

SHOP TRADING HOURS – PROPOSALS FOR A WAY FORWARD

Report of the Shop Trading Hours Working Group

June 2003

Peter Chemis, Chair
Cliff Daly, New Zealand Retailers Association
David Russell, Consumers Institute
David Stewart, Local Government NZ
Paul Watson, New Zealand Council of Trade Unions

June 2003

Hon Margaret Wilson
Minister of Labour
Parliament Buildings
Wellington

Dear Minister

I enclose for referral to the Commerce Select Committee, the Report of the Shop Trading Hours Working Group.

The group has considered material drawn from past legislative and policy attempts to resolve the situation, as well as from the experiences and resources of the members of the group itself. We did not undertake a formal submission process, as we considered that this would occur as part of the Select Committee process. We did, however, consider various points made to us and, through individual members, we consulted with interested parties.

This report outlines the background to the issues, our consideration of those issues, and our view of the most realistic way forward. In this, we have been particularly mindful of the requirements of our terms of reference to make consensus-based recommendations that:

- balance the interests of retailers, consumers, shop employees and the community for specific days of observance;
- are practical, flexible, and not administratively cumbersome; and
- do not impose any further restrictions on shop trading hours than currently apply.

Given the range of interests that we were required to address and the composition of the group itself, it is perhaps unsurprising that we have not been able to achieve unanimity on all aspects of our proposals. However, where differences exist, we have clearly identified those and put forward various choices.

Our report proposes two main options for consideration, should the Committee and Parliament favour changes to the status quo. In doing so, we acknowledge the position of the NZ Council of Trade Unions that any further liberalisation of shop trading hours is opposed on principle. However, although the NZCTU opposes any change to the status quo, if such moves proceed, then it considers they should be accompanied with strong employee protections.

On balance, we consider that our proposals will provide the Committee and Parliament with a good basis for arriving at a practical and generally acceptable solution to this issue. Miscellaneous amendments to clarify the application of some aspects of the current law are also proposed.

The working group functioned well, and each member has had a good opportunity to share and appreciate different perspectives. All members have worked hard to represent the interests of their respective sectors, but in an inclusive and solution-focussed way. The group would like to thank Michael Hobby from the Department of Labour's Employment Relations Service who provided invaluable support and assistance throughout the process.

I am available to meet with you should you wish to discuss the report.

Yours sincerely

Peter Chemis
Chair, Shop Trading Hours Working Group

Contents

Cover Letter	2
Contents	4
Executive Summary	5
Background	8
Role of the Working Group	11
Overview of Issues considered by the Group	12
Proposed Options for Change	16
Employee Protection Issues	20
Leaseholder Protections	26
Other Matters	27
Appendix 1: Terms of Reference	28
Appendix 2: Still Valid Area Exemptions	31
Appendix 3: Local Government Act – Special Consultative Procedure	32
Appendix 4: Protective Provisions	33

Executive Summary/Recommendations

Our report proposes two options for consideration, should the Committee and Parliament favour changes to the status quo. In doing so, we acknowledge the position of the NZ Council of Trade Unions (CTU) that any further liberalisation of shop trading hours, other than minor amendments to address current anomalies, is opposed on principle. However, if there is to be liberalisation, then the CTU considers there should be strong employee protections¹.

The two options proposed are founded on our assessment that Easter Sunday is the main focus for any change, and on the need to balance the social, community, commercial and employee interests involved. Both options include protection for affected employees and leaseholders.

Option 1. General Easter Sunday Trading Exemption

Under this option the Shop Trading Hours Act Repeal Act 1990 would be amended to remove Easter Sunday as a restricted trading day. The majority of the group prefers this option on the grounds of its simplicity and efficiency in dealing with most of the identified issues. It represents a reasonable trade-off that would address the majority of the identified demand for enhanced trading in a clear-cut but not excessive manner. Most of the current area exemptions are for Easter Sunday, so this measure would also act to alleviate most of the concerns about disparity between areas.

Option 2. Local Government Process for Easter Sunday Trading Exemptions

Should the Committee consider that a wholesale deregulation of Easter Sunday trading restrictions exemption is not desirable, our alternative is to amend the Shop Trading Hours Act Repeal Act 1990 to empower territorial local authorities to exempt shops in their areas from trading restrictions on Easter Sunday by way of by-law. This would be subject to the current special consultation requirements and decision-making framework provided for in the Local Government Act 2002. Exemptions could cover shops, groups of shops, or all shops in the local governance area. Enforcement would remain with central Government, as there would be no power to impose additional restrictions requiring local enforcement, only further exemptions. The CTU opposes any liberalisation of current arrangements, but should there be further liberalisation, prefers this option over a blanket Easter Sunday exemption.

Employee Protections

Should further liberalisation proceed, the CTU want strong employee protections. Other group members held contrary views, but conceded that a realistic degree of protection

¹ Essentially in the form of an absolute right to refuse to work on a newly unrestricted day plus mandatory compensation for working on that day. For details of the CTU position, see section 5 of this report.

was appropriate to allow employees to decide on the occasion of each holiday, whether they would agree to work.

It was agreed that both option 1 and 2 would be subject to employee protections which would operate as follows:

- employees in shops opening to trade on Easter Sunday would, on each occasion, have an absolute right to refuse to work on that day unless they expressly agreed otherwise;
- an employee's express agreement to work could not be specified in their employment agreement or be a condition of their employment;
- where employees chose to exercise their right not to work on Easter Sunday, then employers would be able to engage casual staff, on each such occasion, to work solely on that day²;
- the protection would apply only to shops opening as a result of the new exemption, and not to shops who may already open to trade on Easter Sunday;
- where employers wished to open to trade on Easter Sunday, they would be required to give employees reasonable notice of their intention to open so that they could determine employee availability for work on that day;

Compensation

No consensus was achieved on whether monetary compensation should also be provided to employees in shops newly permitted to open on Easter Sunday, and who agree to work on that day. The options here are:

either

- no additional compensation payable as of right for working on Easter Sunday, on the basis that if employees have a genuine choice whether to work, there is no case for mandatory additional compensation, particularly as Easter Sunday is not a public holiday

or

- employees choosing to work on Easter Sunday would receive a mandatory minimum payment in recognition of the special nature of Easter Sunday and the loss of a day on which they are not currently required to work. This would be in the form of either a double time payment plus a day in lieu for having worked that day or, a time and a half payment plus a day in lieu for having worked that day.

² The group was divided on whether employers should be required to inform all staff or only those rostered on that day before considering the use of casual labour.

Leaseholder Protections

Both Easter Sunday liberalisation options would also be subject to standard leaseholder protections:

- where retailers' leases provide for mandatory opening on available trading days, nothing in the lease could be read as requiring the retailer to open on Easter Sunday (unless the retailer is currently able to trade on Easter Sunday) for the duration of that lease/ until its renegotiation.

