



# Easter Trading and Holidays Legislation

▸ **INTERFACE BETWEEN THE SHOP TRADING HOURS ACT REPEAL ACT 1990, SALE OF LIQUOR ACT 1989 AND HOLIDAYS ACT 2003 DISCUSSION DOCUMENT**



**Disclaimer:** The Department of Labour has made every effort to ensure that the information contained in this report is reliable, but makes no guarantee of its accuracy or completeness and does not accept any liability for any errors. The Department may change the contents of this report at any time without notice.

© Crown copyright 2007

This material is Crown copyright unless otherwise stated and may be reproduced free of charge without requiring specific permission. This is subject to it being reproduced accurately and not being used in a derogatory manner or in a misleading context. The source and copyright status should be acknowledged. The permission to reproduce Crown copyright protected material does not extend to any material in this report that is identified as being the copyright of a third party.

Published by the  
Department of Labour  
PO Box 3705  
Wellington  
New Zealand

[www.dol.govt.nz](http://www.dol.govt.nz)

November 2007

ISBN 978-0-478-28151-4

[newzealand.govt.nz](http://newzealand.govt.nz)

## **FOREWORD**

This discussion document focuses on the Easter weekend as three regulatory frameworks (Shop Trading Hours Act Repeal Act 1990, Sale of Liquor Act 1989 and Holidays Act 2003) create inconsistencies for businesses and the community, including employees and consumers during this period.

As part of the Quality Regulation Review (QRR) the Minister of Justice and Minister of Labour have been asked to report on resolving these inconsistencies. The QRR is the Government's response to acknowledging the critical role played by regulation and regulatory frameworks in shaping the business environment within which economic activity takes place. A key focus of the QRR is not only the removal of unnecessary regulatory constraints on economic growth, but also the need for continuous quality improvement of regulatory frameworks and processes.

Submissions to the QRR, primarily from businesses and industry organisations, highlighted inconsistencies with the Shop Trading Hours Act Repeal Act 1990, Sale of Liquor Act 1989 and the Holidays Act 2003 relating to trading restrictions over the Easter weekend.

The call for changing the rules to address these inconsistencies is most strongly expressed by businesses in those regions or areas that attract significant numbers of domestic holidaymakers and international tourists, but were not included in the list of shop trading exemptions prior to the 1990 law change. Examples of events and places that attract significant numbers of tourists over Easter are Wanaka (Warbirds over Wanaka) and holiday destinations like Rotorua and Hamner Springs.

While there are some exceptions, both the Shop Trading Hours Act Repeal Act 1990 and the Sale of Liquor Act 1989 restrict trading during Easter in order to show respect for and to facilitate the social, cultural and religious significance of the Easter weekend. The options proposed for public consideration and comment reflect the differing views on how to recognise the significance of the four-day Easter weekend. For example, whether continuing to recognise the significance of the Easter weekend involves ensuring that retailers and retail workers have time off work to be with their families, or whether it is about enabling shops to trade to meet tourist and consumer demand, or about preserving the religious significance of the weekend by restricting trading.

The key issue for this paper is what to do about Easter Sunday. Within this context this discussion document outlines three decision areas. In order to balance the often competing interests of business owners, employees and the wider community you are asked to consider each of the three decision areas as part of a package.

The first decision area focuses on what should happen to the Shop Trading Hours Act Repeal Act 1990 and Sale of Liquor Act 1989, particularly in regard to Easter

Sunday. Three options are presented in relation to this issue. The second decision area focuses on what should happen with the status of Easter Sunday, and four options are presented in relation to this issue. The third decision area focuses on whether the enforceability and penalty regime for the Shop Trading Hours Act Repeal Act 1990 needs amendment and on the issue of adequate employee/leaseholder protection against the compulsion to work/trade on Easter Sunday.

Some of the options around possible changes to the Holidays Act 2003 are likely to affect service industries and employers who operate seven-day-a-week businesses across both the private and public sectors.

