



NEW ZEALAND COUNCIL OF TRADE UNIONS  
*Te Kauae Kaimahi*

# **SUBMISSION**

by

**New Zealand Council of Trade Unions –  
Te Kauae Kaimahi**

on the

**Easter Trading and Holidays Legislation  
Discussion Document**

**January 2008**

## **1. Introduction**

- 1.1. In general the CTU believes that the current exemptions to shop trading and sale of liquor restrictions on Easter Sunday under their respective pieces of legislation have become too broad to ensure retail and hospitality workers, at least, are guaranteed the opportunity for holidays they can share with their community, other workers, friends and family.
- 1.2. In that context, the identification of “inconsistencies” is a euphemism for competitive pressures on retail and hospitality enterprises. In a competitive environment it is possible to see how pressure to maintain or expand market share would push an enterprise to open on a restricted trading day. Looking at “inconsistencies” in that light, the CTU could only support a move towards removal of exemptions. A survey released by the Newmarket Business Association found 73 per cent of retailers oppose shop trading on Easter Sunday. If that is the desire of most retailers, a move to expand the opportunities for Easter trading would appear counterproductive.
- 1.3. Joining the debates about shop trading hours and sale of liquor with a consideration of the Holidays Act is also counterproductive. Given the retail sector is now New Zealand’s largest employer, retail workers’ experience of Easter Sunday will have a significant impact on everyone’s experience of Easter Sunday (i.e. will we get the chance to spend time with the members of our family, friends and neighbours who work in retail?). However, it is confusing to tie the specific status of Easter for retail workers with the handling of Easter Sunday as a public holiday for all workers. Changes to the Holidays Act do not necessarily compensate the specific loss to retail workers, given their particular working conditions.

## **2. QUESTION ONE: Do you consider that New Zealand law should in general treat Easter as a holiday weekend? What are your reasons?**

2.1. New Zealand law should treat Easter as a holiday weekend. Holiday weekends perform a vital social function allowing workers to spend quality time with their friends and family and provide economic space for the expression of work-life balance. All New Zealand workers need guaranteed periods where they have the opportunity to spend time with their families, neighbours and friends and engage in community activity.

3. **QUESTION TWO: Do you consider that the inconsistencies described above between the Shop Trading Hours Act Repeal Act 1990, the Sale of Liquor Act 1989 and the Holidays Act 2003 need to be addressed? For example, if special rules apply over the Easter weekend should there be consistent in terms of shop trading hours, sale of liquor and statutory holidays? Please explain why or why not.**

3.1. There does not appear to be inconsistency between the Shop Trading Hours Act Repeal Act and the Sale of Liquor Act. There is a question as to whether Easter Sunday should be treated as a public holiday.

3.2. The lack of recognition for Easter Sunday as a public holiday in law appears out of keeping with the spirit of our current public holidays and seems more like a hangover from an era when, in the context of retail trade, no Sunday trading took place and Easter Sunday trading was, therefore, less conceivable.

3.3. However, the Holidays Act and the other two pieces of legislation are not designed to act in an integrated manner. One of the roles of the Holidays Act in terms of public holidays is to set a minimum premium value for a public holiday. But that process is separate from rules about when retailers can trade. Across the workforce as a whole, giving consideration to Easter Sunday as a public holiday would be a separate discussion from trading hours and would have a much broader scope.

**4. QUESTION THREE: Do you agree with the impact of inconsistencies described above? Can you think of any other impacts from these inconsistencies? Is there a difference when considered from the perspective of the business owner, the employee and the customer?**

4.1. Taking each of the five bullet-pointed impacts of “inconsistencies”:

- It is not necessarily inconsistent to have different trading rights for certain areas— depending on the criteria. Equally, that shop trading hours are criticised is not, in itself, a significant impact. To describe them as inconsistent implies that the only consistent approach would be to have no trading restrictions at all.
- Exemptions could override observance of Easter Sunday, but this is not because of inconsistencies.
- Confusion would appear to be a negligible impact of inconsistencies – possibly best addressed by education.
- Furthermore, inconsistencies are not the primary reason that current penalties prove inadequate. Retailers knowingly break the law because they make an economic decision to do so in relation to the relative cost and risk of being fined.
- Again the issue is not inconsistency. While trading restrictions in some areas should – in theory – protect some retail workers from having to work. When you consider the entire workforce, the problem is that Easter is not a public holiday and no worker is guaranteed the statutory minimum of time-and-a-half and a day in lieu.

