

Shop Trading Hours Amendment Bill

Government Bill

As reported from the committee of the whole House

Shop Trading Hours Amendment Bill

Key to symbols used in reprinted bill

As reported from the committee of the whole House

text inserted

~~text deleted~~

Hon Michael Woodhouse

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	New Schedule 1AA inserted	

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Shop Trading Hours Amendment Act **2015**.
- 2 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent. 5
- 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 10
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- 4 Long Title repealed**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,— 15
- (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**. 20
- (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: 25

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

5

compel has the meaning set out in **section 5K**

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

employer has the meaning set out in **section 5G**

employment agreement has the meaning set out in **section 5G**

10

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

~~**Ministry** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act~~

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

15

shop employee has the meaning set out in **section 5G**

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.

20

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.

25

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

Before section 3, insert:

Part 1
Restricted trading days

30

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)”. 5

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

After section 4A, insert: 10

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 bylaw made under ~~section 5A~~ 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: 15

Offence

15 New Part 2 inserted

After section 5, insert:

Part 2

Trading on Easter Sunday

Subpart 1—~~Local regulation~~ Easter Sunday shop trading policies

5A ~~Power to make bylaws to permit shops to open on~~ Territorial authority may have local Easter Sunday shop trading policy

(1) A territorial authority may ~~make bylaws~~ have a local Easter Sunday shop trading policy to permit shops to open on Easter Sunday in an area comprising— 25

- (a) the whole of its district; or
- (b) any part or parts of its district.

(1A) A local Easter Sunday shop trading policy under **subsection (1)** may not—

- (a) permit shops to open only for some purposes; or 30
- (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.
- (1B) Nothing in **subsection (1A)** is intended to limit the territorial authority's power to control any of the matters in **subsection (1A)(a) to (d)** under any other enactment. 5
- (2) ~~A bylaw made 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 description of the locality of the area (other than just the legal description).~~ 10
- (b) a clear description of the boundaries of the area so that they are easily identifiable in practice.
- (3) However, where a ~~bylaw 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. 15
- (4) A bylaw made under **subsection (1)** must not impose —
- (a) ~~restrictions on the activities of shops in the area (including restrictions on opening hours or on the goods it may sell):~~
- (b) ~~restrictions on the type of shops that may open in the area (including restrictions on size or ownership structure):~~ 20
- (c) ~~any other restrictions on shops in the area.~~
- 5B Bylaw must be consistent with New Zealand Bill of Rights Act 1990**
- (1) ~~Before making a bylaw, a territorial authority must determine whether the proposed bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990.~~ 25
- (2) ~~No bylaw may be made that is inconsistent with the New Zealand Bill of Rights Act 1990.~~
- 5C ~~Consultation requirements~~ Adoption, amendment, and revocation of local Easter Sunday shop trading policy**
- (1) ~~The~~ A territorial authority must use the special consultative procedure set out in section 83 of the Local Government Act 2002 when proposing when deciding whether to— 30
- (a) ~~make a bylaw under this Act~~ adopt a local Easter Sunday shop trading policy; or
- (b) ~~amend a bylaw made under this Act~~ a local Easter Sunday shop trading policy; or 35
- (c) ~~revoke a bylaw made under this Act; or~~ a local Easter Sunday shop trading policy.

