

EX MA MAHONY, D.M. Some aspects of regulating for the retail trade...

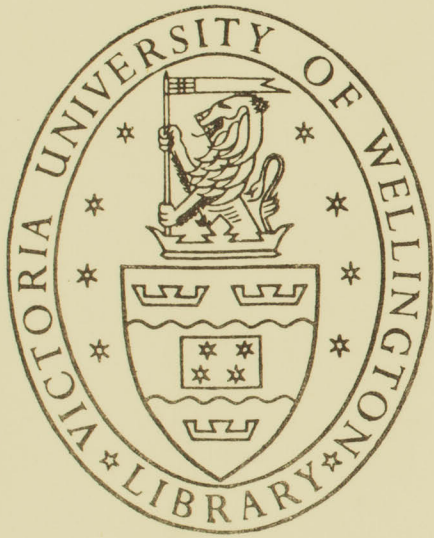


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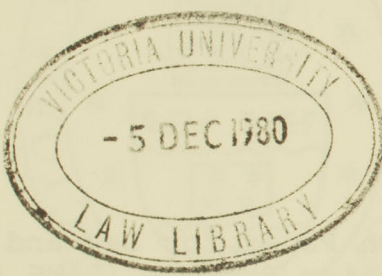
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INTRODUCTION

During the parliamentary session of 1977 188 Public Acts, 16 Local Acts and 2 Private Acts were passed (Official N.Z. Yearbook 1978, p.856). The Shop Trading Hours Act was one of them. This paper will examine the legislative process that moulded a policy into a piece of legislation, and some of the influences that developed the policy. Where certain policy originates will be seen to have some influence on the legislative process. That some aspects of the legislative process, e.g. the proceedings of Caucus, must remain confidential, necessitates that part of this analysis will be speculative in nature. Nevertheless, many steps in the process can be documented and conclusions thereby drawn. Far from being a standard routine, an idea's progress from publication to enactment will be moulded individually by the receptiveness not only of the Minister of a Department, the Department itself, the Government Caucus, Cabinet and parliament, but also by the political party supporting the government and an amalgam of defined and undefined pressures from the public generally.

I. HISTORICAL PERSPECTIVE¹

"... [I] think, myself, it is a mistake to put on the statute-book Bills which will be nugatory, or which will cause a great deal of vexation and embarrassment to the population."

- W.H. Rolleston, M.P. 1892.²

Shop trading hours, as a topic, is no stranger to the cacophony of parliamentary debate. As early as 1892, legislation governing the activities of shops and shop assistants came into force. Since that time successive governments have found it to be a wonderful and endless source of new legislation. As background to the formulation of the Shop Trading Hours Bill of 1977, it will be necessary to outline some of the important developments in the long history of legislation relating to shops and shop assistants.

The first Shop and Shop-assistants Act of 1892 did little more than ensure that a shop assistant would be entitled to one afternoon's holiday (starting from 1 p.m.) on one working day of the week.³ At that time, trading hours were liberal and a five and one-half to six day working week was commonplace.⁴ Most shops along with offices (including government departments) opened on Saturday. Despite the timidity expressed in the mild substance of the Act it engendered some heated debate.⁵ The government was accused of interfering in the right of the individual to work. It was said that a trading pattern was emerging by the "natural"

1 In this section, the author draws heavily on the valuable discussions held with Mr G.C. Kamau and Mr N.S. Woods. See Appendix 1.

2 Parliamentary Debates, Vol. 78 p.133.

3 The Shops and Shop-assistants Act 1892, s.3.

4 Appendix 2.

5 For example, Parliamentary Debates, Vol. 78 p.766.

process of market forces and, what was more, the Act would distort the market place. The latter opinion derived from the argument that, if all shop assistants were to have a holiday on a certain day, then those shops which did not employ assistants (that is, those run on the basis of a sole occupier or family labour) would have an edge on their competition who employed staff. It was the concern for the welfare of shop assistants regarding their working hours and conditions, rather than the consequences to retail trading, that prompted the enactment of the 1892 Bill.⁶ Examples of the "welfare" provisions are: section 4 whereby the working hours of women and persons under eighteen were restricted to fifty-eight; and section 7 whereby female shop assistants were to be provided with sitting accommodation. Section 9 of this short statute placed a duty on Factory Inspectors of the Department of Labour "to see that provisions of this Act are properly carried out, and to prosecute all persons guilty of any breach thereof". Throughout the history of the legislation the Department of Labour has administered its numerous provisions through its Factory Inspectors.⁷

Further legislation in 1894 (again in the form of a Shop and Shop-assistants Act) repealed the 1892 statute. It established the one afternoon holiday per working week as compulsory for all shops,⁸ not merely all shop assistants. While all shops were closed no group of traders could derive extra business from any other. But, of course, there were exceptions. Certain shops could remain open if they carried on the following exclusive businesses: a fishmonger, fruiterer, confectioner, a coffee-house keeper, eating-house keeper, and bookstall on a railway platform keeper. Chemists, too, were given a special mention in section 4 as a further exception to the compulsory closing. Parliament did not want to prescribe which day of the working week was to be graced

6 idem. As stated by William Pember Reeves.

7 It continues to do so under s.26 of the Shop Trading Hours Act 1977. Appendix 3.

8 The Shops and Shop-assistants Act 1894, s.3.

with a half-holiday, so it left this decision to be reached by various local authorities within each town or borough district.⁹ Each district was autonomous in the making of such a decision and, although Saturday seems to have been favoured,¹⁰ there was certainly no uniform closing day in the country. This hesitancy on the part of the legislature in prescribing one day alone on which everyone would holiday resulted in a rather clumsy process of decision-making. All local authorities in a town or combined town district would send delegates to a conference at which they passed a resolution establishing which day would be observed in that district as the closing day. In the initial debate some argument arose as to the necessity for a closing day in the country as opposed to the town. This dichotomy in thinking carried into a number of complicated provisions regarding the means by which a closing day was to be decided.¹¹

The legislation was continually being retouched by amendments until, in 1904, a consolidation of the existing legislation took place under the new title of The Shops and Offices Act. This statute marked the introduction of parliamentary regulation of the hours and conditions of work in offices. After many further amendments the legislation was again consolidated in The Shops and Offices Act 1921-1922. Section 21(a) of the latter Act continued the list of excepted businesses from the compulsory closing of shops. Slightly altered, the list now read as follows: fishmonger, fruiterer, confectioner, florist, a dairy produce seller, a news-agent, a baker or a book stall keeper on a railway station or wharf and a shop selling motor-spirit, petrol or oil.¹² Of greater importance was the fact that for the first time a magistrate

9 *ibid.* s.9.

10 As indicated by the language of s.10 which begins "In the event of any day other than Saturday being appointed ..."

11 For example, The Shops and Offices Act 1908, s.3.

12 Section 21(b) permitted a butcher, hairdresser, tobacconist and photographer to open on Saturday afternoon provided another half-day was taken in lieu.

was armed with powers, under section 19, to grant exemptions for chemists to trade on Sunday. The role of magistrates in subsequent legislation was to increase dramatically. As part of the continuing concern of the legislature regarding the conditions of employment of shop assistants their maximum working hours had been whittled down until they now stood at forty-eight.¹³ It was also under the 1921-1922 Act that the Court of Arbitration was brought in, in a minor way, under section 69 to fix the closing day of shops (whether shop assistants were employed or not) and the maximum hours of work. An occupier could appeal to the Court of Arbitration against its decision on the closing day. The later consolidation of enactments in 1927 and further amendments in 1945 gave the Court of Arbitration a greater prominence in the operation of the provisions.

By virtue of section 3(1)(b) of the Shops and Offices Amendment Act 1945, the Court of Arbitration was given the power to decide the closing day for shops and offices. Anyone who wished to be exempted from such a closing day could appeal to a magistrate who could in his discretion, grant an exemption to open on any day. Similarly, the Court of Arbitration was also given the power to decide the opening hours of shops under any awards relating to shop assistants,¹⁴ while the powers of magistrates were extended to enable them to grant partial or total exemptions to shops from the hours of opening so fixed.¹⁵ Not least of the provisions in this amendment was section 2 which limited the hours to be worked by shop assistants to the now familiar figure of forty.

On the face of it the whole situation regarding shop trading hours may seem to have been well covered. However, the various awards and agreements concerning shops related to

13 Section 8.

14 Section 3(1)(b).

15 Section 3(3).

shop employees only, so that there was a return to an earlier problem - the one-man enterprise or family business remained unaffected. Thus, with an exemption to open, fruit shops, for example, could stay open all day Saturday while being run on the basis of family labour. Other retailers who had to employ staff when opening on Saturdays were forced to pay penal rates under the appropriate industrial award.¹⁶ It is understandable that these retailers would complain of unfair competition. Running in tandem with this difficulty was another also resulting from the state of the legislation. It has been mentioned that a number of businesses were made exceptions to the closing rule. This in itself may not have caused complaint if these businesses had confined themselves to the sale of their "normal" merchandise. Unfortunately the legislature had not prescribed what goods these businesses were to sell. But that was not all, what could be described as "the last twist of the knife" was the wide disregard of the statutory provisions by shop traders.

The Shops and Offices Act 1955 (consolidating previous legislation as well as making alterations) was promoted by the government as the means of redressing the balance. All interested parties were consulted during the careful preparation of the Act.¹⁷ The Act amounted to an attempt by government to restrict the activities of some retailers in fairness to other retailers. One Member of Parliament said:¹⁸

It will also have the effect of reducing a lot of the illegal trading going on today. After all, the shopkeeper is not entirely to blame for the illegal trading, for the public have created the demand; they have created the conditions which make after-hour trading necessary.

16 The Shops and Offices Amendment Act 1945, s.2(8)

17 post, n.19.

18 Parliamentary Debates, Vol. 307 p.2214.

A sentiment which was not often remembered during debate in later years.

In speaking of the 1955 Bill he had introduced, the Minister of Labour (Mr Sullivan), stated:¹⁹

There are some conflicting interests between representatives of different trades as to hours of trading and commodities to be sold, particularly after certain trading interests have closed, under their separate awards. In this Bill we have faced these problems fairly, with due regard to the interests of all parties. There is an obligation on the House to see that the general public are able to obtain the necessary goods and services. The question to be considered is where service to the public starts and finishes and there will always be differences of opinion about that.

The legislature's answer came in a package. Embracing the already established forty-hour week principle,²⁰ the Court of Arbitration was directed²¹ when exercising its power, to fix the opening hours of any shops in accordance with the five day working week, to permit one late night and to dictate the closure of shops during the whole of Saturday (unless some other day was specified in the award). But for two businesses, shops selling motor spirits, petrol, oil and motor accessories²² and shops in which telephonic, telegraphic, or postal business was carried on,²³ the long list of shops excepted from the operation of the Act had disappeared. Special provision, however, was made for bookstalls at passenger transport stations.²⁴ Such bookstalls were exempted from the operation of the Act where they

¹⁹ *ibid.* p.2189.

²⁰ Section 14 of the Shops and Offices Act 1955.

²¹ *ibid.* s.3.

²² *ibid.* s.8.

²³ *ibid.* s.9.

²⁴ *ibid.* s.11.

complied with a warrant, which was authorised by the Minister of Labour, specifying the conditions to be fulfilled by the holder.