4.2. Given the findings of a recent survey by the Newmarket Business Association, perhaps the views of workers and employers in retail are less different than we might expect. Given the unrestricted shop trading framework that New Zealand has for 99 per cent of the year – the cost to consumers would seem minimal.

**5. QUESTION FOUR: Which one of the following statements best describes your view and why?**

- **Shop trading and sale of liquor rules on Easter Sunday should remain as they are currently (status quo)**
  - **Either or both the shop trading and sale of liquor (delete one if you wish) rules should allow for some areas or businesses to have exemptions from trading restrictions on Easter Sunday.**
  - **Either or both the shop trading and sale of liquor (delete one if you wish) rules on Easter Sunday should be the same as any other weekend.**
- 5.1. In line with the submission from the National Distribution Union, the CTU is opposed to option C. Currently, there are only three and a half days each year covered by shop trading restrictions. This limit is not an onerous requirement to place on retailers and does not compromise their ability to run a prosperous and profitable business over the 99 per cent of the year where their opening hours are not constrained.
- 5.2. There has already been extensive deregulation of shop trading hours in New Zealand. In 1990 most shops could not trade on any Sunday and they were unable to open on nine of the 11 recognised public holidays. Now they can trade on 51 out of 52 Sundays and every public holiday except Good Friday, Christmas Day and the morning of Anzac Day.
- 5.3. Already retail workers across New Zealand must frequently work evenings, at the weekend and on many public holidays. Public holidays perform a vital social function allowing workers to spend quality time with their friends and family and provide economic space for the expression of work-life balance. Therefore, retail workers and their families must be guaranteed the opportunity for holidays they can share with their community, other workers,

friends and family. Instead of the continued erosion that has taken place since 1990, this needs to be enshrined and protected.

5.4. The CTU favours option A. By implication, option B is suggesting a more flexible approach to making exemptions. The CTU has not seen a convincing case for increasing the extent of exemptions, therefore does not see the need for such a policy tool.

**6. QUESTION FIVE: If an exemption-making power is reinstated, how would you prefer to see it implemented (e.g. should local authorities or the Minister of Labour make the decision)? Please explain your review.**

6.1. Permitting further extensions will not solve but will, instead, exacerbate the factors undermining observance of current trading rules. Equally it does not address the issues of preserving days when retail/hospitality workers do not have to work. In that context Unions believe that, if we have to make any change, any exemption-making power should be extremely robust and only applied in very narrow circumstances. On that basis the CTU favour the authority to grant exemptions being lodged at ministerial level, but with very specific guidelines.

6.2. At the local level, unions believe local councils would be too susceptible to pressure from local commercial interests to make exemptions. As part of councils' efforts to promote local development and support local tourist industries (especially in comparison with existing exemptions) councils will not, in the first instance, be disinterested parties in the decision.

6.3. Given appropriately rigorous guidelines, the Minister would be better placed to impartially consider such applications. However, even then, the interests of retail workers need to be paramount in evaluating any change.

**7. QUESTION SIX: If an exemption-making power is reinstated, what criteria do you think should be applied to the granting of exemptions (e.g. is there area a significant tourist or holiday destination)?**

7.1. Given the response to the previous question, the criteria that the Minister would apply must be stronger than just “significant holiday destination”. The CTU would like to see exemptions limited to specific events, of a national or international scale (Warbirds over Wanaka is an often-cited example) and the exemption would be limited to trade directly servicing that event.