We strongly encourage employers, unions, industry groups, individuals and other groups in society to consider this discussion document and provide their views on options for possible changes that could be made to the Shop Trading Hours Act Repeal Act 1990, the Sale of Liquor Act 1989 and the Holidays Act 2003.

In responding to this discussion document it is important to realise that there is no guarantee that Parliament will deliver the legislative changes to address these issues. The current Shop Trading Hours Act Repeal Act was introduced in 1990, with the intention of removing all remaining trading restrictions. The shift to total deregulation met with both public and parliamentary opposition, and the few remaining restricted days were included in the legislation after a "conscience vote." A conscience vote means that members of parliament are not required to adopt a party position when voting on a Bill. The same situation applies to amendments to the Sale of Liquor Act 1989.

There have been nine attempts to change the shop trading laws since the 1990 Act was passed. In all cases, except in 2001 when garden centres had the ability to trade on Easter Sunday reinstated, none of the changes were passed.

The issues raised in this discussion document are important to us and we request that you provide detailed reasons to support or oppose the options that have been included for discussion or provide any other options that you may consider relevant.



Hon Annette King  
Minister of Justice



Hon Trevor Mallard  
Minister of Labour

# CONTENTS

<b>FOREWORD .....</b>	<b>2</b>
<b>INTRODUCTION.....</b>	<b>5</b>
The Submission Form .....	5
Regulatory Impact Analysis .....	5
<b>YOUR RESPONSE INVITED.....</b>	<b>6</b>
Making Submissions .....	6
<b>WHAT ARE THE ISSUES WITH THE CURRENT LEGISLATIVE PROVISIONS?</b> <b>.....</b>	<b>7</b>
<b>EXISTING LEGISLATIVE FRAMEWORK.....</b>	<b>9</b>
Shop Trading Hours Act Repeal Act 1990.....	9
Sale of Liquor Act 1989.....	10
Holidays Act 2003 .....	11
Decision areas .....	12
Decision area: What to do about restrictions under the Shop Trading Hours Act Repeal Act 1990 and Sale of Liquor Act 1989?.....	13
Decision area: What to do about the status of Easter Sunday?.....	15
Decision area: Consequential Amendments.....	18
Options .....	19
<b>APPENDIX 1: HISTORY OF AMENDMENTS TO THE SHOP TRADING HOURS ACT REPEAL ACT 1999, SALE OF LIQUOR ACT 1989 AND HOLIDAYS ACT 2003.....</b>	<b>21</b>
<b>APPENDIX 2: SHOPS WHICH MAY REMAIN OPEN UNDER THE SHOP TRADING HOURS ACT REPEAL ACT 1990 .....</b>	<b>24</b>
<b>SUBMISSION FORM .....</b>	<b>25</b>
INTERFACE BETWEEN THE SHOP TRADING HOURS ACT REPEAL ACT 1990, SALE OF LIQUOR ACT 1989 AND HOLIDAYS ACT 2003 .....	25
Information about you (optional).....	26
Please answer as many or as few questions as you would like. Please give reasons for your views. You may attach additional pages for your submission. .....	27

## **INTRODUCTION**

The purpose of this discussion document is to canvass public opinion on issues and options related to the Shop Trading Hours Act Repeal Act 1990, Sale of Liquor 1989 and the Holidays Act 2003. The options proposed for public consideration and comment reflect various approaches to the different interests of employers (including retailers and on-licensed premises), consumers, employees, the general public and other groups in society.

The focus of this discussion document is the impact of trading restrictions on retailers, on-licensed premises, consumers, employees, the general public and other groups in society resulting from the inconsistencies between the Shop Trading Hours Act Repeal Act 1990, Sale of Liquor Act 1989 and the Holidays Act 2003, with a focus on Easter Sunday. The issues discussed relate to:

- restrictions on trading
- various exemptions
- the status of Easter Sunday under the Holidays Act 2003, and
- the enforceability and penalty regime for shop trading.

### **The Submission Form**

The submission form found at the end of this document asks you questions about the information contained in the discussion document. Answer as many or as few questions as you wish. Where you can, please provide any examples or summarise your experience in support of your submissions.

