

Easter Sunday Shop Trading Amendment Bill

Member's Bill

As reported from the Commerce Committee

Commentary

Recommendation

The Commerce Committee has examined the Easter Sunday Shop 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 Shop Trading Hours Act Repeal (Easter 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. One Wanaka employer noted the peculiarity that his shop would have been exempt if its front entrance rather than its back entrance opened into the adjoining mall. 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.

This bill, if passed as amended, would remove the anomaly.

Bill as introduced

This bill as introduced provided for a partial exemption from the requirements under the Shop Trading Hours Act Repeal Act 1990 (the principal Act) to be closed on Good Friday and Easter Sunday for shops located in two visitor districts (Tauranga and Wanaka). This bill specified that the shops could open between 10.00 am and 5.00 pm on those days.

Title

We recommend that the title of the bill be amended to Shop Trading Hours Act Repeal (Good Friday and Easter Sunday) Amendment Bill. This reflects better the title of the principal Act and the intent of

the bill, which is to liberalise Easter trading on both Good Friday and Easter Sunday.

Nationwide exemption for shops

We recommend that shops located in the district of a territorial authority specified in new Schedule 2 be granted an exemption from the requirement in the principal Act to be closed on Good Friday and Easter Sunday. We recognise that it is beyond the scope of this bill to provide for a general nationwide exemption from the prohibition under the Act.

The option that we are recommending lists every territorial authority specified in Part 2 of Schedule 2 of the Local Government Act 2002 in a schedule to the bill. This mechanism would allow territorial authorities that do not wish shops in their district to open to be removed from the exemption, either by the committee of the whole House or by later amending legislation. We considered other options such as listing territorial authorities which had already expressed an interest in an exemption, and designating further “visitor districts” as proposed in the bill as introduced; but we considered that the opt-out mechanism based on territorial authorities specified in the Local Government Act 2002 would be easier to implement.

Effect on existing exemptions under principal Act

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

Trading days

The bill as introduced proposed liberalising shop trading between 10.00 am and 5.00 pm on Good Friday and on Easter Sunday. We recommend leaving the days unchanged, as they are central to the bill as introduced, but also that there be no restriction on the opening hours on these days.

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

Leaseholder protections

We recommend strengthening provisions in section 8 of the Act so that leaseholders are not compelled to open on Good Friday or 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 Shop Trading Hours Act Repeal (Easter 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 (Good Friday and Easter Sunday) Amendment Act 2006 to proceed as if the amendment had not been enacted.

We have recommended similar amendments to the Shop Trading Hours Act Repeal (Easter 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 area as a matter of priority.

Appendix

Committee process

The Easter Sunday Shop Trading Amendment Bill was referred to the committee on 17 May 2006. The closing date for submissions was 28 July 2006. We received and considered 73 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

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

Jacqui Dean

**(Easter Sunday) Shop Trading Hours Act
Repeal (Good Friday and Easter Sunday)
Amendment Bill**

Member's Bill

Contents

	Page
1 Title	2
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
6A New section 4B inserted	4
4B Certain shops may remain open on Good Friday and Easter Sunday	4
7 Consequential protection for certain workers	4
7A Further consequential protection for certain workers	5
7B New sections 7B and 7C inserted	5
7B Further consequential protection for other shop workers	5
7C Refusal by shop worker to work under section 7B	6
8 Effect of certain provisions in leases, etc	7
9 Prosecutions	7
10 New Schedule 2 added	7
<i>Transitional provision</i>	
11 Effect on existing exemptions	7
Schedule	
New Schedule 2 added	

The Parliament of New Zealand enacts as follows:

(Easter Sunday) Shop Trading Hours Act
Repeal (Good Friday and Easter Sunday)
Amendment

cl 1

- 1 Title**
This Act is the (Easter Sunday) Shop Trading Hours Act Repeal (Good Friday and Easter Sunday) Amendment Act 2006.
- 2 Commencement** 5
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. 10

**Part 1
Preliminary provision(s)**

Struck out (unanimous)

- 4 Purpose**
The purpose of this Act is to grant a partial exemption to shops in visitor districts from the requirement in the Shop Trading Hours Act Repeal Act 1990 to be closed on Good Friday and Easter Sunday. 15

New (unanimous)

- 4 Purpose**
The purpose of this Act is to exempt shops located in the district of a territorial authority listed in **Schedule 2** from the requirement in the Shop Trading Hours Act Repeal Act 1990 to remain closed on Good Friday and Easter Sunday. 20

**Part 2
Amendments to principal Act**

- 5 Interpretation** 25
Section 2 is amended by inserting the following definitions in their appropriate alphabetical order:

(Easter Sunday) Shop Trading Hours Act
Repeal (Good Friday and Easter Sunday)
Amendment

Part 2 cl 6

New (unanimous)

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

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

New (unanimous)

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

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

Struck out (unanimous)

“**mandatory opening provision** has the meaning given to it by section 8(3)

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“**visitor district** means any district listed in **Schedule 2**”.

