

Submission

by

Business|NZ

to the

Commerce Select Committee

on the

**Report of the Shop Trading Hours Working
Group**

made in respect to

**Shop Trading Hours Act Repeal (Abolition
of Restrictions) Amendment Bill**

September 2003

PO Box 1925
Wellington
Ph: 04 496 6555
Fax: 04 496 6550

INTRODUCTION

Encompassing five regional business organisations (Employers' & Manufacturers' Association (Northern), Employers' and Manufacturers' Association (Central), Canterbury Employers' Chamber of Commerce, Canterbury Manufacturers' Association, and the Otago-Southland Employers' Association), Business NZ is New Zealand's largest business advocacy body. Together with its 50-member Affiliated Industries Group (AIG) which comprises most of New Zealand's national industry associations, Business NZ is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

In addition to advocacy on behalf of enterprise, Business NZ contributes to Governmental and tripartite working parties and international bodies including the ILO, the International Organisation of Employers and the Business and Industry Advisory Council to the OECD.

Business NZ's key goal is the implementation of policies that would see New Zealand retain a first world national income and regain a place in the top ten of the OECD (a high comparative OECD growth ranking is the most robust indicator of a country's ability to deliver quality health, education, superannuation and other social services).

It is widely acknowledged that consistent, sustainable growth well in excess of 4% per capita per year would be required to achieve this goal in the medium term.

RECOMMENDATIONS

1. That shop trading hours allow retailers the choice of whether or not to open on the remaining restricted days – Good Friday, Easter Sunday, Christmas Day, and Anzac Day morning.
2. That if the above recommendation is not accepted, the Select Committee adopt the Working Group's first recommendation, removing all restrictions to trading on Easter Sunday.
3. That whether or not employees work on Easter Sunday or on any public holiday should be a matter for agreement between the employee and employer with no requirement on the employer to offer work on such a day to every employee but only to those who would otherwise work on the day in question (again leaving any decision of this kind to the employer and employees).
4. That no statutory penal rate should be imposed for work on Easter Sunday (or, in Business New Zealand's view on any public holiday), with the payment of penal rates to be left as a matter for negotiation and agreement.
5. That a transitional provision provide protection against mandatory opening hours clauses in retail leases

DISCUSSION

1. Business New Zealand congratulates the Working Group on a well-reasoned discussion of the issues raised in connection with the further liberalisation of shop trading hours but is of the view that the more satisfactory way to proceed would be to allow retailers to choose their own trading hours without statutory or legislative restraint.
2. This view was expressed by the New Zealand Employers' Federation (a precursor of Business New Zealand) in submissions in 1997 (on the Shop Trading Hours Repeal (Easter) Amendment Bill) and in 1999 (on the Shop Trading Hours (Abolition of Restrictions) Bill).
3. As the Federation pointed out in 1999, "Each of the remaining three and a half days in question will have greater significance for some sectors of the community than for others (for some, a particular day may have no significance whatsoever). On that basis alone it is invidious to pick out one or more specific day or days for special treatment".
4. Consequently, Business New Zealand considers that as well as the ability to open on Easter Sunday, as the Working Group recommends, whether to open on Good Friday, Christmas Day and Anzac Day morning ought also to be a matter of choice for retailers. It has been well said that currently, it is rather odd that someone can get drunk on Good Friday but cannot buy a Bible or a bunch of flowers.
5. However, if the above approach is not adopted, Business New Zealand agrees with the Working Group's preferred recommendation that legislation should remove Easter Sunday completely from the restricted day category. Business New Zealand does not believe that there should be a Local Government Process for determining Easter Sunday Trading Exemptions which would simply produce the kind of anomalies that are the cause of considerable discontent at the present time. This is particularly so since as already noted, even in smaller communities views of what is appropriate in terms of shop opening times will vary considerably. A blanket removal of restrictions, plus individual choice, is much the most satisfactory way to proceed.
6. In relation to work performed on Easter Sunday (if the Working Group's first option is ultimately selected) or, indeed on any public holiday (noting that Easter Sunday is not a public holiday), this should be a matter for agreement between the employer and employee. The proposal that a penal rate be paid for Easter Sunday is, as the majority of the Working Group accepted (page 26) "at odds with the idea of providing employees with a realistic and genuine choice...". This comment was made in connection with the proposal to free up Easter Sunday trading but it is just as relevant to work performed on public holidays. There again, if a penal rate is to be paid that should be matter of agreement between the employer and employee or in collective agreement negotiations.

7. With respect to employee choice, the employer should only be required (if at all) to give employees who would otherwise work on Easter Sunday the opportunity to work on the day in question. Requiring the employer to give all employees the choice (as the CTU proposes) might well operate as a delaying factor leaving the employer with no time to find replacement employees, should that prove necessary. However, again it should be a matter of choice; employers should be able to decide for themselves whether the chance to work will be offered to all employees or only those otherwise rostered on for the day in question.
8. Business New Zealand does support transitional protection for leaseholders, although, depending on the wording of their lease, many may already have protection under ordinary contract law. The point is that employers should not be forced to open on any public holiday but should be free to do so if they choose.

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4 September 2003