### **Regulatory Impact Analysis**

This discussion document includes substantive Regulatory Impact Analysis elements. A formal Regulatory Impact Analysis (analysis of regulatory proposals), designed to improve the quality of regulatory interventions, is required to support most proposed changes to government regulations. This discussion document outlines problems, options and impacts of the options.

Your feedback on the options and their impacts, including staying with the status quo, will contribute to the Regulatory Impact Analysis that will help government decision-makers with their decisions.

## **YOUR RESPONSE INVITED**

The Minister of Justice and Minister of Labour would like your feedback on the issues outlined in this discussion document. This discussion document includes a number of questions for you to respond to. These questions are provided in order to help us better understand your needs and present informed options for ministerial consideration and decision.

We are interested in gathering the widest possible range of views on the issues related to the three Acts and want to hear what you think about these issues and the approaches suggested through the questions. We also welcome any other comment you may have related to trading restrictions and Easter Sunday that may not have been adequately captured by this document. You can include any additional comment either as an attachment to this document or as a separate submission. We encourage you to participate in this consultation as it will enhance the analysis and help to make a better informed decision.

### **Making Submissions**

This document is available in electronic format on the Department of Labour's website ([www.dol.govt.nz](http://www.dol.govt.nz)).

If you wish to make a submission, you may fill out an online submission form at <http://www.dol.govt.nz/consultation/shoptradingform.asp> or alternatively you may wish to send your response to:

Sara Hudson  
Workplace Policy Group  
Department of Labour  
PO Box 3705  
Wellington

A form is attached to this discussion document for your response.

### **The closing date for your response is 14 December 2007**

After the closing date, a document providing an overview of submissions will be posted at the above website, by the beginning of February 2008, with details of how government intends to proceed with the review.

Please note that any submissions that you make may be the subject of a request under the Official Information Act 1982. To assist the Ministry of Justice and Department of Labour with the processing of any such requests, you will be requested to indicate at the beginning of your submissions whether or not you would like the contents made a matter of public record. Any request for non-disclosure will be considered in terms of the Official Information Act.

## WHAT ARE THE ISSUES WITH THE CURRENT LEGISLATIVE PROVISIONS?

The following have been identified as potential inconsistencies between the Shop Trading Hours Act Repeal Act 1990, the Sale of Liquor Act 1989, and the Holidays Act 2003:

- inconsistent area exemptions under the Shop Trading Hours Act Repeal Act 1990 and exceptions under the Sale of Liquor Act 1989
- inconsistent rationale for the trading restrictions, for example the Sale of Liquor Act 1989 aims to reduce alcohol-related harm while the Shop Trading Hours Act Repeal Act limits retail trading on days of special significance, and
- Easter Sunday is a restricted trading day but is not recognised as a public holiday under the Holidays Act 2003.

**Table 1: Current Legislative Provisions**

<b>Legislation</b>	<b>Good Friday</b>	<b>Easter Saturday</b>	<b>Easter Sunday</b>	<b>Easter Monday</b>
<b>Shop Trading Hours Act Repeal Act 1990</b>	Restricted trading day (though some exemptions)*	Not a restricted trading day	Restricted trading day (though some exemptions)*	Not a restricted trading day
<b>Sale of Liquor Act 1989</b>	No liquor sold, supplied or delivered from midnight Thursday (though some exemptions)*	No restrictions	No liquor sold, supplied or delivered from midnight Saturday (though some exemptions)*	No restrictions
<b>Holidays Act 2003</b>	Public Holiday	Not a Public Holiday	Not a Public Holiday	Public Holiday

\*These exemptions are not linked with each other

The impact of these inconsistencies includes:

- criticism from non-exempt businesses that the area exemptions under the Shop Trading Hours Act Repeal Act 1990 mean that businesses in similar areas have different trading rights and trading restrictions
- criticism that current area exemptions and exceptions could override the observance of these days of special, national, religious and/or social significance
- confusion regarding liquor outlets that are currently able to sell liquor, for example, taverns are restricted from trading whereas restaurants are not
- criticism of the penalty provisions in the Shop Trading Hours Act Repeal Act 1990 as an inadequate deterrent to breaches of the law
- as Easter Sunday is not a public holiday under the Holidays Act 2003 some employees in exempted shops or areas may have to work and not receive any additional compensation for doing so

