

# **Submission**

**By**



*to the*

**Department of Labour**

*on the*

## **Easter Trading and Holidays Legislation Discussion Document**

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

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## EASTER TRADING AND HOLIDAYS LEGISLATION

Below are Business New Zealand answers to the questions posed by the Easter Trading and Holidays Legislation Discussion Paper. However, it is Business New Zealand's view that the questions themselves represent an unnecessary complication and that what is required is a relatively straightforward answer to an essentially simple problem.

- With some exceptions general trading and the sale of liquor are not currently permitted on either Good Friday or Easter Sunday, essentially in recognition of the religious character of these days (albeit that this raises an inherent inconsistency with Christmas Day).
- Good Friday is recognised by statute as a public holiday but Easter Sunday is not, since at one time few people would have been required to work on that day.
- Were Easter Sunday to be made a public holiday, the number of such days would then be 12, involving a considerable increase in cost for some employers who have no option but to have (some) employees work on the day (hospitals, aged care homes, public transport providers, farmers, dairy operators and the like).
- Those employers would then also have no option but to pay their employees at least the statutory penal rate of time and a half (see the decision of the Supreme Court in *NZ Airline Pilots Assn v Air New Zealand Ltd* SC 91/2006).
- For employers in the kind of areas referred to above, the non-public holiday nature of Easter Sunday has long been manageable.
- For them (as for any retailers who chose to open on Easter Sunday were Easter trading to be made lawful), Mondayising the day would represent an administrative complication which of itself would involve a cost increase on top of the cost involved in having to make penal payments to a much greater number of employees. For some among them the cost escalation would be an increase too far.
- The simple answer is to leave Easter Sunday as a non public holiday but remove the current prohibition on trading (and on the sale of liquor) from both Good Friday and Easter Sunday.
- This would not *require* trading on the days in question but would give shop owners the opportunity to open should they consider it worth their while to do so. Decisions would be made based on the economic and social costs of opening, including taking account of any special recognition agreed as being employees' conditions of work for the day.
- In the first instance, freeing up trading on Easter Sunday without turning the day into a public holiday will mean that a penal rate does not have to be paid.
- However, as employees work by agreement only (this being an enforceable right), the most likely outcome will be an employer having to pay a penal rate to have any hope of gaining such agreement.
- Axiomatically, there will be no obligation to open, just as many retailers currently choose not to open on official public holidays.

With the above points in mind. Business New Zealand provides the following responses to the questions in the discussion paper.

**1. Do you consider that New Zealand law should in general treat Easter as a holiday weekend?**

It is difficult to establish quite what this question is asking. If the weekend were to be treated as a 'holiday weekend' could it then be expected that Easter Monday would be excluded from the holiday? There would appear to be no very good reason for changing the current arrangement when what is in issue is whether trading should be allowed on the Sunday and if so, whether that day should become a holiday. This is essentially the issue to be addressed.

**2. Do you consider the inconsistencies described between the Shop Trading Hours Act Repeal Act 1990, the Sale of Liquor Act 1989 and the Holidays Act 2003 need to be addressed?**

With regard to the first two Acts, not necessarily, as the reasons for the restrictions are different. However, consideration could be given to removing restrictions on the sale of alcohol on the Friday and the Sunday if that is what the community generally considers desirable. It would certainly make for a more straightforward legislative scheme.

The only inconsistency between the Holidays Act and the Shop Trading Hours Act Repeal Act is that employees affected by the inability to work on Easter Day receive no payment for their 'holiday'. Easter trading would simply introduce the element of choice, provided employees could refuse to work if they wanted to. If they did not usually work on a Sunday they would not be paid even if Easter Sunday were to be made a holiday. On the other hand, if the day stays as it is, employees who did usually work on a Sunday would have the option of working for payment. There would be no obligation on the employer to pay a penal rate to someone choosing to work but in reality, few if any employees would work on Easter Sunday if a penal rate were not paid.

**3. Do you agree with the impact of the inconsistencies described above?**

See previous answer. Attempting to deal with so-called anomalies other than by freeing up Easter trading (and possibly freeing up the sale of liquor, since one must ask why, other than for religious reasons, 'protection' is needed on certain days of the year and not others) would create more problems than it solved.

**4. Which one of the following statements best describes your view and why?**

- c. – The shop-trading and (possibly) the sale of liquor rules on Easter Sunday should be the same as any other weekend. Note: removing the

restriction on liquor sales on Easter Sunday would call into question the need to retain it on Good Friday and Anzac Day morning.

