

## Regulatory Impact Statement

### Easter Sunday Shop Trading

#### Agency Disclosure Statement

- 1 This Regulatory Impact Statement has been prepared by the Ministry of Business, Innovation and Employment (MBIE).
- 2 MBIE has been directed by the Minister for Workplace Relations and Safety to amend the *Shop Trading Hours Act Repeal Act 1990* (the Act) to provide choice for Territorial Authorities by enabling them to make bylaws that will allow shop trading in their areas on Easter Sunday. This amendment is based on Hon. Todd McClay's Member's Bill from 2009 — the *Shop Trading Hours Act 1990 Repeal (Easter Sunday Local Choice) Amendment Bill*.
- 3 The Minister requested consideration of the shop trading restrictions for Easter Sunday only, and not the other restricted trading days under the Act, ie Good Friday, ANZAC Day and Christmas Day.
- 4 Therefore, our analysis necessarily only considers a range of options for implementing this. This does not prevent us in the future from looking at other options for providing flexibility and choice about whether to trade on what are currently restricted trading days, and we have identified some alternative options that would merit analysis in the context of a full review of restricted trading days (see the **Conclusion and recommendations** section (pages 2-3) and the **Scope for options** section on pages 7-8).
- 5 The process for this work was agreed with the Minister (as outlined in the Cabinet paper) and included consultation with government agencies and Local Government New Zealand. MBIE has not been permitted to consult with other stakeholders, or to consult more widely about shop trading on other restricted trading days.

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## Conclusion and recommendations

- 6 This Regulatory Impact Statement analyses a range of options to provide Territorial Authorities with choice about whether or not to allow for shop trading in their areas on Easter Sunday.
- 7 The proposed change can be broadly understood as applying another form of “exemption” from trading restrictions but for Easter Sunday only, and providing choice for this “exemption” at the level of Territorial Authorities.
- 8 The range of options fall into two sets:
  - a) the first set of options (1-3 in the table) address how the proposed change could apply. These are: whether or not to retain pre-existing exemptions, the mechanism of choice for local government, and the extent of choice for workers about working on Easter Sunday.
  - b) the second set of options (4-7 in the table) are issues that relate to restricted trading days. These are: the status of Easter Sunday, enforcement, penalties, and the sale and supply of alcohol.
- 9 In analysing options to address this proposed change, MBIE has emphasised the need to keep consistency as much as possible across the set restricted trading days and avoid creating further problems such as misunderstanding, added complexity, and increased costs for businesses, adverse effects for employees, or difficulty in enforcing shop trading restrictions on the restricted trading days.
- 10 MBIE’s recommendations are:
  - Bylaws<sup>1</sup> should be the mechanism whereby Territorial Authorities can effect choice about whether or not to trade on Easter Sunday
    - Bylaws are transparent and accessible to the public, and will be relatively easy to enforce, perhaps requiring less enforcement than other restricted trading days, depending on levels of compliance. Although there will be costs for Territorial Authorities in creating and reviewing bylaws, these will be outweighed by economic benefits of trading. The option may assist greater understanding of trading restrictions on Easter Sunday, although there may be continuing misunderstanding of trading provisions across the restricted trading days.
  - That pre-existing exemptions should remain in place
    - The rationale for this is to avoid misunderstanding or problems for enforcement through inconsistency with other restricted trading days that would result from dissolving pre-existing exemptions just for one day. The other consideration is retaining the pre-existing exemptions for Easter Sunday and the other restricted trading days will mean fewer costs for local authorities and businesses.
  - Protections for workers (referred to as Worker choice in this RIS) should specify the ability to refuse to work on Easter Sunday, and also apply to garden centre workers

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<sup>1</sup> To provide local government with a mechanism for local choice, MBIE considered either the use of a bylaw or a policy. Pursuant to the Local Government Act 2002, bylaws are required to be reviewed after every five years and there is an explicit obligation to make bylaws publicly available. A policy is better suited to provide a form of guidance about how the Territorial Authority will make decisions or exercise powers. A policy is not as accessible as a bylaw, and there are no formal requirements for its review.

- This aligns with worker protection already provided for garden centre workers but it improves this provision by making it easier to understand and clarifying that shop workers can refuse to work on Easter Sunday without needing to provide a reason. The option maintains as consistent approach as possible with regard to the other restricted trading days.
- The status quo should apply and no change should be initiated with regard to the status of Easter Sunday, enforcement, penalties, and the sale and supply of alcohol.
  - Altering these settings for Easter Sunday alone would introduce further complexity, misunderstanding and the potential for an inconsistent approach to enforcement across the restricted trading days. MBIE's view is that there could be merit in reviewing these settings as part of any future wider review of the Shop Trading Hours Act Repeal Act 1990 looking at the restricted trading days as a whole, and consideration of the status of Easter Sunday or Easter Monday may be better achieved under a review of the Holidays Act 2003.
  - MBIE acknowledges that the penalty level for breaches of the Shop Trading Hours Act Repeal Act 1990 does not always consistently deter breaches, but we do not recommend altering the penalty level for Easter Sunday alone. This would lead to misunderstanding and inconsistency with other restricted trading days and potentially create difficulties with enforcement across the restricted trading days.

11 These recommendations are detailed as preferred options (and coloured orange) in the analytical table beginning on page 8 of this RIS.

## A. Status Quo

### Disparities and lack of choice for trading on Easter Sunday

- 1 Shop trading over the Easter period has been a controversial issue since the introduction of the Act in 1990. It removed trading restrictions for all but three and a half days a year: Christmas Day, Good Friday, Easter Sunday, and ANZAC Day (until 1:00pm).
- 2 Since the Act's introduction, Parliament has repeatedly reconsidered the issue of shop trading restrictions at Easter. Amendment Bills were considered by a conscience vote in 2006, 2007, 2009 and 2012. The only Bill that was passed was the amendment to the Act in 2001 to allow garden centres to remain open on Easter Sunday.
- 3 In addition to the garden centres, the Act also provides exemptions for shops selling certain types of goods (examples include dairies, service centres, take away bars, restaurants and cafes, and duty free stores).
- 4 Historic area exemptions (listed in Annex 1) made under the now repealed *Shop Trading Act 1977* allows certain areas such as Queenstown and Taupo to trade over the Easter period. These historic area exemptions, while not listed within the Act or in regulations, are deemed valid under the Act.

### Worker choice

- 5 Worker choice exists in the Act for garden centre workers through the provision that parties to the employment agreement must agree that the employee will work on Easter Sunday. This provision does not specify whether or not these workers have the ability to refuse to work on Easter Sunday.
- 6 Workers who wish to take time off on Easter Sunday for religious reasons have existing protections against discrimination under the Human Rights Act 1990 and the Employment Relations Act 2000. However, no legislation grants a right not to work on religious days.<sup>2</sup>

### Other relevant issues

- 7 There is a range of other issues that we have considered for potential inclusion in this amendment. These are: the status of Easter Sunday, changes to the enforcement and penalty arrangements and alcohol restrictions.

### Status of Easter Sunday

- 8 Easter Sunday is the only day that is a restricted trading day, but not a public holiday. Since 1936 Easter Monday has been recognised as the public holiday, because traditionally most people worked Monday to Friday.
- 9 Under the *Holidays Act 2003*, Easter Sunday is not a public holiday and therefore employees are not entitled to any additional payment for working or for not working. Employees who would normally work that day but do not because of shop trading restrictions are only entitled to be paid for the day if they use a day's worth of annual leave. However, anecdotally we

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<sup>2</sup> A restricted trading day is not a guaranteed day off work. A restricted day prevents businesses from trading with the public. An employee who would normally work that day would either take leave without pay or annual leave if they wish to get paid. On restricted days businesses may still choose to bring workers in to undertake tasks that does not involve public trading, for example stocktaking.

understand that some employers deliberately or otherwise, treat Easter Sunday as a public holiday.

