

OFFICE OF THE MINISTER FOR WORKPLACE RELATIONS AND SAFETY

The Chair

Cabinet Economic, Growth and Infrastructure Committee

Easter Sunday shop trading amendment

Proposal

1 I propose to amend the Shop Trading Hours Act Repeal Act 1990 (the Act) to grant Territorial Authorities a limited power to create bylaws to allow shop trading in defined areas on Easter Sunday.

2 s 9(2)(f)(iv) of the Official Information Act 1982

Executive Summary

3 Under the Act there are several exemptions in place allowing shops in certain areas to trade on some of the three and a half restricted trading days each year. However, there is no mechanism for creating further exemptions to the shop trading restrictions. This has created an unfair advantage for areas with the historic exemptions over the Easter period.

4 I propose to introduce a Bill amending the Act so that Territorial Authorities have a power to create bylaws that will allow shop trading in defined areas on Easter Sunday. This Bill is based on Hon Todd McClay's Member's Bill from 2009.

5 The Bill will also grant workers affected by these amendments the ability to refuse to work on Easter Sunday without giving a reason. This ability to refuse will also be extended to garden centre workers¹ to ensure consistency of the law on Easter Sunday.

6 s 9(2)(f)(iv) of the Official Information Act 1982

Background to shop trading restrictions

7 The Act prescribes trading restrictions on three and half days of the year — Good Friday, Easter Sunday, ANZAC Day (until 1pm), and Christmas Day. Since the Act's introduction, shop trading over the Easter period has been a controversial issue. Parliament has considered various amendment Bills in 2006, 2007, 2009 and 2012. The only Bill that was passed (all Bills were considered by a conscience vote) was the 2001 amendment that allowed garden centres to open on Easter Sunday.

8 The Act allows shops selling certain types of goods (examples include dairies, service stations, take away bars, restaurants and cafes, and duty free stores) to remain open on the restricted trading days.

¹ In 2001 the Act was amended to allow garden centres to trade on Easter Sunday. Current protections could be interpreted so that garden centre workers may be required to work on Easter Sunday only if this expectation is specified in their employment agreement. The proposed Bill will strengthen this provision to allow them to refuse to work on Easter Sunday without providing a reason.

- 9 Historic exemptions (listed in Annex 1) made under the now repealed Shop Trading Hours Act 1977 also allow certain areas such as Queenstown and Taupo to trade over the Easter period. These historic exemptions, while not listed within the Act or in regulations, are deemed valid under the Act. The Act does not provide for further exemptions to be created.
- 10 The sale and supply of alcohol aligns with the Act and is restricted by the Sale and Supply of Alcohol Act 2012, on the three and a half restricted trading days.

Disparities and lack of choice on Easter Sunday

- 11 Some of the historic Easter trading exemptions are out of date and there is no mechanism in the Act to provide further exemptions. The historic exemptions create an unfair advantage for certain businesses and regions. This is largely because those who benefit from an exemption are able to benefit from tourist trade on the restricted days. For example, businesses in Taupo are allowed to trade on Easter Sunday, but Rotorua, another city that attracts tourists, has no exemptions. The same disparity applies for Wanaka, a city that hosts events over the Easter period, but has no exemption, while Queenstown does.

The proposed Bill

- 12 I propose to amend the Act to grant Territorial Authorities a power to create bylaws that will allow shop trading in defined areas on Easter Sunday. Hon Todd McClay's Member's Bill from 2009, The Shop Trading Hours Act 1990 (Easter Sunday Local Choice) Amendment Bill (the **Bill**), will form the basis for the proposed amendments. A copy this Bill is included in Annex 2 of this paper.

