

[AS REPORTED FROM THE LABOUR COMMITTEE]

House of Representatives, 20 March 1990.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

Rt. Hon. Helen Clark

SHOP TRADING HOURS ACT REPEAL

ANALYSIS

Title	3. Consequential protection for certain workers
1. Short Title and commencement	4. Savings Schedule
2. Shop Trading Hours Act 1977 repealed	

A BILL INTITULED

An Act to repeal the Shop Trading Hours Act 1977, and for incidental matters

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

- 5 **1. Short Title and commencement**—(1) This Act may be cited as the Shop Trading Hours Act Repeal Act **1989**.
 (2) This Act shall come into force on the 30th day of April 1990.
- 10 **2. Shop Trading Hours Act 1977 repealed**—(1) The following enactments are hereby repealed:
- 15 (a) The Shop Trading Hours Act 1977 (from now on in this Act referred to as the repealed Act);
 (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.

No. 230—2

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incl. GST \$2.20

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(2) Section 292 of the Sale of Liquor Act 1962 is hereby consequentially amended—

- (a) By omitting from subsection (6) the words “and the Shop Trading Hours Act 1977” (as inserted by section 28 (1) of the Shop Trading Hours Act 1977); and 5
- (b) By omitting from subsection (7) (as amended by section 28 (1) of the Shop Trading Hours Act 1977) the words “Subject to the Shop Trading Hours Act 1977, it shall be lawful for any shop or store authorised under this section”, and substituting the words “It shall be lawful for any shop or store authorised under this section”. 10

(3) 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”. 15

(4) 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”. 20

(5) The Factories and Commercial Premises Act 1981 is hereby consequentially amended by repealing so much of the Schedule as relates to the repealed Act. 25

(6) The Official Information Amendment Act 1987 is hereby consequentially amended by repealing so much of the Third Schedule as relates to the repealed Act.

(7) Every— 30

(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,— 35

is hereby consequentially revoked.

(8) The following notices are hereby consequentially revoked:

(a) The Shop Trading Hours (Approved Goods) Notice 1985; 40

(b) The Shop Trading Hours (Approved Goods) Notice 1985, Amendment No. 1:

(c) The Shop Trading Hours (Approved Goods) Notice 1989:

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(d) The Shop Trading Hours (Approved Goods) Notice 1990.

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

5 (10) 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

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

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15 **3. Consequential protection for certain workers**—(1) In this section, unless the context otherwise requires,—

“Relevant document”, at any time, means an award or agreement (within the meaning of the Labour Relations Act 1987) that then applies to shop workers and—

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(a) On the commencement of this Act, was current or in force under the Labour Relations Act 1987; or

(b) Is a document subsequent (in terms of sections 2 (2) and 2 (3) of the Labour Relations Act 1987) to a document referred to in paragraph (a) of this definition:

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“Shop” means any—

(a) Building or place, or part of a building or place, where personal chattels (other than liquor within the meaning of the Sale of Liquor Act 1989, money, and things in action) are kept, exposed, or offered, for sale by retail; or

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(b) Barrow, stall, or other such subdivision within a market;—

and includes an auction mart; but does not include any place where there is carried on exclusively the business of selling by auction products that are agricultural products, pastoral products, or livestock:

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

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

(2) After the commencement of this Act, every relevant document shall be deemed (so far as it applies or applied to a shop worker) to contain or, as the case requires, to have contained the provisions set out in the Schedule to this Act until those provisions are amended or deleted by negotiations under the Labour Relations Act 1987. 5

4. Savings—(1) Except in the case of a shop that was, immediately before the commencement of the Shop Trading Hours Amendment Act 1980, entitled to be open on Saturdays by virtue of an order under section 20 of the repealed Act, no provision in any lease, licence, contract, covenant, or agreement, entered into or made before that commencement (being a provision requiring a shop to be open on any day when it may lawfully be open) shall so be construed as to require the opening of the shop at any time on a Saturday. 10 15

(2) Except in the case of a shop that was, immediately before the commencement of this Act, entitled to be open on Sundays by virtue of an order under section 17A or section 20 of the repealed Act, no provision in any lease, licence, contract, covenant, or agreement, entered into or made before that commencement (being a provision requiring a shop to be open on any day when it may lawfully be open) shall so be construed as to require the opening of the shop at any time on a Sunday. 20 25

(3) No provision in any lease, licence, contract, covenant, or agreement, entered into or made before the commencement of this Act (being a provision requiring a shop to be open on any day when it may lawfully be open) shall so be construed as to require the opening of the shop at any time on 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. 30 35

(4) Every prosecution under the repealed Act initiated by an information laid before the commencement of this Act shall proceed as if **section 2** of this Act had not been enacted.