Other Matters

To resolve some current anomalies and update the application of the Act the group also recommends the following amendments:

- Section 4(1)(c) of the Act be amended to enable all shops in public passenger terminals to trade on any restricted day;
- Section 4(1)(e) of the Act be broadened in scope to allow retail trading on restricted days at cultural, sporting and/or other public entertainment events (e.g. concerts), as well as at shows, exhibitions devoted to agriculture, art, industry or science; and
- Section 5 of the Act be amended to increase the maximum fine for breaches of the Act from the current \$1000 to a more realistic level, for example in the order of \$5000.

1. Background

1.1 Development of Current Shop Trading Hours Regime

The current shop trading hours regime is set out under the *Shop Trading Hours Act Repeal Act 1990*. Businesses may open to trade on almost any day of the year at any time they choose. The exceptions are Christmas Day, Good Friday, Easter Sunday and until 1pm on ANZAC Day, when most shops cannot trade, although there are a number of specified exemptions. In other words, trading hours are unregulated for 361½ days a year.

The present situation is in marked contrast to that of the past. Until 1990, the *Shop Trading Hours Act 1977* restricted trading between 9pm – 7am, on Saturdays (until 1980), Sundays and public holidays.

That Act allowed some exemptions for trading outside these times. This depended on either the goods sold or points of sale. *Approved goods* - such as gardening supplies, food and drink, fuels, magazines and medicines could be sold at any time. A Shop Trading Hours Commission also issued specific exemptions to shops, groups of shops or areas to trade on restricted days³.

Following a review of this legislation in the late 1980s, the present Act was introduced in 1990, with the intention of removing all remaining restrictions on trading to reflect changed social patterns and provide retailers, the public and tourists with significantly greater business and consumer choices and opportunities.

However, the shift to total deregulation met with both public and parliamentary opposition, and the few remaining restricted days were included in the legislation after a conscience vote. The restrictions were a compromise solution, reflecting the weight of views of religious and other groups of the time that regarded those days as having special national, religious and/or social significance.

Parliament's decision to maintain some restricted days required the retention of some system of exemptions. Because restrictions on only 3½ days were retained, it was not seen as necessary to maintain all previous exemptions and associated procedures. Some exemptions were, however, seen as necessary, as a blanket restriction (even for only 3½ days) would be unreasonable.

Rather than having an exhaustive list of *exempt goods*, the general principle applied was to enable the operation of *classes of shop* whose main purpose was to provide for essential supplies, convenience items and food and drink. What constituted "convenience items" was interpreted in a narrow sense, with garden and hardware shops not included, although they had previously been partially covered by the approved goods exemptions.

³ The approved goods list was set by regulations made under the Act following consultation with the Shop Trading Hours Commission, which could also consult with the public. Shop exemptions were issued by the Commission following an application and investigation process. The Secretary of Labour could also issue exemptions to a pharmacy, a bookstall at a public passenger terminal, or an exhibition or show.

In terms of shop exemptions, only the existing tourist *area* exemptions were retained (but exemptions were made for duty-free and souvenir shops). In 2001, an amendment to the Act also allowed garden centres to trade on Easter Sunday (but not Good Friday).

As a result, the current situation is that the following types of shop may open on the remaining restricted days:

- Shops that sell food, drink, household and personal items and automotive fuels and goods, which people may reasonably need to be able to buy at any time, provided that the quantities for sale are no greater than sufficient for the demands of people in, or travelling through the area.
- Shops whose principal business is selling souvenirs, duty free goods, or prepared or cooked food ready to eat
- Shops at public transport terminals/stations selling books, magazines, newspapers, souvenirs, duty free goods or prepared or cooked food ready to eat
- Pharmacies
- Garden Centres (on Easter Sunday only)
- Shops in premises where there are bona fide agricultural, art, industry or science shows or exhibitions
- Shops in the towns and suburbs covered by area exemptions granted by the then *Shop Trading Hours Commission* under the Shop Trading Hours Act 1977 and left in place by the 1990 Act⁴

Over time, public and other opinion on these matters has been subject to change, and much of the current debate over shop trading hours has arisen from present-day social and commercial pressures on the restrictions and, in particular, on the operation of the associated exemptions (and consequent anomalies) created, or perpetuated, by the Act to deal with them.

The fewer but tighter exemptions that remain in place have given rise to ongoing dissatisfaction from some types of non-exempted retailers, and retailers in towns with tourist and holiday trade.

Retailers now sell much wider ranges of goods, and the boundaries between 'traditional' shop types have blurred, as the retailers have diversified their operations. This has had the effect of putting pressure on the 'type of shop' boundaries for exemption. Petrol stations, for example, now stock a range of general goods, food and magazines. Other retailers, such as garden centres, that were previously exempt from restrictions because of the specific goods sold, are no longer an exempted category of retailer, leading to pressure for a return of their 'right' to trade.

The other main source of dissatisfaction arises from the area exemptions preserved in 1990, which means that shops in some towns may trade on restricted days while shops in other similar (and often neighbouring) towns and cities may not. Besides the fact that a number of these area exemptions are arguably outdated, the dissatisfaction over

⁴ See Appendix 2 for a detailed list.

differential treatment has no outlet, as there is now no mechanism for further classes of goods or centres/areas to obtain exemptions.

1.2 Reform Attempts

As a result of these factors, various attempts to change the remaining shop trading restrictions have emerged since 1990. With one exception, however, all have lacked sufficient parliamentary support to effect any change to the current law. These attempts have included:

- i) The 1997 *Shop Trading Hours Repeal Act (Easter) Amendment Bill*, which proposed to enable unrestricted trading on Easter Sunday, a common focus for complaint under the present legislation. The Bill was referred to a Select Committee and reported back to the House, but then voted down.
- ii) The 1997 *Shop Trading Hours (Repeal of Restrictions) Bill* proposed total deregulation of shop trading hours, so that shops would be able to trade on any day of the year. The Bill failed to gather enough Parliamentary support to proceed to Select Committee.
- iii) In 2001, the *Shop Trading Hours Act Repeal Amendment Act* allowed garden centres to trade on Easter Sunday.
- iv) The *Shop Trading Hours (Abolition of Restrictions) Bill* was introduced to Parliament in 1999 but remains before the House. The Bill would remove most current restrictions so that shops could trade on any day of the year they wished except ANZAC Day before 1 pm. Given the broad scope of the Bill, in early 2002, supplementary order papers were added to amend it to allow MPs to vote separately on whether to allow unrestricted trading on Christmas Day, Good Friday, and Easter Sunday. After a free vote, Parliament agreed to amend the Bill to maintain all existing restrictions but then voted to refer the Bill to the Commerce Select Committee for further consideration, with a report back date of 22 July 2003.
- v) The *Rotorua District (Easter Sunday Shop Trading) Bill*, introduced in 2002, would have enabled shops in the Rotorua District to trade on Easter Sunday from 9am to 5pm. The Bill was referred to the Commerce Select Committee, and reported back, but failed to proceed further.

1.3 Current Situation

Continued dissatisfaction with the current regulation of shop trading hours in some retailer quarters, but a general political unwillingness to make significant change to it, has meant that the issue remains a source of contention. Significant changes since 1990 in the way retailers operate have also resulted in pressure for change to the current legislative boundaries.