The 2009 Bill

- 13 As it stands, the Bill would allow shops to open on Easter Sunday if a Territorial Authority has made a bylaw permitting this. It enables Territorial Authorities to create these bylaws in accordance with the Local Government Act 2002. The Bill provides consequential protection for workers affected by ensuring that a worker will not be required to work unless the parties to the employment agreement so agree.
- 14 The Bill provides that any mandatory opening provision in a lease, licence, contract, covenant, or agreement entered into before a bylaw comes into effect, must not be interpreted as requiring an affected shop to open. The Bill also provides a transitional provision in regard to prosecutions, and places an obligation on Territorial Authorities to report the existence of any bylaw created to the Chief Executive of the Ministry of Business, Innovation and Employment (MBIE).

Bylaws

- 15 I propose to limit the types of bylaws that can be made so that Territorial Authorities may only allow or disallow trading in a defined area, or areas, of its district. It is important to ensure that shop trading exemptions are not prescribed on the basis that a shop sells a certain product, or is of a particular type of ownership.

- 16 If the bylaw making power is not limited as I propose, there is a risk that the bylaws may create confusion among the public, complicate enforcement, and would not sufficiently consider the interests of local businesses. Such bylaws could also encourage retailers to 'game' the system. For instance if a bylaw allows shops selling a certain product or group of products to be open, it is possible that many types of retailers could start offering those products for sale in addition to their normal business in order to be allowed to trade.

Worker choice

- 17 I also intend to provide all shop workers the ability to refuse to work, without reason, on Easter Sunday. This acknowledges Easter Sunday's continued status as a day of significance across the country, and maintains the ability of workers to take an extended period of leave over the Easter holiday if they choose.
- 18 An employee will be able to bring a personal grievance against their employer if they are made to work despite invoking their refusal to work.
- 19 Garden centres have had the choice to trade on Easter Sunday since 2001. Current protections could be interpreted so that workers in garden centres have only been required to work on Easter Sunday if their employment agreement provides for it, but have not had the right to refuse to work without providing reason. I propose extending the ability to refuse to work on Easter Sunday without providing a reason to garden centre workers. This will ensure consistency of choice for shop workers on Easter Sunday.

Other matters

- 20 In addition to some minor and technical adjustments to the Bill, I have considered a range of other issues for potential inclusion in the Bill, such as changes to the enforcement and penalty arrangements² and alcohol restrictions. However, I do not consider these changes are warranted, as set out below:

² The Act is administered by the Ministry of Business, Innovation and Employment (MBIE), but it does not name a particular regulator or organisation for the purposes of enforcement. The Labour Inspectorate currently fills this role. The Labour Inspectorate focuses on enforcing breaches involving serious exploitation. MBIE considers that breaches of the Act do not involve serious breaches of employment standards. The maximum penalty for a breach of the Act is \$1000.

Table: Shop trading related matters that will remain unchanged

Issue for potential inclusion	Reason not included
Whether responsibility for enforcement should be shifted to local authorities	Maintains a consistent approach across the full set of restricted trading days. Changing this for Easter Sunday alone would introduce further complexity and potential for misunderstanding.
Whether to increase or decrease penalty levels for breaches of the Act	It would be inconsistent to change penalty levels for Easter Sunday alone. Any wider change to penalty levels would require a separate review considering penalties across all restricted trading days.
Whether to remove the historic area exemptions	Despite the fact that the historic area exemptions involve some historical anomalies, they are well recognised by Territorial Authorities and traders. It is likely that local authorities would seek to create bylaws that effectively recreate these historic exemptions in all cases, which would simply impose an additional and unnecessary cost on Territorial Authorities (consulting on and creating the bylaw).
Whether to allow the sale and supply of alcohol on Easter Sunday, either in total or where there are bylaws in place	Changing the current requirements for the sale and supply of alcohol on Easter Sunday would introduce an inconsistent approach to the sale and supply of alcohol across the restricted trading days and lead to further misunderstanding about the sale and supply of alcohol in various areas on Easter Sunday and more widely across all the restricted trading days.
Whether to make Easter Sunday a public holiday	Easter Sunday is a restricted trading day, but not a public holiday. This aligns with the United Kingdom and Australia (with the exception of New South Wales and Victoria). Changing the status of Easter Sunday to be a public holiday (under the Holidays Act 2003) would have a significant impact on businesses — both the retail sector and other sectors would incur additional labour costs if Easter Sunday was made a public holiday.