The one innovation to emerge from the package was the Exempted Goods List.²⁵ Goods on this list could be sold at any time whether or not the shop concerned was deemed for the purposes of the Act or an award to be closed at the time. The Governor General was empowered to add to the list by Order in Council.²⁶

As a result of this new method of regulating trading, enforcement by Factory Inspectors of the Department of Labour came to be the most visible feature of the legislation in action. It is apparent from the history and development of the legislation that there had always been enforcement difficulties to contend with. Now, as the public telegraphed their desires for an extended retail service the problems became more acute. To some extent the Department of Labour was hampered in the pursuit of its duties by the language of the statute. For instance, in order to prosecute a shop for opening outside its lawful hours the Department was often required to prove that the shop was contravening the provisions of the industrial award to which it was subject. This exercise involved proving at the outset which award applied to the business - there were seven possibilities. Very often, say, in a mixed dairy situation, more than one award was applicable. The test then was to establish the business "substantially carried on" in the shop and the award covering that business would be deemed to cover the matter.²⁷ Section 2(5) of the 1955 Act defines "business substantially carried on" as the business for which the value of the turnover of all the business was at least twenty per cent. With large ranges of items being sold in some shops, obtaining

25 *ibid.* s.6.

26 *ibid.* s.6(3).

27 *ibid.* s.3(1)(a).

records of items and calculating their varying percentages of turnover could be a time consuming task.

A requirement that non-exempted goods (those sold Monday to Friday only) be partitioned off behind padlocked screens²⁸ went a little way to ameliorating a Factory Inspector's lot. But ready identification of illegal trading by no means remedied the problem. The Factory Inspectors who were expected to closely control the trading hours and exempted goods matters, had duties beyond this situation to fulfil.²⁹ They felt, and still do, that their major task is that of inspecting the safety of workers rather than the trading hours of shops. There was, in any case, little incentive for the time and effort required to bring a prosecution against someone trading illegally (in terms of the Act). Once a prosecution had been obtained a small fine of fifty dollars³⁰ was not sufficient to deter shop occupiers from offending again (and again). The struggle to contain abuses against the legislation was taken up by the unions as well. Under the various awards the unions relating to each award could take action in the Court of Arbitration against shops breaking award provisions. Although this was done, it proved to be a lengthy process and was not favoured.

In 1959, an amendment to the Shops and Offices Act 1955 set up the Shops and Offices Exemption Tribunal.³¹ This authority replaced the magistrate as the body to examine applications for exemptions from closing provisions. In performing this function the Tribunal was directed³² to be satisfied that the granting of an exemption was desirable

28 *ibid.* s.5(3)(b).

29 Under Part II, III and IV of the Act.

30 Section 38 (twenty-five pound).

31 Section 3.

32 Section 5.

in the public interest. Other factors that the Tribunal was to have regard to included the interests of the occupier of any other shop that could have been affected and the desirability of providing service to the public at all reasonable times, particularly in the case of shops situated at resorts.³³ Another amendment in 1970 was passed to allow for an associate member to be appointed to the Tribunal.³⁴ The Tribunal dealt with all North Island applications and the associate with those in the South Island. In general terms, the exemptions granted were of two types: (1) exemptions to shops in holiday and beach resorts and (2) exemptions for shops involved in cottage industry or hand crafted goods.³⁵

1. The Exempted Goods Review Committee 1975

At intervals the Minister of Labour appointed a committee to review the Exempted Goods List. Review committees were formed in 1957, 1959, 1968 and 1975. The last committee in 1975 undertook a comprehensive review of not only the exempted goods list but also the general ambience surrounding implementation of the Act's provisions. Its report is worthy of note for a number of reasons:

- (a) that the extensive additions to the exempted goods list proposed by the Committee was adopted by the Minister;
- (b) that the Committee set its own wide guidelines under which it conducted the review;
- (c) that it made findings on a number of issues which are repeatedly argued throughout the history of this legislation;

33 idem.

34 section 2.

35 The register of exemption orders may be inspected by any member of the public without charge: s.21 Shop Trading Hours Act 1977.

- (d) that it made comments on the contemporary treatment of the legislation;
- (e) that the proposed exempted goods list was the result of a majority decision;
- (f) that four different groupings of the members of the Committee annexed separate comments to the report;
- (g) that eighteen months after the report of the Committee the 1977 Bill was introduced in parliament.

Appointed on 13 December 1974 under section 6(5) of the 1955 Act, the Committee reported back to the Minister on 13 June 1975. Its five members represented trade, employee and consumer groups.³⁶ A public notice was placed by the Committee in the daily papers of the four main centres advertising the commencement of hearings and inviting written submissions. Parties were also invited to tender submissions as to the grounds on which the Committee should act because none were specified in section 6(5). It is not clear why the Committee did not ask the Minister at the outset, although the previous Committee of 1968 set its own criteria. The 1975 Committee stated in its report that its main guide was the public interest which was constituted of the following considerations:³⁷

- (a) The desirability of providing a reasonable range of goods to the public at all reasonable times.
- (b) The desirability of providing goods to the public which they may require in special circumstances.

36 The Committee was made up of J.B. Stevenson, a Wellington lawyer (chairman); P.W. Fels, Managing Director of Hallensteins; J.A. Brosnan, Union representative; Mrs K.W. Booth, women's interests; G.E. Wood, Consumer's Institute.

37 Report of the exempted goods Review Committee 1975, paragraph 4.

- (c) The effect of the exempted goods list or any amendment thereof on:
- (i) persons or businesses associated with the sale of goods;
 - (ii) the direction in section 3(1)(b) of the Act that shops should be closed for the whole of one day each week (which shall be Saturday unless another day is specified in the Award); and
 - (iii) the provision of section 4 of the Act that every shop shall be closed during the whole of Sunday.

In paragraph 6 of its report, the Committee noted that: "Whilst members of the Committee agree upon the principles, they disagree on their application to the proposals raised in the submissions to the Committee". Thus the reason for the number of separate memoranda attached to the report.

In the general part of its report the Committee canvassed many of the issues that this topic raises. From the evidence it received,³⁸ the Committee found that there was no established public demand for an extension of shopping hours or availability of goods, but that certain limited areas desired extended shopping hours and that some classes of goods were in demand.³⁹ That large volumes of non-exempted goods were being regularly sold in contravention of the law was recognised by the Committee.⁴⁰ To stop these continual breaches of the law the Committee suggested that either the list of exempted goods be altered or that enforcement or penalties be increased or that all three should occur.⁴¹

38 *ibid.* para. 3(a).

39 *ibid.* para. 7(a).

40 *ibid.* para. 7(b).

41 *ibid.* para. 8.

In a brief statement the Committee agreed with argument from submissions to the effect that "excessive extensions of the list would give rise to increased prices and could lead to erosion of the principle of the forty hour week generally".⁴² A large list of extensions⁴³ to the list was accepted unanimously by the Committee members and proposed as the new list to the Minister. Further goods were added to the list by the Minister from the majority list of the Committee, from a list put forward by the Labour Department and some were his own choice. This combined list was gazetted on 27 November 1975.

The very final comment of the Committee set the scene for future developments; it was:⁴⁴

The Committee is of the firm opinion that the law in this sphere is overdue for a complete review. At the present time the law is obscure and is to be found in the Act, collective Agreements, Awards, decisions of the Shops and Offices Exemption Tribunal and the exempted goods list. Even lawyers have difficulty in finding and understanding the law. The Committee urges a complete reappraisal and clarification of the law so that it may be easily found and understood by all those who are affected by it.

At the beginning of this section on the historical background to the 1977 Act, a statement made by Mr Rolleston during debates on the very first piece of legislation in the area being surveyed, is quoted.⁴⁵ Whether it applied to the Bill being scrutinized at the time is not important. In 1975, when the law had gained many more provisions and was still not effective in the sense of being accepted and adhered to,

42 *ibid.* para. 10.

43 It included various building and handyman supplies, fish, flowers, all food, coal fuels, diesoline, kerosene, various gardening supplies, paperbacks and magazines, various medicinal and household goods, and miscellaneous items like panty hose, light bulbs and films.

44 *ibid.* para. 19.

45 Parliamentary Debates, Vol. 78 p.133.

it seems prophetic. The terms nugatory, vexatious and an embarrassment covered everyone's complaints. The public was determined to shop for what it liked, when it liked; some retailers were determined to provide the desired services while others were determined their colleagues would not. While the Department of Labour was not perhaps able to match these determinations, it still managed to bring 525 prosecutions against shops for breaching the law in 1975.⁴⁶

There were no further opportunities for a Labour administration to tinker with the legislation as it stood in 1975. The general elections of that year brought in a new National government. Neither shop trading hours nor any aspect of the Shops and Offices Act became a publicised election issue of any moment. Not one party manifesto mentions the topic.⁴⁷ The winds of change, however, were soon to arrive.

46 Report of the Department of Labour, 1975 p.20.

47 This was still the case with 1978 party manifestos although an oblique reference to new patterns of work (flexible working hours, multiple shifts, part time work and job sharing) can be found in the 1978 National Party Manifesto at p.29.

II. THE SHOP TRADING HOURS BILL

1. The Formulation of Policy

Certain sections of the media had raised the question of more flexible trading hours prior to 1976.⁴⁸ It has been suggested that the trading hours legislation has been a perennial theme for discussion at National Party Conferences.⁴⁹ Yet, despite the publicity accompanying the 1975 Review Committee which sat in April of that year, the National Party Conference did not seem interested.⁵⁰ On the appointment of that Committee others proved their interest by inundating the Department of Labour with correspondence,⁵¹ mainly suggesting extensions to the exempted goods list. The matter of extensions was discussed in the government Caucus Committee on Labour matters in March 1976, where it was decided that a complete review of the law was called for and not an amending list. The then Minister of Labour, Mr J.B. Gordon, instructed his department as to his requirements for new legislation. The Department in its turn gave directions to Parliamentary Counsel⁵² as to the contents of a draft bill. In the meantime, a short remit was passed at the National Party Conference in July 1976. It read as follows:⁵³ "That the National Government immediately amend the Shops and Offices Act to allow Saturday trading for those who wish to trade." By October 1976, it was reported in the press that the government Labour Caucus Committee had begun "a re-examination of the case for extended hours for weekend

48 National Business Review had raised the question for six years prior to this date. National Business Review, October 13 1976, p.4 (Editorial).

49 For example, suggested by Mr B. Purdy.

50 At least, no remit on the topic was passed.

51 Correspondence on the matter has continued to come in ever since. The Department has all of it filed over a dozen large stacks.

52 Mr E. Williams.

53 National Party Conference Proceedings Handbook 1976.

shopping".⁵⁴ A little later, on 23 November, a petition⁵⁵ was presented to parliament with the abstract of prayer reading thus:

Praying that the House will investigate, with a view to amending the legislation relating to Saturday trading, in order to allow those who wish to trade to do so. (56)

It was referred to the Petitions Committee and reported back to the House for consideration on 2 June 1977. The amending legislation though was well under way by this time. At a meeting on 6 December 1976, Cabinet approved the final draft Bill; it was introduced in the House three days later.

2. The Draft Bill

There were undoubtedly draft bills examined and rejected before a final version was introduced into parliament. What their contents were cannot be discussed as they are the subject of confidentiality. Noting the contents of the Bill is worthwhile especially where it can be compared to the legislation it is repealing and, later, to the final provisions of the Act passed. This exercise can indicate whether a real change in policy on the topic of the legislation has taken place, or whether some modifications have been undertaken and for what purposes.

The Bill, firstly represented a hiving-off of one clearly defined set of provisions from a series of provisions in an existing statute.⁵⁷ The Shops and Offices Act carried under

54 The Marlborough Express, Thursday October 21, 1976.

55 The petitioner was Mr K.C. Morgan an Auckland businessman. It is interesting to note that the petition took exactly the same form as submissions made by the Campaign for Saturday Trading at Select Committee.

56 There is a striking similarity in the wording of the prayer and the 1976 National Party remit. Perhaps they thought it would advance their case.

57 The sections to be repealed were ss. 3-12 inclusive and s.49 of the 1955 Act as well as the following Acts: Shops and Offices Amendment Acts of 1959, 1965 and s.2 of the 1975 Amendment Act.

its umbrella, provisions relating respectively (and in separate parts) to shops, offices and safety, health and welfare in various commercial premises. That the Shop Trading Hours Bill was to be exclusively concerned with the trading of retail items can be seen in the exclusion of service businesses, e.g. hotels, restaurants, hairdressing salons, from the Bill's definition of shop,⁵⁸ and in the explicit statement in the redundant clause 3.