However, while the anomalies and inconsistencies created by the present legislation fuel demands for change, some shop trading restrictions are still desired by many people on either social or religious grounds.

There appears to be no significant demand for wholesale deregulation of the present arrangements, but the operation of the current exemptions – in particular that of the ‘frozen’ local area exemption remains a sore point, particularly in relation to the Easter period. This period brings with it the spectacle of defiant retailers such as garden centres and those from non-exempted localities such as Tauranga and Rotorua asserting their ‘right to trade’ in the face of government agency attempts to enforce the legal boundaries to such trading. The outcome satisfies nobody.

2. Role of the Working Group

It is this quandary that the working group has been established to consider. The group was convened by the Minister of Labour to advise the Commerce Select Committee on options to change the current legislation that will achieve the best balance between:

- the societal preference to have certain days of significance and observance;
- the interests of some retailers to be open on currently restricted days;
- the interests of consumers to be able to purchase goods on currently restricted days;
- tourist demand in particular areas/locations; and
- the interests of employees who may be affected by their employer opening to trade on a currently restricted day⁵.

Given the partial and sometimes controversial nature of previous attempts to address this issue, our task has been to propose practical, realistic and consensus-based options that will, insofar as such a thing is possible, ‘put the matter to bed’.

In order to do so, we have considered material drawn from past legislative and policy attempts to resolve the situation, as well as from the experiences and resources of group members themselves. Our perspectives include those of employees, retailers, consumers and local government. Given the range of interests that require addressing and the composition of the group itself, we have not been able to achieve unanimity on all aspects of our proposals. Where points of difference over specific issues have arisen, we have identified them. Overall, however, we have taken a consensus-based approach to the issues before us, to make recommendations that:

- balance the interests of retailers, consumers, shop employees and the community for specific days of observance;
- are practical, flexible, and not administratively cumbersome; and
- do not impose any further restrictions on shop trading hours than currently apply.

⁵ A copy of the working group’s Terms of Reference is attached at Appendix 1 to this report

3. Overview of Issues considered by the Group

As noted previously, the current debate over shop trading hours has arisen from present-day social and commercial pressures on the restrictions and, in particular, on the operation of the associated exemptions created by the Act to deal with them.

3.1 Interests

In this debate, it is easy to focus on those voices raised most loudly whilst losing sight of how representative of mainstream opinion they might be. In our consideration of these issues we have been very conscious of the fact that in the last 13 years, Parliament has supported only one, limited form of exemption from the current restrictions on shop trading and this cannot be attributed solely to party politics. The most recent opportunity for Parliament to vote on this matter saw little overt support for a major change to the current restrictions, although it demonstrated the tensions of maintaining some of them – particularly in terms of the perceived needs of specific areas.

The views of the group mirror the differing perspectives on this issue and the tensions that often result.

The CTU, representing the interests of affected employees does not see a particularly significant or justifiable social or commercial demand for change. In its view, there are already significant opportunities for retail trade on 361½ days a year and any proposals for change need to be seen in this context – there are some anomalies at present, but these are inevitable and a small price to pay. There are social as well as commercial imperatives that should be considered – in particular any further erosion of retail employees' ability to enjoy some respite from work. Accordingly, the CTU opposes further liberalisation, although it supports miscellaneous amendments to resolve some currently anomalies. Should, however, any moves to liberalise the current arrangements proceed, the CTU considers that they would need to be accompanied by strong employee protections.

The NZ Retailers' Association notes that there is no overall consensus amongst members regarding further deregulation – this being a function of the size, location and type of business of specific members. There is, however, a recognised need to deal with the current anomalies in terms of the types of shop allowed to trade and the area/locality exemptions in a way that will provide a relatively settled solution, provided this is achieved at a realistic cost.

The Consumer perspective appears to be that consumers will take up any reasonable opportunity afforded them to shop. Beyond that, however, consumers are also employers, and/or employees, homemakers, students, those retired from the workforce or not currently in employment, and those in varying family, social and cultural situations and of different religious or ethical belief. As such, their perspectives will vary.

The Local Government perspective sees the demand issues for change arising in some localities, particularly those who feel disadvantaged by the area exemptions frozen in 1990. Again, however, the demand for change is a function of the specific communities within each Authority, which may be informed by a variety of perspectives.

Notwithstanding the diverse views of the group, we have, however, for the Committee's consideration, attempted to develop proposals for targeted change, underpinned by suitable protections. In assessing the relevant factors in this, we have focused on the following key questions:

- where is the demand for change coming from and where is it focused (days, types of shop, areas)?
- what is the scope for change in terms of the restrictions/exemptions in a way that would best balance the various interests involved/redress current anomalies and inconsistencies
- In the event of further liberalisation of current arrangements, what if any protections might be appropriate for affected employees/retailers?

3.2 Days

Christmas Day is of general national (and religious) importance to the majority of New Zealanders and continued restrictions on shop trading hours on that day appear to have wide support with little or no reported demand for trading on that day. ANZAC day is also widely regarded as important by the majority of New Zealanders and there is general compliance amongst retailers with the present ANZAC day morning shop trading restrictions.

Easter shop trading restrictions on Good Friday and Sunday are supported by a number of people because of those days' religious significance as well as the social aspects of the consequent 'long weekend'⁶. However, there is considerable agitation amongst sectors of the retail trade against two of the four days over Easter weekend being restricted for trading purposes. The weekend has long been the focus of attempts to amend the current Act, and of retailers' challenges to the current restrictions. These have arisen particularly from garden centres and hardware stores, given their ability to trade over this period prior to the 1990 Act, and from supermarkets. There is also pressure from some "tourist" areas to allow trading over the weekend given reported demand for access to shops from the travelling public. The 'on-again/off again' nature of the restrictions over this period (Friday restricted, Saturday unrestricted, Sunday restricted, Monday unrestricted) is also a factor.

The group makes no claims for theological expertise, however of the two currently restricted days, we consider that, overall, Easter Sunday is the day with the greatest potential for change. Notwithstanding the interests of particular store types and areas, the demand by retailers relates predominantly to Easter Sunday, and it appears to attract more

⁶ There is no direct relationship between shop trading hours restrictions and statutory holidays. While both relate to days of national importance, only 2½ of the 3½ restricted days are included amongst the 11 statutory holidays. Good Friday and Easter Monday are statutory holidays, but Easter Sunday is not.

demand for trading than Good Friday, possibly because of its placement near the end of the Easter holiday weekend. Unlike the other restricted days, it is not a public holiday (although this raises separate issues), and is also the day to which most of the current area exemptions relate.

Accordingly, we see the most practical and appropriate focus for any change being options surrounding Easter Sunday. However, we also acknowledge views within the group that logically, there is little to distinguish between Easter Sunday and Good Friday other than the factors we have noted above. Some of the group believe that in future, further consideration will need to be given to Good Friday.

3.3 Areas

We have also considered the current area exemptions. As noted above, the majority of these relate to Easter Sunday although we note the strong concern expressed by some smaller communities that the special characteristics of their areas and tourist pressure over the Easter weekend justify an exemption for them to trade on Good Friday as well.