### **Enforcement and penalties**

- 10 The Act does not name a particular regulator or organisation for the purposes of enforcement. The Labour Inspectorate currently fills this role.
- 11 The Labour Inspectorate focuses on enforcing breaches involving serious exploitation of workers. MBIE considers that breaches of the Act do not involve serious breaches or exploitation of employment standards. Over the past three years Labour Inspectors have adopted an approach of responding to, rather than proactively investigating, complaints in relation to the Act.
- 12 The maximum penalty for a breach of the Act is \$1000. The Labour Inspectorate has indicated that for prosecutions it has taken against non-compliant businesses, the Courts have only been prepared to fine up to \$500. Anecdotally, many businesses report that they can achieve more sufficient turnover by trading on a restricted day to make a profit even if they are liable to pay this penalty.
- 13 Media reports for the last several years have focused on a lack of compliance with restrictions on shop trading over the Easter break; including Easter Sunday. Non-compliance may be widespread throughout particular regions, for example Wanaka, but strong evidence indicating the extent of non-compliance is difficult to gather, as data collected only indicates complaints.

### **Sale and Supply of Alcohol**

- 14 The sale and supply of alcohol on particular days is also restricted by the Sale and Supply of Alcohol Act 2012, which places restrictions on alcohol on the restricted trading days.
- 15 Currently restrictions to the sale and supply of alcohol are maintained regardless of whether an area or business has a historic area exemption from the shop trading restrictions.

## B. Problem definition

- 16 This RIS addresses two, related, problems associated with the current regime established under the Act. These are:
- a) Currently, communities lack the ability to choose whether or not to allow trading on restricted trading days. This lack of choice has the potential to hinder economic development for regions where there may be a strong demand for trading on restricted days.
  - b) Some of the historic area exemptions are outdated but there is no mechanism in the Act to provide further exemptions, or amend existing exemptions. The exemptions, in particular the historic area exemptions, are considered to 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 exemption. The same applies for Wanaka, a city that hosts events over the Easter period, but has no exemption, while Queenstown has an exemption for Good Friday.
- 17 The Minister has directed a solution to the outdated exemptions regime for shop trading restrictions but only for Easter Sunday. Therefore this RIS addresses these problems in the context of Easter Sunday only.

## C. Regulatory Impact Analysis

### Objective

- 18 The overall objective is to address the uneven ability between areas to choose whether or not to trade on Easter Sunday.

### Criteria

- 19 The objective relates to a set of six criteria, and options designed to achieve the objective have been assessed against each of these. The criteria are:
- I. Local authorities will experience reduced costs in providing for Easter Sunday trading in their area
  - II. Businesses will experience economic benefits as a result of being able to trade on Easter Sunday
  - III. Workers will experience increased choice and economic benefits as a result of Easter Sunday trading
  - IV. The removal of restrictions for Easter Sunday trading will maintain consistency with other restricted trading days
  - V. Easy to understand
  - VI. Easy to enforce

### Options

#### Scope for options

- 20 The solution for addressing the uneven ability between areas to trade on Easter Sunday and giving local communities' choice has been directed by the Minister. This solution is to amend the Act to provide choice by enabling Territorial Authorities to make bylaws allowing trading in their areas on Easter Sunday.
- 21 Our analysis necessarily only considers a range of options for implementing changes to trading restrictions on Easter Sunday. This does not prevent us in the future from looking at other options for providing flexibility and choice about whether to trade on what are currently restricted trading days.
- 22 A full review of the effectiveness of the Act would have provided for a consideration of a range of options to address the uneven ability between areas and businesses to trade on restricted trading days, as well as a consideration of other factors such as level of penalties, enforcement, and whether the current exemptions regime is fit for purpose and if not, what could replace this.
- 23 Such a review would include considering the benefits and costs of a range of options, such as providing flexibility and choice about whether to trade on all restricted trading days, on Good Friday as well as Easter Sunday, and repealing the restrictions altogether.
- 24 MBIE has done some initial analysis on whether the restrictions should be repealed altogether for Easter Sunday, or whether local authorities should be able to decide whether or not to allow trading on Easter Sunday. It is our view that while there may be some benefits of repealing the restrictions altogether for Easter Sunday — such as reduced cost to councils from not having to pass bylaws, greater consumer choice over when/where to shop (with

consumers not needing to rely on councils having to pass bylaws) — a repeal of the restrictions at a national level just for Easter Sunday and not for the restricted trading days as a set would create more problems than benefits in terms of inconsistency across the restricted trading days. This would be likely to lead to further misunderstanding with regard to trading on Easter Sunday and for the other restricted trading days.

- 25 In particular, repealing the restrictions at a national level for Easter Sunday and not providing for local area choice over whether to trade would set the status of Easter Sunday apart from Good Friday, and create confusion for businesses and consumers with regard to Good Friday, potentially resulting in increased non-compliance. We consider that there is merit in examining the restricted trading days as a whole, and that the option of repealing the restrictions altogether would sit within a broader review as this would ensure consistency across all of the days. Because of this, we have not considered repealing national level restrictions for Easter Sunday in our options analysis.
- 26 MBIE has not been permitted to consult widely on the issue, but has discussed the proposed amendment with Local Government New Zealand (LGNZ). LGNZ indicate that while all their members do not agree on whether the Easter Sunday trading restrictions should be lifted, they all agree that they should be given the choice to decide whether shop trading can take place on Easter Sunday.

### Options analysed

- 27 The analysis of the options for implementing the provision of choice for Territorial Authorities to make bylaws allowing trading in their areas on Easter Sunday is presented in the following table, with recommendations based on the net positive outcomes of the preferred option. The orange shaded rows indicate MBIE's preferred options.



# Shop Trading – options analysis

Option	Criteria for assessment of options						Conclusions/net outcomes
	Reduced costs for Territorial Authorities	Increased economic benefits for businesses	Increased choice and economic benefits for workers	Maintains consistency with other restricted trading days	Easy to understand	Easy to enforce	
<b>1. Mechanism of choice for local government</b>							
Status Quo –Bylaws or policies cannot be created to allow for shop trading	<ul style="list-style-type: none"> <li>No additional costs for local authorities</li> </ul>	<ul style="list-style-type: none"> <li>Local businesses in areas with exemptions benefit from opportunities for shop trading on Easter Sunday</li> <li>Local businesses in areas without exemptions continue to miss out on opportunities for shop trading on Easter Sunday</li> </ul>	<ul style="list-style-type: none"> <li>Most shop workers will have an unpaid day off (unless they take annual leave).</li> <li>Some shop workers may continue to work on the day but not trade with the public (for example, stocktaking).</li> </ul>	<ul style="list-style-type: none"> <li>No further inconsistency with other restricted trading days</li> </ul>	<ul style="list-style-type: none"> <li>Lack of understanding about trading restrictions and exemptions continues</li> </ul>	<ul style="list-style-type: none"> <li>Level of ease for enforcement remains the same</li> </ul>	<p>Retaining the status quo is not a viable option as it does not contribute to the objective of addressing the uneven ability between areas to choose whether or not to trade on Easter Sunday.</p> <p>MBIE's view is that it would be preferable to consider options for trading on Easter Sunday alongside of Good Friday, and potentially across other restricted trading days.</p>
Option 1 - Territorial Authorities have a wide discretion over the types of bylaws they can make to allow trading	<ul style="list-style-type: none"> <li>Costs for Territorial Authorities if they choose to make bylaws. Territorial Authorities will also bear the cost of reviewing the bylaws every five years</li> <li>No costs for Territorial Authorities if they do not choose to make bylaws</li> </ul>	<ul style="list-style-type: none"> <li>If a bylaw is in place to allow all shop trading, it is likely to have a positive impact for businesses. These businesses may see additional revenue from trading on a day they previously could not</li> <li>If the bylaw only allows particular types of businesses, the impact will be mixed, as not all businesses may not be able to open, and some businesses may consider resorting to "gaming" the system to trade</li> </ul>	<ul style="list-style-type: none"> <li>Dependant on whether or not a shop worker is working in a shop for which a bylaw applies: <ul style="list-style-type: none"> <li>some shop workers will be able to work</li> <li>some shop workers would be able to take annual leave (paid leave) if they choose not to work.</li> <li>some shop workers will have an unpaid day off (unless they take annual leave)</li> <li>some shop workers may continue to work on the day but not trade with the public (for example, stocktaking)</li> </ul> </li> </ul>	<p>xxx</p> <ul style="list-style-type: none"> <li>Further complexity created in the ability to allow businesses to trade based on the types of goods or services they sell or based on the size of their business</li> <li>Potential for 'gaming' by businesses claiming to be a certain type of business to be allowed to trade</li> <li>Further inconsistency created between other restricted trading days</li> </ul>	<p>xx</p> <ul style="list-style-type: none"> <li>Increased misunderstanding of who can trade, where and when, especially if bylaws are created that allow for some types of businesses to trade based on their size or the types of goods or services they sell</li> </ul>	<p>xx</p> <ul style="list-style-type: none"> <li>More complex, costly and time consuming to enforce if areas choose to make bylaws allowing trading for types of businesses: <ul style="list-style-type: none"> <li>due to increased public confusion about who can trade, where and when</li> <li>due to the need to determine whether 'gaming' is occurring</li> </ul> </li> <li>Enforcement likely to be easier than under the Status Quo for areas choosing to make bylaws just by area within their district boundaries.</li> <li>Level of ease for enforcement likely to remain the same as under the Status Quo for areas opting not to make bylaws</li> </ul>	<p>The key downside of this option is that the wider discretion for local authorities significantly increases the inconsistency and complexity of an already complicated restricted trading and exemptions regime. This would create difficulty for enforcement, confusion about which businesses can trade — when and where, and 'gaming'.</p>