Implications

- 21 The amendment allows Territorial Authorities, and through them local communities, the ability to decide whether retailers within their area can open. It increases the likelihood that retailers can choose to be open and may produce positive economic benefits from increased retail activity.
- 22 There are no significant negative impacts for employees associated with the proposed amendments. Affected workers will be able to refuse to work without reason on Easter Sunday. For many workers it is likely to be a positive impact because they will have the ability to work and be paid on Easter Sunday, essentially allowing them to be paid for an additional day than they would be currently. Under current legislation, workers who would otherwise work on an Easter Sunday, but do not because of shop trading restrictions, are only entitled to be paid where they take annual leave.

- 23 Extending the worker choice provision to garden centre workers will clarify and strengthen the protection these workers currently have.

Stakeholder views

- 24 Stakeholders such as the New Zealand Council of Trade Unions are likely to object to the proposed changes as they may consider that it removes a guaranteed day off for workers. As I have mentioned above, enabling Territorial Authorities to allow trading on Easter Sunday will have a neutral or positive effect on most workers.
- 25 Garden centre owners may object to the extension of worker choice to their employees for Easter Sunday.
- 26 Many stakeholders will consider the change to be positive. I also anticipate that some groups (in particular retailers) will continue to lobby for an extension of the changes to include Good Friday as well.

Risks

- 27 Retailers, as well as the general public, may find the changes and any implementation of them complex or confusing, particularly over what days the changes apply to — Good Friday or Easter Sunday. To mitigate this, MBIE will communicate clearly what the changes are. MBIE will also work with Territorial Authorities to ensure that their communities are aware of the changes and how they will be implemented.

Consultation

- 28 The following government agencies have been consulted on this paper, and as far as possible, this Cabinet paper reflects their comments: The Treasury, Ministry of Justice, Department of Internal Affairs, Inland Revenue, Ministry of Social Development, Ministry for Women, Te Puni Kōkiri, Ministry of Pacific Island Affairs, and the State Services Commission.
- 29 Local Government New Zealand was consulted on these proposals and was supportive of them. They consider that while not all their members agree that shop trading should be allowed on Easter Sunday, their members would consider that such a decision should be made by local communities.

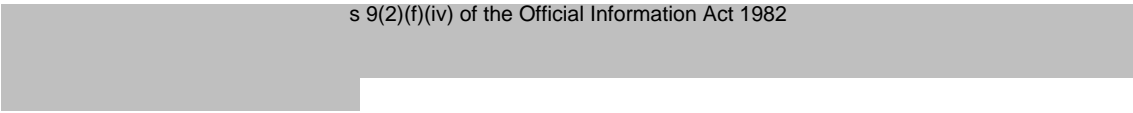
Financial implications

- 30 Any financial impacts for government are likely to be minimal, but positive. This is due to an anticipated reduced need for enforcement of breaches of shop trading restrictions on Easter Sunday.
- 31 Territorial Authorities that do choose to undertake the process of creating a bylaw would incur the financial costs associated with consulting and creating a bylaw.

Human Rights

- 32 The proposed amendment appears to be consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.
- 33 The draft legislation will be vetted by the Ministry of Justice for consistency with the Bill of Rights Act 1990 prior to its introduction.

Legislative implications

- 34  s 9(2)(f)(iv) of the Official Information Act 1982

Regulatory impact analysis

- 35 A regulatory impact statement (RIS) is required for these changes and this is provided with the Cabinet paper.

Quality of Impact Analysis

- 36 The General Manager, Strategic Policy Branch, and MBIE's Regulatory Impact Analysis Review Panel have reviewed the regulatory impact statement prepared by MBIE.
- 37 The Regulatory Impact Analysis Review Panel has reviewed the attached Regulatory Impact Statement (RIS) prepared by the Ministry of Business, Innovation and Employment. They consider that the information and analysis summarised in the RIS partially meets the criteria necessary for ministers to fairly compare the available policy options and take informed decisions on the proposals in this paper. This is because of the constraints that have been placed on the options to be considered and on the parties that should be consulted at this stage of the policy process. The review panel nonetheless considers the analysis in the RIS is as good as it could be in light of these constraints.

