



ANALYSIS

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1993-94, No. 17

An Act to provide for the regulation of shop trading hours

(20 January 1994)

1. Short Title and commencement - (1) This Act may be cited as the Trading Hours Act 1993-94.

(2) This Act shall come into force on a date to be prescribed by the Queen's Representative by Order in Executive Council, and different dates may be so specified in respect of different islands.

2. Interpretation - (1) In this Act, unless the context otherwise requires, -

"Authority" means the General Licensing Authority established by the General Licensing Authority Act 1989;

"Chief Executive" means the Chief Executive of the General Licensing Authority;

"Goods" includes all personal chattels other than money or things in action;

"Market" means a place or building in which goods are sold or exposed for sale in barrows, stalls, or other such subdivisions, whether or not the dimensions or situations of those subdivisions are fixed, and whether or not the lease of, or licence or permission to use, those subdivisions is granted by one or more of the operators thereof or by some other person;

"Minister" means the Minister responsible for the General Licensing Authority;

"Occupier" in relation to any building or place used or intended to be used as a shop, means the person occupying that building or place; and includes any agent, manager, foreman, or other person acting or apparently acting in the general management or control of any such building or place; and where any such building or place is occupied by a body of persons, whether incorporated or not, also extends to the working manager; and the term "occupier" also has the extended meaning assigned to it by subsection (2) of this section;

"Pharmacy" means premises from which are principally sold medicines, and surgical appliances;

"Place" includes a caravan, a trailer, and a vehicle;

"Shop" means any building or part thereof, barrow, stall, sea-going vessel, or other place where goods are exposed or offered for sale to the public but does not include premises licensed under the General Licensing Authority Act 1989 or the Sale of Liquor Act 1991-92;

(2) For the purposes of this Act, whenever a hawker or other person who carries on business by selling or exposing goods for sale otherwise than in a shop sells or offers for sale, or delivers to a customer, any goods, he shall be deemed to keep a shop and to be the occupier thereof.

PART I SHOP TRADING HOURS

3. Shop trading hours - (1) Subject to the provisions of this Act, the occupier of a shop shall not open or permit to be opened any shop, or sell goods from that shop, on such days and during such hours as may from time to time be prescribed by the Queen's Representative by Order in Executive Council.

(2) An Order made under subsection (1) may apply to the whole of the Cook Islands, or to any one or more islands in the Cook Islands, or to any one or more districts on any island, and may be made in respect of the sale of goods in shops generally, or in respect of the sale in any shop of any kind or kinds of goods, as may be specified in the Order.

(3) For the purposes of subsection (1), a shop shall be deemed to be open if it is not locked or otherwise effectually closed against the admission of the public, or if any person therein is engaged in the sale of goods, canvassing for orders, or delivering goods to customers.

4. Pharmacy hours - The occupier of a pharmacy may open it at any time for an emergency when, pursuant to this Act or any Order made hereunder it ought not to be open, for the purpose only of selling medicines and surgical appliances that are urgently required if -

- (a) the pharmacy is opened for that purpose only; and
- (b) the pharmacy is closed immediately after the sale is made; and
- (c) except for the admission and exit of the purchaser, the door of the pharmacy is kept locked.

5. Postal business - The occupier of a shop where telephonic, telegraphic, or postal business is transacted on behalf of the Postmaster-General may open it at any time for an emergency when, pursuant to this Act or any Order made hereunder it ought not to be open for such business only, if -

- (a) the shop is open for that purpose only;
- (b) the shop is closed immediately after the business has been transacted; and
- (c) except for the admission and exit of the customer, the door of the shop is kept locked.

6. Airport shops - A shop at any airport terminal may, notwithstanding any other provision of this Act, open at such times and on such days, and subject to such conditions, as the authority having control over the airport thinks fit, provided such opening hours are related to arrival and departure times of aircraft arriving at and departing from that airport.

PART II EXTENDED TRADING HOURS ON RAROTONGA

7. Application for extended opening of shops on Rarotonga - (1) The occupier of a shop, or the occupiers of the majority of shops in any area, may apply to the Authority for approval to open at specified times on specified days, or to sell specified goods only at such times and on those days, notwithstanding that opening of such shop at such times or on such days may be prohibited pursuant to an Order made under section 3 of this Act.

(2) Every application under subsection (1) shall be in writing to the Chief Executive, shall be accompanied by the prescribed fee, and shall specify -

- (a) the name of the applicant;
- (b) the name and address of the shop concerned;

- (c) the area and the nature of the area in which the shop is situated;
- (d) the size of the shop;
- (e) the quantity and kind of goods sold and proposed to be sold in the shop;
- (f) the number of persons engaged and proposed to be engaged in the management of the shop;
- (g) the reasons for the application;
- (h) whether or not the occupier, or any person engaged or proposed or likely to be engaged in the management, of the shop has ever been the occupier, or engaged in the management, of a shop in respect of which an offence has been committed under this Act;
- (i) any general policy directions given to the Authority in writing by the Minister;
- (j) such other matters as the Authority considers relevant.