- employees who work on Easter Sunday but not ordinarily on a Monday are not eligible for treatment of either day as a public holiday (in contrast to the situation on Christmas Day and New Year's Day, which can be observed either on the actual day or on the following Monday or Tuesday).
- under the current arrangements (collective and individual agreements), employees' entitlements for working on Easter Sunday vary across industries depending on whether they are exempt or restricted from trading and the provisions of collective and individual agreements.

**Questions:**

1. Do you consider that New Zealand law should in general treat Easter as a holiday weekend? What are your reasons?
2. Do you consider that the inconsistencies described above between the Shop Trading Hours Act Repeal Act 1990, the Sale of Liquor Act 1989 and the Holidays Act 2003 need to be addressed? For example, if special rules apply over the Easter weekend should they be consistent in terms of shop trading hours, sale of liquor and statutory holidays? Please explain why or why not.
3. Do you agree with the impact of the inconsistencies described above? Can you think of any other impacts from these inconsistencies? Is there a difference when considered from the perspective of the business owner, the employee and the customer?

## **EXISTING LEGISLATIVE FRAMEWORK**

### **Shop Trading Hours Act Repeal Act 1990**

The Shop Trading Hours Act Repeal Act 1990 (the 1990 Act) restricts most shops from trading on Good Friday, Easter Sunday, Christmas Day and before 1pm on Anzac Day. This is not, however, an absolute restriction on trade as the exemptions under the Act enable some shops to open. Examples of shops which are considered to provide an "essential service" and have exemptions are<sup>1</sup>:

- dairies and service stations, and
- shops selling prepared or cooked food ready to be eaten immediately.

The 1990 Act retains exemptions for shops in centres covered by area exemptions granted by the Shop Trading Hours Commission under s18(2) and s20 of the Shop Trading Hours Act 1977 (the 1977 Act). These exemptions were granted by the Commission through an application and hearing process. The types of exemptions allowed for under the current legislation are not consistent from region to region or within a region. When the 1977 Act was repealed, the mechanism through which applications for new exemptions or variations for existing exemptions could be considered and granted was removed. Therefore, existing exemptions are based on criteria applied under the 1977 Act which may no longer be relevant today.

Non-compliance with the shop trading legislation has become an issue, particularly in some of the tourist areas on Easter Sunday. Although there is no excuse for these breaches, there is some sympathy when neighbouring towns have exemptions, for example, Rotorua versus Taupo and Wanaka versus Queenstown.

Recent decisions by the courts also suggest issues with the effectiveness of the penalty regime. The cost of enforcing compliance significantly outweighs the penalties that are imposed (fine levels are statutorily set at an amount that does not exceed \$1,000), which raises questions about whether the sanctions are sufficient to make the restrictions effective. Given the number of convictions that result in discharge without a fine, the courts are effectively sending the message that they do not consider breaches of the shop trading restrictions to be a serious matter.

There have been nine attempts to change the shop trading legislation since the introduction of the 1990 Act. In all cases, except in 2001 when garden centres were allowed to trade on Easter Sunday, Parliament voted not to change the restrictions.

---

<sup>1</sup> A full list of exempted businesses under the Shop Trading Hours Act Repeal Act is set out in Appendix 2.