We agree that the basis upon which the original area exemptions were set has become outmoded. We have considered the feasibility of allowing specific areas exemptions based upon 'tourist demand' or other special character or event-based criteria, however all such approaches have practical difficulties and risk simply creating further anomalies. We were therefore unable to reach a consensus approach on this point. Instead, we concluded that the best way to deal with these issues is to focus on the days where demand for change is estimated to be greatest and treat area-based issues as part of a broader approach. As noted above, we see Easter Sunday as the practical focus. We do not consider that change on Good Friday is likely to gain widespread support.

3.4 Basis for exemptions

Finally, we have examined the basis for the exemptions under the 1977 and 1990 Acts (exemptions for specific goods sold, groups of shops vs. shops selling categories of goods).

The issue of exemptions is complex. At issue are the criteria to be employed in granting them. Given the dramatic reduction in the scope of trading restrictions brought about by the 1990 reforms, the current exemptions replaced a highly detailed 'allowed goods' basis for exemption with a more generic 'allowed type of shop' exemption, largely based around need and convenience concerns.

Some inconsistencies are unavoidable, and any boundaries set will, to some extent, be arbitrary and incapable of exact definition.

However, it appears that the courts have applied the broad criteria in the Act allowing the sale of personal and convenience goods in a way that has generally accommodated the

diversification of goods sold in dairies, petrol stations and other convenience stores⁷. It was acknowledged in 1990 that the imposition of even limited restrictions would invite criticism because of inconsistency with the purpose of the reforms generally. Operationally, any restrictions on shop trading hours create difficulties in determining what exemptions might be permitted.

We consider it unlikely that any marked improvements could be made by significantly amending the current basis for restrictions or exemptions, as these would invariably raise different, but equally complicated issues over time. Approved goods, the chief vehicle for exemption under the previous legislation, created numerous interpretation disputes, as well as requiring an ongoing mechanism of amendment. Similar issues arise with area-based exemptions. Exemptions by category or class of good require some lucid definition of class, which is difficult for shops selling a wide range of goods⁸. Proposals to exempt some additional types of retailers - say, hardware stores - might satisfy some retailers, but be seen as unfair to others – e.g. supermarkets. And, after a point, the broader the range of allowable exemptions, the less point of the original restrictions.

On balance therefore, we see the simplest and least fraught approach as being to narrow the scope of restrictions through focusing on specific days as a basis for further exemption.

That said, we do see some benefit in minor amendments to some of the current exemptions to better reflect developments since 1990:

- *Section 4(1)(c) of the Act exempts from restriction, shops in public passenger terminals whose main business is selling books, magazines or newspapers, souvenirs or duty free goods, or prepared or cooked food. In addition, the other exemptions of the Act in respect of the sale of fuel, auto parts, personal items, drink etc also apply. If the rationale is to allow travellers to purchase necessity or convenience goods en route to their destinations, there is probably a case for a general exemption for all stores in these places. The group considers that there would be little risk of any undesirable consequences of such an extension. It would be highly unlikely that such an exemption would attract significant increases in retailers in these locations as people do not travel to terminals to shop, their primary purpose being to travel or meet or farewell other travellers.*
- *Section 4(1)(e) exempts shops in premises where there are bona fide shows, exhibitions devoted to agriculture, art, industry or science. We consider that there is a good case to recognise developments in this area by broadening this exemption to include cultural, sporting and/or other public entertainment events (e.g. concerts).*

⁷ Two cases that have interpreted the application of the section 4(1)(a) exemption are *Department of Labour v Cavanagh* [1996] DCR 657 and *Woolworths (New Zealand) Ltd v Attorney-General* [2001] 3 NZLR 123.

⁸ As noted above, the continued diversification of retail outlets – for example the inclusion of convenience stores and food outlets in petrol stations and the inclusion of garden centres in hardware stores and department stores - has created additional pressures on the legislation.

4. Proposed Options for Change

Since 1990, the status quo has attracted criticism and been modified as a result (the garden centre exemption in 2001), although this has failed to satisfy the different interests involved – particularly local interests and garden centres and hardware stores that still believe they should have retained the right to trade on both Good Friday and Easter Sunday.

On the other hand, Parliament has recently rejected the proposition of total deregulation. That said, Parliament has also referred the matter back to the Committee for further consideration, and the group has been established to advise the Committee independently.

Our consideration of the various issues involved has led us to propose two main options for change. Neither will please everyone – they will be criticised for either going too far or not far enough. Nor do they address all current ‘anomalies’ arising from the present legislation, although we doubt this is possible.

We do, however, consider the options to be a practical and reasonable response, given our assessment of the demand for change and the need to balance the social, community, commercial and employee interests involved. The two options are to either:

- amend the Shop Trading Hours Act Repeal Act 1990 to remove Easter Sunday as a restricted trading day; or
- amend the Shop Trading Hours Act Repeal Act 1990 to empower territorial local authorities to exempt shops in their areas from trading restrictions on Easter Sunday

Neither option is novel and each is founded on our assessment that Easter Sunday is the most practical and appropriate focus for any change.

Both options would need to be underpinned by suitable protections for affected employees and retailer leaseholders. These are detailed in sections 5 and 6 of this report.

Option 1. General Easter Sunday Trading Exemption

This option would simply remove Easter Sunday from the current list of restricted trading days. As such, it mirrors the approach taken in the 1997 *Shop Trading Hours Repeal Act (Easter) Amendment Bill*.

We prefer this option on the grounds of its simplicity and efficiency in dealing with most of the identified issues. It would address the majority of the identified demand for enhanced trading in a clear-cut but not excessive manner. Most of the current area exemptions are for Easter Sunday, so this measure would also act to alleviate most of the concerns about disparity between areas.

With one day of the current 3½ restricted days removed a clear line could be drawn under the remaining 2½ days, although we acknowledge that there would remain some calls for further liberalisation. However, short of total deregulation, there will always be such calls.

We consider that the liberalisation of Easter Sunday trading represents a reasonable trade-off, particularly if done in concert with the employee and retailer leaseholder protections proposed in sections 5 & 6 of this report.

Option 2. Local Government Process for Easter Sunday Trading Exemptions

Should the Committee consider that a wholesale deregulation of Easter Sunday trading restrictions exemption is not a desirable option, our alternative option is to amend the legislation to empower territorial local authorities to exempt shops in their areas from trading restrictions on Easter Sunday.

We consider that there is a strong case for enabling local bodies to make such exemptions on the grounds that:

- the demand for change to the current arrangements is essentially locally derived , so the solution should also be decided at the local level;
- this option would provide flexibility in addressing local issues and circumstances, but would limit the effects to within local boundaries;
- it achieves a good fit with the role, responsibility and powers of local government set out in the Local Government Act 2002⁹.

In arriving at this option, we have also considered the pros and cons of a central vs. local approach to deciding shop trading exemptions.

It might be argued that a local exemption process would have the effect of creating different exemptions across the country and uncertainty around which towns and cities have exemptions. Retailers who own branches nation-wide could find this approach difficult, as different rules would apply to different localities. Having a central body issuing exemptions might therefore be seen as desirable in terms of ensuing greater consistency.