(3) Upon receiving an application under subsection (1), the Chief Executive shall as soon as is practicable thereafter forward the application to the Authority, which shall arrange a time and place for the hearing of the application.

(4) The Authority shall not less than 14 days before the date fixed for the hearing, give the applicant notice of the time and place of the hearing of the application

(5) Within 7 days after being given notice under subsection (2) of this section, the applicant shall if required by the Authority cause notice of the application to be publicly notified in a manner approved by the Authority for the purpose, such notice to be in such form as the Authority may require.

8. Hearings in respect of shops on Rarotonga - (1) The Authority may in its discretion hear any application made pursuant to section 7 in public or in private.

(2) Where the Authority hears an application in private, the applicant may appear and be heard either personally or by counsel.

(3) Where the Authority hears an application in public, any of the following persons may appear and be heard, in person or by counsel -

- (a) the applicant;
- (b) the occupier of any shop in the area that may be affected by the result of the application;
- (c) any organisation that, or any of whose members may, in the opinion of the Authority, be affected by the result of the application;
- (d) a representative of the Aronga Mana of the district or area in which the shop is situated;
- (e) where the day or time in respect of which the application is sought is a Sunday, a representative of the Religious Advisory Council and any church in the district in which the shop is situated;
- (f) any person who, or organisation which, wishes to make representations.

(4) In considering an application under section 7 of this Act, the Authority shall have regard, inter alia, to the following matters:

- (a) public demand;
- (b) any effect the granting of the order would have on family and other social patterns in the area concerned;
- (c) any effect the refusal to make an order would have on the ability of the residents of the district or area in which the shop is situated to purchase food, toiletries and other essential household items on any given day;
- (d) the nature of the area in which the shop or shops concerned are situated and the class of patron intended to be served thereby, having regard in particular to the desirability of providing service to the public at all reasonable times in tourist and holiday resort areas;
- (e) the need to minimise the amount of commercial activity taking place on Sundays;
- (f) any policy directions given to the Authority by the Minister.

(5) The Authority may by written notice to the applicant or his counsel either refuse the application or grant it, either wholly or in part, and either unconditionally or subject to such conditions as the Authority thinks fit; and the shop or shops concerned may be open during the hours and days set out in the application, or during such other specified times on specified days as may be approved by the Authority, or to sell only such goods at such times or days as shall be specified in the approval.

(6) An approval granted pursuant to this section shall remain in force until it lapses or is revoked pursuant to section 12 of this Act.

(7) Proceedings before the Authority shall not be held bad for want of form; and no decision of the Authority shall be reviewed in any Court except on the grounds of lack of jurisdiction.

(8) The occupier of a shop in respect of which an approval under this section is for the time being in force shall display prominently in the shop, so that it may be read by any person without having to ask for its production or obtain permission to see it, a notice setting out accurately the full terms of the approval; and no person shall display in any shop a notice that relates to an approval that is no longer in force in respect of that shop or that does not set out accurately the full terms of an approval that is in force in respect of that shop.

PART III
EXTENDED TRADING HOURS
ON ISLANDS OTHER THAN RAROTONGA

9. Application for extended opening of shops on islands other than Rarotonga

(1) The occupier of a shop, or the occupiers of the majority of shops in any area may apply to the Island Council for approval to open at specified times on specified days, or to sell specified goods only at such times and on those days, notwithstanding that opening of such shop at such times or on such days may be prohibited pursuant to an Order made under section 3 of this Act.

(2) Every application under subsection (1) shall be in writing to the Clerk of the Island Council, shall be accompanied by the prescribed fee, and shall specify -

- (a) the name of the applicant;
- (b) the name and address of the shop concerned;
- (c) the area and the nature of the area in which the shop is situated;
- (d) the size of the shop;
- (e) the quantity and kind of goods sold and proposed to be sold in the shop;
- (f) the number of persons engaged and proposed to be engaged in the management of the shop;
- (g) the reasons for the application;
- (h) whether or not the occupier, or any person engaged or proposed or likely to be engaged in the management, of the shop has ever been the occupier, or engaged in the management, of a shop in respect of which an offence has been committed under this Act;
- (i) any general policy directions given to the Island Council in writing by the Minister;
- (j) such other matters as the Island Council considers relevant.

(3) Upon receiving an application under subsection (1), the Clerk of the Island Council shall as soon as is practicable thereafter arrange a time and place for the hearing of the application.