Option	Criteria for assessment of options						Conclusions/net outcomes
	Reduced costs for Territorial Authorities	Increased economic benefits for businesses	Increased choice and economic benefits for workers	Maintains consistency with other restricted trading days	Easy to understand	Easy to enforce	
Option 2 - Territorial Authorities are limited to creating bylaws to allow shop trading by area within their district boundaries (ie, a bylaw could specify a particular area within a Territorial Authority, or their entire region)	<p>—</p> <ul style="list-style-type: none"> <li>Costs for Territorial Authorities if they choose to make bylaws. Territorial Authorities will also bear the cost of reviewing the bylaws every five years</li> <li>No costs for Territorial Authorities if they do not choose to make bylaws</li> </ul>	<p>—</p> <ul style="list-style-type: none"> <li>If a bylaw is in place to allow all shop trading, it is likely to have a positive impact for businesses. These businesses may see additional revenue from trading on a day they previously could not</li> <li>If a bylaw is not in place, it is likely to have a negative impact on businesses. These businesses miss out on additional revenue from a potential trading day</li> </ul>	<p>✓</p> <ul style="list-style-type: none"> <li>Dependant on whether or not a shop worker is working in a shop for which a bylaw applies:- <ul style="list-style-type: none"> <li>some shop workers will be able to work</li> <li>some shop workers would be able to take annual leave (paid leave) if they choose not to work</li> <li>some shop workers will have an unpaid day off (unless they take annual leave)</li> <li>some shop workers may continue to work on the day but not trade with the public</li> </ul> </li> </ul>	<p>✗</p> <ul style="list-style-type: none"> <li>Minor inconsistency compared with other restricted trading days</li> </ul>	<p>—</p> <ul style="list-style-type: none"> <li>May initially create initial further misunderstanding of who can trade, where and when compared with Status Quo</li> <li>Over time there is likely to be better understanding within areas that choose to create bylaws by area within their district boundaries</li> <li>There will be greater transparency for the public in knowing which areas can trade on Easter Sunday</li> </ul>	<p>✓</p> <ul style="list-style-type: none"> <li>No enforcement needed within areas choosing to make bylaws likely to be easier than under the Status Quo and Option 1</li> <li>Level of ease for enforcement likely to remain the same for areas opting not to make bylaws</li> </ul>	<p><b>Preferred option</b></p> <p>This is MBIE’s preferred option for addressing the policy objective.</p> <p>Although there will be some costs for Territorial Authorities in creating and reviewing bylaws, these will be outweighed by economic benefits of trading. The other key benefit of this option is that bylaws are transparent and accessible to the public (more so than policy), and will be relatively easy to enforce, perhaps requiring less enforcement than other restricted trading days, depending on levels of compliance. The option may assist greater understanding of trading restrictions on Easter Sunday, although there may be continuing misunderstanding of trading provisions across the restricted trading days.</p>
Option 3 – Territorial Authorities can create policy that would allow shop trading on Easter Sunday (wide discretion as in Option 1)	<p>—</p> <ul style="list-style-type: none"> <li>Some initial costs (and costs for reviewing) for Territorial Authorities if they choose to make policies.</li> <li>No costs for Territorial Authorities if they do not choose to make policies.</li> </ul>	<p>—</p> <ul style="list-style-type: none"> <li>If a policy is in place to allow all shop trading, it is likely to have a positive impact for businesses. These businesses may see additional revenue from trading on a day they previously could not.</li> <li>If the policy only allows particular types of businesses, the impact will be mixed, as not all businesses may be able to open, and some businesses may consider resorting to “gaming” the system</li> </ul>	<p>—</p> <ul style="list-style-type: none"> <li>Dependant on whether or not a shop worker is working in a shop for which a policy applies:- <ul style="list-style-type: none"> <li>some shop workers will be able to work</li> <li>some shop workers would be able to take annual leave (paid leave) if they choose not to work</li> <li>some shop workers will have an unpaid day off (unless they take annual leave)</li> <li>some shop workers may continue to work on the day but not trade with the public</li> </ul> </li> </ul>	<p>✗✗✗</p> <ul style="list-style-type: none"> <li>Further complexity created in the ability to allow businesses to trade based on the types of goods or services they sell or based on the size of their business</li> <li>Potential for ‘gaming’ by businesses claiming to be a certain type of business to be allowed to trade</li> <li>Further inconsistency created between other restricted trading days</li> </ul>	<p>✗✗✗</p> <ul style="list-style-type: none"> <li>Increased misunderstanding of who can trade, where and when, especially if bylaws are created that allow for some types of businesses to trade based on their size or the types of goods or services they sell</li> <li>Policy not as accessible and transparent a process for the public as bylaws</li> </ul>	<p>✗✗✗</p> <ul style="list-style-type: none"> <li>Potential to create difficulty in enforcement for the Labour Inspectorate if the policy is not well understood.</li> <li>Also, there is likely to be difficulty in obtaining clarity over which businesses have the ability to trade on Easter Sunday.</li> <li>More complex, costly and time consuming to enforce if areas choose to make policies allowing trading for types of businesses: <ul style="list-style-type: none"> <li>due to increased public confusion about who can trade, where and when</li> <li>due to need to determine whether ‘gaming’ is occurring.</li> </ul> </li> <li>Level of ease for enforcement likely to remain the same for areas opting not to make policies.</li> </ul>	<p>The option is not favoured by MBIE.</p> <p>This option has the same downsides as Option 1, in terms of the wide discretion allowed for policy-making.</p> <p>In addition to this, the key disadvantages of this option is that policy-making compared with bylaws will not be as accessible and transparent a process.</p>