An entirely new provision⁵⁹ relating to markets appears in the Bill, probably in response to the serious enforcement problems encountered by the Department with the sudden rise in the popularity of markets.

Another provision⁶⁰ was the product of the exempted goods concept in the 1955 Act being brought through, under a change of name to "approved goods", and combined with a new concept of "special goods". "Special goods" were listed in the Second Schedule of the Bill alongside the hours of Saturday morning during which they could be sold without the necessity of an exemption.

A number of clauses⁶¹ retained the right of some businesses to be exempted from the closing hours set elsewhere in the Bill. The businesses concerned were pharmacies, those containing Post Office facilities, and bazaars or similar "charitable" activities. Bookstalls at passenger transport stations, however, were authorised to open for extended hours by the Secretary of Labour.

One clause⁶² that was to be substantially modified was the

58 Clause 2.

59 Clause 4.

60 Clause 5.

61 Clauses 7, 8 and 9.

62 Clause 10 is in fact an exact repetition of s.31 of the 1955 Act.

provision which replaced the Shops and Office Exemption Tribunal with the Shop Trading Hours Commission. Clause 19 relating to the Commission's powers and duties on the hearing of applications set out the criteria required to be taken into account under the heading of public interest but, more importantly, added the criterion of "public demand".

Two further clauses that would cause considerable discussion were one allowing a local authority the right to apply for an authority to open all shops in a district area,⁶³ and the other giving a bare power to the Minister to add as he liked to the list of approved goods.⁶⁴

The most visible innovations of the Bill concerned opening hours of shops and the power of industrial unions to negotiate them. Clause 6 laid out some very broad limits for trading hours (7 a.m. to 9 p.m. on weekdays) which had been the province of negotiation between employer and employees under the appropriate awards. Clause 23 expressly deprived industrial awards and agreements of making provision for opening hours. Working hours of employees were not regulated under the Bill, but were mentioned in clause 23 to the effect that nothing in the Bill could be deemed to overrule working hours fixed by industrial agreement.

The Bill continued to be administered by the Department of Labour as it continued to be enforced by Inspectors of Factories, who when prosecuting offenders against the Bill could press for the increased fine of \$500.

3. The First Reading

The Minister of Labour introduced the Bill to the House on Thursday 9 December 1976. First readings are usually a short formality during which the Minister or mover explains the

63 Clause 18, which also provided for area applications by a majority of shops.

64 Clause 5.

objectives of, and answers questions on the legislation. The Opposition generally can do little more than reply in broad terms, as very often the Bill would have been circulated for an hour or so before coming up.

At the outset the Minister stated that the intention of the legislation was "to rationalise the law relating to the trading hours of retail shops".⁶⁵ This is in fact the exact explanation embodied in the Long Title to the Bill.

From the rather more worthy concerns of the conditions and welfare of shop employees in 1892 the proposed legislation of 1977 was seen specifically in commercial terms. Mr Gordon then proceeded with an inventory of the provisions: the Bill was to remove the fixing of trading hours from the scope of awards and collective agreements; broad outer limits for trading were set (7 a.m. to 9 p.m. Monday to Friday); individuals and now groups, including local authorities, could apply for authority to trade outside those limits; a full-time Commission was to be established; it was to take into account additional criteria - whether there was an existing public demand and whether the area was a tourist one; an extended approved goods list took over from an exempted goods list and there was also a special goods list for retailing motor vehicles, vegetables and flowers on Saturday morning; nothing was to affect the rights of employers and employees to negotiate the hours of work, penal rates and conditions of employment; the forty-hour week principle was still applicable; and employees were to have two consecutive days off work. The Minister then summed up that these would allow for "a more civilised approach to shop trading" but did not describe or explain more specifically just what sort of trading pattern was more civilised.

In spite of the shortness of this debate Mr Faulkner (who

65 Parliamentary Debates, Vol. 40 p.4679.

had had the advantage of being Minister of Labour in 1975) led the debate for the Opposition raising a number of very broad points against the Bill. He objected that the Bill would (a) increase costs especially where penal rates were payable when staff worked outside the normal award hours, and (b) undermine the small businessman by the future opening of supermarkets on the weekend.

In an uncharacteristic and not to be repeated lapse, Mr Faulkner made the following admission:⁶⁶

I know that what the government is doing is popular, but that does not make it right ... why shouldn't [the shop assistants' union] have a say in the hours they work?

The Prime Minister immediately came back with the reply:

"The trade unions aren't running the country this year."

It is undoubtedly because Mr Faulkner had been the Minister of Labour in the Labour administration the year before that arguments were ready at his fingertips. The Speaker in fact saw the status of a first reading debate being threatened by the evolving of "a wide ranging second reading speech".⁶⁷ In drawing the first reading to a close the Minister emphasised in response to some pointed challenge, that the forty-hour week and two days off was not being challenged, rather the Bill afforded the concept some protection.

The Bill had been introduced; the reaction was strong. The parties had already begun to define the lines of future battle that would be defended and attacked as the Bill progressed.

66 Parliamentary Debates, Vol.408 p.4680.

67 *ibid.*, p.4681.

4. Select Committee

During the first reading of the 1977 Bill the Minister of Labour mentioned that "[b]ecause of the public interest in matters covered by the Bill"⁶⁸ he intended to request its referral to the Labour Committee for study over parliamentary recess.

Despite the time and expense involved in presenting submissions to a select committee, fifty-six groups and individuals made that effort. Of those who made written submissions thirty gave evidence in person before the Committee. The huge response in terms of submissions can be traced to the wide reporting of the Bill's progress and the fact that large numbers of retailers were likely to be effected both if the Bill was passed or the status quo was maintained.

Although general themes were developed in a number of submissions, e.g. the effect of the Bill on retailing costs, most submissions retained a uniqueness or had some special circumstances that produced many conflicting arguments. The submissions took many forms. There was a letter⁶⁹ from an individual to his M.P. which was then referred to the select committee. The author of the letter stated that the consequences of the Bill would have a disruptive and restrictive effect on the lives of shop assistants and posed two blunt questions: who is pushing this Bill through parliament and why? The contents of any reply to this letter are unknown.

In another letter the Gisborne-East Coast Retailers' Assn. wrote to their local M.P. Mr R.L. Bell.⁷⁰ In strong terms they

68 *ibid.*, p.4679.

69 Submission No. 18 by Mr P. Jink to the Parliamentary Labour Select Committee 1976.

70 *ibid.*, Submission No. 16.

voiced their opposition to the Bill. Their statements rested on one aspect of the changing pattern of social life in New Zealand. They perceived the "emergence of some organiser who is determined to alter the present pattern of life" in order for it "to conform to certain overseas patterns". Further described as a vocal minority using the banner of "public demand", the insidious group was said to be unacceptable to the "vast majority of respectable citizens in this country".

Telegrams too were read among the submitted material.⁷¹

Some submissions amounted to no more than a simple request for certain goods to be added to the now "approved" goods list. The groups making these submissions had endeavoured to obtain extensions on the list of goods before.⁷² This was their sole concern; it is unlikely that they had misunderstood the role of a select committee to examine all aspects of a piece of legislation. In fact, two such submissions⁷³ mention that their only concern is with the approval of goods to the list. Little justification for the extension is cited e.g. the case for selling flowers outside normal hours is rested on the proposition that they are perishable commodities which waste if not sold.

Other submissions also involved one concern. The Motor Vehicle Dealers Institute⁷⁴ and Ormond queried the effect of clause 6(2) relating to the effectual closing of premises

71 Submissions Nos. 3, by Auckland Pharmacy Employees Industrial Union of Workers; 15, by GHB Grocery Group; and 31 by Eastern Suburbs Branch NZ Dairy Mixed Business Association.

72 For example when making submissions to the 1975 Review Committee.

73 Submission No. 27, NZ Berryfruit Growers Federation and No. 28, NZ Commercial Flower Growers Association Inc.

74 Submission No. 22 and No. 50.

with practice accepted by the Department of Labour. Although not a formidable barrier premises on which cars were kept were closed by the securing of a chain around the yard.

Apart from the presentation of a Christian view by two individuals with regard to the consequences of the proposed legislation,⁷⁵ submissions were the products of people in the trade. It was this latter group who proved to be overwhelmingly against the Bill.

A seventeen strong group of the larger retailers e.g. Allied Farmers Co-op, D.I.C. Ltd, Whitcoulls, expressed the view that their size presented them with peculiar problems in trading and therefore a unique experience.⁷⁶ They professed to be opposed to Saturday trading extensions on a "balance of evidence". The sorts of considerations persuading them to this view were:

- (i) the lack of regional or national planning in the extension of trading;
- (ii) that the criteria of the Bill were too loose, that they should include the effect of Saturday trading on social patterns, transport, delivery services and banking facilities;
- (iii) that Saturday trading would result in an adverse effect on the retail industry e.g. in the areas of recruiting management;
- (iv) that equal pay would also affect their economic viability.

The Chemists Guild of New Zealand also saw their members as part of a unique system which saw the legislation as

75 Submission No. 4

76 Submission No. 1

unnecessary, wasteful and unwise.⁷⁷ For years the pharmacies provided an extensive and convenient service during and after normal hours. It has been seen that they had special statutory sanction to meet the public's needs outside the usual hours.⁷⁸ The group added, however, that they were dependent on the links that a pharmacy had with general retailing in order to remain economic propositions. If shops selling similar lines to pharmacies could remain open at the same times, they would lose their economic viability. The group then urged government to be cautious before passing the Bill. It also suggested the undertaking of economic studies before moves were made.

More submissions advocated a cautious approach. A retail grocer from Meadowbank, Auckland who styled himself as "representative of smaller neighbourhood retail stores in New Zealand", supported the general tenor of the Bill but felt that the provisions of the Bill in general terms were contrary to the public interest and created unnecessary and unfair hardship for many retailers and their employees and increased costs for the retailer.⁷⁹

Some other submissions were more wholehearted in their support of the Bill. In this area two groups, both concerned with handyman supplies and builders' equipment⁸⁰ saw the Bill as a legal means by which they could operate on Saturdays. The position of the exempted goods with all its attendant anomalies was less favoured as a means of establishing selective Saturday trading.

The one large trading store totally for the Bill was Woolworths Ltd. Basing its arguments in support of the Bill squarely on its belief:⁸¹

77 Submission No. 8.

78 ante. p.6. Shops and Offices Act 1955

79 Submission No. 10.

80 Submission No. 14, Felvin Suppliers and Distributors Ltd and No. 21, Manukau Timber Co. Ltd.

81 Submission No. 60, p.5.

that the free enterprise system, as advocated and adopted by the Government, encourages the beneficial elements of competition. The protection of inefficient utilisation of resources, human and physical cannot be afforded by the nation.

Woolworth's submissions further contain the statement:⁸²

"The public is democratically entitled to have freedom of choice, not restricted by unreasonable shopping hours"

A little later Woolworths submits that:

"Parliament should legislate for the maximum shop trading hours it so determines, and permit retailers to open all or part of those hours as a democratic free enterprise business decision."

It is not inconceivable that the above juxtaposed "democratic choices" may result in some conflict between decisions of the public and those of Woolworths. Further to its argument for the Bill Woolworths took on a social argument for extended shopping hours being available under the Bill. It was merely that shopping should be a pleasant social experience when all the family can shop together.