We do not, however, consider these to be compelling reasons for central decision-making. Even a central exemption-making process could give rise to variations at the

⁹ Under sections 10-11 of the Local Government Act 2002 the purpose and role of local government is to promote the social, economic, environmental, and cultural well-being of communities, and enable democratic local decision-making and action. Under section 12 of the Act, local authorities have full capacity to carry on or undertake any activity or business, do any act, or enter into any transaction (subject to any enactment and the general law) to carry out their role.

local level, as was the case under the 1977 legislation. The advantage of allowing Local Authorities to make decisions on exemptions is that a body would make such decisions with a better knowledge and understanding of the community, and would be accountable for those decisions. Variations that arise from locally made decisions should therefore not be seen as inconsistencies so much as a reflection of local circumstances and interests. The basic elements of our proposal are as follows:

To amend the Shop Trading Hours Act Repeal Act to enable territorial local authorities to issue trading exemptions for Easter Sunday only

Local authorities could propose/make exemptions under the Local Government Act 2002. The Act provides the generic framework for local government decision-making and both general and specific requirements for public consultation in the exercise of the powers of local government¹⁰.

Specifically, section 145 of the Act already provides for a general bylaw-making power for local authorities to:

- protect the public from nuisance;
- protect, promote, and maintain public health and safety;
- minimise the potential for offensive behaviour in public places;

while section 147 allows bylaws to be made for specific liquor control purposes.

A statutory amendment could therefore also provide for the power to make bylaws exempting trading on Easter Sunday. Under the Act, the making of by laws is subject to the special consultative procedures of section 83 of the Act (attached Appendix 3) which requires, amongst other things,

- the preparation of a statement of proposal and relevant information which must be made available for public inspection so that all ratepayers and residents have reasonable access to that statement;
- advance public notice of the proposal and the consultation being undertaken, including how interested parties can obtain information about the proposal and, inspect it
- that people who make submissions on the proposal have reasonable opportunity to be heard by the local authority and that written submissions are generally available to the public, while meetings on submissions and decisions about the proposal are also generally open to the public;

This would provide a give good opportunity for all relevant views to be heard and interests considered. The Act also provides strong requirements for local authority decision-making generally to be inclusive and responsive to the views and needs of

¹⁰ For example, section 78(1) of the Act requires that “local authority must, in the course of its decision-making process in relation to a matter, give consideration to the views and preferences of persons likely to be affected by, or to have an interest in, the matter.” While section 82 of the Act outlines the principles for such consultation generally.

the community. We see the Act as providing a good framework within which local decisions could be made about whether to liberalise Easter Sunday trading.

We do not see specific criteria being necessary for local authorities to use, given their current decision-making framework. A bylaw could, for example, arise from either a council-identified need or a specific application. The process of consultation would enable the scope of application and other factors to be tested and determined. However, if the Committee thinks it useful, specific criteria could be set to guide a local authority in making any such bylaws/policies e.g. requiring a specific assessment of :

- the impact of the existing restrictions and the nature of public demand for change;
- the impact of making an exemption on the business/employees involved;
- the public interest in making or not making an exemption.

Bylaws made under the Act must also be reviewed within 5 years of having first been made. This would give a minimum requirement for the review of any decisions made, although it would not prevent the bylaws being amended.

Easter Sunday trading exemptions could cover shops, groups of shops, or all shops in the local governance area

The power to issue exemptions would not encompass the power to restrict any current trading activities on Easter Sunday or on any other day.

We are proposing the power to make additional exemptions, rather than to impose any new form of commercial regulation by way of restriction.

Enforcement would remain with central Government

Our logic for this proposition is that local authorities would be making additional *exemptions* rather than making restrictions requiring enforcement. Accordingly, enforcement of the restrictions remains unchanged – it is only the scope of these that may change. If, however, there was change the local authorities would be required to keep the Department of Labour informed about any new exemptions made (a statutory requirement for such information to be given to the Department could form part of any amendments to the Act).

Standard employee/leaseholder protections would apply on a national basis

The power to make exemptions from the Easter Sunday restrictions would not extend to determining other matters, such as the rights of employees not to have to work on that day or of leaseholders to trade or not trade. These are best set centrally. Our views on the appropriate protections are contained in sections 5 & 6 of this report.

Existing Easter Sunday Area Exemptions

Existing Easter Sunday area exemptions could either remain in place or be required to be renewed or otherwise dealt with by the local authority concerned. The group had different views on this issue. Some members favour a 'clean break', with such exemptions lapsing within say a 2 year period. This would provide an incentive and allow sufficient time for representations to be made to either retain or extend the exemptions in those areas. Other members of the group, however, noted that such a provision is unnecessary and could give rise to perverse effects. Should a local body decide to take no action on exemptions within its area, then any provision for existing area exemptions to lapse would be a de facto restriction on trading. Because of these reasons, any such proposal would be outside the group's terms of reference.

5. Employee Protection Issues

Any amendment to the current restrictions also involves issues of employee protection and the status of leases held by retailers that may require them to trade on available trading days. These are dealt with in turn below.

5.1 Background

The Shop Trading Hours Act Repeal Act 1990 enabled trading on more days than were allowed under the previous legislation (e.g. Sundays, public holidays). Because of this, the Act protected shop employees from being made to work on days where the shop was previously required to close. Section 7 of the Act, and a schedule to the Act¹¹ applied specific protective provisions to every employment agreement applying to shop workers at the time which:

- protected existing shop workers from being forced to work on the newly unrestricted days;
- prohibited duress or discrimination, or changes to their terms and conditions of employment, if they refused to change their hours or days of work;
- gave them first choice of any extended hours or days of work;
- allowed them to change their mind about their hours or days of work;
- required employers to ensure safe workplaces for employees now working at night; and
- required employers to provide transport for the worker if no public transport was available on holidays or late at night.

The Act deemed the protective provisions of the Schedule to be inserted into every employment agreement applying to shop workers at the time, subject to future amendment or repeal as a result of subsequent agreement negotiations.

It is not known whether any retail employees are still covered by the original deemed provisions, however it is likely that negotiations for employment agreements since 1990

¹¹ attached at Appendix 4

have removed them. They do not appear in any current collective agreements held by the Department of Labour.

In 2001, when the Act was amended to allow garden centres to trade on Easter Sunday, a further but less prescriptive protective provision was included so that garden centre employees' employment agreements could not be interpreted as requiring them to work on Easter Sunday unless the parties to the agreement so agreed.

5.2 Level of Protection Required

Either of the two options proposed by the group for change to the present restrictions will affect retail employees to the extent that some will find themselves in a situation where their employer chooses to open on what would have previously been a day when they were not required to be available for work. As noted before, Easter Sunday is not a public holiday, so the current provisions for receipt of a day in lieu plus any negotiated premium for working on the holiday would not apply. Nor would the proposed amendments to the Holidays Act currently before Parliament (time and a half payment for work on a public holiday).

The issue is the degree of protection that ought to be available for affected employees.

