



Submission

to the

Department of Labour and Ministry of Justice

on the

**Easter Trading and Holidays Legislation
Discussion Document**

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EASTER TRADING AND HOLIDAYS LEGISLATION

Interface between the Shop Trading Hours Act Repeal Act 1990, Sale of Liquor Act 1989 and Holidays Act 2003 Discussion Document

Introduction

This submission is presented by the New Zealand Retailers Association Incorporated. The Association is the largest trade association representing the retail industry in New Zealand.

Our membership of over 6,000 includes the major supermarkets and general merchandise chain stores, traditional department stores, and thousands of owner operators spread throughout New Zealand.

Viewed statistically we represent an industry that has annual sales of \$60b per annum and which employs some 325,000 people (17% of the workforce) in approximately 49,000 outlets spread throughout the country.

Background

The retail sector, by way of the New Zealand Retailers Association and a cross-section of its membership, contributed significantly to the Government's Quality of Regulation Review consultation process throughout 2006 and 2007. We are pleased that one of the more significant issues in regulatory anomalies raised by our sector, and others impacted, has been channelled into a consultative review programme driven by the Department of Labour (the Department) and Ministry of Justice (the Ministry).

As highlighted in the Discussion Document, the Easter Trading issue has seen 9 attempts to change the Shop Trading legislation since introduction of the 1990 Act. All cases, with the exception in 2001 where garden centres were allowed to trade on Easter Sunday, Parliament voted not to change the restrictions. The most recent attempts were by way of two private member bills introduced into the House in 2006 by Jacqui Dean MP and Steve Chadwick MP.

The Association has consulted with our membership extensively on this issue over a number of years and latterly on the proposed solution points raised in the Discussion Document to ensure that this submission is representative of the current majority viewpoint. As with Parliament and the New Zealand Public, the views of the sector are not 100% aligned but there has consistently been an overwhelming consensus from members in the last 2 series of surveys that retailers be given the right to trade on Easter Sunday, whether they then choose to do so is a personal and business decision.

The Discussion Document notes that there was a stronger call for addressing the legislative inconsistencies around Easter Trading by businesses in regions or areas that attract significant numbers of domestic holidaymakers and international tourists. We concur with this statement. Interestingly, there was a misconception publicly and within our own membership that the businesses calling for the review were likely to be larger national chain stores who were only considering the corporate dollar. This was not validated by any of our surveys or anecdotal feedback – instead **the most significant response of support to Easter Sunday Trading was from the small independent owner/operator who was tired of being forced to close on a Sunday – one of the busiest trading days of the week.**

Easter Sunday was deemed the one trading day of the current non-trading days that retailers seek legislative reprieve from. There is an incorrect public assumption that trading “creep” will ensue, whereby the relaxation of trading on Easter Sunday will quickly lead to the demise of Easter Friday, Christmas and ANZAC Day restrictions. This assumption is, in our opinion (and based on industry feedback), unfounded and we and our members support maintaining the restrictions on the remaining 2.5 days - however, it must be noted that there are some geographical regions/areas that strongly seek the right to trade on Easter Friday due to significant national events that occur in those regions over the Easter period (annually, biennially etc). This document does not seek to address those concerns but the Association’s view can be reviewed in our previous submissions to the Dean and Chadwick bills.

Summary of the Association’s position

In considering the proposed solutions and our response to the Discussion Paper the following baseline position was that solutions should in addressing inconsistencies, also:

- Avoid expensive policing (and seek to remove where possible)
- Not increase costs to employers
- Recognise the important role business plays in the New Zealand Economy
- Recognise that “shopping” is a legitimate relaxation/social occasion for most families (and tourists)
- Not seek to manipulate people by trying to dictate how they relax or what activities are designated acceptable as “leisure” pursuits
- Recognise the growth in the number of New Zealanders that do not have any religious affiliation, or have non-Christian beliefs¹.

It is the Association’s **recommendation** that the following proposals proceed:

- That the trading restrictions under the Shop Trading Hours Act Repeal Act 1990 and Sale of Liquor Act 1989 for Easter Sunday are removed.
- That the Status Quo of the treatment of Easter Sunday remains (that Easter Sunday continues to be treated as a non-Public Holiday)
- Appropriate protection provisions for employees and leaseholders should be included.

This is the “desired state” from the proposals outlined, however, we discuss in further detail where some of the other options may hold merit and may be considered as a quid pro quo to ending the confusing, inconsistent and antiquated exemptions within and across the 3 pieces of legislation being addressed, while achieving the removal of trading restrictions on Easter Sunday.

