

SHOP TRADING HOURS ACT REPEAL BILL

EXPLANATORY NOTE

THIS Bill has the effect of empowering the occupiers of shops to open and close them whenever they wish.

Clause 1 relates to the Bill's Short Title and commencement. The Bill comes into force on 30 April 1990.

Clause 2 repeals the Shop Trading Hours Act 1977 and its amendments and subordinate legislation, abolishes the Shop Trading Hours Commission, transfers the Commission's records to the Department of Labour and the rest of its assets and liabilities to the Minister of Labour, and makes consequential amendments to other legislation.

Clause 3 gives certain protections to workers employed in or about shops. These protections apply to workers who are subject to certain awards and agreements. Provisions relating to working hours and personal security will be deemed to be part of each of the awards and agreements concerned. The provisions will continue in force indefinitely in the awards and agreements concerned, and in successive replacement awards and agreements until amended or deleted by negotiation under the Labour Relations Act 1987.

Clause 4 contains 4 savings provisions.

Subclauses (1) to (3) relate to existing contracts requiring shops to be open on days when they may lawfully be open. Contracts in force when general Saturday trading was brought in in 1980 are not to be read as requiring shops to be open on Saturdays; and contracts in force when the Bill comes into force are not to be read as requiring shops to be open on Sundays or public holidays.

Subclause (4) provides that prosecutions under the Shop Trading Hours Act 1977 filed before its repeal are to proceed.

No. 230—1

Price
incl. GST \$2.20

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 Shop Trading Hours Act 1977 repealed	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 Shop Trading Hours Act 1977 repealed**—(1) The following enactments are hereby repealed:

(a) The Shop Trading Hours Act 1977 (from now on in this Act referred to as the repealed Act);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;

15 (d) The Shop Trading Hours Amendment Act 1982;

(e) The Shop Trading Hours Amendment Act 1989.

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

20 (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

(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”.

- (3) Section 3 (2) of the Anzac Day Act 1966 is hereby 5
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”.
- (4) Section 4 (2) of the Waitangi Day Act 1976 is hereby 10
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”.
- (5) The Factories and Commercial Premises Act 1981 is 15
hereby consequentially amended by repealing so much of the Schedule as relates to the repealed Act.
- (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. 20
- (7) 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 25
 - (c) Order or exemption under the Shops and Offices Act
1955 or under any enactment repealed by that Act,—
- is hereby consequentially revoked.
- (8) The following notices are hereby consequentially revoked:
- (a) The Shop Trading Hours (Approved Goods) Notice 1985: 30
 - (b) The Shop Trading Hours (Approved Goods) Notice 1985,
Amendment No. 1:
 - (c) The Shop Trading Hours (Approved Goods) Notice 1989.
- (9) The Shop Trading Hours Commission established by
section 4 (1) of the repealed Act is hereby abolished. 35
- (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; 40
and
 - (b) Its debts, assets, liabilities, and other property shall
become debts, assets, liabilities, and other property of
the Minister of Labour.

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

5 “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—

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

10 (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:

“Shop” means any—

15 (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

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

20 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:

25 “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.

(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.

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.

(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. 5

(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. 10 15

(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.

Section 3

SCHEDULE

PROTECTIVE PROVISIONS

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

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.

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).