Option	Criteria for assessment of options						Conclusions/net outcomes
	Reduced costs for Territorial Authorities	Increased economic benefits for businesses	Increased choice and economic benefits for workers	Maintains consistency with other restricted trading days	Easy to understand	Easy to enforce	
Option 4 - Territorial Authorities can create policy that would allow shop trading on Easter Sunday by area within their district boundaries. (ie A policy could specify a particular area within a Territorial Authority, or their entire region, for which trading restrictions would be lifted).	<p>—</p> <ul style="list-style-type: none"> <li>Some initial costs (and costs for reviewing) for Territorial Authorities if they choose to make policies</li> <li>No costs for Territorial Authorities if they do not choose to make policies.</li> </ul>	<p>✓</p> <ul style="list-style-type: none"> <li>If a policy is in place to allow all shop trading, it is likely to have a positive impact for businesses. These businesses may see additional revenue from trading on a day they previously could not</li> <li>If a policy is not in place, it is likely to have a negative impact on businesses. These businesses miss out on additional revenue from a potential trading day</li> </ul>	<p>—</p> <ul style="list-style-type: none"> <li>Dependant on whether or not a shop worker is working in a shop for which a policy applies:- <ul style="list-style-type: none"> <li>some shop workers will be able to work</li> <li>some shop workers would be able to take annual leave (paid leave) if they choose not to work</li> <li>some shop workers will have an unpaid day off (unless they take annual leave)</li> <li>some shop workers may continue to work on the day but not trade with the public</li> </ul> </li> </ul>	<p>✗</p> <ul style="list-style-type: none"> <li>Minor inconsistency compared with other restricted trading days</li> </ul>	<p>✗✗</p> <ul style="list-style-type: none"> <li>May create initial further misunderstanding of who can trade, where and when compared with the Status Quo</li> <li>Policy not as accessible and transparent a process for the public as bylaws</li> <li>There will be less transparency for the public than under Options 1 and 2 in knowing which areas can trade on Easter Sunday</li> </ul>	<p>✗✗</p> <ul style="list-style-type: none"> <li>Potential to create difficulty in enforcement for the Labour Inspectorate if the policy is not well understood</li> <li>Also, there is likely to be difficulty in obtaining clarity over which areas have the ability to trade on Easter Sunday</li> <li>More complex, costly and time consuming to enforce if areas choose to make policies allowing trading for types of businesses: <ul style="list-style-type: none"> <li>due to increased public confusion about who can trade, where and when</li> <li>due to need to determine whether 'gaming' is occurring</li> </ul> </li> <li>Level of ease for enforcement likely to remain the same for areas opting not to make policies</li> </ul>	<p>The option is not favoured by MBIE.</p> <p>The key disadvantages of this option (as with Option 3) are that is policy-making, compared with bylaws, will not be as accessible and transparent a process when compared to bylaws.</p>

## 2. Pre-existing exemptions

Status quo – retains historic area exemptions	<ul style="list-style-type: none"> <li>No additional costs for local authorities with historic area exemptions</li> </ul>	<ul style="list-style-type: none"> <li>Local businesses in areas with exemptions benefit from opportunities for shop trading on Easter Sunday</li> <li>Local businesses in areas without exemptions continue to miss out on opportunities for shop trading on Easter Sunday</li> </ul>	<ul style="list-style-type: none"> <li>Shop workers in places with historic area exemptions will continue to be able to work on Easter Sunday.</li> <li>Most shop workers outside places with historic area exemptions will have an unpaid day off (unless they take annual leave).</li> <li>Some shop workers may continue to work on the day but not trade with the public (for example, stocktaking).</li> </ul>	<ul style="list-style-type: none"> <li>No further inconsistency with other restricted trading days</li> </ul>	<ul style="list-style-type: none"> <li>Lack of understanding about trading restrictions and exemptions continues</li> </ul>	<ul style="list-style-type: none"> <li>Level of ease for enforcement remains the same</li> </ul>	<p><b>Preferred option</b></p> <p>Retaining the pre-existing area exemptions in the Act is the preferred option because it is less costly for local authorities and businesses. This creates less inconsistency with other restricted trading days, and does not create further misunderstanding or problems for enforcement in a way that other options do.</p>
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Option	Criteria for assessment of options						Conclusions/net outcomes
	Reduced costs for Territorial Authorities	Increased economic benefits for businesses	Increased choice and economic benefits for workers	Maintains consistency with other restricted trading days	Easy to understand	Easy to enforce	
Option 1 - Remove all historic area exemptions for Easter Sunday	<p>xx</p> <ul style="list-style-type: none"> <li>Costs in creating bylaws for local authorities without existing exemptions</li> <li>Additional costs for local authorities that had pre-existing exemptions and therefore need to create bylaws to allow for shop trading just on Easter Sunday (but exemptions remain for other restricted trading days)</li> </ul>	<p>x</p> <ul style="list-style-type: none"> <li>Businesses in areas with historic area exemptions will lose business, unless their local Territorial Authorities have a bylaw in place for the upcoming Easter period</li> </ul>	<p>x</p> <ul style="list-style-type: none"> <li>Most shop workers will have an unpaid day off (unless they take annual leave)</li> <li>Some shop workers may continue to work on the day but not trade with the public (for example, stocktaking)</li> </ul>	<p>x</p> <ul style="list-style-type: none"> <li>Creates further inconsistency with other restricted trading days in that exemptions remain for other days</li> </ul>	<p>xx</p> <ul style="list-style-type: none"> <li>May create initial further misunderstanding of who can trade, where and when compared with the Status Quo – both within areas that allow for trading and across the country</li> <li>Over time understanding is expected to improve within areas that choose to create bylaws by area within their district boundaries, but misunderstanding likely to continue across the country</li> </ul>	<p>xx</p> <ul style="list-style-type: none"> <li>Given potential for misunderstanding, enforcement may become more difficult. Both inadvertent and deliberate non-compliance may result due to Easter Sunday having no exemptions but other restricted trading days retaining them</li> <li>Level of ease for enforcement likely to remain the same for areas opting not to make bylaws</li> </ul>	<p>This option is the least preferable. Removing all historic area exemptions for Easter Sunday, while creating consistency on the day, inadvertently creates further inconsistency across the other restricted trading days. This would lead to more misunderstanding and enforcement difficulties. In addition, this will create additional costs for Territorial Authorities which had historic area exemptions.</p> <p>Further analysis of the effects of removing the historic area exemptions would be justified under a wider review of all the restricted trading days.</p>
Option 2 - Transitioning to removing exemptions (Retain the historic area exemptions for other restricted trading days, but remove all Easter Sunday exemptions over 12 months following enactment of the Bill).	<p>x</p> <ul style="list-style-type: none"> <li>Costs in creating bylaws for Territorial Authorities without existing exemptions</li> <li>Delayed costs for Territorial Authorities that had pre-existing exemptions and therefore need to create bylaws to allow for shop trading</li> </ul>	<p>x</p> <ul style="list-style-type: none"> <li>Businesses in areas with historic area exemptions will lose business, unless their local Territorial Authorities have a bylaw in place for the Easter period when the historic area exemptions do not apply</li> </ul>	<p>—</p> <ul style="list-style-type: none"> <li>If no bylaw is in place, most workers will have an unpaid day off (unless they take annual leave), while some may continue to work on the day but not trade with the public</li> <li>If a bylaw is in place, all workers in shops that open to trade will be able to work, and workers would be able to take annual leave (paid leave) if they choose not to work</li> </ul>	<p>x</p> <ul style="list-style-type: none"> <li>Creates further inconsistency with other restricted trading days in that exemptions remain for other days</li> </ul>	<p>x</p> <ul style="list-style-type: none"> <li>May create initial further misunderstanding of who can trade, where and when compared with the Status Quo – both within areas that allow for trading and across the country, but the transition period may mitigate some misunderstanding</li> <li>Over time understanding is expected to improve within areas that choose to create bylaws by area within their district boundaries, but misunderstanding likely across the country</li> </ul>	<p>x</p> <ul style="list-style-type: none"> <li>Given potential for misunderstanding, enforcement may become more difficult. Both inadvertent and deliberate non-compliance may result due to Easter Sunday having no exemptions but other restricted trading days retaining them. The transition period may mitigate some misunderstanding</li> <li>Level of ease for enforcement likely to remain the same for areas opting not to make bylaws</li> </ul>	<p>This option is less preferable than the Status Quo for the same reasons as the Option 1.</p> <p>Compared with Option 1 it would have a slightly reduced impact in terms of costs for local authorities (but still generate more costs than the Status Quo). Will be difficult to understand and to enforce than the Status Quo.</p> <p>Further analysis of the effects of removing the historic exemptions would be justified under a wider review of all the restricted trading days.</p>

