



NEW ZEALAND COUNCIL OF TRADE UNIONS
Te Kauae Kaimahi

**Submission of the
New Zealand Council of Trade Unions
Te Kauae Kaimahi**

to the

Commerce Committee

on the

Shop Trading Hours Amendment Bill

P O Box 6645

Wellington

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Summary of recommendations

1. All existing exemptions from trading laws for particular areas should be repealed (across all restricted trading days). The general exemptions in the Act are enough.
2. No mechanism should be created to allow territorial authorities to make bylaws removing trading restrictions. Giving territorial authorities this power merely compounds the problem.
3. Section 44(1) of the Holidays Act should be amended to include Easter Sunday as a public holiday.
4. Overall, we support the proposal to permit employees to opt out of working on Easter Sunday. This proposal should be extended to all restricted trading days (it is illogical to create this framework and only apply it to Easter Sunday). Technical amendments would assist the effectiveness of these provisions including:
 - a. The replacement of adverse treatment (an unknown test in employment law) with "discrimination" (a well-established one);
 - b. The ability for labour inspectors to issue infringement notices for failure to notify employees of rights to refuse to work on restricted trading days and compelling employees to work on restricted trading days. It may also be useful to consider the introduction of a more general infringement notice regime.

1. Introduction

- 1.1. This submission is made on behalf of the 31 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With 320,000 members, the CTU is one of the largest democratic organisations in New Zealand.
- 1.2. The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga) the Māori arm of Te Kauae Kaimahi (CTU) which represents approximately 60,000 Māori workers.
- 1.3. The CTU supports the right of all working people to time off with their families. Restricted trading days (while inconsistent and imperfect) are an important mechanism to permit this family time.
- 1.4. The current exemptions from trading restrictions are idiosyncratic and outdated. The CTU advocates the removal of all existing exemptions. Local authorities should not be permitted to pass by-laws permitting Easter Sunday trading.
- 1.5. Easter Sunday is the only day subject to restricted trading hours that is not also a public holiday. This is peculiar and the source of considerable confusion. The Holidays Act 2003 should be amended to make Easter Sunday a public holiday (albeit one that is not 'Mondayised'). This would provide workers required to work on Easter Sunday with additional remuneration and an alternative day off.
- 1.6. We support the right of workers to refuse work on Easter Sunday and the mechanism proposed in the Bill to enforce this. These protections should be extended to all restricted trading days. Some minor improvements could be made to penalties and enforcement.

2. Exemptions from trading restrictions

- 2.1. As many commentators have noted, the current exemptions from the trading restrictions make little sense. Why should workers on Parnell Road be subject to lesser protection than those who work on Parnell Rise? Why should workers on the ground floor of the Carnegie Centre get more protection than those on the Mezzanine?
- 2.2. We think that a much better approach is simply to state the types of business that should be permitted to remain open (because they are provide important or essential

services). Sections 4 and 5 of the Shop Trading Hours Act Repeal Act 1990 set out these reasonably well- dairies, restaurants, shops providing services to travellers and tourists (duty-free and shops in transport terminals), souvenir shops, garden centres on Easter Sunday, arts and other exhibitions.

- 2.3. No effective case has been made for why other types of business should be open on Easter Sunday other than the nebulous “choice.”
- 2.4. Enabling territorial authorities to pass by-laws allowing businesses to open will simply compound confusion and provide greater potential for unfair and idiosyncratic outcomes.
- 2.5. The CTU therefore submits that:
 - All existing exemptions from trading laws for particular areas should be repealed (across all restricted trading days). The general exemptions in the Act are enough.
 - No mechanism should be created to allow territorial authorities to make bylaws removing trading restrictions. Giving territorial authorities this power compounds the problem.

3. Easter Sunday’s odd status

- 3.1. It is peculiar that Easter Sunday should be subject to trading restrictions without a corresponding right for workers to take time off. This means that workers have an odd choice between coming into work to do some part of their job that does not involve customer service or taking some form of leave (paid or unpaid).
- 3.2. This is the worst of both worlds: Workers do not get time with their families without using leave and yet the shops remain closed.
- 3.3. A much better solution is to normalise Easter Sunday as a true public holiday like Christmas so that those workers who do undertake this work are paid at least time and a half for hours worked and are given another day off in lieu.
- 3.4. Section 44(1) of the Holidays Act should be amended to include Easter Sunday as a public holiday.

4. A workers' right to refuse work on restricted trading days

- 4.1. Overall, we support the proposal to permit employees to opt out of working on Easter Sunday. This proposal should be extended to all restricted days (it is illogical to create this framework and only apply it to Easter Sunday).
- 4.2. However, the proposal needs amendment to make it more robust and easily enforceable.
- 4.3. First, "treating adversely" under proposed s 5K is a new test in employment law (albeit one that is also proposed in the Employment Standards Legislation Bill 53-1). Creating a new test is unhelpful and inefficient (the Courts will need to develop new law) when existing tests may easily be adapted.
- 4.4. We submit that the test of discrimination in s 104 of the Employment Relations Act 2000 may easily be adapted by the addition of "or refuses to undertake work during the days and times set out in section 3(1) of the Shop Trading Hours Act 1990" to the list of reasons for discrimination. Proposed s 5K and 5L of the Bill should also be amended to replace "treated adversely" and "adverse treatment" with "discriminated against" and "discrimination" respectively.
- 4.5. The Bill provides no penalty to an employer who fails to comply with the notice requirements in proposed s 5J when informing an employee that they want them to work Easter Sunday and giving them the right to opt out.
- 4.6. A useful feature of the Employment Standards Legislation Bill currently before the House is the introduction of a new regime for labour inspectors to issue parking-ticket style infringement notices for clear breaches of certain provisions of the Employment Relations Act 2000 and Holidays Act 2003.
- 4.7. We recommend the introduction of an infringement notice regime in relation to breaches of proposed s 5J. It is also valuable to consider whether infringement notices would be useful in relation to breaches of the restricted trading requirements more generally. This would allow labour inspectors to more quickly and easily deal with shops who flout the restrictions.