## **Sale of Liquor Act 1989**

The restricted trading days are Good Friday, Easter Sunday, Christmas Day and before 1pm on Anzac Day. The general conditions that apply for on-and off-licences are that no liquor is to be sold, supplied or delivered by licencees on these days. These restrictions primarily apply to hotels, taverns and retailers (including supermarkets and bottle stores). However, a range of exceptions from those conditions mean that a number of premises are allowed to trade on those days, such as:

- people residing or staying on-licensed premises (such as lodgers or hotel guests) who can buy liquor on restricted trading days
- a range of entertainment venues (such as restaurants, nightclubs, theatres, chartered clubs and sports clubs) that can provide liquor on their premises, and
- sale of grape or fruit wine is permitted from wineries on Easter Sunday, as long as it is made on the premises or made from grapes or fruit harvested on land on which the premises are based.
- Trading restrictions during Easter, under the Sale of Liquor Act 1989, have remained unchanged. This may be due to:
  - the special character of the restricted trading days for many citizens and concerns about allowing the sale and supply of liquor by hotels, taverns and retailers on days considered to be sacrosanct
  - the social concerns relating to alcohol abuse and its impact on families and the incentives for citizens to spend time apart from families at hotels or other premises if trading was allowed on the restricted days, and
  - general concerns about the risk of retail activity undermining the social, cultural and religious significance of the four-day Easter weekend.

When the issue of liquor trading restrictions was last considered in 1999, general Sunday trading restrictions were removed, with the exception of Easter Sunday, but a new restriction was added to restrict trading on Anzac Day (before 1pm).

## **Holidays Act 2003**

The purpose of the Holidays Act 2003 is to promote balance between work and other aspects of employees' lives. The Holidays Act 2003 provides public holidays to recognise days of national, social/and or religious significance, and employees required to work on public holidays receive a compensatory minimum payment of time and a half (and an alternative holiday if it is a day that they would normally work).

Easter Sunday is not a public holiday under the Holidays Act 2003 in contrast to Christmas, Good Friday and Anzac Day, which are public holidays. As a result, employees in areas where shops/premises operate under exemptions from the Shop Trading Act Repeal Act 1990 or Sale of Liquor Act 1989 do not receive any additional compensation or entitlements for working Easter Sunday unless this is provided for in their employment agreements.

Although Easter Sunday is the actual day of religious significance, the public holiday was transferred to the following Monday (sometimes referred to 'mondaysation') to give greater opportunity for employees to observe the holiday, as at the time the public holiday entitlement was established (1936) most people did not work on Sundays.

## **Decision areas**

### ***Balancing Competing Interests***

There are three decision areas presented in this paper. In order to balance the often competing interests of business owners, employees and the wider community you are asked to consider each of the three decision areas as part of a package. The need for **stability** and finding the **balance between choice, and protection of employees** underpin the proposed options.

**Stability** - Any future changes to the legislative framework needs to be enduring, have a clear public policy objective and be fair for both businesses and individuals. A clear rationale for either maintaining restrictions or liberalising trading over Easter Sunday is required.

**Balancing Choice and Protection** - The future of trading restrictions relies on striking an appropriate balance between imperatives relating to "choice" and "protection." This involves considering the needs and interests of employer (including retailers and on-licensed premises), consumers, employees, the general public and other groups in society.

The three decision areas are:

- What to do about restrictions under the Shop Trading Hours Act Repeal Act 1990 and Sale of Liquor Act 1989?
- What to do about the status of Easter Sunday?
- Consequential issues, such as what to do about the enforceability and penalty regime for the Shop Trading Hours Act Repeal Act 1990, and the issue of adequate employee/leaseholder protection against the compulsion to work/trade on Easter Sunday.

After reading the options you will be asked a series of questions about these options. Balancing the often competing interests of business owners, employees and the wider community may mean considering a combination of options. For example, making Easter Sunday a public holiday could be done in combination with either leaving restrictions as they are (Option 1) or altering restrictions for Easter Sunday (Option 2) or removing restrictions for Easter Sunday (Option 3).

## **Decision area: What to do about restrictions under the Shop Trading Hours Act Repeal Act 1990 and Sale of Liquor Act 1989?**

### ***Option 1: Retain the status quo***

#### *Possible benefits*

- continues to recognise the special character of the days by making trading the exception rather than the rule on Good Friday and Easter Sunday
- there is no evidence of widespread support for removal of restrictions under the Sale of Liquor Act 1989.

#### *Potential issues*

- does not address the inconsistencies in the legislation or public perceptions about the anomalies in the legislation
- does not address the inadequacy of current penalties under the Shop Trading Hours Act Repeal Act 1990
- non-compliance with the Shop Trading Hours Act Repeal Act 1990 will continue to be an enforcement issue.