Implacably opposed to the legislation before the select committee were the NZ Federation of Labour, the NZ Shop Employees Association, the NZ Clerical Workers Union, the NZ Drivers Federation and the NZ Insurance Guild Union who presented their submissions together.⁸³ The Federation of Labour policy relating to the matter was adopted at its 1976 conference in the following terms - (1) to achieve a thirty-five hour week which would include a mandatory double time provision for weekend work; and (2) to overcome shopping problems by the taking of one hour for this purpose during a normal week. In stating its opposition to the entire Bill the Shop Employees Association commented

82 idem

83 Submission 35. Each group did make separate submissions.

that the 1977 Bill reversed the concept of legislation for the welfare of shop employees which was implicit in the 1955 Act. The latter three in the above list of unions along with the New Zealand Bank Officers' Union all opposed the Bill. Although not directly mentioned pursuant to the operation of the Bill, they rested their opposition on the premise that any expansion of hours on weekdays or weekends by the retail trade would require a supporting network of services associated with office administration, transport, storing, warehousing and the distribution and lodgment of cash.

Submissions were also received from the New Brighton District Business Association and Coastlands Merchants Association,⁸⁴ both of whom were groups experienced in Saturday trading. Neither favoured the Bill. It would be easy to say that both groups were protecting vested interests and, indeed, Coastlands was frank in admitting that it wished to retain Saturday trading as unique to Paraparaumu. However, unlike some other submissions both tried to proffer constructive comment or criticism regarding the Bill. Coastlands did meander off the point when, in relation to the provisions regarding the emergency opening of a pharmacy, a pharmacy was to be closed for all other reasons, it suggested that it was "bad taste for a female customer to be on locked premises with a male pharmacist". New Brighton in rebutting the use of the overseas experience to domestic conditions said:⁸⁵

The Association does not believe that in a country with less than three million people it is feasible or desirable to load extra costs of extended shopping hours on to the consumer and we do not believe that it is responsible for supporters of extended hours to quote overseas examples of operations where the total population of only one city involved would exceed that of New Zealand as a whole.

84 Submissions Nos. 25 and 9 respectively.

85 *ibid.*, p.5.

It added:⁸⁶ "It is the experience of our members that to open on a Saturday increases overheads by some twenty-two and one-half percent." That its members were able to recoup this amount, it said, was due to the unique geographical position New Brighton held in Christchurch.

Another organisation with a wealth of pertinent experience also rejected the extension of trading hours provided for in the Bill. This was the NZ Retailers' Federation.⁸⁷ Due to an on-going review of the situation the Federation could state that at the time of making the submission a majority of retailers was opposed to the legislation though with increased social change their position may well become modified.

Amongst all these submissions entered the Campaign for Saturday Trading dissertation presented by Mr K.C. Morgan who, with an accompanying flourish, also presented a petition to the House⁸⁸ calling for the introduction of Saturday trading. In a "glossy" style presentation the Campaign consisting of Auckland businessmen, having the same objective of introducing unrestricted shopping hours, set out the social changes taking place that necessitated more flexible hours. Like others, they saw the increase of married women in the work force requiring hours outside the normal work routine when they could shop. They also noted that with the advent of equal pay whatever extra spending money there was was going to the non-retail sectors of the economy e.g. gambling, travel, liquor, entertainment. It was up to the retailing community to increase its share of the total personal spending of the consumer. The Campaign supported the principle of the forty-hour week. It did not, however, agree with the protection of dairies by repressive legislation which continued "to restrict other forms of free competition providing cheaper prices to the public."

86 idem.

87 Submission No. 41.

88 ante p.55.

In addition to groups taking a stand on the general issue of flexibility of trading hours there were a number of intertwined supporting and peripheral issues which could be taken up. Not every set of submissions covered all or even some of the other points of discussion. It is interesting to note however a number of recurring matters. A number of submissions when discussing public opinion about the Bill resorted to various polls taken as in-house exercises or as commissioned surveys. In much the same way groups had to resort to their own statistical data as proof of assertions regarding retail activity, e.g. at different times of the day.

The two most frequent arguments that could be worked for either side of the debate were the influence of extended hours in increasing retail costs, or, in reverse, the efficient absorption of such costs by longer use of plant and equipment; - and the influence of vast social changes on more flexible hours or, in reverse, the detrimental effects of more flexible hours on social patterns. Of common ground were certain criticisms of the Bill's provisions.

Criticisms related to the new two schedules of goods - approved and special. The Retailers' Federation for one, saw that the addition of items to the special goods list could taken to its logical extreme, become a covert method of expanding Saturday trading. The same has always been true of the approved or exempted goods list which has indeed grown dramatically.⁸⁹ Many groups pointed out the difficulties of interpreting the clause relating to the opening of shops on public holidays. Although parties putting forward submissions did not criticise the operations of the Magistrates on the Exempted Goods Tribunal, there was a general consensus that if a Commission was to be established there should be at least three members with a range of

89 Appendix 7 - Shop Trading Hours Act 1977, First Schedule

experience in the retail industry or related areas. Many groups also expressed dissatisfaction with the requirement that the Chairman of the Commission be a barrister or solicitor of at least three years standing. There would be decidedly more status attached to the Commission's operation if the minimum requirement for the appointment of a magistrate (7 years standing) was also the requirement here. Clause 18 generated adverse criticism in relation to both its aspects. Those making submissions did not like the idea that a bare majority of shop owners could have an order made for a particular area which in effect forced the minority of shops to open if they wanted to remain competitive. Quite apart from that there was also a lack of definition of "area". The second aspect which, whenever raised in argument invoked strong reaction, was that a local authority have the power to make an application for shops in an area within its district. No one, it seemed, trusted the local authority to do this. With the increasing participation by local authorities in the development of shopping areas⁹⁰ there was the feeling that vested interests could become important. The Retailers' Federation put it rather more roundly:⁹¹

The past record of most local authorities on town planning and zoning issues, differential rating and environmental issues give the industry no confidence at all that this power would be exercised with logic and discretion.

Also in relation to the making of applications various submissions expressed concern at the prominence given to the criterion of "public demand" while the "public interest" was subordinated to the place of an "also ran" criterion.⁹² Finally, various submissions commented adversely on the power remaining in the Minister, under clause 5, to recommend to

90 Hay, E.B. "How a Small Borough Showed the Way" 1978 NZ Local Government, February p.3 marks an early development of a shopping complex by a local authority, in 1950's.

91 *ibid.*, para. 7.2.

92 Clause 19(5).

the Governor General to make additions to the approved and special goods lists by Order in Council. Implicit in the comments was the fear that pressure would be placed on the Minister to declare (notionally, recommend) additions to the list without any other parties being consulted.

As a whole, submissions to the Select Committee were well presented and well argued. Most groups saw the existing legislation as unworkable, especially in terms of enforcement by the Department of Labour, and were anxious to attempt to make this Bill workable or to present cogent arguments for its withdrawal. Apparently those making submissions were all listened to attentively.⁹³

5. The Labour Select Committee Reports Back to the House

Mr Luxton, Chairman of the Labour Committee, presented the report of the Committee on the Bill to the House on 27 May. If success of a Select Committee, in terms of its effect on legislation, was based on the number of amendments made to the draft Bill, this was a very successful Select Committee. Mr Luxton documented a number of the "main" amendments agreed to by the Committee. He began with the name of the Act in clause 1.⁹⁴ Changes in relation to the Commission's composition and expansion of the criteria they were to take into account were accepted. The Minister's power to recommend additions to the two schedules was vested in the Commission, as was a power of review. While applications for extended trading hours could be initiated by individuals, groups and areas the much criticised local authority application had been deleted. Although these relatively minor changes had been readily incorporated into the Bill, nothing going to the heart or policy of the Bill was modified. The hours of opening remained as broad as ever,

93 As reported by Mr G.C. Kelly and Mr B.I. Purdy

94 Parliamentary Debates, Vol. 409, p.191.

and the right of the unions to negotiate trading hours remained severed. Once Mr Luxton had made his report Mr Faulkner declared that the Opposition would vote against it.⁹⁵ The reason given for that move was that so many people who would be directly affected by the Bill had put forward substantial evidence opposing the measure. Government members in their turn said that the opposition of interested groups was met by the amendments to the Bill's provisions. Mr Malcolm emphasised the democratic process by which the Bill had travelled:⁹⁶

We brought the Bill into the House in the correct form as is the democratic custom. It went to the select committee, in the normal democratic way, and the select committee hearings were open to the press. Full submissions were made by interested parties, and I am bound to say many of the submissions were of great value. Opposition members ... approached the Bill in an entirely partisan and destructive fashion from the outset, ... the Government members of the committee approached the matter very openly [T]he modified Bill which has been brought back into the House clarifies the changes we are proposing. Indeed, the whole purpose of reporting the Bill back to the House is so that it can be made public.

Following even such a path as has just been described, does not insure that information, valuable or not, has been exchanged, retained and employed in the improvement of proposed legislation. Rather, it is merely a checklist of detours that a piece of legislation must have passed in order to obtain that most respected of legislative descriptions - democratic.

In the remaining speeches the possibility of a Government member crossing the House to vote against the Bill was raised, as was the suggestion that the Bill be returned to Select Committee for further consideration in light of its altered appearance. Both matters were raised again in the

95 idem.

96 ibid., p.193.

second reading under which heading they will be examined. The last few speeches of the Report Back⁹⁷ had very little relevance to the matter of the Shop Trading Hours Bill. Mr Hunt recorded his opposition to the Bill in an opening sentence and then immediately started to speak of a paper he felt was in the hands of the Minister of Welfare and which he wanted tabled. Obviously Mr Hunt was taking advantage of his opportunity to speak to clear up some other matter. Mr Templeton who was Acting Minister on very short notice appealed to the rules and procedure of the House to prevent Mr Hunt's continued badgering. The Speaker of the House came into the discussion and put the matter succinctly, he said: "It is not germane at all". The House then divided and the Committee's report was accepted.

6. Second Reading

On June 16 the Minister of Labour moved that the Shop Trading Hours Act be read a second time. A feature of the second reading was the length of the series of debates that were spread over a number of days.⁹⁸ It was inevitable that repetition and irrelevancies crept into the debate. What has become all too common as a part of the parliamentary debating style, was the growing amount of time spent on procedural points rather than the substance of the matter before the House.⁹⁹

Although material produced in the Select Committee was freely quoted by some members,¹⁰⁰ there seemed to be no attempt to build up arguments in any coherent form from the submissions. Rather, most members who spoke were concerned with giving an explanation as to the activities of that

97 *ibid.*, p.198.

98 Second reading debate can be found in Parliamentary Debates Vol. 410, pp. 756-767, 810-838, 861-884 and 896-932.

99 *ibid.*, for example p.868 and p.881.

100 *ibid.*, for example at pp. 828, 866, 867 and 905.

member's electorate, e.g. to what extent the electorate had been misinformed about the Bill. It must be remembered that parliamentary debate is regularly broadcast over radio. The other side of the debates was a sporadic treatment of a number of different arguments. On a few occasions the arguments used initially in the first reading debate were enlarged upon. Mrs Batchelor, for instance, employed the latter technique at one stage¹ by building a long speech on the theme of family life and the likely detrimental affects of the Act upon it.

At the beginning of the second reading the Minister once again went through an inventory of the clauses of the Bill and their proposed spheres of operation. He began, too, with a complaint at the bad press the Bill had been receiving. He put it down to the result of "personal interpretations placed on the Bill by union officials and members on the other side of the House".² As a result of that, the Minister stated, strikes had already taken place on a decision made before the Bill had returned from Select Committee. To counter what he called scaremongery about the final ambit of the Bill the Minister made a few general statements about the Bill's provisions. Firstly, he conceded that the Bill, although overriding the closing hour provisions in awards and collective agreements, did not in any way affect the working hour provisions. Secondly it was stated that no reasonable interpretation of the Bill would support a claim that widespread weekend trading would result. Thirdly the unsatisfactory nature of the 1955 Act with its enforcement difficulties placed a duty on a responsible and honest government to ensure the law was capable of proper enforcement. It was suggested that the new legislation would be. Mr Gordon also threw in an argument to the effect that since the law was last reviewed (1955) living and social patterns have changed drastically.