Option	Criteria for assessment of options						Conclusions/net outcomes
	<i>Reduced costs for Territorial Authorities</i>	<i>Increased economic benefits for businesses</i>	<i>Increased choice and economic benefits for workers</i>	<i>Maintains consistency with other restricted trading days</i>	<i>Easy to understand</i>	<i>Easy to enforce</i>	
<b>3. Worker Choice</b>							
Status quo – Provisions in place workers working as their business can trade under the Act, and for Garden Centre workers to reach an agreement to work Easter Sunday. The Act does not specify whether “agreement” means within an Employment Agreement or that agreement includes the ability to refuse to work on Easter Sunday.	<ul style="list-style-type: none"> <li>No additional costs for local authorities</li> </ul>	<ul style="list-style-type: none"> <li>Some potential costs for business in that lack of clarity regarding agreement may result in dispute resolution costs.</li> </ul>	<ul style="list-style-type: none"> <li>Garden centre workers must be able to reach an agreement with their employer about whether they can work on Easter Sunday. It is unclear whether this agreement can be written into an employment agreement.</li> <li>There is no explicit ability to refuse to work on Easter Sunday.</li> </ul>	<ul style="list-style-type: none"> <li>Maintains level of inconsistency regarding protection across workers working on restricted trading days.</li> </ul>	<ul style="list-style-type: none"> <li>Maintains current level of misunderstanding about what is meant by agreement to work on Easter Sunday and for whom.</li> </ul>	<ul style="list-style-type: none"> <li>Level of ease for enforcement remains the same.</li> </ul>	<p>The Labour Inspectorate has not received complaints to date regarding the issue of agreement to work on Easter Sunday by workers working in exempted businesses.</p> <p>The status quo provides some protection for garden centre workers only, and therefore maintains inconsistency across other restricted trading days. A lack of understanding about the level of protection for various workers will be maintained.</p>
Option 1 – Status quo (see above protection for garden centre workers) is applied also to those shop workers affected by the Bill	<ul style="list-style-type: none"> <li>No additional costs for local authorities</li> </ul>	<ul style="list-style-type: none"> <li>Some potential costs for business in that lack of clarity regarding agreement may result in dispute resolution costs.</li> </ul>	<ul style="list-style-type: none"> <li>Garden centre workers must be able to reach an agreement with their employer about whether they can work on Easter Sunday. It is unclear whether this agreement can be written into an employment agreement.</li> <li>There is no explicit ability to refuse to work on Easter Sunday.</li> </ul>	<ul style="list-style-type: none"> <li>Creates consistency with main groups of workers who will have the ability to work on Easter Sunday. Maintains some inconsistency with historic exemptions workers who can work across other restricted trading days. However, changing this would create greater inconsistency between Easter Sunday and other restricted trading days.</li> </ul>	<ul style="list-style-type: none"> <li>Maintains current level of misunderstanding about what is meant by agreement to work on Easter Sunday and for whom.</li> </ul>	<ul style="list-style-type: none"> <li>Level of ease for enforcement remains the same.</li> </ul>	<p>This option is preferred to the Status Quo in that it applies protection to the shop workers affected by the Bill as well. It is also preferable to Options 2 and 3 in that a consistent approach is achieved for garden centres workers and shop workers affected by the Bill but it is not as effective as Option 4 in that the protection maintains the potential for misunderstanding about “agreement”.</p>

Option	Criteria for assessment of options						Conclusions/net outcomes
	Reduced costs for Territorial Authorities	Increased economic benefits for businesses	Increased choice and economic benefits for workers	Maintains consistency with other restricted trading days	Easy to understand	Easy to enforce	
<p>Option 2 – agreement to work includes ability to refuse for those shop workers affected by the Bill</p> <p>Status quo amended to clarify that an Employment Agreement can require an agreement in good faith (including the ability to refuse without needing to provide a reason) to work on Easter Sunday but, the Employment Agreement should not stipulate that an employee must work on Easter Sunday</p>	<p>—</p> <ul style="list-style-type: none"> <li>No additional costs for local authorities</li> </ul>	<p>—</p> <ul style="list-style-type: none"> <li>May be some costs to businesses in time spent negotiating agreement to work on Easter Sunday, but there may also be some savings in terms of avoided employment relationship issues due to better understanding of the need to agree on working on Easter Sunday</li> </ul>	<p>✓</p> <ul style="list-style-type: none"> <li>There is no obligation to work on Easter Sunday – a worker may choose to take either annual leave or leave without pay</li> <li>Affected workers must be able to reach an agreement with their employer about whether they can work on Easter Sunday</li> <li>There is explicit ability to refuse to work on Easter Sunday without the need to provide a reason</li> <li>Shop workers can bring a personal grievance against their employer if they are made to work despite invoking their refusal to work</li> <li>This option does not apply to Garden centre workers</li> </ul>	<p>✗</p> <ul style="list-style-type: none"> <li>Additional inconsistency added in that different protections apply to garden workers.</li> </ul>	<p>—</p> <ul style="list-style-type: none"> <li>The option clarifies what an agreement means, and should be easier to understand for workers affected by the amendment.</li> <li>Creates another set of worker protection, which may confuse other workers that work on Easter Sunday</li> </ul>	<p>✓</p> <ul style="list-style-type: none"> <li>Easy to enforce, as it clarifies what constitutes an agreement for workers affected by the amendment but may lead to enforcement issues with garden centre workers.</li> </ul>	<p>While this option is preferred to the Status Quo its main downside is that it creates an additional layer of inconsistency in that the protection differs from that for garden centre workers.</p>
<p>Option 3– agreement to work includes ability to refuse for all Easter Sunday shop workers including those working in shops for which there are exemptions from restricted trading</p> <p>Status quo amended to clarify that an Employment Agreement can require an agreement in good faith (including the ability to refuse without needing to provide a reason) to work on Easter Sunday but, the Employment Agreement should not stipulate that an employee must work on Easter Sunday</p>	<p>—</p> <ul style="list-style-type: none"> <li>No additional costs for local authorities</li> </ul>	<p>✗</p> <ul style="list-style-type: none"> <li>Increased costs to a greater number of businesses in time spent negotiating agreement to work on Easter Sunday, but there may also be some savings in terms of avoided employment relationship issues due to better understanding of the need to agree on working on Easter Sunday.</li> <li>These costs will be intensified for the exempt businesses which will have to follow two employment regimes – one for Easter Sunday and the other for the other restricted trading days.</li> </ul>	<p>✓✓✓</p> <ul style="list-style-type: none"> <li>Applies to all workers</li> <li>There is no obligation to work on Easter Sunday – a worker may choose to take either annual leave or leave without pay.</li> <li>Affected workers must be able to reach an agreement with their employer about whether they can work on Easter Sunday.</li> <li>There is explicit ability to refuse to work on Easter Sunday without the need to provide a reason.</li> <li>Shop workers can bring a personal grievance against their employer if they are made to work despite invoking their refusal to work.</li> </ul>	<p>—</p> <ul style="list-style-type: none"> <li>Creates consistency across all workers working for a businesses that is allowed to trade on Easter Sunday</li> <li>Creates greater inconsistency for businesses with exemptions across all restricted trading days</li> </ul>	<p>—</p> <ul style="list-style-type: none"> <li>The option clarifies what an agreement means, and should be easier to understand</li> <li>This would create confusion for the businesses and their employees that were previously not covered by these provisions</li> </ul>	<p>✓</p> <ul style="list-style-type: none"> <li>Easy to enforce for the day as all workers have the same worker choice provision</li> </ul>	<p><b>Preferred option</b></p> <p>This is MBIE’s preferred option because it extends protections to all workers of shops that are permitted to trade under the Act on Easter Sunday.</p>