The group has considered this issue in some depth. There are concerns that there is a need for a 'real' protection so that employees are not forced or coerced into working on a new trading day, but differing views on the scope and elements of that protection.

The fundamental position of the CTU on the importance of adequate protection was recognised, as was the requirement that retailers had certainty that they could access staff with the skill and knowledge to serve their customers on all days that they are permitted by law to open.

The group discussed in detail:

- the principle of choice;
- provisions which embed that principle and prevent it being undermined; and
- whether financial compensation was appropriate as an element of protection and dis/incentive factor in the exercise of choice.

While the group is in some agreement over the first two matters, there is no consensus on the third.

5.3 Nature of protection

The group agreed that the essential element of effective employee protection is the establishment of a general right for affected employees to be able to refuse to work on a newly unrestricted trading day.

The critical factor in this is the degree to which any agreement to work must be given on each such occasion, or whether it can be in the form of a future commitment to work, for example in the form of an employment agreement between the employer and employee.

The CTU notes that unless the right to refuse is absolute and ongoing, employees may be pressured to trade off the right, and advance agreement to work may simply be presented to new employees as a condition of their employment. The CTU also notes that Easter Sunday is not a public holiday so will not give rise to any compensation for working on that day as required by the Holidays Act.

Accordingly, the CTU consider that, should Easter Sunday be allowed as a trading day, the following protections should apply to affected employees:

- an absolute individual right to refuse to work achieved through a general prohibition on employment agreements requiring affected retail employees to work on Easter Sunday as a condition of their employment; and
- a minimum statutory rate of compensation for retail employees who choose to work on Easter Sunday

The group is generally agreed that, given the scope of the options for exemption proposed, any associated protection needs to be an effective one.

Some group members consider that the current protections are adequate, and that the parties should be able to agree in employment agreements to work on specific days in the same manner provided for by the 2001 Amendment in relation to garden centres trading on Easter Sunday. However, to achieve consensus, the group agreed that, to be effective, the protection needs to be in the form of an absolute, renewable right. It also needs to apply to the pre-employment situation to prevent it being undermined. The recommended position is therefore that:

- employees in shops opening to trade on Easter Sunday would, on each occasion, have an absolute right to refuse to work on that day unless they expressly agreed otherwise; and
- an employee's agreement to work should not be able to be specified in their employment agreement or be a condition of their employment.

We acknowledge that this is a stronger protection than that which currently applies and that some anomalies arise. The implications of this are explored below.

5.4 Issues arising

Would the protection apply to all current arrangements or just those arising from further liberalisation?

The protection could apply to:

- all employees, whether or not the shop they work in was entitled to open prior to any new exemption taking effect; or
- only those employees who work in shops which were not entitled to open prior to the new exemption

Either approach will cause some anomalies. Retrospectively applying an absolute right of refusal on every occasion could have far-reaching consequences for existing arrangements, particularly if a compensation element formed part of the protection (see below). However, where the protection only applied to new exemptions and did not override existing agreements, there would be a smaller effect, although inconsistencies may be introduced between retail employees who already work those days and other employees who typically work on currently restricted days¹².

On balance, the group considers that any protection should not impose undue costs on existing arrangements already agreed between employers and employees. While there may be some inconsistencies of treatment, we recommend that any new protections should apply only to the situation created by a new exemption, and not to existing exemptions.

Should employers be able to engage others to work on the days that existing staff do not agree to work on?

The basic protection would prevent a requirement to work being a term or condition of employment, thus covering new employees. However, this would also have the effect of prohibiting an employer from engaging staff specifically to work on the day, as this would be the purpose - and therefore a term and condition - of their employment.

Accordingly, should an absolute right to refuse work by employees be supported by the Committee, the group recommends that provision be made so that where employees choose to exercise their right not to work on Easter Sunday, employers are able to engage casual staff, on each such occasion, to work solely on that day¹³.

It is the group's consensus view that employers who seek to trade on Easter Sunday should not employ casual staff before first offering work to existing staff. However, we record a difference of view as to the potential application of this provision. The CTU considers that an employer should be required to offer the opportunity to work to all staff employed by that employer before considering the use of casual employees. Other group

¹² Although any specific protection will always give rise to an anomaly in regard to the situation of non-retail employees

¹³ The CTU are also of the view that any compensation element that might form part of a protection package (see below) should also apply to such workers. Other members of the group, however, see no particular reason to specify a mandatory minimum additional pay rate for casuals employed specifically for one day after existing employees have exercised their right not to work on that day.

members consider that the offer should only need to be made in the first instance to staff who would otherwise be rostered to work on that day (i.e. a Sunday).

Notice periods

Employers and employees will need to work out arrangements for determining who is available to work. The options here are to allow these administrative arrangements to be determined by the parties, or give some statutory guidance. In the latter case, this could be either in the form of a simple “reasonable notice” requirement or a specified term (e.g. 4 weeks as was the case in 1990). A set term could avoid dispute over whether a sufficient opportunity had been given to advise of an employee’s availability to work.

However, this might not accord with the working situation of a number of businesses where such matters might be more satisfactorily dealt with informally. As a whole, the group considers there would be some utility in any legislation containing a provision requiring reasonable notice to be given. However, we are not of a firm view as to whether this should be further specified. In the circumstances we consider this a matter best left to the Committee and its legislative drafters.

Anti-discrimination provisions

The protective provisions enacted in 1990 forbade undue influence or discrimination against employees not wishing to work on a formerly protected day or night. An issue that arises is whether there is a need for a similar provision to reinforce any new right of choice/right to refuse to work on Easter Sunday (or any other unrestricted day). There may be advantages in terms of clarity in specifying that no undue influence may be applied to an employee to obtain their agreement to work, or discrimination used against them if they exercise that right. On the other hand, employees are generally protected against unjustifiable actions by their employers under the personal grievance provisions of the Employment Relations Act¹⁴. In practice, therefore, it is likely that any action by an employer to force an employee to work on a day, or discriminate against any employee who refuses to work, would be able to be challenged under present legislation whether or not a specific provision was made. Some members of the group were therefore of the view that no specific provision is required, whilst others considered that this is a matter best left to the Committee and its legislative drafters.

Compensation as an element of protection

This is the main area on which the group found itself divided and unable to recommend a consensus option.

¹⁴ Section 103(1)(b) of the Employment Relations Act defines a personal grievance as including the situation whether the employee’s employment or any condition of employment is affected to the employee’s disadvantage by some unjustifiable action by the employer.

CTU views

As noted above, the CTU sees mandatory compensation as an integral element of any employee protections. Its rationale is the special commemorative status of Easter Sunday and the *quid pro quo* for an employee working on that day, even by agreement, should it become unrestricted. This is seen as no different than any other form of penal rate and as means of balancing the employer's commercial incentives for opening with the adverse effects on the employee in terms of lost social or recreational opportunities.