1 *ibid.*, p.760; Michael Connolly took up a similar theme in his speech *ibid.*, p.908.

2 *ibid.*, p.756.

The Minister hoped that the Bill would "move with the times".

A variety of items and topics were argued in debate. When faced with the argument that employees would be forced to work during unnegotiated opening hours if they wanted a job at all, a government member told an opposition member that the answer to the dilemma lay in future legislation, namely, the Human Rights Commission Act. What the link between the two was remains a mystery. That was the attitude of another Member of Parliament⁴ who went on to add that the highly competitive atmosphere in retailing resulted in a domino effect if some shops opened.

The question of legitimation by new legislation of illegal practices was seen as a proper function of the new Act because it would mean that there would no longer be any enforcement difficulties.⁵ Opposition members pointed out that merely because people broke the law was a spurious reason for changing the law. Nevertheless the argument was accepted by the Government benches during the whole debate.

On a number of occasions Opposition members raised this fact that there was nothing in the Government's manifesto that dealt with shop trading hours.⁶ Their contention was that the Government had no mandate from the people they represented to make such wide changes to the law.

The government, on the other hand, made much of the expanded list of criteria, gaining political points by announcing that the comprehensive nature of the criteria now prevented any thought of an open slather on weekend trading.⁷ Much of

4 *ibid.*, p.810

5 *ibid.*, p.761

6 *ibid.*, pp. 816, 819 and 821.

7 *ibid.*, p.901 and p.876.

the general opposition to the Bill was thereby soothed and the government showed that it was actually concerned for the family and social patterns of New Zealanders. But despite this, at least one MP seemed not to have caught up with the play. At one point⁸ this member stated that demand was the controlling factor in this legislation: "[The Bill] is an attempt to meet a public demand by considering the interests of all the parties".

In addition to the matter of industrial strike action it was once again brought to the attention of the public that the Opposition "went on strike" at Select Committee deliberations. Defending themselves from the charge of failing to be an effective opposition, the Labour members responded that if they had deliberated the Government would have held them too responsible for the substance of the Bill.⁹ Elsewhere¹⁰ the Opposition stated their position as follows: "We said the Government had a right to do what it wished, but it had no right to demand that we be a party to it".

It had become almost a practice that any concerted opposition from the Labour party ranks and the unions be branded as collusion between the Opposition and the Socialist Unity Party. At the least, the Opposition was described as being led by the nose by the S.U.P. and at worst as Mr Talboys put it¹¹ "members opposite have no enemies to the left". The best the Opposition could do to counter the effect of statements was to list all the other groups opposed to the Bill e.g. the Bank Officers' Federation, and express their surprise that such groups had been infiltrated by the S.U.P.

At about the middle of the second reading debates¹² the

8 *ibid.*, p.897

9 *ibid.*, p.826.

10 *ibid.*, p.819

11 *idem.*

12 *ibid.*, p.827.

Opposition gained the opportunity to accuse the Government benches of a lack of independence in their consideration of the Bill. On asking the question "Who wants this Bill?", Opposition members had come up with the answer that Woolworths and an Auckland campaigner (Mr K.C. Morgan) wanted the legislation;¹³ that big business was a backer of the bill;¹⁴ that the benefit of the legislation would increase the turnover in malls and thus the financial interests behind the malls would like to see the Bill passed.¹⁵ Fletcher Development, a subsidiary of Fletcher Holdings was named as the manager of eleven shopping complexes, while Challenge Properties was named as operating three others in Auckland. It was contended that the leasing arrangements of these groups were of a type that gave the lessor a rent based on the turnover in profits. As profits would increase through operating in the more flexible hours available under the Act, the rental would also rise, and whether or not there were increased costs for the consumer or retailer the managers of malls gained. Sir Jack Marshall (as a director of Fletchers) and other National Party members were linked to the businesses involved.

It is curious that, although this was seriously raised once more and mentioned once in passing by the Opposition,¹⁶ this weapon in their attack against the Bill was not used more strongly. Part of the ineffectiveness of this attack was due to the silence which the Government benches refused to break on the subject. A typical response on the part of National members was to ignore those speeches altogether. When a Government member acknowledged the argument in any way it was to disassociate it with the subject of debate. For instance, when Dr Wall resumed his seat after speaking of benefits from the Act accruing to the upper ranks of the National Party he asked the next National speaker to explain who would benefit, either proportionately or at all, as much as the financiers of suburban malls would. Mr Brill

13 *ibid*, p.827.

14 *ibid.*, p.833.

15 *ibid.*, p.837.

16 *ibid.*, p.862 and in the Third Reading p.1261.

merely replied "May I say at once to the member for Porirua that I am not required to discuss whether any individual will benefit from extended hours, particularly weekend hours, because this Bill does not deal with that topic".¹⁷

Some topics briefly raised in debate can be seen to directly stem from the Select Committee hearings. At a time when the country was very concerned about its energy resources, an argument that extended hours of shopping must draw on the country's power reserves was an obvious one.¹⁸ As obvious was an argument that asserted there would be further strained industrial relationships over the negotiation of penalty rates for working during extended hours.¹⁹ An analogy was also drawn, as it had been in Select Committee, between the permissive legislation on shop trading hours and that of liquor licensing legislation which extended the closing hours of public hotels.

In general the debate was jerky with few speakers continuing any particular line of debate. It seemed that all members, no matter their electorate, could find something in the legislation with which to identify for the purposes of making a speech. Little was achieved in clarifying the various issues for the general public or for members of parliament. The only people who had expressed discontent with the Bill and had become reconciled were in fact three members of the Government benches. Mr Brill and Mr Fenton faced some mocking at the tongues of the Opposition for their weakly explained reconciliations.²⁰ As an indication of how inane the debate had become at the end it was an Opposition member who moved "That the question be now put".²¹ The Deputy Speaker considered the motion and decided that the

¹⁷ *ibid.*, p.862.

¹⁸ *ibid.*, p.816.

¹⁹ *idem.*

²⁰ e.g. Parliamentary Debates Vol. 408, p.194.

²¹ *ibid.*, p.928 by Squadron Leader Drayton who had not until that time spoken in the debate.

one member who wanted to speak could do so despite the fact that the House had heard thirty-five speakers on this Bill and "a fair amount of repetition".²² After the Minister of Labour summed up the House divided and the second reading was passed.

7. Committee of the Whole

The House of Representatives went into committee on 28 June to discuss amendments to the Shop Trading Hours Bill, and the amendments of the Labour Committee were read into the Bill. These secret sessions were discussed in the third reading.

8. Third Reading

The Minister of Labour moved the third reading of the Bill on 7 July. Early in the discussion members of the House became confused as to exactly what it was they were supposed to be discussing. References to material from the second reading had been made and this was thought to be incorrect. Guidance was sought from the Deputy Speaker. Admitting to some difficulty in describing what was relevant and appropriate for discussion in a third reading, the Deputy Speaker turned to Speakers' Rulings for a general guide.²³ The guide explained that it was appropriate in a third reading to sum up the Bill as it came from the Committee of the Whole on the basis that it was the first opportunity members had to record for the benefit of the House (and posterity)²⁴ the words of wisdom uttered therein. To some extent therefore members are limited depending on their ingenuity, to discussion of proposed amendments and the like rather than the wide-ranging debating that took place in the second reading or argument in Select Committee.

A number of impressions of the debate that took place in the

22 idem.

23 Parliamentary Debates, Vol. 411, p.1262.

24 idem.

Committee of the Whole are conveyed by the government speakers. The Minister of Labour stated that "some very strong challenges were issued on some of the later clauses"²⁵ and "genuine attempts were made on at least two or three clauses to look for possible loopholes in the legislation",²⁶ although "it was symptomatic of the Bill that during the Committee stage we had an extended debate on the short title".

Members for the Opposition, the House was told, tried to fulfil its "duty as a good and loyal Opposition by doing the best [they] could to make what [they] thought was a very bad Bill just a little better". They did this by moving amendments to the clauses of the Bill. As summarised by Opposition member Dr A.M. Finlay²⁷ there were a number of proposals. The first amendment moved was to clause 4A(2) where instead of an appointment of two lay members to the Commission it was sought that the Retailers' Federation and Federation of Labour nominate one each. On clause 4B it was sought that in exercising its jurisdiction all three members of the Tribunal should participate while keeping a separate jurisdiction for the Commissioner only in respect of "peripheral matters of procedure". In relation to clause 6(1) and the hours of opening the Opposition attempted to limit retailers to one late night by proposing that the hours be reduced to between 7 a.m. and 6 p.m. on four days a week. One amendment which "the Government was on the verge of accepting" concerned the making of applications for extended hours by the majority of shops in an area or district. The Opposition had previously linked this provision to a means by which a mall operator or the like, who owned interests in the majority of shops in a complex, could force all shops in that complex to open. It was proposed that where one person held such a multiple interest that person's vote be deemed to count as one rather than the number of interests held. Another matter raised before was that public demand

²⁵ *ibid.*, p.1257.

²⁶ *idem.*

²⁷ *ibid.*, p.1266.

be dropped as a specific criterion which the Commission was to take note of under clause 19 in making its decision. This proposal rested on the rather tenuous argument that public demand was a "very elusive concept, hard to define and even harder to grasp" and should be dropped as an aspect of the primary criterion - the public interest. It was also suggested that a criterion be added to clause 19, one which would look to minimizing trading on statutory holidays. Members from the Opposition benches sought that not only should the Tribunal have regard to the forty hour week, but also the eight hour day, as a factor in its consideration of applications. In this way shifts of more than eight hours in a day were to be avoided. All criteria it was argued should be binding on the Commission.

But, the Government "stuck with the Bill and did not accept the amendments". In answer to some of the Opposition suggestions the Minister said that Government officers and advisers considered the Commission would regard an owner of a block of shops, or a mall as a majority although such an application was unlikely. On such a reply the Government must be seen as very far-sighted in providing for all eventualities. That "public demand" be removed from the criteria was seen as removing an argument that had already had much play in Select Committee,²⁸ and, that all criteria be binding was seen as crippling the Commission if it had to take account of special circumstances (e.g. topography) in a unique case.

Invitations to nominate members to the Commission had been extended to the Opposition during the course of the third reading but these had been refused,²⁹ Mrs Batchelor saying that because she was against the principle of the Bill she would find it difficult to ask anyone to take part in its administration. Once the amendments had been canvassed and invitations rejected, debate petered out so that it was

28 *ibid.*, p.1258.

29 *ibid.*, p.1267.

left to the Minister of Labour to sum up briefly. Repeating an earlier statement that the Bill was neither concerned in the main with working conditions or working hours, Mr Gordon implied that commercial shop trading hours was the key to the legislation. His final words in the last of the third reading speeches were: "the flexibility of hours provided under the Bill will meet the community's wishes without destroying our family life".³⁰

The House divided and the third reading was passed. The Act received the Governor General's Royal Assent on 12 July 1977. However, in order to allow the Department of Labour adequate time in which to prepare the Register of Orders (containing 6000 orders at the time) the provision requiring such a Register was not to come into force until 1 January 1978 all other provisions of the Shop Trading Hours Act 1977 came into force on 1 October 1977.