**8. QUESTION SEVEN: If the exemption-making power is reinstated, should shop trading and sale of liquor restrictions/exemptions be considered at the same time? Please explain why or why not.**

8.1. From the perspective of the CTU, the key issue is protecting any workers from *having* to work Easter Sunday. Considered together or apart, workers affected by each piece of legislation should have the right not to work.

**9. QUESTION EIGHT: What information do you have on the potential costs/benefits of any of these options? Please provide any supporting information.**

9.1. The CTU points to the size of the retail workforce in New Zealand – now New Zealand’s biggest employer. There are only three and a half restricted trading days a year. A change to that small number of restricted days could have a significant impact on a large number of people (especially when the impact on family and friends is included) for very limited benefit.

**10. QUESTION NINE: Do you consider that Easter Sunday should or should not be treated as a public holiday? Please explain why or why not.**

10.1. That Easter Sunday is not considered a public holiday in law, when Good Friday and Easter Monday are, appears to reflect a time when trading on Sunday, let alone Easter Sunday, seemed far less likely.

10.2. In terms of retail workers, turning Easter Sunday into a public holiday is not necessarily a protection from having to work that day. While it does ensure they would receive some premium for working that day – and that may be a disincentive to some retailers to open – it is not the same as shops being required to stay closed.

10.3. For the wider workforce, there are already a variety of approaches to working on Easter Sunday and, while an extra public holiday might be attractive to many workers, its consideration should be separate from a consideration of shop trading hours.

**11. QUESTION TEN: If you consider Easter should be treated as a public holiday, which one of the following statements best describes your view and why?**

- **Increase the number of public holidays to 12 by making Easter Sunday a public holiday**
- **Maintain the number of public holidays at 11 by making Easter Sunday a public holiday subject to “mondaysation” arrangements similar to Christmas and New Year Holidays when they fall on a Sunday.**
- **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.**

11.1. The CTU does not support option C because of potential confusion and because of the assumed direct trade off between penal rates and extended working hours that is implied for retail workers.

11.2. While option A might be attractive to many workers, the CTU would like to see the issue considered more comprehensively and separate from a debate around shop trading hours.

11.3. Making Easter Sunday a public holiday, rather than Easter Monday, and allowing it to be treated as falling on the Monday when Easter Sunday is not otherwise a working day is an acceptable option.

**12. QUESTION ELEVEN: What information do you have on the potential costs/benefits of any of these options? Please provide supporting information.**

12.1. The CTU believes there is a need for greater consideration of the cost and benefits of option A. Grouping two public holidays around Christmas and New Year helps to make these significant opportunities for family interaction. And the addition of a further public holiday would not put New Zealand outside the norms for other OECD countries.

12.2. . The CTU believes option C could be difficult and/or confusing to administer and does not adequately address the question of allowing workers the right not to work on Easter Sunday.

**13. QUESTION TWELVE: If there are changes to shop trading and sale of liquor restrictions, do you consider that there should be additional protections for employees? Please explain why or why not.**

13.1. Yes. Public holidays perform a vital social function allowing workers to spend quality time with their friends and family and providing economic space for the expression of work-life balance. Retail workers across New Zealand must already frequently work evenings, at the weekend and on

many public holidays. At the last census the retail sector alone employed over 238,000 people. When considering the social significance of restricted trading days, the family, friends and community ties of a quarter of a million workers means the flow-on effects of liberalised trading on Easter Sunday could be enormous.

13.2. Currently, there are only three and a half days each year covered by shop trading restrictions. This limit is not an onerous requirement to place on retailers and does not compromise their ability to run a prosperous and profitable business over the 99 per cent of the year where their opening hours are not constrained. There has already been extensive deregulation of shop trading hours in New Zealand. In 1990 most shops could not trade on any Sunday and they were unable to open on nine of the 11 recognised public holidays. Now they can trade on 51 out of 52 Sundays and every public holiday except Good Friday, Christmas Day and the morning of Anzac Day. Given this trend and the pressure that applied to get workers to work these hours, greater protection for employees would be required.