- (d) ~~continue a bylaw made under this Act without amendment following a review under **section 5D**.~~
- (2) ~~The statement of proposal referred to in section 83(1)(a) of that Act must include,—~~
- (a) ~~as the case may be,—~~ 5
- (i) ~~a draft of the bylaw as proposed to be made or amended; or~~
- (ii) ~~a statement that the bylaw is to be revoked; or~~
- (iii) ~~a copy of the bylaw to be continued; and~~
- (b) ~~the reasons for the proposal; and~~
- (c) ~~a report of any relevant determination made by the territorial authority under **section 5B or 5D(2)(b)**.~~ 10
- (3) ~~Despite **subsection (1)(b)**, a territorial authority may, by resolution publicly notified made publicly available, make minor changes to, or correct errors in, a bylaw made under this section 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.~~ 15
- (a) ~~an existing right, interest, title, immunity, or duty of any person to whom the bylaw applies; or~~
- (b) ~~an existing status or capacity of any person to whom the bylaw applies.~~
- (4) ~~In **subsection (3)**, **publicly notified** means a notice given in accordance with the requirements of the definition of public notice in section 5(1) of the Local Government Act 2002.~~ 20
- (4) ~~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~~ 25
- (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.~~
- 5D Review of bylaws local Easter Sunday shop trading policy** 30
- (1) ~~A territorial authority—~~
- (a) ~~may review a bylaw made by it under **section 5A** at any time; and~~
- (b) ~~must review a bylaw made by it under **section 5A** no later than 5 years after the date on which the bylaw was made.~~
- (1) ~~This section applies if a territorial authority has adopted a local Easter Sunday shop trading policy under **section 5C**.~~ 35
- (1A) ~~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.~~

- (1B) **Subsection (1A)** 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.
- (2) A territorial authority that is reviewing a bylaw to which **subsection (1)** applies local Easter Sunday shop trading policy must use the special consultative procedure to decide whether to—
- (a) propose that the bylaw be either amended, revoked, replaced, or continued without amendment; and
 - (b) determine whether the proposal gives rise to any implications under the New Zealand Bill of Rights Act 1990; and
 - (e) consult on the proposal in accordance with **section 5C**.
- (a) amend the policy; or
 - (b) revoke the policy; or
 - (c) replace the policy; or
 - (d) continue the policy without amendment.
- (3) A ~~bylaw~~ local Easter Sunday shop trading policy that is not reviewed as required by ~~this section~~ **subsection (1A)** is, if not earlier revoked by the territorial authority concerned, revoked on the day that is 2 years after ~~the last date on which the bylaw should have been reviewed under this section~~ the date by which the policy is required to be reviewed under that subsection.
- 5E Application of Local Government Act 2002**
- (1) ~~To the extent that the Local Government Act 2002 applies to bylaws made under other enactments, that Act also applies to a bylaw made under this Act (including, without limitation, section 157 of the Local Government Act 2002, which relates to public notice of bylaws and the availability of copies).~~
- (2) **Subsection (1)** is subject to any provision to the contrary in this Act.
- 5E 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.

5F ~~Reporting requirements~~ Chief executive to be notified of local Easter Sunday shop trading policy

- (1) A territorial authority must, ~~report to the chief executive of the Ministry within 10 working days after the date on which the territorial authority makes adopts,~~ amends, or revokes a ~~bylaw under this Act.~~ local Easter Sunday shop trading policy,— 5
- (a) notify the chief executive of the decision to adopt, amend, or revoke the policy; and 10
- (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.
- (2) A report must,— 15
- (a) ~~if it is about making a bylaw,—~~
- (i) ~~specify the date on which the bylaw comes into force; and~~
- (ii) ~~include a copy of, or an electronic link to, the bylaw;~~
- (b) ~~if it is about amending a bylaw,—~~
- (i) ~~specify the bylaw being amended; and~~ 20
- (ii) ~~specify the date on which the amendments come into force; and~~
- (iii) ~~include a copy of, or an electronic link to, the bylaw;~~
- (e) ~~if it is about revoking a bylaw, specify the date on which the revocation is effective.~~

Subpart 2—~~Employee~~ Shop employee rights 25

5G 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 30

shop employee means an employee within the meaning of section 6 of the Employment Relations Act 2000 who works in or from a shop ~~that is permitted to open on Easter Sunday.~~