9. Analysis of Influences Outside Parliament

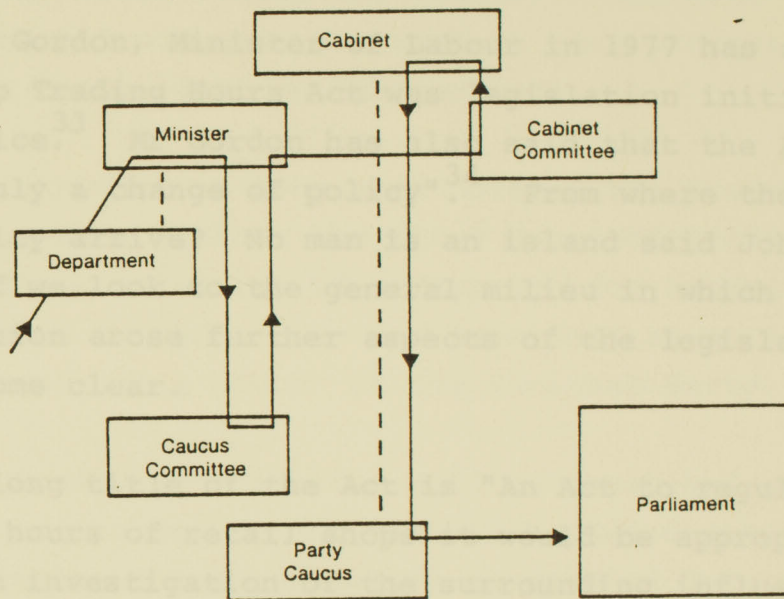
This paper has so far described the Shop Trading Hours Act 1977 in terms of its appearance as a draft Bill; the ways in which it differed from previous legislation on the same theme; and the chronological order of events by which the Bill became an Act. The latter included descriptions of the first, second and third readings as well as Select Committee hearings. Certainly it is by these last named events that the public recognises that parliament is doing its part in the making of statute law. When the Governor General gives the Royal Assent to the Bill that jumps those hoops the public knows it will have legislative force. That parliamentary procedure figures in the legislative process is without doubt, but the House of Representatives is no longer seen to be the originator of new legislation. The parliamentary timetable is dominated by government Bills which are largely prepared outside the Chamber and often presented as a fait accompli.³¹ The legislative process

30 Parliamentary Debates Vol. 411, p.3120

31 Jackson W.K. "A Political Scientist Looks at Parliament" (in Sir John Marshall Ed.) "The Reform of Parliament" 1978 at p.20.

encompasses much more than the arrangements of the House. That a wider circle of participants are present in the legislative process can be seen in the following diagram of the Parliamentary Legislative Process³²

FIGURE 3:1 *The Parliamentary Legislative Process*⁹



It is apparent that even to this diagram additions must be made. The public, through interested individuals or interested groups contribute to the input of the legislative process either through the initiation of ideas or the sometimes more subtle pressures of opinion on the existing ideas. In much the same way the political parties of both the Government and Opposition also contribute to the input of the legislative function. These then are the influences on the legislative process. Not all playing an equal part yet never really acting in isolation. Most will, to some degree, be present in the shaping of a new piece of legislation

32 Levine, S. "NZ Political System" George Allen & Unwin 1979, p.46

Many of the pressures shaping legislation cannot be confined to one time or place as being the time and place of influence on the final statute. This takes account of the human element in the process, where people dealing with other people carry with them knowledge of events and people that may be far away in time and space, and of possibilities that may never eventuate. Not all the influences in the legislative process are therefore accessible for examination.

Mr J.B. Gordon, Minister of Labour in 1977 has stated that the Shop Trading Hours Act was legislation initiated in his office.³³ Mr Gordon has also said that the Act was "certainly a change of policy".³⁴ From where then did this new policy arrive? No man is an island said John Donne; so that, if we look to the general milieu in which the legislation arose further aspects of the legislative process may become clear.

As the long title of the Act is "An Act to regulate the trading hours of retail shops it would be appropriate to begin an investigation of the surrounding influences with an examination of the retail trade. The retail trade had reached a peak in sales for 1974-1975. But, with the rest of the economy, suffered a depression over the following years.³⁵ Retailers had been (and still are) operating on fixed percentage margins since 1970.³⁶ As a result of inflation they had absorbed extraordinary increased levels of total operating costs.³⁷ The umbrella of interests that the retail trade covers is a very wide one. There are individual stores, chains of stores, and complexes of shops. Shopping centres or complexes are relatively recent

33 Letter, to the author 18.9.80.

34 idem.

35 Economic Monitoring Group, Report No. 2 to the New Zealand Planning Council 1979, p.1-3.

36 Submission No. 41 to Labour Select Committee 1977 and NZ Retailers' Federation 59th Annual Report 1979 p.1.

37 Newspaper articles recorded Retailers asking for relief from profit squeeze. Appendix. 4.

developments in New Zealand.³⁸ They have proved successful situate in their suburban centres. The Fletcher Group of Companies are "the biggest and most experienced operator in the shopping centre business in this country".³⁹ Karl Robinson, general manager of the shopping centres division of Fletchers said in 1976: "We've been active in attempting to steer a path towards more flexible hours for shopping".⁴⁰ At the time protests at laws preventing Saturday opening were being heard around the country. Robinson said that Fletchers did not take the lead in such protests because it was more traditional in its approach.

The media had for a long time covered the protests of various retail traders against the fixed hours of trading. In 1976 it noted the formation of a Campaign for Saturday Trading led by Mr K.C. Morgan who was described as an Auckland businessman and a member of the National Party.

Further protests were being held in localised areas, mainly the Wellington region, by certain hardware stores against the necessity for an exemption to open on Saturdays. They opened their stores on Saturdays in defiance of the law. Those who did not open along with the shop employee unions put pressure on the Department of Labour to enforce the provisions of the Shops and Offices Act 1955. The Minister of Labour said:⁴¹

There were enforcement difficulties encountered by the Department of Labour, and indeed on many occasions I expressed my frustration that good inspectors were not concentrating on safety factors in factories etc., but chasing up small minor infringements [of the 1955 Act].

38 McLachlan G. "The Shopping centre is here to stay", NBR Marketplace No. 4, 1976.

39 *ibid.*, p.15.

40 *ibid.*, p.19.

41 Letter, *ibid.*

There were reports that Auckland Factory Inspectors had refused to enforce the legislation except on complaint.⁴²

Protests and the volume of illegal trading came to a head as the Review Committee appointed in 1975 by a Labour Government made its report to the Minister. In acknowledging the difficulties of enforcement, the anomalous position of retailers trading illegally, it called for a review of the law.

When the National Party was elected to government in 1975 no party policy had been formulated in either major political camp. The National Party membership however passed a remit in their 1976 Party Conference which urged the National Government to make trading hours more flexible. It is this party remit that can be seen as the point at which the Minister acted to change the law. Although the publicised protests against the law and enforcement difficulties must have had some influence on his acceptance of the party policy, the Minister has stated⁴³ that this was not "a factor in the consequential legislation".

The Department's function was to be the formulation of law on the direction of the Minister, rather than the proffering of advice on such a step. It drew up guidelines on which the Parliamentary Counsel was to draft a Bill. Although the policy change on hours of opening derived from the Minister's instructions it was the experience of the Department that requested a provision to relate to markets, which had been growing in popularity while operating outside the authority of the 1955 Act. Parliamentary Counsel's job was quite straightforward, some provisions needed only to be repeated in part or full where applicable.⁴⁴

42 Source: J. Reid union consultant

43 Letter, *ibid.*

44 For example, s.16 Shop Trading Hours Act 1977.

So that Caucus could consider the Minister's proposal for legislation to be introduced to the House the Department of Labour furnished a paper on the history of the Shops and Offices Act 1955 and on the contemporary situation.⁴⁵ The Minister's proposal, whatever it was, proved too liberal for Caucus and, acting as it so often does as a brake on the actions of Ministers, it pulled him back. The proximity between the passing of the remit and the discussions in Caucus was very close.⁴⁶ Other government departments were informed of the impending legislation but only the Tourism and Publicity Department responded expressing interest in the matter.

There is some inconsistency regarding the matter of interested parties over the new legislation. The Labour Department, the Shop Employees Union and the Retailers' Federation all deny any consultation took place amongst any of them. Some members of parliament however spoke of consultation with interested parties in vague terms - whether these were other interested parties (it is difficult to see who could be more of an interested party than the Shop Employees Union or Retailers' Federation) or consultations took place after the Bill was introduced is not clear.

The Minister of Labour has said no great urgency was associated with the passing of the Bill; that it was routine legislation following a normal course.⁴⁷ Although the policy was adopted quickly by the National Government and a Bill was introduced quickly it was referred to Select Committee over recess.

Select Committees can be an important stage of the legislative process, by providing an opportunity for ordinary citizens and interested groups to express their opinions, good or

45 G.C. Kaumu, Interview.

46 Parliamentary Debates Vol. 408 p.3120.

47 *ibid.*, Letter.

bad, about the proposed legislation; it gives all parties (including government) a chance to examine the legislation for defects in principle as well as in statutory language; and operates as a feed back service of public opinion to members of parliament. A majority of submissions, it has been seen, were against the principle of more flexible hours for shops, many submissions made recommendation for changes in the draft Bill which would make it workable legislation at least. The Bill was considerably amended along the lines so proposed. As the Bill went through its second and third reading the fact that people had been opposed to the legislation in principle was pushed aside, while the fact of amendments made by applicants before the Select Committee being adopted into the Bill was almost a matter of self-congratulation. Thus in one sense the influence of interested people in Select Committee was strong enough to bring about numerous changes in the final Act. In another sense the real concerns of the interested groups were obscured. Groups like Retailers' Federation and the Pharmacists urged the government to take caution over the introduction of the Bill. They noted that the flexibility of shop trading hours would not substantially increase the total profits in the retail sector, but would rather redistribute it among certain retailers. They also recorded their concern at the lack of economic studies undertaken by the government in this sphere. Some groups e.g. Mixed Dairy Business Association provided their own statistics regarding the distribution of profits over the hours shops were open. But there was no comprehensive economic report on the retailing industry nor was the Department of Labour asked to commission one. There was in fact no detailed economic arguments or discussions produced during the debates in parliament. The best members of parliament could manage was to say that increases would rise or be absorbed depending on which side of the House the argument was raised.

Publicity remained constant and the greater feedback of letters was aimed at the Minister, the Department writing and filing replies. Members too used the mail as evidence of support

of the public both for and against the legislation. Although some members would have contacted their electorates⁴⁸ it seems that the large number of public opinion polls quoted throughout the submissions to Select Committee were used as gauging public reaction.⁴⁹

That the Minister's action in initiating the Shop Trading Hours Bill is decisive of its political importance is proved when another factor is taken into consideration. The remaining parts of the Shops and Offices Act 1955 have been reviewed and the Factories and Commercial Premises Bill 1980 has been introduced into the House. The review of the 1955 Act had been under way and would have taken account of the shop trading hours provisions in due course.

It has already been noted that formal cognisance of a flexible shop trading hours policy was not adopted by the National Party until 1976. In 1971, however, Mr W.G. Tolhurst introduced as a private members bill, and amendment to the Shops and Offices Act which was to make public demand the paramount reason on which exemptions for extended hours were to be granted to shops. The Bill went as far as a second reading before it became obvious that parliamentarians simply saw no need for it. Six years and a severe economic depression later, it seems the climate for such changes had altered considerably. Vastly changed social patterns were spoken of on a vague level in parliament and on a more detailed level in Select Committee. Changes, said to have the most impact on the retail sector,⁵⁰ included the tremendous increase in the numbers of married women in the work force⁵¹ and the advent of equal pay.⁵² Combined with the

48 In much the same way as J. Terris MP has this year. Appendix.5.

49 Letter *ibid.*

50 Source: Mr B.I. Purdy

51 Married women in the labour force as a percentage of all married women increased from 3.6 in 1936 to 32.6 in 1976: Official NZ Yearbook 1979, p.776.

52 Equal Pay Act 1972; reached half-way stage in implementation in 1975.

increased mobility of the ordinary consumer, in spite of the fuel crisis,⁵³ these factors were seen by some sectors of the retail industry as an opportunity to take a greater slice of the profits away from non-retail sectors. The mechanism by which this was to be achieved was through more late nights and Saturday trading - in short, flexible trading hours.

