

Shop Trading Hours Act Repeal (Easter Trading) Amendment Bill

Member's Bill

As reported from the Commerce Committee

Commentary

Recommendation

The Commerce Committee has examined the Shop Trading Hours Act Repeal (Easter Trading) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

We had two similar members' bills referred to us, this bill and the Easter Sunday Shop Trading Amendment Bill, and we decided to call for submissions on both and consider the bills together. We have no clear preference for either bill and are recommending that both proceed with amendment.

More liberal trading at Easter was the central issue raised by submitters, polarising opinion on this issue. Those in favour of relaxed trading laws emphasised the importance of tourism, economic opportunities, regional events, anomalies in the present law, and freedom of choice as key issues; whereas those opposed to the bills cited family and community time, protection for employees, and religious reasons for opposing any liberalisation.

Some submitters indicated a preference for aspects of one bill over the other; for example, on whether the decision to liberalise trading in an area or town should be made nationally or by local authorities, and whether trading should be liberalised on Easter Sunday alone, or both Good Friday and Easter Sunday.

Some of us oppose the extension of shop trading to Good Friday and to Easter Sunday, as all shops in New Zealand can open for 361.5 days each year and shops are open for 51 of the 52 Sundays available in each year. On the “no shopping days” many shops are open for business to sell drinks, petrol and souvenirs amongst other items.

Some of us believe that the present position should remain unchanged, as international comparisons show that New Zealand workers already work some of the longest weekly hours of any OECD country. Easter Sunday and Good Friday are also days of special significance to Christians; and, regardless of the religious significance, some of us believe that some special days should be preserved so that holidays can be enjoyed by families together.

The bills will be conscience votes for members. We have recommended technical and drafting amendments to the bills as introduced, leaving the substantive decisions to the House.

Anomalous law

Many submitters referred to anomalies in the law, and in particular to the fact that some tourist areas without exemptions, such as Wanaka, bordered Queenstown which had exemptions. The Wanaka Chamber of Commerce stated that it regularly sought and obtained exemptions prior to 1990, and allowing trading would in effect restore that situation. Many submitters highlighted the fact that a number of businesses exempted under the Act now sell a much wider range of products than they did in 1990.

Bill as introduced

This bill as introduced delegated to territorial authorities the authority to decide whether retail shops in their districts may be open on Easter Sunday. The bill required territorial authorities to consult with their communities before making such a decision using the special consultative procedure provided for in Part 6 of the Local Government Act 2002.

Title

We recommend that the title of the bill be amended to Shop Trading Hours Act Repeal (Easter Sunday) Amendment Bill to reflect better the intent of the bill which relates to Easter Sunday only.

Local decision-making process

We recommend that territorial authorities should decide whether shops in their districts may remain open on Easter Sunday and that they should be required to consult their communities on this matter using the special consultative procedure set out in section 83 of the Local Government Act 2002. The bill as introduced referred to Part 6 of the Act but we are recommending a more specific provision which details the obligations of a territorial authority in using the special consultative procedure.

We also recommend that a clear record is kept of which districts are exempted and that the chief executive of the Department of Labour is notified in writing when the consultation process results in shops in the district of a territorial authority being exempted.

Effect on existing exemptions under principal Act

We recommend adding a provision that clarifies that a decision to open under new section 4B overrides existing exemptions under the principal Act to the extent that they allow shops to open on Easter Sunday. This had the effect of removing requirements relating to hours of opening and other restrictions.

Trading days

The bill as introduced proposed liberalising shop trading on Easter Sunday only. We are leaving this unchanged as it is central to the intent of the bill.

Several submitters called for making Easter Sunday a public holiday. This is beyond the scope of this bill, as it would involve amending the Holidays Act 2003.

We are conscious of the large number of submitters who argued that the status quo remain for family or religious reasons, and considered that there were sufficient shopping days in the calendar year. We respect these views but the majority of submissions supported a liberalisation to some degree, and called for a tidying up of the current anomalous situation.

Worker protection

We recommend adding extensive protections for workers as new sections 7B and 7C. These provisions are based on the recommendations of the 2003 Shop Trading Hours Working Group, established

by the Minister of Labour of the time. This group reached a consensus that it was appropriate to offer employees in shops affected by any new exemptions a realistic degree of protection by allowing them to decide, on the occasion of each holiday, whether they would work.