**5. If an exemption-making power is reinstated, how would you prefer to see it implemented?**

Having an exemption power s would introduce an unnecessary complication. Allowing for exemptions merely creates anomalies. Freeing up Easter trading would be a simple recognition of societal change. The important thing is to ensure trading is a discretionary matter.

**6. Criteria for an exemption-making power.**

See above.

**7. If there is an exemption-making power should shop trading and sale of liquor restrictions/exemptions be considered at the same time?**

There should be no exemption-making power but, given the community concern over sale of liquor, possibly more extensive consultation with community members than is likely through this present consultation process before complete freeing up of liquor sales occurs. Exemption making power helps to create anomalies giving, for example, persons trading in an exempted area an advantage over those whose trading activities have been restricted by local authorities (but who may then consider they have no option other than to ignore the restrictions imposed).

**8. What information do you have on the potential costs/benefits of any of these options?**

The main advantage of freeing up Easter trading is that it would remove the anomalies that currently exist and bring back a little respect for the law. Statute laws that are widely defied merely bring the law in general into disrepute. This is not a desirable outcome and the ability of individuals to make sensible decisions for themselves needs to be more widely recognised.

**9. Do you consider that Easter Sunday should or should not be treated as a public holiday?**

It has previously been explained that Easter Sunday should not be treated as a public holiday but that whether or not individuals would work on the day should be a discretionary matter. It should be noted that under current holidays' legislation, many businesses choose not to open on public holidays.

**10. If you consider Easter Sunday should be treated as a public holiday which one of the following statements best describes your view?**

See answer above. The answers below provide reasons why the suggestions made would be unacceptable.

- a. Employers in general would not welcome an increase in the number of public holidays to 12. Such an increase would affect far more than those engaged in trading, adding a considerable cost increase at a time when the requirement to pay for an extra week's annual holiday, KiwiSaver costs and so on have already made their own significant contributions to the expense of running a business. The Holidays Act requires that employees have 11 public holidays a year but does not require them to be paid days. As noted, employees' freedom of choice will be preserved if work on Easter Sunday is made discretionary.
- b. Introducing 'mondayising' arrangements would add unnecessary complexity, replacing one set of difficulties with another.
- c. Another unnecessary exercise in complexity which would create a different set of anomalies.

**11. What information do you have on the potential costs/benefits of any of these options?**

See above. All the suggested options have difficulties in cost and employment relations terms. The simplest option of removing trading restrictions is likely to be the most effective.

**12. If there are changes to shop trading and sale of liquor restrictions, do you consider that there should be additional protections for employees?**

As earlier indicated, legislation should make clear that employment can only be with the employee's agreement and this should be required whenever an employee is asked to work on Good Friday or Easter Sunday, with the ability to take an employment relations complaint if an employee considers he or she was coerced into working.

**13. Do you consider the above proposals are adequate and appropriate?**

Business New Zealand's proposal to free up Easter Sunday trading without turning the day into a public holiday, but allowing for work only by agreement, is the best solution because it offers protection to employees without introducing further anomalies which would lead only to future calls to reconsider what has been put in place.

- 14. If there are changes to shop trading hours and sales of liquor restrictions, do you consider the employee protections should be targeted to only apply to employees in business affected by these changes?**

Since the Shop Trading Hours Act Repeal Act was introduced in 1990 it has contained a 'protected day' provision which could simply be updated to include a specific reference to Easter Sunday (although it already refers to Sundays generally). This is all that would be necessary as other employees who work over the Easter period (in the health or transport sectors, for example) will already be covered by relevant employment agreement terms and conditions.

- 15. If there are changes to shop trading and sale of liquor restrictions, do you consider that there should be additional protections for leaseholders?**

This too is covered in the Shop Trading Hours Act Repeal Act and could similarly be included in any new legislation.

- 16. Do you consider that the above proposals are adequate or appropriate?**

Yes.

- 17. If there are changes to shop trading and sale of liquor restrictions, do you consider the leaseholder protections should be targeted to only apply to businesses affected by the changes?**

Yes. There is no reason to target commercial arrangements which will be unaffected by what is proposed.

- 18. Do you consider penalties for breaching shop trading restrictions need to be increased?**

No. Increased penalties do not make bad law good.

- 19. Do you consider that Labour Inspectors' powers of enforcement need to be increased?**

No, if what is referred to here is the power to police current restrictions. Such restrictions are already seen as inappropriate by a large section of the community. However, Labour Inspectors' powers will automatically increase to the extent that they are called upon to ensure that any employee who worked on Good Friday or Easter Sunday did so on a voluntary basis.

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