What, if any, submissions were made to the Minister by groups advocating flexible hours can only be a matter of speculation. The Minister has said that no outside interest groups prompted him in his actions.⁵⁴ This is partly borne out in the widespread dismay of most interested groups when the Bill was introduced. The seemingly total lack of consultation put many parties on edge and resulted in the issue becoming an emotive one.⁵⁵ Despite an oft made comparison with the liquor licensing issue no one suggested a referendum be taken to settle the matter. Although some groups in Select Committee had stated that public opinion had not been properly canvassed this never became a concern of the government benches as a whole. The few National Party M.P's who had expressed an objection or two to the Bill found that they had been removed by amendments made after Select Committee. That the amendments were in the nature of a conciliatory gesture to those making submissions is proved by the fact that they did nothing to re-shape the policy of flexible trading hours contained in the Bill. Government was seen to have moved yet not changed stance at all; party discipline was maintained.

10 An Epilogue

"... the [Shop Trading Hours] Bill now before the House will take us to the turn of the century."

Mr Luxton M.P., 1977⁵⁶

53 A straw clung to by some people before the Select Committee.

54 *ibid.*, letter.

55 Submission No. 30 which began "It is unbelievable that government is thinking of destroying an industry [Mixed Dairy] that has served this country faithfully for many decades ..."

56 Parliamentary Debates Vol. 410, p.822.

In 1978 the Department of Labour reported that "[the 1977 Act] is difficult to enforce and inspectors are frequently berated by occupiers and members of the public ..." ⁵⁷ In July 1980 the Prime Minister announced a major amendment to the Shop Trading Hours Act 1977 - Saturday trading from 7 a.m. to 9 p.m. would become legal. The amendment Bill was introduced to parliament on July 10. There has not been the same barrage of protest as greeted the 1977 Bill; it is old news now to the public. For the interest groups, no conflicts have been solved. Their differences are being resolved in another arena - that of negotiations of industrial awards. ⁵⁸ What happens there will affect the general public as much as the requirements of any legislation and as with the passing of the 1977 Act they will be as little consulted and informed until the matter has been decided.

- Mr A.J. Faulkner - Member of Parliament, former Minister of Labour 1972-1973. (Interview).
- Mr S. Williams - Opposition Research Unit.
- Dr L. Cleveland - Political Science Department WU.
- Mr J. Robson - Member of Opposition Research in 1977.

57 Report of Department of Labour 1978 p.22.

58 Appendix G.

APPENDIX I

The author wishes to acknowledge the assistance of the following people in the preparation of this paper:

- | | | |
|------------------|---|--|
| Mr G.C. Kamau | - | Assistant Chief Inspector of Factories,
Department of Labour (Interview). |
| Mr G. Jackson | - | Secretary of Labour
(Interview). |
| Mr N.S. Woods | - | Visiting Fellow at VUW Industrial Relations
Centre and former Secretary of Labour
(1966-1970).
(Interview). |
| Mr G. Kelly | - | Secretary Shop Assistants Union (Wgtn)
(Interview). |
| Mr B.I. Purdy | - | Executive Director of the N.Z. Retailers
Federation.
(Interview). |
| Mr A.J. Faulkner | - | Member of Parliament, former Minister of
Labour 1972-1975.
(Interview). |
| Ms B. Williams | - | Opposition Research Unit. |
| Dr L. Cleveland | - | Political Science Department VUW. |
| Mr J. Robson | - | Member of Opposition Research in 1977. |

Schedules.

SCHEDULES.

Ibid.,
Second Schedule.
1910, No. 61.
Schedule.
1920, No. 67, sec. 11

FIRST SCHEDULE.

HOURS OF EMPLOYMENT IN CERTAIN TRADES.

	Hour on One Working-day in each Week.	Hour on all other Working-days, except the day observed as the Weekly Half-holiday.
Bakers	11 p.m.	10.30 p.m.
Butchers	10 p.m.	6 p.m.
Chemists	9 p.m.	8 p.m.
Confectioners	11 p.m.	10.30 p.m.
Dairy-produce sellers	10 p.m.	6 p.m.
Fishmongers	11 p.m.	10.30 p.m.
Florists	10 p.m.	8 p.m.
Fruiterers	11 p.m.	10.30 p.m.
Hairdressers	10.30 p.m.	8 p.m.
Newsagents	10 p.m.	8 p.m.
Pork-butchers	11 p.m.	10.30 p.m.
Tobacconists	10.30 p.m.	8 p.m.

TO BE PROSECUTED

EVENING POST 17/9
SUPERMARKETS' COMPETITION
11/11/63
Butcheries Forced
To Break The Law

AUCKLAND, Today (PA).—Competition from supermarkets, chain stores and dairies is forcing many Auckland butchers to keep their shops open after the legal closing time, the Arbitration Court was told today.

"I do it myself," the president of the Auckland Master Butchers' Association (Mr. E. M. Mitchell) told Mr. Justice Tyndall.

"If we don't provide service when our customers want it, they go elsewhere," he said. "I am concerned that we are breaking the law."

Retailers are asking the Court to extend closing time to 5.30pm.

To Mr. A. B. Grant, workers' representative on the Court, Mr. Mitchell said he did not think employers would stagger workers' hours to avoid paying them overtime if the extra half-hour were granted.

A new classification of "journeyman butcher" and inclusion in the award of qualifications attached to it were opposed by the Auckland Butchers' Union, represented by Miss E. M. Allan.

Employers were represented by Mr. W. R. Thompson.

The Court reserved its decision.

Post 7/9/50 TILKINS
EASTBOURNE
SHOPS TO BE
PROSECUTED

THE Labour Department has decided to prosecute the Eastbourne shopkeepers who remained open last Saturday in defiance of the Shop Trading Hours Act.

The Labour Department's assistant district superintendent in Lower Hutt (Mr Jim Ainge) said letters would be sent out this week to about half a dozen shopkeepers informing them of the department's decision.

Only those shops which had already been warned by the department would be prosecuted, said Mr Ainge.

The maximum possible fine for the offence is \$500. The chairman of the new "Village" shopping complex on the corner of Rimu Street and Muritai Road (Mr John Corbett) was not available for comment this morning.

Controls Self-Defeating, Bad For Everybody, According To Retailers

RETAILERS strenuously opposed the Government's latest action on price control, the president of the Retailers' Federation (Mr J D M Liddle) said today. (See statement on page 6).

"These regulations are against the interests of the consumers, the retail industry and, indeed, the country as a whole," he said.

Retailers had been working under fixed margins and price restraints since 1970, and had been forced to absorb increasing wage bills and other costs.

"The reductions in retail margins demanded by the Government are in many cases well above five per cent, and consumers should be aware that actual profits to

the retailer are between two and five cents on each dollar of sales turnover," said Mr Liddle.

Wage Bill

The new regulations came at a time when retailers, as the largest employers of females, were faced by a major increase in the wage bill because of equal pay. Now the Government was forcing extra costs onto the industry and at the same time drastically reducing its ability to absorb these costs.

"Retailers will have to reduce their ranges of stocks to the volume lines, and will reduce discounts and mark-downs. There will be fewer bargain lines for the housewife. By putting the retail industry in a straitjacket the

Government will only succeed in reducing competition, and this will be seen in less variety."

From a wider point of view the new regulations would have the effect of deterring investment from the retail and manufacturing sectors, said Mr Liddle.

Government should reduce its own spending and not expect the private sector to bear all the burden. Inflation will not be controlled until this is done and the retail industry rejects these archaic controls on principle as being self-defeating," said Mr Liddle.

Retailers seek relief from profit squeeze

NBR Oct 29/75

THE Retailers Federation is pressing the government for a substantial change to the price and profit control regulations.

Last Friday they sent a 38-page report to the department of Trade and Industry.

The report argues that lack of profitability has caused re-investment to drop below the rate of inflation and that earnings are not adequate to maintain stock levels.

Many retailers say they can't internally finance stock replacement and are having to borrow to maintain stock levels.

This has caused a reduction in forward ordering and is about to create an employment problem.

Already the industry believes it has reduced the female work force by about 10 per cent.

Federation personnel say the regulations "are starting

by BARRIE SAUNDERS

to crucify the trade."

They are not asking for the abolition of price controls but want changes to the freeze on percentage mark-ups.

These are frozen at 1970 levels and although gross profits increase as sales rise the retailers claim that their expenses are rising faster.

A major cause of this is the move to equal pay.

Wellington department store proprietor D A Smith claims "today's retailer is operating not under price control but under an accelerating profit freeze."

In its last year James Smith increased sales by 17 per cent but profit dropped by 47 per cent.

In the past few months other retailers have reported substantial profit falls.

George Court and Son Ltd was down 93 per cent, Woolworths down 47 per

cent, Beath and Company increased sales 7.5 per cent but profits dropped 39 per cent, and Hallensteins Bros profits were down 29 per cent.

The federation expects most retailers will report worse results next year.

Retailers would like to see an end to the percentage mark-up freeze or at least a substantial relaxation.

They argue that a mark-up freeze is inappropriate because much stock is marked down in sales and if a higher normal limit is not allowed reasonable profits are not possible.

If retailers were subject only to the group B regulations limiting net pre tax profit to turnover, they could recover costs not allowed at present.

It is expected that federation officials will discuss their submission with departmental officials next month but that a decision is unlikely before December.



PARLIAMENT BUILDINGS,
WELLINGTON

25 July 1980

Dear Friend,

SATURDAY SHOP TRADING

There have been many strong views expressed by the different interest groups affected by the Government's proposal to extend Saturday shop trading to all stores from the hours of 7 a.m. on Saturday morning until 9 p.m. in the evening.

Bill Rowling has pointed out that this sort of "open slather" proposal is ridiculous, since it is very doubtful that there is a sufficient amount of money available to allow retailers to extend their hours in this way, without having a serious effect on prices - quite apart from the effect on the traditional New Zealand weekend, and on the fourty hour week generally.

Nevertheless, we in Parliament would like to gauge as accurately as we can the views of everybody affected. There is no doubt that both the retailers, and those who work in shops, are directly and strongly opposed to the idea of Saturday shop trading. In contrast to this, there have been some surveys produced in other parts of New Zealand which suggest that shoppers at large would find this a welcome innovation.

My purpose in writing to you is to conduct a random sample survey of my own, to determine how people not directly affected (that is neither a shop owner or shop worker) feel about the idea of extended shopping hours on Saturdays. This will help me to form an opinion about its acceptability so far as the people who live in this area are concerned, so that I will be better able to represent that view in Parliament when the legislation is debated after the report back from the Select Committee on the Bill.

I would therefore like to invite you to let me have your views and to help you to express these, I've appended a tear-off slip which sets out a number of alternatives. If you have a point of view which is not covered by these, I would be very pleased indeed to have your advice in writing. My address is c/- Parliament Buildings, Wellington

Yours sincerely,

JOHN TERRIS, M.P.
Western Hutt

-----tear off-----

Please tick one of the boxes below and return this slip to J. Terris, MP,
Parliament Buildings, Wellington:

- I AM IN FAVOUR OF THE EXTENSION OF SATURDAY SHOP TRADING (7am-9pm)
- I AM IN FAVOUR OF LIMITED SATURDAY SHOP TRADING - e.g. Saturday morning, say, in areas where there is clear need
- I AM COMPLETELY OPPOSED TO THE EXTENSION OF SATURDAY SHOP TRADING

Award

The three principal Awards affecting the retail sector (Retail Non Food, Grocery and Supermarket and Clerical) all provide for the payment of double time, or ordinary time in addition to the weekly wage, where a store trades on Saturday.

However, all the Awards provide in broad terms that where a store is closed but workers are brought back for stocktaking etc, the penal payment is time and a-half for the first three hours and double time thereafter, with a minimum payment of four hours.