(4) The Clerk shall, in addition to complying with subsection (3), forward as soon as practicable, a copy of the application to the General Licensing Authority, who shall be entitled to be heard, or to make recommendations in writing, (whichever is the more practicable in the circumstances) in respect of the application.

(5) The Island Council shall, not less than 14 days before the date fixed for the hearing, give the applicant notice of the time and place of the hearing of the application.

(6) Within 7 days after being given notice under subsection (5) of this section, the applicant shall if required by the Island Council shall cause notice of the application to be publicly notified in a manner approved by the Island Council for the purpose, such notice to be in such form as the Island Council may require.

10. Hearings in respect of shops on islands other than Rarotonga - (1) The Island Council may in its discretion hear any application made pursuant to section 9 in public or in private.

(2) Where the Island Council hears an application in private, the applicant may appear and be heard either personally or by his agent.

(3) Where the Island Council hears an application in public, any of the following persons may appear and be heard, in person or by his agent -

- (a) the applicant;
- (b) the occupier of any shop in the area that may be affected by the result of the application;
- (c) any organisation that, or any of whose members may, in the opinion of the Island Council, be affected by the result of the application;

- (d) a representative of the Aronga Mana of the island;
- (e) where the day or time in respect of which the application is sought is a Sunday, a representative of the Religious Advisory Council and any church on the island;
- (f) any person who, or organisation which, wishes to make representations.

(4) In considering an application under section 9 of this Act, the Island Council shall have regard, inter alia, to the following matters:

- (a) public demand;
- (b) any effect the granting of the order would have on family and other social patterns on the island concerned;
- (c) any effect the refusal to make an order would have on the ability of the residents of the island or district in which the shop is situated to purchase food, toiletries and other essential household items on any given day;
- (d) the nature of the area in which the shop or shops concerned are situated and the class of patron intended to be served thereby, having regard in particular to the desirability of providing service to the public at all reasonable times in tourist and holiday resort areas;
- (e) the need to minimise the amount of commercial activity taking place on Sundays;
- (f) any policy directions given to the Island Council by the Minister;

(5) The Island Council may by written notice to the applicant or his agent either refuse the application or grant it, either wholly or in part, and either unconditionally or subject to such conditions as the Island Council thinks fit; and the shop or shops concerned may be open during the hours and days set out in the application, or during such other specified times on specified days as may be approved by the Island Council or to sell only such goods at such times or days as shall be specified in the approval.

(6) An approval granted pursuant to this section shall remain in force until it lapses or is revoked pursuant to section 12 of this Act.

(7) Proceedings before the Island Council shall not be held bad for want of form; and no decision of the Island Council shall be reviewed in any Court except on the grounds of lack of jurisdiction.

(8) The occupier of a shop in respect of which an approval under this section is for the time being in force shall display prominently in the shop, so that it may be read by any person without having to ask for its production or obtain permission to see it, a notice setting out accurately the full terms of the approval; and no person shall display in any shop a notice that relates to an approval that is no longer in force in respect of that shop or that does not set out accurately the full terms of an approval that is in force in respect of that shop.

PART IV
OFFENCES AND PENALTIES

11. Offences and penalties - (1) The occupier of a shop that is open in contravention of -

- (a) this Act or any Order or regulation made hereunder; or
- (b) a condition subject to which an approval has been granted pursuant to section 8 or section 10 of this Act,

commits an offence.

(2) Every person commits an offence who -

- (a) without reasonable cause delays or obstructs a constable in the exercise of any of his powers or duties under this Act; or
- (b) conceals or prevents, or attempts to conceal or prevent any person from appearing before and being examined by a constable.

(3) Every person who commits an offence against this Act shall be liable, on conviction, to a fine not exceeding \$2,000, and where the offence is a continuing one, to a further fine not exceeding \$200 for every day or part of a day during which the offence has continued.

(4) The High Court may, where any person is convicted of a second offence under subsection (1)(b), revoke the approval concerned but only if it is satisfied that the interests of the public generally, or of the public in the area where the shop is situated, will not be unduly and unreasonably inconvenienced.

PART V
MISCELLANEOUS

12. Revocation or lapse of approvals - (1) An approval granted by the Authority pursuant to clause 8 or by an Island Council pursuant to clause 10 that applies to a specific shop may be revoked by the Authority or by the Island Council (as the case may be) after giving the occupier affected by the proposed revocation a reasonable opportunity to be heard in respect of the matter, if -

- (a) the occupier intends to, or carries on a new or different class of business in the shop to that which was being carried on at the time the approval was granted;
- (b) the occupier of the shop in respect of which an approval has been granted has failed for a period of 2 months or more to keep the shop open, or to keep the shop open for the times or days for which approval was granted;
- (c) the occupier of the shop becomes bankrupt, or goes into receivership or liquidation, or enters into a scheme or arrangement for the benefit of creditors;
- (d) notwithstanding the provisions of section 11(4), the occupier of the shop is convicted in the High Court for a second or subsequent offence under this Act.