**14. QUESTION THIRTEEN: Do you consider that the above proposals are adequate and appropriate? Please explain why or why not.**

14.1. The CTU believes that a right to refuse to work each Easter Sunday is appropriate. However that would have to be supported by awareness that employers may put significant pressure on employees to work.

**15. QUESTION FOURTEEN: If there are changes to shop trading and sale of liquor restrictions, do you consider that employee protections should be targeted to only apply to employees in businesses affected by these changes? Please explain why or why not.**

15.1. The CTU can see an argument for the right to refuse to work on Easter Sunday being extended as widely as possible and including all retail workers. If there is going to be an effective debate about public holidays free

from shop trading, all workers need to be empowered to exercise their right to choose.

**16. QUESTION FIFTEEN: If there are changes to shop trading and sale of liquor restrictions, do you consider that there should be additional protections for leaseholders? Please explain why or why not.**

16.1. Yes. In a similar manner to workers, individual leaseholders in a mall or retail development may have little choice about when to open because of contractual obligations in their lease. If shop trading rules were liberalised and protections were not extended to leaseholders (as well as workers) those leaseholders will be pressured to open on Easter Sunday. That pressure on leaseholders would then flow on to workers.

**17. QUESTION SIXTEEN: Do you consider that the above proposals are adequate and appropriate? Please explain why or why not.**

17.1. The proposals are positive. However, just as workers are placed under extreme pressure to work on restricted trading days, so leaseholders will face similar pressure from mall and retail development owners. Thus the CTU believes the proposed protections may not prove adequate and it would be appropriate to consider extending the leaseholder's right not to open on Easter Sunday, irrespective of any change in shop trading hours and sale of liquor rules for a particular geographic area or retail sector.

**18. QUESTION SEVENTEEN: If there are changes to shop trading and sale of liquor restrictions, do you consider that the leaseholder protections should be targeted to only apply to businesses affected by these changes? Please explain why or why not.**

18.1. On the basis of the answer to Question 16, the leaseholder protections being considered could be applied to all leaseholders, rather than those who might be confronted by a liberalised trading environment on Easter Sunday. If

there is going to be an effective debate about public holidays free from shop trading, both workers and leaseholders need to be empowered to exercise their right to choose.

**19. QUESTION EIGHTEEN: Do you consider the penalties for breaching shop trading hours need to be increased? If so, which option do you support for increasing penalties? Please explain why you do or do not support this option or options.**

19.1. The CTU believes the penalties for breaching shop trading laws are not strong enough. Over Easter this year DoL labour inspectors targeted 31 retailers – mostly garden centres – on Good Friday and found 25 (80 per cent) breaching the law. On Easter Sunday they visited a further 24 retailers – including Bunnings and Mitre 10 – and found 22 (92 per cent) breaching the law.

19.2. It was the sixth time one of the garden centres was prosecuted for trading on Good Friday. The total fine for another garden centre chain opening 9 stores on Good Friday was \$2790. This would suggest that the low level of fines (alongside the level of enforcement) were encouraging retailers to make an economic decision to defy the law.

**20. QUESTION NINETEEN: Do you consider that Labour Inspector's powers of enforcement need to be increased? If so, is this option adequate and appropriate? Please explain why or why not.**

20.1. The CTU believes there is a strong case for increased enforcement powers around shop trading hours. The targeted exercise undertaken by the Department of Labour over Easter 2007 points to the potential extent of illegal trading amongst retailers such as garden centres and hardware stores. And media stories over Easter 2007 pointed to a number of retailers from sectors not targeted by the DoL exercise that were also trading outside the law.<sup>i</sup> This would suggest there is relatively widespread violation of the

shop trading laws at Easter and greater enforcement (along with increased penalties) would be key parts of a solution.

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<sup>i</sup> “Easter trading prosecutions likely”, <http://tvnz.co.nz/view/page/425823/1053051>, Sunday 8 April 2007, accessed 10 December 2007