Option	Criteria for assessment of options						Conclusions/net outcomes
	Reduced costs for Territorial Authorities	Increased economic benefits for businesses	Increased choice and economic benefits for workers	Maintains consistency with other restricted trading days	Easy to understand	Easy to enforce	
<p>Option 4 – agreement to work includes ability to refuse for those shop workers affected by the Bill and those working in garden centres</p> <p>Status quo amended to clarify that Employment Agreement can require agreement in good faith (including the ability to refuse without needing to provide a reason) to work on Easter Sunday but it should not stipulate that an employee must work on Easter Sunday.</p>	<p>—</p> <ul style="list-style-type: none"> <li>• No costs to Territorial Authorities</li> </ul>	<p>—</p> <ul style="list-style-type: none"> <li>• Some costs to businesses in time spent negotiating agreement to work on Easter Sunday, but there may also be some savings in terms of avoided employment relationship issues due to better understanding of the need to agree on working on Easter Sunday</li> </ul>	<p>✓</p> <ul style="list-style-type: none"> <li>• There is no obligation to work on Easter Sunday – a worker may choose to take either annual leave or leave without pay</li> <li>• Affected workers must be able to reach an agreement with their employer about whether they can work on Easter Sunday</li> <li>• There is explicit ability to refuse to work on Easter Sunday without the need to provide a reason</li> <li>• Shop workers can bring a personal grievance against their employer if they are made to work despite invoking their refusal to work</li> </ul>	<p>✓</p> <ul style="list-style-type: none"> <li>• Creates consistency with main groups of workers who will have the ability to work on Easter Sunday. Maintains some inconsistency with historic exemptions for workers who can work across other restricted trading days. However, changing this would create greater inconsistency between Easter Sunday and other restricted trading days</li> </ul>	<p>—</p> <ul style="list-style-type: none"> <li>• Clarifies what an agreement means, and should be easier to understand.</li> <li>• Creates confusion as it creates two types of employment regimes on Easter Sunday</li> </ul>	<p>✗</p> <ul style="list-style-type: none"> <li>• Easy to enforce, as it clarifies what constitutes an agreement, and it applies to garden centre workers and workers affected by the amendment</li> </ul>	<p>Extends protections only to a select group of workers and other workers miss out.</p>
<b>4. Status of Easter Sunday</b>							
<p>Status quo – Easter Sunday remains not a public holiday (while retaining Easter Monday as a public holiday)</p>	<ul style="list-style-type: none"> <li>• No additional costs for Territorial Authorities</li> </ul>	<ul style="list-style-type: none"> <li>• No additional costs for local businesses</li> </ul>	<ul style="list-style-type: none"> <li>• All workers who work on Easter Sunday are paid at a standard rate (that is, no provision of the Holidays Act applies, such as time and a half)</li> <li>• A worker who chooses not to work on the day can either take leave without pay, or annual leave (paid leave)</li> </ul>	<ul style="list-style-type: none"> <li>• No further inconsistency with other restricted trading days</li> </ul>	<ul style="list-style-type: none"> <li>• Current level of understanding about status of Easter Sunday remains</li> </ul>	<ul style="list-style-type: none"> <li>• Level of ease for enforcement remains the same</li> </ul>	<p><b>Preferred option</b></p> <p>Retaining the Status Quo is our preferred option in the context of the proposed amendment. The Status Quo — of retaining Easter Sunday as <i>not</i> a public holiday and retaining the public holiday of Easter Monday - ensures that enforcement would not become overly complex and difficult, and that costs to businesses are not increased.</p> <p>MBIE’s view is that consideration to change the status of Easter Sunday or Easter Monday is outside the scope of this proposed amendment and would be better achieved under a review of the Holidays Act 2003 and/or as part of a wider review of all the restricted trading days in the Shop Trading Hours Act Repeal Act 1990.</p>

Option	Criteria for assessment of options						Conclusions/net outcomes
	Reduced costs for Territorial Authorities	Increased economic benefits for businesses	Increased choice and economic benefits for workers	Maintains consistency with other restricted trading days	Easy to understand	Easy to enforce	
Option 1 - Make Easter Sunday a Public Holiday (while retaining Easter Monday as a public holiday)	<p>✘</p> <ul style="list-style-type: none"> <li>Some additional costs for Territorial Authorities paying employees working on a public holiday</li> </ul>	<p>✘</p> <ul style="list-style-type: none"> <li>Additional costs for businesses in the retail sector (and other sectors) that have staff working on Sundays.</li> <li>Additional revenue for businesses from trading on the day</li> </ul>	<p>✓</p> <ul style="list-style-type: none"> <li>Provisions of the Holidays Act apply for Easter Sunday and all workers (including shop/retail workers) are paid time and a half for working on Easter Sunday</li> </ul>	<p>✓</p> <ul style="list-style-type: none"> <li>Aligns with other restricted trading days</li> </ul>	<p>✘✘</p> <ul style="list-style-type: none"> <li>Potential for misunderstanding given Easter Monday already a public holiday.</li> <li>Potential for misunderstanding that it will be necessary to comply with the Holidays Act</li> </ul>	<p>✘✘</p> <ul style="list-style-type: none"> <li>Given potential for misunderstanding, enforcement may become more difficult. Both inadvertent and deliberate breaches of the Holidays Act may result due to Easter Sunday becoming a public holiday and workers therefore needing to be paid accordingly</li> </ul>	<p>This change would have a significant impact on businesses through additional labour costs; especially for the retail sector. The other key negative effects of this option are that it would increase misunderstanding, and make enforcement of shop trading restrictions more difficult, as well as increase the chance for problems with enforcement of the Holidays Act on both the Easter Sunday and the Easter Monday.</p>
Option 2 - Removing Easter Monday's status as a public holiday, while making Easter Sunday a 'Mondayised' public holiday	<p>✘</p> <ul style="list-style-type: none"> <li>Some additional costs for Territorial Authorities paying employees working on a public holiday</li> </ul>	<p>✘</p> <ul style="list-style-type: none"> <li>Additional costs for businesses in the retail sector (and other sectors) that currently have staff working on Sundays, and compliance costs for those who have staff working on Mondays</li> <li>Additional revenue for businesses from trading on the day</li> </ul>	<p>—</p> <ul style="list-style-type: none"> <li>Provisions of the Holidays Act apply for Easter Sunday, and Easter Monday and all workers (including shop/retail workers) are paid time and a half for working on Easter Sunday</li> <li>Those who formerly worked Easter Monday (as a public holiday) would no longer receive time and a half on that day</li> </ul>	<p>✘</p> <ul style="list-style-type: none"> <li>Creates unintended consequence of removing the entitlement of a public holiday on Easter Monday for retail and shift workers who currently do not work on Sundays</li> </ul>	<p>✘</p> <ul style="list-style-type: none"> <li>May create further confusion about status of Easter Sunday, as well as confusion about status of other Easter break days, and the other restricted trading days</li> <li>Potential for misunderstanding that it will be necessary to comply with the Holidays Act</li> </ul>	<p>✘</p> <ul style="list-style-type: none"> <li>Given potential for misunderstanding, enforcement may become more difficult. Both inadvertent and deliberate breaches of the Holidays Act may result due to Easter Sunday becoming a public holiday and workers therefore needing to be paid accordingly</li> </ul>	<p>This change would have a significant impact on businesses through additional labour costs; especially for the retail sector. The other key negative effects of this option are that it would increase misunderstanding, and make enforcement of shop trading more difficult, as well as enforcement of the Holidays Act.</p>
<b>5. Enforcement</b>							
Status Quo – Enforcement remains the same for Easter Sunday as with all restricted trading days	<ul style="list-style-type: none"> <li>No additional costs for local authorities</li> </ul>	<ul style="list-style-type: none"> <li>No additional costs for local businesses.</li> </ul>	<ul style="list-style-type: none"> <li>No foreseeable impact or change</li> </ul>	<ul style="list-style-type: none"> <li>Maintains consistency with other restricted trading days</li> </ul>	<ul style="list-style-type: none"> <li>Easy to understand in that the same regulator enforces across all restricted trading days</li> </ul>	<ul style="list-style-type: none"> <li>Level of ease for enforcement remains the same</li> <li>Likely to be reduced need for enforcement in areas that create bylaws (see above option)</li> </ul>	<p><b>Preferred option</b></p> <p>Maintaining the Status Quo in terms of enforcement is preferable to Option 1 on all criteria.</p> <p>MBIE's view (in agreement with Local Government New Zealand) is that retaining the current enforcement approach, including responsibility for enforcement of breaches of the Act, maintains a consistent approach across the full set of restricted trading days. Changing this for Easter Sunday alone would introduce further complexity, misunderstanding and the potential for an inconsistent approach to enforcement across the restricted trading days.</p> <p>There may be merit in reviewing enforcement and penalty levels as part of any future wider review of restricted trading days as a whole.</p>