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3. 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,—

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

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“Existing document” means an industrial document applying to shop workers that, on the 30th day of April 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:

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“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:

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“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 30th day of April 1990 (whether or not the location or designation of the worker has or had changed during that period):

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

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“Shop” means any—

(a) Building or place, or part of a building or place, where personal chattels (other than liquor within the meaning of the Sale of Liquor Act 1989, money, and things in action) are kept, exposed, or offered, for sale by retail; or

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(b) Barrow, stall, or other such subdivision with a market;—

and includes an auction mart; but does not include any place where there is carried on exclusively the business of selling by auction products that are agricultural products, pastoral products, or livestock:

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“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:

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“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.

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(2) 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).

(3) Subject to **subsections (4) and (5)** 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).

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(4) 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

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(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 (3)** of this section to have been inserted into the subsequent document or any further subsequent document.

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

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(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 (3)** of this section to have been inserted

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into the subsequent document or any further subsequent document (whether in its original form or in any amended form).

5 (6) To every industrial document into which any protective provisions are deemed by **subsection (3)** 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—

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(i) Those inserted provisions; and

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

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(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—

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(i) Have under **subsection (4)** of this section been omitted from the document; or

(ii) Having under **subsection (5)** of this section been contained in an earlier industrial document in an amended form, have since been omitted; and

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(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 (5)** of this section been contained in the document in an amended form; or

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(ii) Having under **subsection (5)** 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.

(7) An annex attached to an industrial document pursuant to **subsection (6)** of this section is not part of the document.

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(8) 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

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(b) Subject to **paragraph (a)** of this subsection, to the extent that other provisions of the document give workers

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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. 5

4. 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. 10 15

(2) No mandatory opening provision in a lease, licence, contract, covenant, or agreement, entered into or made before the 30th day of April 1990 shall so be construed as to require the opening of any shop at any time— 20

- (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 25

(b) Between 9 p.m. on any day and 7 a.m. the next day,— unless the shop was, on the 29th day of April 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. 30

(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 35
- (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 40

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on those days to the extent that it may lawfully be open then.

5 **5. Prosecutions**—Every prosecution under the repealed Act initiated by an information laid before the 30th day of April 1990 shall proceed as if **section 2** of this Act had not been enacted.

Section 3

SCHEDULE
PROTECTIVE PROVISIONS

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1. In these provisions,—

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

“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 a continuous period including all or part of that day and beginning before the day on which the Shop Trading Hours Act Repeal Act 1989 came into force (whether or not the location or designation of the worker has or had changed during that period).

2. 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 4 of these provisions.

3. 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 allow the worker other working hours.) the employer does not have to offer the worker other working hours in substitution. This clause overrides clause 4 of these provisions.

4. 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 day except where by mutual agreement between the employer and a worker the hours are altered.

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Provided that where mutual agreement cannot be reached, the union will be consulted.

SCHEDULE—*continued*

PROTECTIVE PROVISIONS—*continued*

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5. 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 before offering it to any other person.

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5. 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.

6. 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 (*employees*) workers.

7. 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.

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8. 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 Sundays, at night, or on any protected day that is not a Sunday:

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.

New

8. 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.

9. During the period referred to in clause 8 of these provisions, the employer shall give the union a reasonable opportunity to discuss with

SCHEDULE—*continued*PROTECTIVE PROVISIONS—*continued*

workers arrangements for work on Sundays or on any protected day that is not a Sunday or at night.

10. 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.

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11. Except where a worker provides or arranges the worker's own transport, the employer shall either provide or pay for transport between a worker's home and place of employment if the worker—

- (a) Is required to work during particular hours on a protected day or at night; and
- (b) In order to do so, the worker 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.

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11. 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
- (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.

12. 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).