Publicity

- 38 I intend to make a media statement on the amendments to the shop trading restrictions for Easter Sunday at an appropriate time.

Next Steps

- 39 I intend to progress this change through an amendment to the Act to come into force by April 2016. I will return to Cabinet with a Bill in September 2015 with a view to introducing it in the House in October 2015.

Recommendations

The Minister for Workplace Relations and Safety recommends that the Committee:

- 1 **Agree** that the Shop Trading Hours Act Repeal Act 1990 (the Act) be amended to grant Territorial Authorities a limited power to create bylaws to allow shop trading in defined areas on Easter Sunday
- 2 s 9(2)(f)(iv) of the Official Information Act 1982
- 3 **Invite** the Minister for Workplace Relations and Safety to issue drafting instructions to the Parliamentary Counsel Office to give effect to these recommendations
- 4 **Authorise** the Minister for Workplace Relations and Safety to make decisions consistent with the overall policy decisions in this paper on any issues which arise during the drafting process

Hon Michael Woodhouse
Minister for Workplace Relations and Safety

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Annex 1: Table of pre-existing exemptions

Exemptions granted under Section 18(2) the Shop Trading Hours Act (1977) – still valid					
Town/Location	Exemption	Hours	Restrictions	No.	Date Issued
Auckland (Parnell Road)	Easter Sunday	10am - 6pm	None	1828	12/7/89
Christchurch (Arts Centre)	Easter Sunday	10am - 4pm	None	1815	26/4/89
Dunedin (Carnegie Centre, Moray Place)	Easter Sunday, ANZAC Day	7am - 9pm	Only Arts, Crafts, Children's' Toys & Books (<i>toys and books sold only while performances happening on the mezzanine floor</i>)	1459	28/6/85
Hamilton (Market Place, Collins Road)	Easter Sunday	9am - 5pm	None	1202	8/4/83
Napier (Harbour Market)	Easter Sunday	10am - 4:30pm	Only Food, Second-hand Goods, Industrial Goods	1660	9/11/87
Nelson	Christmas Day, Easter Friday, Easter Sunday, ANZAC Day	Whenever Founders Park is Open	Crafts Only	1559	15/9/86
Paihia	Easter Friday, Easter Sunday, ANZAC Day	7am - 9pm	None	1174	10/10/81
Picton (Mariners Mall)	Easter Friday, Easter Sunday (<i>if a Cruise Ship is in Port</i>), ANZAC Day	7am - 9pm	None	1750	7/10/88
Queenstown (District)	Easter Friday, ANZAC Day (<i>after 12pm</i>)	Any Time	None	1462	26/8/86
Tairua	ANZAC Day (<i>if Fri. or Mon.</i>)	8am - 8pm	None	1551	9/12/86
Taupo (Central)	Easter Sunday	10am - 3pm	None	1946	13/11/89
Thames (Richmond Court)	Christmas Day (<i>if Sunday</i>), Easter Sunday (<i>if in March</i>)	8am - 5pm	Only Full-time Artists & Crafts People, selling their own work, at Stalls	1480	6/8/83
Wanaka (Pembroke Mall, Stage I)	Easter Sunday, ANZAC Day	7am - 9pm	None	537	22/6/82

Exemptions granted under Section 18(2) the Shop Trading Hours Act (1977) – still valid					
Town/Location	Exemption	Hours	Restrictions	No.	Date Issued
Whangamata	ANZAC Day <i>(if Fri. or Mon.)</i>	8am - 6pm	None	1550	25/9/86
Whitianga (District)	ANZAC Day <i>(if Fri. or Mon.)</i>	8am - 8pm	None	1554	15/9/86

**Annex 2: Shop Trading Hours Act 1990 Repeal (Easter Sunday
Local Choice) Amendment Bill**