¹ 2006 New Zealand Census Religion Question

What should we do about restrictions under the Shop Trading Hours Act Repeal Act 1990 and Sale of Liquor Act 1989

The options presented are:

- X** Option 1 – Retain the Status Quo
- X** Option 2 – Reinstate the exemption-making provision for shop trading to exempt specific areas from trading restrictions and enable sale of liquor exemptions to be considered at the same time
- ✓** **Option 3 - Remove the trading restrictions under the Shop Trading Hours Act Repeal Act 1990 and Sale of Liquor Act 1989 for Easter Sunday**

Option 1 fails to address the current inconsistencies and anomalies. It fails to recognise changes in geographical locations as different areas capitalise on marketing their area and experiencing growth in visitor numbers, and fails to recognise the make up of business types – where traditional products and services are blended and blurred across or within a businesses (eg. A garden centre or café in a hardware store, a chemist or bookshop that sells souvenirs).

Option 2 could not address the current issue. As the economic, societal and cultural make up and demands of our country change the goal posts would need to continually be reviewed and changed. It is an administrative nightmare in the making open to subjective scrutiny on fairness and appropriateness. It further impacts on the costs of enforcement, and continues to create confusion to businesses and consumers.

Option 3 delivers business with the right to trade if they choose to do so, consumers (domestic and international) to shop if they choose to do so, and religious New Zealanders to observe the day (a Christian celebration) in the manner to which is appropriate to them.

What should happen to the status of Easter Sunday

The options are:

- ✓** **Option 1: Retain the Status Quo**
- X** Option 2: Increase the number of public holidays to 12 by making Easter Sunday the 12th public holiday
- X** Option 3: Maintain the number of public holidays at 11 by making Easter Sunday a public holiday, subject to 'mondayisation' arrangements similar to Christmas and New Year holidays when they fall on Sunday
- X** Option 4: Treat Easter Sunday as if it were a public holiday for employees of businesses affected by new amendments to the Shop Trading Hours Act Repeal Act 1990 or the Sale of Liquor Act 1989. This would not apply to those that are currently able to trade under an exemption or exception.

Option 2, 3 & 4 all have consequential cost impacts with option 2 in particular rendering opening on Easter Sunday non-viable for the majority of businesses. There has been discussion that the wider economic impact of such a decision could be mitigated by making this amendment to the treatment of Easter Sunday as a public holiday within the Shop Trading Act rather than within the Holidays Act. This not only seems illogical but anti-competitive to burden certain business

sectors with additional employment costs, on top of the huge costs recently legislated for with the introduction of 4 weeks paid annual leave, and KiwiSaver employer contributions.

Option 1 is our preferred position, however if we assume that removing the trading restrictions on Easter Sunday also removes the protections associated with that day, then in making Easter Sunday effectively a normal day of work the ability to provide for employee protections would not be enforceable. It is not clear in the discussion paper how this may be worked around. Therefore, notwithstanding our preferred position, we would consider that Option 3, may provide the appropriate protections for employees which we believe is also important. While this option would still add costs to employers, and is less favourable than our preferred option 1, we would be willing to consider it as more viable than option 2.

Consequential Amendments

These are:

- ✓ Adequate employee protection against compulsion to work on Easter Sunday
- ✓ Adequate leaseholder protection against compulsion to open on Easter Sunday, and

We support the proposal for adequate protection against compulsion to work on Easter Sunday, and in principle, support leaseholder protections. However, we also acknowledge with the latter that further consultative work with industry and property owners in particular (eg. Major mall owners) should be undertaken to ascertain the viability/impacts of such decisions.

Removal of the current exemption regime by removing the barriers to trade on Easter Sunday nullify penalty and enforcement reviews.

Conclusion

The Association commends the work undertaken by the Government's Quality of Regulation Review in identifying the issues and directing the Department and Ministry to undertake the Easter Trading and Holidays Legislation consultation. We believe there is the need for further industry consultation prior to the implementation of proposed recommendations. The Association has a vital role to play in that consultation, and wish to offer our services in that regard.

But what is quite clear, although reiterated through the past 8 unsuccessful attempts at seeking change to Easter Trading legislation (but continues to be conveniently disregarded) is that the economic, social and cultural landscape of our nation has changed vastly and rapidly in the past 18 years. Simplification of the Easter Trading issue is required and a realignment of legislation with reality continues to be called for and is eagerly welcomed.

Therefore, in regards to the Discussion Document proposals, the Association recommends:

- That the trading restrictions under the Shop Trading Hours Act Repeal Act 1990 and Sale of Liquor Act 1989 for Easter Sunday are removed.
- That the Status Quo of the treatment of Easter Sunday remains (that Easter Sunday continues not to be treated as a Public Holiday)

- Appropriate protection provisions for employees and leaseholders should be included.

The Association wishes to continue to be informed of the progress of this discussion paper and its recommendations, and is available for further discussion and consultation.

New Zealand Retailers Association

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