(2) Every approval granted by the Authority pursuant to section 8 or by an Island Council pursuant to section 10, shall lapse upon there being a change of ownership of the shop to which the approval relates.

(3) For the purposes of subsection (2), where a shop is owned by a company or other body corporate or partnership, every change to the shareholding or other means of beneficial ownership whereby the effective management or control of the shop is changed, shall be deemed a change of ownership.

(4) Where an approval is revoked or lapses pursuant to this section it shall not be capable of being revived otherwise than by way of application being made pursuant to section 7 or section 9 (as the case may require) for a further approval.

13. Register of approvals - (1) The Authority shall keep a register of copies of all approvals made under section 8 for the time being in force, and shall cause to be sent to the Police, a copy of every such approval.

(2) The Island Council shall keep a register of copies of all approvals made under section 10 for the time being in force, and shall cause to be sent to the Police on that island, and the General Licensing Authority, a copy of every such approval.

(3) Any person may, during ordinary office hours and upon payment of the prescribed fee, inspect any register kept pursuant to subsection (1) or (2) of this section and take notes therefrom.

14. Police support - (1) The Police shall provide for the Authority (and in the case of islands other than Rarotonga, the Island Council of the island) such support as may be necessary for the enforcement of this Act.

(2) For the purposes of this Act every constable may enter, inspect, and examine any shop, or any place that he has reasonable cause to believe to be a shop or to have a shop within its premises, at all reasonable times.

(3) Every occupier of a shop, or a place that a constable has reasonable cause to believe to be a shop or to have a shop within its premises, shall allow a constable, to enter, inspect, and examine it pursuant to subsection (2) of this section.

(4) Every constable may examine with respect to matters under this Act, any person whom he finds in a shop or in a place he has reasonable cause to believe to be a shop or to have a shop within its premises, and may require any such person to give his name and address and to sign a statutory declaration of the matters in respect of which he is so examined.

15. Annual report - (1) As soon as is practicable after the 30th day of June in every year the Authority shall furnish to the Minister a report of the activities of the Authority under this Act during the year that ended with the 30th day of June, including particulars relating to decisions made by Island Councils under this Act. Such report may also include any recommendations that the Authority or any Island Council may have relating to the trading hours of shops.

(2) The Minister shall table the report received by him in Parliament as soon as practicable after it is received by him.

16. Ministerial powers - (1) The Minister may from time to time give to the Authority or to any Island Council in writing directions as to the policy to be followed in the administration of this Act, and a copy of every such direction shall be included in the report to be provided to the Minister pursuant to section 15.

(2) The Minister may from time to time direct the Authority or any Island Council to call for and consider submissions from the public on the question of shop trading hours either generally or in respect of any particular island or district, and in that case the Authority or the Island Council (as the case may be) shall call for and consider submissions accordingly, and submit to the Minister a report on those submissions, together with its views, whether or not those views are derived from the submissions made to it.

(3) Any applicant who is dissatisfied with a decision of the Authority pursuant to section 8, or of an Island Council pursuant to section 10, may within one month of the date on which notice of the decision was given to the applicant, appeal in writing to the Minister, setting out the grounds on which the appeal is made.

(4) When an appeal is made pursuant to subsection (3), the Authority or the Island Council (as the case may be) shall cause to be sent to the Minister -

- (a) the application in respect of which the appeal is being made;
- (b) copies of any written submissions received by the Authority or the Island Council in respect of the application;
- (c) any notes made of any oral submissions heard by the Authority or the Island Council in respect of the application;
- (d) the minutes or other records of the meeting at which the decision appealed against was made;

(5) The Minister may affirm, vary, or reverse the decision appealed against, and shall when considering the appeal, have regard to the matters required by sections 8(4) or 10(4) of this Act (as the case may require) to have been taken into account upon the making of the decision appealed against.

(6) No decision of the Minister under this section shall be reviewed in any Court except on the grounds of lack of jurisdiction.

17. Regulations - The Queen's Representative may, by Order in Executive Council make all such regulations as shall be necessary for the administration of this Act.

18. Repeals - (1) The Rarotonga Regulations and Offences Ordinance 1917 (No.3) is repealed.

(2) Any Order made pursuant to subsection (2) of section one of this Act extending this Act to any Island other than Rarotonga, or any earlier or subsequent Order, may include provision repealing any provision of any Ordinance or Bylaw in force in that island which is inconsistent with the provisions of this Act.

This Act is administered by the General Licensing Authority