We are aware that some workers could be compelled to work when they did not wish to on Good Friday or on Easter Sunday. The new provisions provide that the employer must give each shop worker reasonable notice of the intention to open the shop on Good Friday or Easter Sunday, and the shop worker can refuse to work on either or both of those days unless he or she has expressly agreed to do so on each occasion. Section 7B overrides an employment agreement or condition of employment to the extent that it is inconsistent with this requirement. Section 7C provides that if, because of a shop worker's refusal to work, an employer does anything described in section 104(1)(a) to (c) of the Employment Relations Act 2000, the shop worker is to be treated as having been discriminated against in his or her employment for the purposes of that Act.

Some committee members felt there was a need for enhanced protection for shop workers who chose to work on Easter Sunday. They proposed an amendment to both bills requiring shop workers who work on Easter Sunday to receive all entitlements due as if Easter Sunday were a public holiday, consistent with the provisions of the Holidays Act 2003. This amendment was not agreed by the committee, but may be taken up by way of a Supplementary Order Paper to the committee of the whole House.

We have recommended similar amendments to the Easter Sunday Shop Trading Amendment Bill.

Leaseholder protections

We recommend strengthening provisions in section 8 of the Act so that leaseholders are not compelled to open on Easter Sunday. This protection would apply whether the lease was entered into before or after the amendment comes into force.

We have recommended similar amendments to the Easter Sunday Shop Trading Amendment Bill.

Prosecutions

We recommend that section 9 of the principal Act be amended to allow prosecutions laid before the commencement of the Shop Trading Hours Act Repeal (Easter Sunday) Amendment Act 2006 to proceed as if the amendment had not been enacted.

We have recommended similar amendments to the Easter Sunday Shop Trading Amendment Bill.

Penalties regime

We received advice on a penalties regime which was outside the scope of this bill but we feel it is an issue the Government should pursue. We consider that penalties across the board should be adjusted and urge the Government to review this as a matter of priority.

Petitions**Petition 2005/61 of Steve Chadwick and 3,136 others**

This petition requests that the House of Representatives enact legislation to enable the amendment to the current geographical exemptions to Easter Sunday shop trading.

The issues raised are discussed elsewhere in the commentary and have been addressed in the bill as reported.

Appendix

Committee process

The Shop Trading Hours Act Repeal (Easter Trading) Amendment Bill was referred to the committee on 14 June 2006. The closing date for submissions was 28 July 2006. We received and considered 54 submissions from interested groups and individuals. We heard 31 submissions.

We received advice from the Department of Labour.

Committee membership

Gerry Brownlee (Chairperson)(from 6 December 2006)

Katherine Rich (Chairperson) (until 6 December 2006)

Gordon Copeland (Deputy Chairperson)

Chris Auchinvole (until 6 December 2006)

Charles Chauvel (from 2 August 2006)

Shane Jones

Hon Luamanuvao Winnie Laban

Hon Mahara Okeroa (until 2 August 2006)

Simon Power (from 6 December 2006)

Maryan Street

Lindsay Tisch (from 6 December 2006)

Chris Tremain (until 6 December 2006)

Pansy Wong (until 6 December 2006)

Dr Richard Worth (from 6 December 2006)

Jacqui Dean replaced Pansy Wong for this item of business

Steve Chadwick added for this item of business

Shop Trading Hours Act Repeal
(Easter Trading) Amendment

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (unanimous)

Subject to this Act,

Text struck out unanimously

New (unanimous)

Subject to this Act,

Text inserted unanimously

(Subject to this Act,)

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

Steve Chadwick

Shop Trading Hours Act Repeal (Easter (Trading) Sunday) Amendment Bill

Member's Bill

Contents

		Page
1	Title	1
2	Commencement	2
3	Principal Act amended	2
Part 1		
Preliminary provision		
4	Purpose	2
Part 2		
Amendments to principal Act		
5	Interpretation	2
6	Shops to be closed on Anzac Day morning, Good Friday, Easter Sunday, and Christmas Day	3
7	New section 4B inserted	3
	4B Territorial authorities' power to allow shops to remain open on Easter Sunday	3
7A	Consequential protection for certain workers	3
8	Further consequential protection for certain workers	4
8A	New sections 7B and 7C inserted	5
	7B Further consequential protection for other shop workers	5
	7C Refusal of shop worker to work under section 7B	5
9	Effect of certain provisions in leases, etc	6
10	Prosecutions	7
<i>Transitional provision</i>		
11	Effect on existing exemptions	7

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Shop Trading Hours Act Repeal (Easter (*Trading*) Sunday) Amendment Act **2006**.