Compensation is considered justified because:

- work on Easter Sunday will significantly detract from the ability of retail workers to enjoy a consecutive 4 day holiday period (if they are not working on either Easter Saturday or Monday) and potentially mean only one days holiday (if they do work those days as well);
- if Sunday is a normal day of work for the retail workers concerned, then Easter Sunday represents the only guaranteed Sunday off each year;
- the social, religious and community significance of Easter Sunday means it is equivalent to a de facto public holiday status; and
- it has been custom and practice over many years for employees who regularly work on Sundays to be paid their ordinary Sunday pay (and have the day off) for Easter Sunday. If Easter Sunday is opened up for shop trading, an employee who normally works on a Sunday will therefore lose a day's pay if they choose to not work on Easter Sunday. However, where an employee *does* choose to work on that day, it can be argued that any statutory premium should be at a higher than ordinary rate of pay. The rationale is the special nature of Easter Sunday (as noted above) and to offset the disadvantage to the employee in terms of the lost family, social and leisure time that would otherwise be able to be enjoyed over the Easter weekend.

Given these factors, the CTU considers that a mandatory payment of:

- either a double time or a time and a half rate
- plus a paid day in lieu

would be an appropriate level of compensation¹⁵.

¹⁵ A rate of time and a half would be consistent with the proposed new minimum hourly rates for working on a public holiday in the Holidays Amendment Bill, although Easter Sunday is not itself a public holiday. For retail workers, however, the CTU considers that the effect of opening up Easter Sunday to trading would be much the same, so the same – or greater – rate is justifiable. A double time rate is seen as justified by the cumulative effect of potentially losing the opportunity to take either a 4 or 2 day break over Easter (depending if the Saturday and Monday are worked)

Other Group Views

Some group members were sympathetic to these views, and the matter was evenly balanced. However, most of the group recognises that paying compensation is largely at odds with the idea of providing employees with a realistic and genuine choice to continue with the status quo (i.e. to not work) on Easter Sunday. If the other protections noted in section 5 above are put in place, the case for mandatory compensation is a difficult one to argue. Arguments against a requirement to pay compensation are as follows:

- the potential for any specified compensation requirement to undermine the objective of choice in determining whether or not employees agree to work on Easter Sunday
- Easter Sunday is not a public holiday. Easter *Monday* was granted as a public holiday in lieu of Easter Sunday at a time when public holidays were routinely ‘mondaysed’. Retail employees who might work on that day can already gain a compensatory paid day off in lieu, as well as any negotiated monetary compensation, for working over Easter. Should the Holidays Bill be enacted in its present form, such employees will be eligible for a statutory time and a half payment.
- there is no reason to impose a penal rate for work on Easter Sunday and it would be unfair to impose additional costs on employers lawfully able to open to trade on a day that is not a public holiday. The level of compensation payable for working on that day should be solely a matter of negotiation between the employer and union/employees concerned.
- Easter Sunday is a scheduled working day for many New Zealanders, including retail employees working in exempted shops or areas. No statutory penal rate applies to their work. It would be unfair to those employees as well as the employers required to pay, to provide for a mandatory level of compensation for some employees in one industry working on Easter Sunday.

6. Leaseholder Protections

Section 8 of the 1990 legislation also provided retailers with transitional protection against blanket mandatory opening hours clauses in their leases. They were not obliged to trade on the newly unrestricted days until the current leases had expired and been renegotiated.

Previous attempts to amend or repeal the current Act have included similar protective provisions, so that shop owners are not forced to open at times they had not already specifically agreed to in leases made prior to any decision to vary the restricted days. Once current leases have expired, however, the parties can renegotiate suitable arrangements. A provision to this effect was included in the *Shop Trading Hours Act Repeal Amendment Act 2001*. The working group supports a similar provision should any changes be made to the current restricted trading days.

7. Other Matters

7.1 Fines and Enforcement

The Department of Labour currently enforces the Act and retailers found guilty in the District Court of breaching its provisions are subject to a maximum fine of \$1000.

This maximum has not been increased since it was set in 1977 under the previous Shop Trading Hours Act, and is not always applied in practice by the courts. Even where it is, the comparatively low level means that it is widely treated as a de facto licence fee to trade, and thus has neither deterrent nor punitive value.

It is not appropriate to propose draconian penalties for an activity that causes no real damage and has not been shown to be a social menace. We consider that balance needs to be set and there should be meaningful penalties for breaching the Act.

Accordingly, we propose that the present \$1000 maximum fine level be increased to at least reflect the period of time since it was introduced, whether or not the scope for exemptions is widened as we propose. A suitable figure in this regard might be in the region of \$5000.

7.2 Sale of Liquor

The Sale of Liquor Act 1989 currently imposes trading day restrictions which mirror those of the Shop Trading Hours Act Repeal Act. All on-licence and off-licence premises are now permitted to sell liquor on Sundays (as well as other days), but the sale of liquor is prohibited on Anzac Day (before 1pm), Christmas Day, Good Friday and Easter Sunday.

Matters concerning the Sale of Liquor Act are not within our terms of reference. However, we note, for the sake of completeness, that should Easter Sunday trading restrictions be liberalised, then this will still mean that some retailers (such as supermarkets) would remain unable to sell liquor on Easter Sunday. It is possible that this situation could give rise to calls from such retailers for consequential amendments to the Sale of Liquor Act.

Appendix 1: Shop Trading Hours Working Group: Terms of Reference

Purpose of Working Group

The working group has been formed to:

- 1) consider previous and current attempts to reform and liberalise the regulation of shop trading hours in light of social, community and economic changes since the 1990 legislation came into effect and the issues arising from those attempts; and
- 2) report to the Commerce Select Committee, via the Minister of Labour, on options to change the current legislation that will achieve the best balance between:
 - the societal preference to have certain days of significance and observance;
 - the interests of some retailers to be open on currently restricted days;
 - the interests of consumers to be able to purchase goods on currently restricted days;
 - tourist demand in particular areas/locations; and
 - the interests of employees who may be affected by their employer opening to trade on a currently restricted day.

The group will determine its own procedures but will conduct its work in two phases:

- 1) information identification and gathering; and
- 2) assessment of policy options

In considering policy options, the group will consider:

- any bill relating to shop trading currently before the committee;
- submissions made to the committee on those bills;
- options for reform considered in the past and by previous Governments including and since 1990.

The recommendations of the working group should reflect a consensus approach. Recommendations should:

- balance the interests of retailers, consumers, shop employees and the community for specific days of observance;
- be practical, flexible, and *not* be administratively cumbersome; and
- *not* impose any further restrictions on shop trading hours than currently apply.

Background

The Shop Trading Hours Act Repeal Act 1990 allows unrestricted trading on all days other than Christmas Day, Good Friday, Easter Sunday, and before 1pm on ANZAC Day. The Act contains two broad types of exemptions:

- 1) for shops selling goods that people may reasonably need to buy at any time (e.g. takeaways, pharmacies, service stations and shops selling convenience goods and souvenirs); and
- 2) for shops in centres covered by area exemptions granted by the Shop Trading Hours Commission under the Shop Trading Hours Act 1977, which were frozen in place by the 1990 Act.

An amendment in 2001 also enabled garden centres to trade on Easter Sunday.