Part 2

Amendments to principal Act

6 Certain shops may remain open

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Section 4(2) is amended by adding the following paragraph:

“(c) The shop is located in a visitor district listed in **Schedule 2**, and is open only between 10 am to 5 pm on both Good Friday and Easter Sunday.”

New (unanimous)

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

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

(Easter Sunday) Shop Trading Hours Act
Repeal (Good Friday and Easter Sunday)
Amendment

Part 2 cl 6A

New (unanimous)

6A New section 4B inserted

The following section is inserted after section 4A:

“4B Certain shops may remain open on Good Friday and Easter Sunday

Section 3(1) does not apply to a shop on Good Friday or Easter Sunday if the shop is located in the district of a territorial authority listed in **Schedule 2.**”

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Struck out (unanimous)

7 Consequential protection for certain shop workers

(1) Section 7 is amended by inserting the following subsections after subsection (6):

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“(6A) Protective provisions referred to in subsections (5)(b) and (6)(b) may be inserted into industrial documents covering shop workers employed in a visitor district only by agreement between parties.

“(6B) **Subsection (6A)** 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 in a visitor district that, before the commencement of this Act, was allowed to be open on Good Friday or Easter Sunday under the Shop Trading Hours Act Repeal Act 1990.”

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(2) Section 7 is amended by adding the following subsection:

“(10) For the purposes of this section, **employment agreement** has the meaning given to it by section 5 of the Employment Relations Act 2000.”

New (unanimous)

7 Consequential protection for certain workers

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(1) Section 7(1) is amended by omitting “the Schedule to this Act” wherever it appears and substituting “Schedule 1”.

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

New (unanimous)

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|---|----|
| (3) Section 7(7)(a)(ii) is amended by omitting “term shop ” and substituting “terms shop and shop worker ”. | |
| (4) Section 7(7)(a)(iii) is amended by omitting “ protected worker , and shop worker ” and substituting “ and protected worker ”. | 5 |
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| 7A Further consequential protection for certain workers | |
| (1) The heading to section 7A is amended by omitting “ certain ” and substituting “ garden centre ”. | |
| (2) Section 7A(3) is repealed. | |
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| 7B New sections 7B and 7C inserted | 10 |
| The following sections are inserted after section 7A: | |
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 | |
| “7B Further consequential protection for other shop workers | |
| “(1) This section— | |
| “(a) applies to a shop that is entitled to remain open on Good Friday and Easter Sunday under section 4B : | 15 |
| “(b) does not apply to a shop that, immediately before the commencement of the Shop Trading Hours Act Repeal (Good Friday and Easter Sunday) Amendment Act 2006 , was entitled to remain open on Good Friday or Easter Sunday under section 4 or 4A: | 20 |
| “(c) overrides an employment agreement or condition of employment (whether entered into, or agreed to, before, on, or after the commencement of the Shop Trading Hours Act Repeal (Good Friday and Easter Sunday) Amendment Act 2006) to the extent that the employment agreement or condition is inconsistent with this section. | 25 |
| “(2) On each occasion where it is intended to open a shop on Good Friday or Easter Sunday (or both), the employer of each shop worker must give the shop worker— | 30 |
| “(a) reasonable notice of that intention; and | |
| “(b) a reasonable opportunity to advise the employer whether he or she agrees to work on Good Friday or Easter Sunday (or both). | |

(Easter Sunday) Shop Trading Hours Act
Repeal (Good Friday and Easter Sunday)
Amendment

Part 2 cl 7B

New (unanimous)

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

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

“(1) This section applies if a shop worker refuses to work on Good Friday or Easter Sunday (or both) under **section 7B(3)**. 5

“(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 the shop worker’s employment for the purposes of section 103(1)(c) of that Act and the provisions of that Act apply accordingly. 10

“(3) If a shop worker refuses to work on Good Friday or Easter Sunday (or both), the employer may employ another person to work in place of the shop worker only on Good Friday or Easter Sunday (or both).” 15

Struck out (unanimous)

8 Effect of certain provisions in leases, etc

Section 8(2A) is amended by omitting “to which section 4A applies to open on Easter Sunday”, and substituting the following paragraphs: 20

“(a) to open on Easter Sunday, if the shop is a garden centre to which section 4A applies; or

“(b) to open on Good Friday and Easter Sunday during the period from 10am to 5pm unless agreed to by the parties to the employment agreement, if the shop is located in a visitor district.” 25

New (unanimous)