2 Commencement

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

3 Principal Act amended

This Act amends the Shop Trading Hours Act Repeal Act 1990. 5

New (unanimous)

<p>Part 1 Preliminary provision</p>

4 Purpose

The purpose of this Act is to—

- (a) enable territorial authorities to decide whether (*retail*) shops in their districts may (*be*) remain open on Easter Sunday: 10
- (b) require territorial authorities, before making any such decision, to consult their communities by adopting the special consultative procedure (*provided for in Part 6*) set out in section 83 of the Local Government Act 2002. 15

New (unanimous)

<p>Part 2 Amendments to principal Act</p>

5 Interpretation

Section 2 is amended by inserting the following definitions in their appropriate alphabetical order:

“**district** has the meaning given to it by section 5(1) of the Local Government Act 2002 20

New (unanimous)

“**employment agreement** has the meaning given to it by section 5 of the Employment Relations Act 2000

“**shop worker** means a person who is employed to work in, or from, a shop or whose employment is at any time dependent on a shop being open at that time

5

“**territorial authority** has the meaning given to it by section 5(1) of the Local Government Act 2002”.

6 Shops to be closed on Anzac Day morning, Good Friday, Easter Sunday, and Christmas Day

Section 3(1) is amended by omitting “(sections) 4 and 4A” and substituting “(sections) 4, 4A, and **4B**”.

10

7 New section 4B inserted

The following section is inserted after section 4A:

“4B Territorial authorities’ power to allow (retail) shops to remain open on Easter Sunday

15

“(1) Section 3(1) does not apply where—

“(a) the territorial authority for the district in which a (retail) shop is located has decided that shops in that district may remain open on Easter Sunday; and

“(b) in making that decision, the territorial authority has first adopted the special consultative procedure (provided for in Part 6) set out in section 83 of the Local Government Act 2002.”

20

New (unanimous)

“(2) If **subsection (1)** applies, the territorial authority must give written notice of the decision to the chief executive of the Department of Labour.”

25

7A Consequential protection for certain workers

(1) The definition of **shop worker** in section 7(1) is repealed.

(2) Section 7(7)(a)(ii) is amended by omitting “term **shop**” and substituting “terms **shop** and **shop worker**”.

30

New (unanimous)

- (3) Section 7(7)(a)(iii) is amended by omitting “**protected worker, and shop worker**” and substituting “**and protected worker**”.

Struck out (unanimous)

8 Further consequential protection for certain workers

Section 7A is amended by repealing subsections (1) and (2) and substituting the following subsections: 5

- “(1) An employment agreement entered into or made before, on, or after the commencement of—

“(a) the Shop Trading Hours Act Repeal Amendment Act 2001 must not be interpreted as requiring a person who is a shop worker in a shop to which section 4A applies to work on Easter Sunday unless the parties to the employment agreement so agree; and 10

“(b) the Shop Trading Hours Act Repeal (Easter Trading) Amendment Act **2006** must not be interpreted as requiring a person who is a shop worker in a shop to which **section 4B** applies to work on Easter Sunday unless the parties to the employment agreement so agree. 15

- “(2) **Subsection (1)** does not apply to an employment agreement relating to a person who is a shop worker employed to work in, or from, or in relation to, any shop that, before the commencement of— 20

“(a) the Shop Trading Hours Act Repeal Amendment Act 2001 was entitled to be open on Easter Sunday under section 4; and 25

“(b) the Shop Trading Hours Act Repeal (Easter Trading) Amendment Act **2006** was entitled to be open on Easter Sunday under section 4.”