Problem definition

The Act's current exemptions contain a number of inconsistencies, and no longer reflect current commercial or social preferences, or tourist demands. This is particularly the case for area exemptions. Some tourist areas, such as Queenstown and Taupo are exempted, while other similar towns, such as Mount Maunganui and Rotorua, are not. These problems cannot be remedied under the current Act, as there is no mechanism for adding new exemptions.

Recent Developments

In recent years there have been a number of attempts to reform the Act. These approaches have focused either on removing restrictions on trading on one or all of the restricted days or allowing new exemptions to be added.

A 2001 amendment to the Act allowed garden centres to trade on Easter Sunday. The most recent attempt at reform has been the Shop Trading Hours Act Repeal Act (Abolition of Restrictions) Bill. The Bill, introduced by Rodney Hide MP, originally sought to remove all trading restrictions on all remaining restricted days except Anzac Day morning. Following a majority vote by Parliament in May 2002 to retain the status quo, the Bill was referred to the Commerce Select Committee for further consideration. It is this select committee process to which the working group is to provide recommendations regarding whether and how to change the current legislation.

Issues for consideration

Consideration is to be given to the scope of any reform proposals that might emerge. The scope will be important in defining what the possible range of options might be. Current exemptions could be amended by:

- changing the days on which trading is currently restricted;
- changing the types of shops allowed to trade on otherwise restricted days;
- changing the areas in which goods are able to be sold on otherwise restricted days;
- establishing a mechanism for granting exemptions and who would be responsible for this (e.g. the Minister of Labour, a specialist body, local bodies, or another body);

Another issue for consideration is the nature of any employee or leaseholder projections that might be required.

Working Group Membership

The working group will comprise a chair, representatives from the New Zealand Council of Trade Unions, New Zealand Retailers Association, local government, and of consumer interests. Administrative support for the group will be provided by the Department of Labour.

Reporting

The working group shall report to the select committee, via the Minister of Labour, within three months after first convening. The working group's report shall contain recommendations to the committee.

Appendix 2: Still Valid Area Exemptions under the Shop Trading Hours Act

Town / Location	Exemption	Hours	Restrictions	No.	Date Issued
Auckland (Parnell Road)	Easter Sunday	10am - 6pm	None	1828	12/7/89
Christchurch (Arts Centre)	Easter Sunday	10am - 4pm	None	1815	26/4/89
Dunedin (Carnegie Centre, Moray Place)	Easter Sunday, ANZAC Day	7am - 9pm	Only Arts, Crafts, Childrens' Toys & Books (<i>toys and books sold only while performances happening on the mezzanine floor</i>)	1459	28/6/85
Hamilton (Market Place, Collins Road)	Easter Sunday	9am - 5pm	None	1202	8/4/83
Napier (Harbour Market)	Easter Sunday	10am - 4:30pm	Only Food, Second-hand Goods, Industrial Goods	1660	9/11/87
Nelson	Christmas Day, Easter Friday, Easter Sunday, ANZAC Day	Whenever Founders Park is Open	Crafts Only	1559	15/9/86
Paihia	Easter Friday, Easter Sunday, ANZAC Day	7am - 9pm	None	1174	10/10/81
Picton (Mariners Mall)	Easter Friday, Easter Sunday (<i>if a Cruise Ship is in Port</i>), ANZAC Day	7am - 9pm	None	1750	7/10/88
Queenstown (District)	Easter Friday, Easter Sunday	Any Time	None	1462 2156	26/8/86
Tairua	ANZAC Day (<i>if Fri. or Mon.</i>)	8am - 8pm	None	1551	9/12/86
Taupo (Central)	Easter Sunday	10am - 3pm	None	1946	13/11/89
Thames (Richmond Court)	Christmas Day (<i>if Sunday</i>), Easter Sunday (<i>if in March</i>)	8am - 5pm	Only Full-time Artists & Crafts People, selling their own work, at Stalls	1480	6/8/83
Wanaka (Pembroke Mall, Stage I)	Easter Sunday, ANZAC Day	7am - 9pm	None	537	22/6/82
Whangamata	ANZAC Day (<i>if Fri. or Mon.</i>)	8am - 6pm	None	1550	25/9/86
Whitianga (District)	ANZAC Day (<i>if Fri. or Mon.</i>)	8am - 8pm	None	1554	15/9/86

Appendix 3: Local Government Act 2002 – section 83: Special Consultative Procedure

- (1) Where this Act or any other enactment requires a local authority to use or adopt the special consultative procedure, that local authority must--
- (a) prepare---
 - (i) a statement of proposal; and
 - (ii) a summary of the information contained in the statement of proposal (which summary must comply with section 89); and
 - (b) include the statement of proposal on the agenda for a meeting of the local authority; and
 - (c) make the statement of proposal available for public inspection at--
 - (i) the principal public office of the local authority; and
 - (ii) such other places as the local authority considers necessary in order to provide all ratepayers and residents of the district with reasonable access to that statement; and
 - (d) distribute in accordance with section 89(c) the summary of the information contained in the statement of proposal; and
 - (e) give public notice, and such other notice as the local authority considers appropriate, of the proposal and the consultation being undertaken; and
 - (f) include in the public notice a statement about how persons interested in the proposal--
 - (i) may obtain the summary of information about the proposal;
 - (ii) may inspect the full proposal; and
 - (g) include in the public notice a statement of the period within which submissions on the proposal may be made to the local authority; and
 - (h) ensure that any person who makes a submission on the proposal within that period--
 - (i) is sent a written notice acknowledging receipt of that person's submission; and
 - (ii) is given a reasonable opportunity to be heard by the local authority (if that person so requests); and
 - (i) ensure that the notice given to a person under paragraph (h)(i) contains information--
 - (i) advising that person of that person's opportunity to be heard; and
 - (ii) explaining how that person may exercise that person's opportunity to be heard; and
 - (j) ensure that, except as otherwise provided by Part VII of the Local Government Official Information and Meetings Act 1987, every meeting at which submissions are heard or at which the local authority, community board, or committee deliberates on the proposal is open to the public; and
 - (k) subject to the Local Government Official Information and Meetings Act 1987, make all written submissions on the proposal available to the public.
- (2) The period specified in the statement included under subsection (1)(g) must be a period of not less than 1 month beginning with the date of the first publication of the public notice.
- (3) This section does not prevent a local authority from requesting or considering, before making a decision, comment or advice from an officer of the local authority or any other person in respect of the proposal or any submission or both.

Appendix 4: Shop Trading Hours Act Repeal Act 1990 Schedule - Section 7: Protective Provisions

1. 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 3 of these provisions.

2. 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 offer the worker other working hours in substitution. This clause overrides clause 3 of these provisions.

3. 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 of this Act except where by mutual agreement between the employer and a worker the hours are altered.

4. 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.

5. 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 workers.

6. 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.

7. 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.

8. During the period referred to in clause 7 of these provisions, the employer shall give the union a reasonable opportunity to discuss with workers arrangements for work on Sundays or on any protected day that is not a Sunday or at night.

9. 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.

10. 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, cable car, or a combination of 2 or more of those means of transport) is not available.

11. 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).