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|---|--|
| <p>8 Effect of certain provisions in leases, etc
Section 8 is amended by inserting the following subsections after subsection (2B):</p> <p>“(2C) A mandatory opening provision in a lease, licence, contract, covenant, or agreement entered into, or made before or after the commencement of the Shop Trading Hours Act Repeal (Good Friday and Easter Sunday) Amendment Act 2006 must not be interpreted as requiring a shop to open on Good Friday or Easter Sunday.</p> <p>“(2D) Subsection (2C) does not apply to a shop that, before the commencement of the Shop Trading Hours Act Repeal (Good Friday and Easter Sunday) Amendment Act 2006 was entitled to remain open on Good Friday or Easter Sunday under section 4 or 4A.”</p> <p>9 Prosecutions
Section 9 is amended by adding the following subsection:</p> <p>“(3) Every prosecution under section 5 initiated by an information laid before the commencement of the Shop Trading Hours Act Repeal (Good Friday and Easter Sunday) Amendment Act 2006 must proceed as if that Act had not been enacted.”</p> <p>10 New Schedule 2 added
The schedule set out in the schedule of this Act is added as Schedule 2.</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> |
| <i>Transitional provision</i> | |
| <p>11 Effect on existing exemptions
Section 4B overrides section 4 to the extent that section 4 authorises a shop to remain open on Good Friday or Easter Sunday (or both).</p> | <p>25</p> |

**(Easter Sunday) Shop Trading Hours Act
Repeal (Good Friday and Easter Sunday)
Amendment**

Schedule

s (5) 10

**Schedule
New Schedule 2 added**

(s 2) ss 2, 4B

**Schedule 2
(Visitor districts to which this Act applies) Territorial
authorities for the purposes of section 4B**

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(Wanaka district, meaning all that area comprised within a radius of 25 kilometres from the Post Shop situated at 39 Ardmore Street, Wanaka.)

(Tauranga District, meaning all that area comprised within 30 kilometres from the Chief Post office Tauranga.)

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Ashburton District Council

Auckland City Council

Banks Peninsula District Council

Buller District Council

Carterton District Council

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Central Hawke's Bay District Council

Central Otago District Council

Chatham Islands Council

Christchurch City Council

Clutha District Council

20

Dunedin City Council

Far North District Council

Franklin District Council

Gisborne District Council

Gore District Council

25

Grey District Council

Hamilton City Council

Hastings District Council

Hauraki District Council

Horowhenua District Council

30

Hurunui District Council

Hutt City Council

Invercargill City Council

Kaikoura District Council

Kaipara District Council

35

Kapiti Coast District Council

Schedule 2—*continued*

<u>Kawerau District Council</u>	
<u>Mackenzie District Council</u>	
<u>Manawatu District Council</u>	
<u>Manukau City Council</u>	
<u>Marlborough District Council</u>	5
<u>Masterton District Council</u>	
<u>Matamata-Piako District Council</u>	
<u>Napier City Council</u>	
<u>Nelson City Council</u>	
<u>New Plymouth District Council</u>	10
<u>North Shore City Council</u>	
<u>Opotiki District Council</u>	
<u>Otorohanga District Council</u>	
<u>Palmerston North City Council</u>	
<u>Papakura District Council</u>	15
<u>Porirua City Council</u>	
<u>Queenstown-Lakes District Council</u>	
<u>Rangitikei District Council</u>	
<u>Rodney District Council</u>	
<u>Rotorua District Council</u>	20
<u>Ruapehu District Council</u>	
<u>Selwyn District Council</u>	
<u>South Wairarapa District Council</u>	
<u>South Taranaki District Council</u>	
<u>South Waikato District Council</u>	25
<u>Southland District Council</u>	
<u>Stratford District Council</u>	
<u>Tararua District Council</u>	
<u>Tasman District Council</u>	
<u>Taupo District Council</u>	30
<u>Tauranga City Council</u>	
<u>Thames-Coromandel District Council</u>	
<u>Timaru District Council</u>	
<u>Upper Hutt City Council</u>	
<u>Waikato District Council</u>	35
<u>Waimakariri District Council</u>	

(Easter Sunday) Shop Trading Hours Act
Repeal (Good Friday and Easter Sunday)
Amendment

Schedule

Schedule 2—*continued*

<u>Waimate District Council</u>	
<u>Waipa District Council</u>	
<u>Wairoa District Council</u>	
<u>Waitakere City Council</u>	5
<u>Waitaki District Council</u>	
<u>Waitomo District Council</u>	
<u>Wanganui District Council</u>	
<u>Wellington City Council</u>	
<u>Western Bay of Plenty District Council</u>	10
<u>Westland District Council</u>	
<u>Whakatane District Council</u>	
<u>Whangarei District Council</u>	

Legislative history

4 May 2006	Introduction (Bill 42–1)
17 May 2006	First reading and referral to Commerce Committee