5H	<u>Provision requiring shop employee to work, or be available to work, on Easter Sunday unenforceable</u>	
	A provision in a shop employee's employment agreement <u>(including an availability provision as defined in section 67D of the Employment Relations Act 2000)</u> 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.	5
5I	<u>Shop employee's right to refuse to work on Easter Sunday</u>	
	A shop employee—	
	(a) may refuse to work on Easter Sunday; and	10
	(b) is not required to provide the employer with a reason for refusing to work on Easter Sunday.	
5J	<u>Employer's obligation to notify shop employee of right to refuse to work on Easter Sunday</u>	
(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.	15
(2)	A notice under subsection (1) must be—	
	(a) <u>be in writing; and</u>	
	(b) <u>be given at least 4 weeks before the relevant Easter Sunday; and,—</u>	20
	(i) <u>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</u>	
	(ii) <u>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</u>	25
	(c) <u>be delivered in person to the shop employee or be sent by email to the shop employee's current email address.—</u>	30
	(i) <u>delivered in person to the shop employee; or</u>	
	(ii) <u>sent by email to the shop employee; or</u>	
	(iii) <u>if a manner of giving notices is specified in the shop employee's employment agreement, given in the manner specified.</u>	
5JA	<u>Shop employee's obligation to notify employer of intention to refuse to work on Easter Sunday</u>	35
(1)	<u>A shop employee who intends to refuse to work on Easter Sunday must give notice to his or her employer of that intention.</u>	

- (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 5J**; and 5
 - (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 5J**; and 10
 - (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. 15

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. 20
- (2) ~~For the purposes of this section and **section 5L 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 25
 - (b) exerts undue influence on the shop employee with a view to ~~induce~~ 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 5J** of the shop employee’s right to refuse under **section 5I**. 30
- (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. 35

5L Personal grievance

- (1) ~~If an employer, or a representative of an employer, **compels** a shop employee to work on an Easter Sunday, that action must be treated as an unjustifiable action~~

- by the employer that affects the shop employee's employment to the shop employee's disadvantage for the purposes of section 103(1)(b) of the Employment Relations Act 2000.
- (2) **Subsection (3)** applies to a shop employee who claims that his or her employer, former employer, or a representative of that employer— 5
- (a) compelled the shop employee to work on an Easter Sunday; or
- (b) treated the shop employee adversely because he or she refused to work on an Easter Sunday.
- (3) A shop employee to whom this subsection applies,—
- (a) if the adverse treatment consists of or includes dismissal, may have a personal grievance for the purposes of section 103(1)(a) of the Employment Relations Act 2000, because of a claim of unjustifiable dismissal, and Part 9 of that Act applies accordingly: 10
- (b) if the adverse treatment consists of an action other than dismissal or includes an action in addition to dismissal, may have a personal grievance for the purposes of section 103(1)(b) of the Employment Relations Act 2000, because of a claim described in that paragraph, and Part 9 of that Act applies accordingly: 15
- (c) if compelled by his or her employer to work on an Easter Sunday, may have a personal grievance for the purposes of section 103(1)(b) of the Employment Relations Act 2000, because of a claim described in that paragraph, and Part 9 of that Act applies accordingly. 20
- 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**— 25
- (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. 30

16 New Part 3 heading inserted

Before section 6, insert:

Part 3 Miscellaneous matters

- 17 Section 7 amended (Consequential protection for certain workers)** 35
- (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. 5

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 an agreement that was entered into, or made before the commencement of the Shop Trading Hours Amendment Act **2015**, must not be interpreted as requiring a shop to which **section 4B** applies to open on Easter Sunday. 10
- (2D) **Subsection (2C)** does not apply to a shop that, before the commencement of the Shop Trading Hours Amendment Act **2015**, was entitled to open on Easter Sunday under section 4 or 4A.

Part 2 15

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 20

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

Schedule
New Schedule 1AA inserted

s 20

Schedule 1AA
Transitional, savings, and related provisions

5

s 2A

Part 1
Provisions relating to Shop Trading Hours Amendment Act 2015

1 Interpretation

In this Part, **2015 Act** means the Shop Trading Hours Amendment Act **2015**.

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2 Prosecutions initiated before the commencement of 2015 Act

The amendments made by the 2015 Act do not apply to prosecutions initiated under section 5 by a charge laid before the commencement of the 2015 Act.

Legislative history

22 October 2015
3 November 2015
12 May 2016
28 June 2016
17 August 2016

Introduction (Bill 81–1)
First reading and referral to Commerce Committee
Reported from Commerce Committee
Second reading
Committee of the whole House (Bill 81–2)