Double time payments for Saturdays apply whether or not the work is done inside 40 hours, as overtime, or as part-time work only on a Saturday.

The 1980 Award negotiations will focus attention on the problems attached to Saturday work, with a gulf existing between Shop Employees Union claims to lock the industry up, and employers trying to maintain flexibility and improve work-pattern options.

RETAIL NEWS: Official organ of the N.Z. Retailers Federation

1. July 1980

2. August 1980

If Bill passes, union will use award for battle

Believing that it has a fair amount of employer and political sympathy in its opposition to the terms of the proposed trading hours legislation, the Shop Employees' Association is drafting its own bill, to be made public when submissions are heard.

It is understood that the "bill" would retain the existing hours but allow greater flexibility by agreement in the period immediately before Christmas; flexibility for shops catering for tourists; and stricter policing of the act by the Labour Department.

In the event of the Shop Trading Hours Amendment

Bill passing unchanged, the union has served notice that it intends to use the retail non food award negotiations next month to gain control of Saturday work.

Union industrial officer, Rob Campbell, said that award claims would most likely include a ban on Saturday work without the written, specific and prior consent of the union — the same conditions that govern the retail butchers' award where shops wish to open on a second late night.

Employers should note that in the butchers' award, all employees receive the late night extra payment, whether they work or not, if the shop opens two nights.

If the battleground over trading hours is removed to the award negotiations, the union is likely to try to (1) ban weekend work except with union consent; (2) oppose the use of more part-

timers; (3) oppose the employment of more school children and make this more costly by claiming for higher youth rates; (4) claim for increased clothing allowances.

It is understood that the union is not interested in trying to restrict Saturday opening hours to 1pm because it recognises that full-time employees who seek Saturday work will prefer to work the full day.

Therefore it will attempt to have roster systems set out in the award, with prescribed ratios of seniors, juniors and part-timers so that staffing levels would not be at the discretion of individual employers.



Rob Campbell — If all else fails, weekend work only on union terms

SCHEDULES

Section 9 (4) (a) FIRST SCHEDULE

GOODS DEEMED TO BE APPROVED GOODS

Aquarium Flora and Fauna

Aquarium flora and fauna (including tropical fish), and food and ancillary equipment necessary for the keeping of such flora and fauna.

Bakers and Pastrycooks Goods

Biscuits.
Bread.
Cake.
Pastry.
Pies.
Sandwiches.
Smallgoods.

Building Supplies and Handyman's Requisites

Timber.
Plywood.
Interior wallboard and tiles (with or without a wood content).
Decorative and faced boards.
Fibrous plaster and plaster board sheets.
Building paper and substitutes.
Damp course.
Sand and glass paper.
Fillers, adhesives, and putty.
Paint, primers only, in containers not exceeding 2.3 litres.
Nails, screws, hinges, and butts.
Catches and handles.
Hacksaw blades.
Hammers.
Handles for garden and hand tools.
Paint brushes.
Screwdrivers.

Condiments

Mayonnaise.
Mustard.
Pepper.
Pickles.
Relishes.
Salt.
Sauces.
Vinegar.

Confectionery

Confectionery and sweetmeats.

Dairy Produce

Butter.
Cheese, including packaged and processed cheese.
Cream, including reduced cream.
Milk, including condensed and dried milk.

FIRST SCHEDULE—*continued**Drinks*

Aerated waters.
Cordials.
Cordial extracts.
Soft drinks.

Fish

Fresh fish and shellfish, if it is sold by the owner of a registered fishing boat or a person appointed by him in that behalf, direct from that boat at the place where it is moored, berthed, or beached, or from a stall within 500 metres from that place, and if it has been taken from that boat under a valid boat fishing permit for the method or methods used to take that fresh fish or shellfish.

Frozen Foods

Fruit, frozen.
Ice cream.
Ice blocks.
Meals, pre-cooked and deep frozen.
Vegetables, frozen.

Fruit and Flowers

Flowers sold by the grower thereof on the premises where they are grown.
Fruit, fresh, bottled, or tinned.

Fuels

Charcoal.
Coke.
Coal.
Carbonettes, and any other solid fuels derived from coal, in retail packages not exceeding 20 kilogrammes.
Dieseline.
Firewood.
Kerosine.

Gardening Supplies

Compost.
Fertilisers.
Fungicides.
Garden Dusts.
Garden Sprays.
Insecticides.
Manures.
Mulches.
Peat.
Pesticides.
Plant care products.
Potting mixtures and ingredients.
Soil conditioners.
Weed killers.

Groceries, Miscellaneous

Breakfast cereals, pre-packaged.
Baked Beans.
Cocoa, including cocoa compounds.
Coffee, including coffee compounds.
Eggs.
Extracts, meat or vegetable.

FIRST SCHEDULE—*continued**Groceries, Miscellaneous—continued*

Fish, tinned.
Flour, in pre-packed quantities not exceeding 1.5 kilogrammes.
Honey.
Jam.
Jelly crystals.
Nuts, shelled and pre-wrapped.
Pastes and spreads.
Soups, tinned or packaged.
Spaghetti, tinned.
Sugar, in pre-packed quantities not exceeding 1.5 kilogrammes.
Tea, in pre-packed quantities not exceeding 250 grammes.

Magazines and Periodicals

Magazines and periodicals; this shall not be deemed to include books published either in hard-bound or paper-backed editions.
Newspapers.

Meats and Smallgoods

Bacon.
Ham, cooked.
Luncheon sausage.
Meat, tinned.
Sausages, pre-wrapped.
Saveloys.

Medicinal and Household Goods

Aspirins and similar headache tablets.
Babies' bottles.
Baby foods.
Babies' teats.
Cough mixtures.
Fly sprays.
Light bulbs.
Medicated confectionery.
Razor blades.
Sanitary towels.
Sticking plaster, bandages, and similar emergency dressings.
Sunburn lotions.
Toilet rolls.
Toilet soaps.
Toothpaste.
Toothbrushes.

Miscellaneous Items

Boats.
Candles.
Pantyhose.
Torch batteries.
Women's nylon stockings.

Motor Accessories

Caravans and trailers.
Motor spirits, petrol, and oil.
Parts or accessories for motor vehicles, farm machinery, or farm implements.

Photographic Goods

Films.

FIRST SCHEDULE—continued

Plants, etc.

- Corms.
- Plants.
- Seedlings.
- Seeds.
- Shrubs.
- Trees.
- Tubers (including seed potatoes).

Prepared or Cooked Foods

- Cooked fish.
- Cooked chipped potatoes.
- Cooked oysters.
- Cooked sausages.
- Cooked saveloys.
- Meals, including refreshments, consumed on the premises in which they are sold.
- Take-away foods, being prepared or cooked foods in a form ready for immediate human consumption.

Tobacco, etc.

- Cigarettes.
- Cigarette papers.
- Cigars.
- Matches.
- Tobacco.

Vegetables

- Lettuce.
- Tomatoes.
- Vegetables, tinned or freeze-dried.
- Vegetables sold by the grower thereof on the premises where they are grown.

SECOND SCHEDULE

Section 9 (4) (b)

GOODS DEEMED TO BE SPECIAL GOODS

Goods	Hours	Days
Cut flowers (including bouquets)	8 a.m. to Noon	Saturdays (other than New Year's Day, the day after New Year's Day, Waitangi Day, Anzac Day, Christmas Day, and Boxing Day).
Wreaths		
Vegetables		
New and used motor cars (including station sedans), motor trucks (including vans), motor omnibuses, motorcycles, power cycles, tractors, and other motor vehicles propelled by mechanical means	8 a.m. to 1 p.m.	

Part 1
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Section 100

SECOND SCHEDULE

Part	Section	Description
Part 1	Section 1	On 1st January 1977
	Section 2	On 1st January 1978
Part 2	Section 3	On 1st January 1979
	Section 4	On 1st January 1980
Part 3	Section 5	On 1st January 1981
	Section 6	On 1st January 1982
Part 4	Section 7	On 1st January 1983
	Section 8	On 1st January 1984
Part 5	Section 9	On 1st January 1985
	Section 10	On 1st January 1986
Part 6	Section 11	On 1st January 1987
	Section 12	On 1st January 1988
Part 7	Section 13	On 1st January 1989
	Section 14	On 1st January 1990
Part 8	Section 15	On 1st January 1991
	Section 16	On 1st January 1992
Part 9	Section 17	On 1st January 1993
	Section 18	On 1st January 1994
Part 10	Section 19	On 1st January 1995
	Section 20	On 1st January 1996
Part 11	Section 21	On 1st January 1997
	Section 22	On 1st January 1998
Part 12	Section 23	On 1st January 1999
	Section 24	On 1st January 2000
Part 13	Section 25	On 1st January 2001
	Section 26	On 1st January 2002
Part 14	Section 27	On 1st January 2003
	Section 28	On 1st January 2004
Part 15	Section 29	On 1st January 2005
	Section 30	On 1st January 2006
Part 16	Section 31	On 1st January 2007
	Section 32	On 1st January 2008
Part 17	Section 33	On 1st January 2009
	Section 34	On 1st January 2010
Part 18	Section 35	On 1st January 2011
	Section 36	On 1st January 2012
Part 19	Section 37	On 1st January 2013
	Section 38	On 1st January 2014
Part 20	Section 39	On 1st January 2015
	Section 40	On 1st January 2016
Part 21	Section 41	On 1st January 2017
	Section 42	On 1st January 2018
Part 22	Section 43	On 1st January 2019
	Section 44	On 1st January 2020
Part 23	Section 45	On 1st January 2021
	Section 46	On 1st January 2022
Part 24	Section 47	On 1st January 2023
	Section 48	On 1st January 2024
Part 25	Section 49	On 1st January 2025
	Section 50	On 1st January 2026
Part 26	Section 51	On 1st January 2027
	Section 52	On 1st January 2028
Part 27	Section 53	On 1st January 2029
	Section 54	On 1st January 2030
Part 28	Section 55	On 1st January 2031
	Section 56	On 1st January 2032
Part 29	Section 57	On 1st January 2033
	Section 58	On 1st January 2034
Part 30	Section 59	On 1st January 2035
	Section 60	On 1st January 2036
Part 31	Section 61	On 1st January 2037
	Section 62	On 1st January 2038
Part 32	Section 63	On 1st January 2039
	Section 64	On 1st January 2040
Part 33	Section 65	On 1st January 2041
	Section 66	On 1st January 2042
Part 34	Section 67	On 1st January 2043
	Section 68	On 1st January 2044
Part 35	Section 69	On 1st January 2045
	Section 70	On 1st January 2046
Part 36	Section 71	On 1st January 2047
	Section 72	On 1st January 2048
Part 37	Section 73	On 1st January 2049
	Section 74	On 1st January 2050
Part 38	Section 75	On 1st January 2051
	Section 76	On 1st January 2052
Part 39	Section 77	On 1st January 2053
	Section 78	On 1st January 2054
Part 40	Section 79	On 1st January 2055
	Section 80	On 1st January 2056
Part 41	Section 81	On 1st January 2057
	Section 82	On 1st January 2058
Part 42	Section 83	On 1st January 2059
	Section 84	On 1st January 2060
Part 43	Section 85	On 1st January 2061
	Section 86	On 1st January 2062
Part 44	Section 87	On 1st January 2063
	Section 88	On 1st January 2064
Part 45	Section 89	On 1st January 2065
	Section 90	On 1st January 2066
Part 46	Section 91	On 1st January 2067
	Section 92	On 1st January 2068
Part 47	Section 93	On 1st January 2069
	Section 94	On 1st January 2070
Part 48	Section 95	On 1st January 2071
	Section 96	On 1st January 2072
Part 49	Section 97	On 1st January 2073
	Section 98	On 1st January 2074
Part 50	Section 99	On 1st January 2075
	Section 100	On 1st January 2076

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