commencement of this Act, the protective provisions shall be deemed to have been inserted into every existing document (but in such a way as to apply only to the shop workers to whom the document applies).

(4) Subject to subsections (5) and (6) of this section, where any of the protective provisions has been deemed by this section to have been inserted into an industrial document, that provision shall be deemed to have been inserted into any subsequent document negotiated under the Labour Relations Act 1987 (but in such a way as to apply only to the shop workers to whom the subsequent document applies).

(5) Where any of the protective provisions has been deemed by this section to have been inserted into an industrial document, that provision may—

(a) By agreement between the parties; or

(b) As a consequence of arbitration agreed by the parties,— in any subsequent document negotiated under the Labour Relations Act 1987 be declared to have been omitted from the subsequent document; and in that case the provision shall not thereafter be deemed by subsection (4) of this section to have been inserted into the subsequent document or any further subsequent document.

(6) Where any of the protective provisions has been deemed by this section to have been inserted into an industrial document, there may—

(a) By agreement between the parties; or

(b) As a consequence of arbitration agreed by the parties,— be contained in a subsequent document a provision declared (in the provision itself or another provision of the document) to be the protective provision in an amended form; and in that case the protective provision concerned shall not thereafter be deemed by subsection (4) of this section to have been inserted into the subsequent document or any further subsequent

document (whether in its original form or in any amended form).

(7) To every industrial document into which any protective provisions are deemed by subsection (4) of this section to have been inserted there shall be attached an annex, numbered in accordance with the Schedule to this Act,—

(a) Setting out in full—

(i) Those inserted provisions; and

(ii) The definition in section 2 of this Act of the term “shop”; and

(iii) The definitions in subsection (1) of this section of the terms “at night”, “protected day”, “protected worker”, and “shop worker”; and

(b) Stating that by virtue of the Shop Trading Hours Act Repeal Act 1990 those inserted provisions apply to all shop workers to whom the document applies; and

(c) Specifying the protective provisions that—

(i) Have under subsection (5) of this section been omitted from the document; or

(ii) Having under subsection (6) of this section been contained in an earlier industrial document in an amended form, have since been omitted; and

(d) Specifying (by reference both to each protective provision concerned and to the appropriate provision or provisions of the document) the protective provisions that—

(i) Have under subsection (6) of this section been contained in the document in an amended form; or

(ii) Having under subsection (6) of this section been contained in an earlier industrial document in an amended form, are now contained in the document in a form that has been further amended.

(8) An annex attached to an industrial document pursuant to subsection (7) of this section is not part of the document.

(9) Where provisions are deemed by this section to have been inserted into an industrial document,—

(a) The other provisions of the document shall be construed in a sense consistent with the inserted provisions, whenever such a construction is appropriate and reasonable; and

(b) Subject to paragraph (a) of this subsection, to the extent that other provisions of the document give workers protection greater or more advantageous than the protection given by the inserted provisions, they shall prevail over the inserted provisions; and

- (c) Subject to paragraphs (a) and (b) of this subsection, to the extent that the inserted provisions conflict with other provisions of the document, the inserted provisions shall prevail.

**8. Effect of certain provisions in leases, etc.**—(1) No mandatory opening provision in a lease, licence, contract, covenant, or agreement, entered into or made before the 12th day of November 1980 shall so be construed as to require the opening of any shop at any time on a Saturday, unless the shop was on the 11th day of November 1980 entitled to be open at that time by virtue of an authority or order under section 13 (2), section 15, or section 20 of the repealed Act.

(2) No mandatory opening provision in a lease, licence, contract, covenant, or agreement, entered into or made before the 1st day of August 1990 shall so be construed as to require the opening of any shop at any time—

- (a) On any day that is a Sunday, New Year's Day, the day after New Year's Day, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Labour Day, Christmas Day, Boxing Day, or the day observed as anniversary day in the locality in which the shop is situated; or

(b) Between 9 p.m. on any day and 7 a.m. the next day,— unless the shop was, on the 31st day of July 1990, entitled to be open at that time by virtue of an authority or order under section 13 (2), section 15, section 17A, or section 20, of the repealed Act.

(3) In this section, "mandatory opening provision", in relation to a shop, means a provision—

- (a) Requiring the shop to be open at all times when it may lawfully be open; or
- (b) Requiring the shop to be open whenever required to be open by a specified person, or a person of a specified class or description; or
- (c) Specifying hours and days on which the shop should be open, and requiring it to be open during those hours on those days to the extent that it may lawfully be open then.

**9. Prosecutions**—Every prosecution under the repealed Act initiated by an information laid before the 1st day of August 1990 shall proceed as if section 6 of this Act had not been enacted.

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## Section 7

## SCHEDULE

## PROTECTIVE PROVISIONS

1. No worker shall be required to work on a protected day or at night. No undue influence shall be applied to any worker in an attempt to induce that worker to agree to work on a protected day or at night. No action shall be taken to discriminate against or disadvantage any worker not wishing to work on a protected day or at night. This clause overrides clause 3 of these provisions.

2. A worker who agrees to work on Sundays or at night shall give the employer at least 2 weeks notice of wanting to cease working on Sundays or at night. If a worker stops working on Sundays or at night, the employer does not have to offer the worker other working hours in substitution. This clause overrides clause 3 of these provisions.

3. Workers shall continue to be employed on the basis of the conditions (in relation to working hours) that applied to them immediately before the commencement of this Act except where by mutual agreement between the employer and a worker the hours are altered.

4. Where an employer intends to open a shop on Sundays, at night, or on a protected day that is not a Sunday, the employer shall offer the work to protected workers who are suitably qualified and capable of carrying out the work before offering it to any other person.

5. Where no workers, or not enough workers, accept work on Sundays, at night, or on a protected day that is not a Sunday, the employer retains the right to recruit extra workers.

6. Where an employer decides to close a shop on a day that is not a protected day, or on part of such a day, the employer shall consult all workers affected, and the union, to minimise disruptions to work patterns.

7. The employer shall give all workers and the union at least 4 weeks written notice (including a description of the rights of workers under these provisions) of the employer's intention to employ workers on any protected day that is not a Sunday, or to begin or resume employing workers on Sundays or at night:

Provided that a shorter period of notice may be given by agreement with the union to meet the exigencies of a changed trading environment. The union shall not withhold its agreement unreasonably.

8. During the period referred to in clause 7 of these provisions, the employer shall give the union a reasonable opportunity to discuss with workers arrangements for work on Sundays or on any protected day that is not a Sunday or at night.

9. The employer shall consult with the union about alterations to patterns of working hours, or to job responsibilities, arising from a decision to open a shop on Sundays or at night.

10. The employer shall either provide or pay for transport between a worker's home and place of employment if the worker—

(a) Works during a protected day or at night; and

SCHEDULE—*continued*PROTECTIVE PROVISIONS—*continued*

- (b) In order to do so, must leave home or work (as the case may be) when suitable public transport (by train, bus, ferry, boat, cablecar, or a combination of 2 or more of those means of transport) is not available.

11. The employer shall ensure that the personal security of every worker who works alone at night is reasonably protected (for example by ensuring reasonable access to the presence and support of another worker or some other person).

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This Act is administered in the Department of Labour.

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