New (unanimous)

8 Further consequential protection for certain workers

- (1) The heading to section 7A is amended by omitting “**certain**” and substituting “**garden centre**”. 30

New (unanimous)

(2) Section 7A(3) is repealed.

8A New sections 7B and 7C inserted

The following sections are inserted after section 7A:

“7B Further consequential protection for other shop workers

“(1) This section—

“(a) applies to a shop that is entitled to remain open on Easter Sunday under **section 4B**:

“(b) does not apply to a shop that, immediately before a decision made under **section 4B** comes into effect, was entitled to remain open on Easter Sunday under section 4 or 4A:

“(c) overrides an employment agreement or condition of employment (whether entered into, or agreed to, before, on, or after a decision under **section 4B** comes into effect) to the extent that the employment agreement or condition is inconsistent with this section.

“(2) On each occasion where it is intended to open a shop on Easter Sunday, the employer of each shop worker must give the shop worker—

“(a) reasonable notice of that intention; and

“(b) a reasonable opportunity to advise the employer whether he or she agrees to work on Easter Sunday.

“(3) A shop worker is entitled to refuse to work on Easter Sunday unless he or she has expressly agreed to work following notice under **subsection (2)**.

“7C Refusal of shop worker to work under section 7B

“(1) This section applies if a shop worker refuses to work on Easter Sunday under **section 7B(3)**.

“(2) If, by reason of the shop worker’s refusal to work, the shop worker’s employer or a representative of that employer does any thing described in section 104(1)(a) to (c) of the Employment Relations Act 2000 in relation to the shop worker, the shop worker is to be treated as having been discriminated against in that shop worker’s employment for the purposes of

New (unanimous)

section 103(1)(c) of that Act and the provisions of that Act apply accordingly.

“(3) If a shop worker refuses to work on Easter Sunday, the employer may employ another person to work in place of the shop worker on that day only.”

5

Struck out (unanimous)

9 Effect of certain provisions and leases, etc

Section 8 is amended by repealing subsections (2A) and (2B) and substituting the following subsections:

“(2A) A mandatory opening provision in a lease, licence, contract, covenant, or agreement entered into, or made before, the commencement of—

10

“(a) the Shop Trading Hours Act Repeal Amendment Act 2001 must not be interpreted as requiring a shop to which section 4A applies to open on Easter Sunday:

“(b) the Shop Trading Hours Act Repeal (Easter Trading) Amendment Act **2006** must not be interpreted as requiring a shop to which **section 4B** applies to open on Easter Sunday.

15

“(2B) **Subsection (2A)** does not apply to a shop that, before the commencement of—

20

“(a) the Shop Trading Hours Act Repeal Amendment Act 2001 was entitled to be open on Easter Sunday under section 4; and

“(b) the Shop Trading Hours Act Repeal (Easter Trading) Amendment Act **2006** was entitled to be open on Easter Sunday under section 4.”

25

New (unanimous)

9 Effect of certain provisions in leases, etc

Section 8 is amended by inserting the following subsections after subsection (2B):

New (unanimous)

“(2C) A mandatory opening provision in a lease, licence, contract, covenant, or agreement entered into or made before or after a decision made under **section 4B** comes into effect must not be interpreted as requiring a shop to remain open on Easter Sunday.

5

“(2D) **Subsection (2C)** does not apply to a shop that before a decision made under **section 4B** comes into effect was entitled to remain open on Easter Sunday under section 4 or 4A.”

Struck out (unanimous)

10 Prosecutions

Section 9 is amended by adding the following subsection:

10

“(3) Every prosecution under section 5 initiated by an information laid before the commencement of the Shop Trading Hours Act Repeal (Easter Trading) Amendment Act **2006** must proceed as if that Act had not been enacted.”

New (unanimous)

10 Prosecutions

15

Section 9 is amended by adding the following subsection:

“(3) Every prosecution under section 5 initiated by an information laid before a decision made under **section 4B** comes into effect must proceed as if that decision had not been made.”

Transitional provision

20

11 Effect on existing exemptions

A decision under **section 4B** overrides section 4 to the extent that section 4 authorises a shop to remain open on Easter Sunday.

Legislative history

18 May 2006

Introduction (Bill 51-1)

14 June 2006

First reading and referral to Commerce Committee