Option	Criteria for assessment of options						Conclusions/net outcomes
	Reduced costs for Territorial Authorities	Increased economic benefits for businesses	Increased choice and economic benefits for workers	Maintains consistency with other restricted trading days	Easy to understand	Easy to enforce	
Option 1 – Territorial Authorities enforce trading restrictions for their areas on Easter Sunday	<ul style="list-style-type: none"> <li>• Additional costs for local authorities in enforcing trading restrictions for their areas on Easter Sunday</li> </ul>	<ul style="list-style-type: none"> <li>• No additional costs for local businesses</li> </ul>	<ul style="list-style-type: none"> <li>• Potential for confusion and inconsistency regarding enforcement of employment provisions which would remain with the Labour Inspectorate, while shop trading enforcement was dealt with by Territorial Authorities</li> </ul>	<ul style="list-style-type: none"> <li>• Creates inconsistency in the enforcement approach across other restricted trading days</li> <li>• To give effect to Territorial Authorities enforcing trading restrictions, an amendment would be needed to the Local Government Act 2002 (LG Act)</li> </ul>	<ul style="list-style-type: none"> <li>• Creates confusion over who enforces the law on which days, and in approaches to enforcing</li> </ul>	<ul style="list-style-type: none"> <li>• Ease of enforcement not guaranteed across restricted trading days</li> <li>• Potential for inconsistent approaches to enforcement of the Act</li> </ul>	<p>This option is not favoured by MBIE.</p> <p>Territorial Authorities enforcing trading restrictions for their areas on Easter Sunday alone would introduce further complexity, misunderstanding and the potential for an inconsistent approach to enforcement across the restricted trading days.</p>
<b>6. Penalties</b>							
Status Quo – penalties remain the same (at \$1000) for breaches on restricted trading days	<ul style="list-style-type: none"> <li>• No additional costs for local authorities</li> </ul>	<ul style="list-style-type: none"> <li>• No additional costs for local businesses</li> </ul>	<ul style="list-style-type: none"> <li>• Not applicable</li> </ul>	<ul style="list-style-type: none"> <li>• Maintains consistency with other restricted trading days</li> </ul>	<ul style="list-style-type: none"> <li>• Easy to understand in that penalties remain the same across all restricted trading days</li> </ul>	<ul style="list-style-type: none"> <li>• Level of ease for enforcement remains the same</li> </ul>	<p><b>Preferred option</b></p> <p>Maintaining the status quo, in terms of retaining the current level of penalties, is preferable to Option 1. It retains consistency with penalty levels on other restricted trading days and in doing so will be easier for businesses to understand and more straightforward for the regulator to enforce.</p> <p>Altering the level of penalties for Easter Sunday only would lead to misunderstanding and inconsistency with other restricted trading days and potentially create difficulties with enforcement on other restricted trading days.</p>
Option 1 – the level of penalties are reviewed/amended for Easter Sunday	<ul style="list-style-type: none"> <li>• No additional costs for local authorities</li> </ul>	<ul style="list-style-type: none"> <li>• No additional costs for local businesses</li> </ul>	<ul style="list-style-type: none"> <li>• Not applicable</li> </ul>	<ul style="list-style-type: none"> <li>• A change in penalty level would create inconsistency with the penalties across other restricted trading days – and if penalties were increased on just one day (Easter Sunday) this could lead to additional problems with enforcement on other restricted trading days</li> </ul>	<ul style="list-style-type: none"> <li>• Creates confusion over level of penalty on Easter Sunday and other restricted trading days</li> </ul>	<ul style="list-style-type: none"> <li>• Ease of enforcement not guaranteed across restricted trading days if penalty levels become inconsistent across the days</li> </ul>	<p>This option is not favoured by MBIE.</p> <p>This option would lead to misunderstanding and inconsistency with other restricted trading days and potentially create difficulties with enforcement on other restricted trading days.</p> <p>While there may be merit in an increase to the level of penalties for breaches of the Shop Trading Hours Act Repeal Act, a review of the pros and cons of an increase in penalty level for breaches of the Shop Trading Hours Act Repeal Act should encompass all restricted trading days, and not apply a change of penalty level for one day only.</p>

Option	Criteria for assessment of options						Conclusions/net outcomes
	Reduced costs for Territorial Authorities	Increased economic benefits for businesses	Increased choice and economic benefits for workers	Maintains consistency with other restricted trading days	Easy to understand	Easy to enforce	
<b>7. Sale and Supply of Alcohol</b>							
Status quo – Alcohol restrictions in the Sale and Supply of Alcohol Act 2012 align with restrictions for shop trading in the Act. Alcohol restrictions apply regardless of whether there are exemptions to shop trading restrictions in place	<ul style="list-style-type: none"> <li>No additional costs for local authorities</li> </ul>	<ul style="list-style-type: none"> <li>No additional costs for local businesses.</li> <li>Businesses miss out on potential economic benefit of selling/supplying alcohol that would result from amending Alcohol Act to lift restrictions for Easter Sunday</li> </ul>	<ul style="list-style-type: none"> <li>Workers working for alcohol retail shops have an unpaid day off work, unless they take annual leave</li> </ul>	<ul style="list-style-type: none"> <li>Avoids inconsistency with other restricted trading days</li> <li>Maintains consistency with what happens for current exemptions regime</li> </ul>	<ul style="list-style-type: none"> <li>Current level of understanding about alcohol restrictions on Easter Sunday remains</li> </ul>	<ul style="list-style-type: none"> <li>Enforcement retained by Liquor Licensing Authority</li> </ul>	<p><b>Preferred option</b></p> <p>Currently restrictions to the sale and supply of alcohol are maintained regardless of whether an area or business has an exemption to shop trading. MBIE considers that 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. We therefore recommend retaining the current approach and not amending the Sale and Supply of Alcohol Act 2012.</p> <p>MBIE's view is that the alcohol restrictions be lifted only in the context of a wider review of the restricted days, or as part of a review of the Sale and Supply of Alcohol Act 2012.</p>
Option 1 - Amend the Sale and Supply of Alcohol Act 2012 to lift Easter Sunday restrictions	<ul style="list-style-type: none"> <li>✓ No additional costs for local authorities.</li> </ul>	<ul style="list-style-type: none"> <li>✓ No additional costs for local businesses</li> <li>Some businesses across the country benefit from the ability to sell/supply alcohol on Easter Sunday</li> </ul>	<ul style="list-style-type: none"> <li>✓ Workers working for alcohol retail shops can work, but if they choose not to work, they can take paid leave (annual leave) or unpaid leave.</li> </ul>	<ul style="list-style-type: none"> <li>xx Creates inconsistency with other restricted trading days</li> <li>Creates inconsistency with what happens for current exemptions regime</li> </ul>	<ul style="list-style-type: none"> <li>xx Potential for confusion about alcohol restrictions overall if these are lifted for Easter Sunday only</li> <li>Potential for some further confusion about shop trading restrictions on Easter Sunday if alcohol restrictions are lifted for Easter Sunday in general regardless of whether bylaws are in place or not.</li> </ul>	<ul style="list-style-type: none"> <li>x Enforcement retained by Liquor Licensing Authority. Given inconsistency with other restricted trading days and with what happens for current exemptions regime, enforcement under this option may be made more difficult.</li> </ul>	<p>This option is not favoured by MBIE.</p> <p>The key factors making this option less favourable than the Status Quo is that it creates inconsistency with other restricted trading days and with what happens for the current exemptions regime. It is likely to generate further misunderstanding about alcohol restrictions and this is likely to create difficulties for the enforcement of the sale and supply of alcohol.</p>

Option	Criteria for assessment of options						Conclusions/net outcomes
	<i>Reduced costs for Territorial Authorities</i>	<i>Increased economic benefits for businesses</i>	<i>Increased choice and economic benefits for workers</i>	<i>Maintains consistency with other restricted trading days</i>	<i>Easy to understand</i>	<i>Easy to enforce</i>	
Options 2 - Amend the Sale and Supply of Alcohol Act 2012 to lift Easter Sunday restrictions for areas in which trading restrictions are lifted	✓ <ul style="list-style-type: none"> <li>No additional costs for local authorities</li> </ul>	✓ <ul style="list-style-type: none"> <li>No additional costs for local businesses</li> <li>Some businesses across the country benefit from the ability to sell/supply alcohol on Easter Sunday</li> </ul>	✓ <ul style="list-style-type: none"> <li>Where there are bylaws in place, workers working for alcohol retail shops can work, but if they choose not to work, they can take paid leave (annual leave) or unpaid leave</li> </ul>	✗ <ul style="list-style-type: none"> <li>Creates inconsistency with other restricted trading days</li> <li>Creates inconsistency with what happens for current exemptions regime</li> <li>Creates alignment with trading in areas in which bylaws are made</li> </ul>	✗✗ <ul style="list-style-type: none"> <li>Potential for confusion about alcohol restrictions overall if these are lifted for Easter Sunday only</li> <li>Potential for confusion about alcohol restrictions for Easter Sunday if these are only lifted for areas that have created a bylaw</li> </ul>	✗ <ul style="list-style-type: none"> <li>Enforcement retained by Liquor Licensing Authority. Given inconsistency with other restricted trading days and with what happens for current exemptions regime, enforcement under this option may be made more difficult</li> </ul>	This option is not favoured by MBIE.  Although this option aligns with trading in areas in which bylaws would be made the option is less favourable than the Status Quo. It creates inconsistency with other restricted trading days and with what happens for the current exemptions regime. Like Option 1, it is likely to generate further misunderstanding about alcohol restrictions and this is likely to create difficulties for the enforcement of the sale and supply of alcohol.

## **D. Implementation and risks of proposed amendment**

- 28 The proposals for amending the Act will comprise an amendment Bill that we anticipate will be introduced in Parliament in the latter part of 2015. It is anticipated that even if the amendment was passed before Easter 2016, it is likely that bylaws created under this amendment will only be ready for Easter 2017. No consequential amendments will be required to other legislation for this amendment Bill to take effect.
- 29 There will be some risks associated with implementing the proposed amendment, and these are largely due to the (necessarily) limited nature of the amendment — it applies to Easter Sunday only and not the other restricted trading days.
- 30 The general public, businesses and employees could find the changes and their implementation complex or confusing. This is because the ability to make a bylaw to allow for trading does not apply to Good Friday or to the other restricted trading days.
- 31 To mitigate this, MBIE will develop an information plan to communicate clearly what the changes are. MBIE will work with Territorial Authorities through DIA and LGNZ to ensure that communities are aware of the changes and how they will be implemented, and to reassure the public that enforcement across the restricted trading days will not change. Public complaints about shop trading will continue to be dealt with by MBIE's Labour Inspectorate.
- 32 MBIE's approach to enforcement of shop trading will not change as a result of this policy change to shop trading on Easter Sunday. In general, MBIE's Labour Inspectorate's priority focus is on breaches of minimum employment standards such as the minimum wage, including those involving migrant workers.
- 33 Information on which Territorial Authorities have put bylaws in place to allow for Easter Sunday trading, and whether the bylaw removes trading restrictions for all or part of that Territorial Authority will need to be made accessible to MBIE's Labour Inspectors so they can enforce the Act.
- 34 LGNZ will work with MBIE to ensure an up-to-date list is publicly available of Territorial Authorities that have bylaws allowing for shop trading, and which specific areas the bylaws pertain to.

## **E. Impacts of proposed amendment**

- 36 There are no significant negative impacts anticipated for the main groups affected by this amendment; including government. These groups include: retail sector employees, retail businesses, Territorial Authorities, regions for which there are exemptions from trading restrictions, regions for which there are no current exemptions from trading restrictions, and Christian-based communities and institutions.

### **Impacts on businesses/employers**

- 37 The main positive impact on businesses will be the ability to trade on Easter Sunday for those businesses that are within the relevant region of a Territorial Authority which has chosen to lift Easter Sunday trading restrictions via making a bylaw.
- 38 Some businesses will experience continuing trade restrictions if they are within the relevant region of a Territorial Authority which has chosen not to lift Easter Sunday trading restrictions. There is some risk that these businesses may consider this unfair.
- 39 There may be continuing frustration and potentially some confusion on the part of businesses which want to be able to trade across the Easter break (on Good Friday as well), and potentially on other restricted trading days as well, about on which days trading can occur.
- 40 There is the possibility for an increase in non-compliance on Good Friday; given the ability to lift restrictions has been granted for Easter Sunday only. This could exacerbate the sense of unfairness for businesses complying with the law, and therefore missing out on trading opportunities while non-compliant businesses can continue to factor in penalties to their business planning.

### **Impacts on employees**

- 41 There are no significant negative impacts for employees associated with the proposed amendments.
- 42 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.
- 43 The requirement for employers and employees to reach an agreement to work on Easter Sunday (including the ability to refuse to work on Easter Sunday) provides that employees who have benefited from a guaranteed day of no work can continue to do so.

### **Wider impacts**

- 44 There will be ongoing economic benefits to businesses within the relevant region of a Territorial Authority that has chosen to create bylaws allowing shop trading on Easter Sunday. Territorial Authorities undertaking the process of creating a bylaw would incur a financial cost for doing so and also a cost for reviewing the bylaw (which is required every five years).
- 45 It is expected that there will be no significant impacts to government in implementing this amendment. If Territorial Authorities choose to create bylaws allowing shop trading on Easter Sunday, there may be some fiscal savings over time for MBIE (as the current regulator), as it is anticipated there would be fewer breaches of the Act on Easter Sunday. However, it is not known what the effects (if any) of this change will be on enforcing breaches of shop trading restrictions on other restricted trading days, especially on Good Friday.

## F. Consultation

- 46 The following government agencies have been consulted on the Cabinet paper and this RIS: The Treasury, Ministry of Justice, Department of Internal Affairs, Inland Revenue, Ministry of Social Development, Ministry for Women, Te Puni Kokiri, Ministry of Pacific Island Affairs, the State Services Commission and the Department of Prime Minister and Cabinet.
- 47 MBIE has also been permitted to consult with Local Government New Zealand (LGNZ) on the proposed amendment, but not to consult with other affected stakeholders, including Business New Zealand and NZCTU.
- 48 Anecdotal evidence suggests that cities and districts such as Rotorua and Wanaka that have expressed considerable frustration that they do not have the same exemptions as their neighbours are likely to take up the opportunity to create these bylaws.
- 49 LGNZ expressed initial support for the bill in 2008/09 when the Bill was introduced in the House, and are supportive of this proposed amendment, as it would provide Territorial Authorities with choice about whether to trade on Easter Sunday. They have emphasised a strong preference that the enforcement of Easter Sunday trading breaches should remain unchanged.
- 50 LGNZ also raised the suggestion that allowing Territorial Authorities to create policy that would allow shop trading on Easter Sunday may be a more straightforward approach and would cost less than creating a bylaw. We have considered this but concluded that using the bylaw approach would be preferable to creating policy. The key reason for this is public accessibility. The Local Government Act 2002 prescribes explicit obligations relating to public notice and availability of bylaws. The policies of Territorial Authorities would have a lower level of transparency for the public, and may create difficulties in enforcement for the Labour Inspectorate (that is, difficulty in obtaining clarity over which Territorial Authorities or parts of Territorial Authorities have the ability to trade on Easter Sunday). The Local Government Act 2002 also prescribes a minimum obligation to review bylaws every five years.
- 51 The opportunity for public consultation on the Bill will occur through the usual submission process when the Bill is referred to a Select Committee.

## **G. Monitoring, Evaluation and Review**

- 53 This change applies only to Easter Sunday, rather than all restricted trading days, and keeps the status quo for other related issues that may be altered by removing trading restrictions (ie sale and supply of alcohol). Given the narrow policy scope of this change MBIE does not consider there is benefit in a full scale review of the effectiveness of this policy change. Rather, it will be more useful to monitor what effects there are (if any) on levels of compliance with shop trading restrictions, and whether there are effects on understanding of shop trading restrictions over the Easter break.
- 54 MBIE's Labour Inspectorate and Service Centre activities, as well as information from LGNZ will be utilised to monitor the effects of the preferred policy change.
- 55 The information provided by LGNZ, together with the Labour Inspectorate's data on number of complaints, and Service Centre calls concerning the shop trading during the Easter break will enable MBIE to assess the level of take up of trading on Easter Sunday and observe the extent of any effect of this policy change on levels of non-compliance over the Easter break.
- 56 Public confusion persists regarding what constitutes lawful shop trading during Easter. In 2015, the Labour Inspectorate received 39 complaints about shop trading over the Easter break. However, a number of businesses complained about were exempt from the shop trading restrictions as they were either a service or selling acceptable goods. Some complaints related to more than one business, and one individual complained twice about the same shop.
- 57 MBIE will also assess whether the policy change has an effect on the public's understanding of shop trading restrictions during the Easter break, using MBIE's Labour Inspectorate and Service Centre information.

## 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
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