### ***Option 2: Reinstate the exemption-making provision for shop trading to exempt specific areas from trading restrictions and enable sale of liquor exemptions to be considered at the same time***

This option would require adding the power for the Minister of Labour, or local authorities, to exempt specific (geographically defined) areas from the trading restrictions on Easter Sunday

#### *Possible benefits*

- would define clear criteria for the review of existing exemptions
- would address concerns that current exemptions are based on criteria which are no longer relevant today
- would address the anomaly of some shops in specified towns/areas being able to trade while others in similar towns/areas are not

#### *Potential issues*

- reactivating the exemption mechanism would require administrative procedures to be followed and discretion to be exercised which may result in criticism by non-exempted businesses or areas
- potential risk of increased confusion and uncertainty around which towns and cities have exemptions
- if the criteria are not sufficiently specific and exemptions are readily granted the intent of maintaining Easter Sunday as a restricted trading day would be undermined.

**Option 3: Remove the trading restrictions under the Shop Trading Hours Act Repeal Act 1990 and Sale of Liquor Act 1989 for Easter Sunday**

*Possible benefits*

- would maintain alignment between the Shop Trading Act Repeal Act 1990 with the Sale of Liquor Act 1989 on Easter Sunday
- would remove most of the disparities with the area exemptions under the shop trading legislation as most of the current exemptions are for Easter Sunday
- would reduce non-compliance problems under the shop trading legislation
- businesses could choose whether to operate, based on personal or communal interests and behavioural change may be widespread but not universal.

*Potential issues*

- undermines the value placed on the social, cultural and religious significance of Easter Sunday
- many liquor and shop employees would no longer be able to observe Easter Sunday free from the requirement to work
- some businesses may be compelled to open because their competitors are trading or because leaseholder arrangements add pressure to trade.

**Questions:**

4. Which one of the following statements best describes your view and why?
  - a. Shop trading and sale of liquor rules on Easter Sunday should remain as they are currently (status quo).
  - b. Either or both the shop trading and sale of liquor (delete one if you wish) rules should allow for some areas or businesses to have exemptions from trading restrictions on Easter Sunday.
  - c. Either or both the shop trading and sale of liquor (delete one if you wish) rules on Easter Sunday should be the same as any other weekend.
5. If an exemption-making power is reinstated, how would you prefer to see it implemented (e.g. should local authorities or the Minister of Labour make the decision)? Please explain your view.
6. If an exemption-making power is reinstated, what criteria do you think should be applied to the granting of exemptions (e.g. is the area a significant tourist or holiday destination)?
7. If the exemption-making power is reinstated, should shop trading and sale of liquor restrictions/exemptions be considered at the same time? Please explain why or why not.
8. What information do you have on the potential costs/benefits of any of these options? Please provide any supporting information.

## **Decision area: What to do about the status of Easter Sunday?**

### ***Option 1: Retain the status quo***

#### *Possible benefits*

- there would be no additional costs for businesses with employees who work on Easter Sunday.

#### *Potential issues*

- has no impact on current inconsistencies between the Shop Trading Hours Act Repeal Act 1990, Sale of Liquor Act 1989 and Holidays Act 2003
- workers who currently work on Easter Sunday would not receive any additional compensation for working on that day, unless it was a provision of their employment agreement.

### ***Option 2: Increase the number of public holidays to 12 by making Easter Sunday the 12<sup>th</sup> public holiday***

#### *Possible benefits*

- making Easter Sunday a public holiday would provide some protections to those employees required to work on Easter Sunday, and allow them to either observe the day free from work, or to receive compensation for working
- retailers with exemptions from restrictions on Easter Sunday may reconsider opening if it is made a public holiday, as they would be required to pay their staff time-and-a-half and provide an alternative day's holiday; this may result in workers continuing to have Easter Sunday free from work.

#### *Potential issues*

- any additional public holiday entitlements would have corresponding cost impacts for employers.<sup>2</sup> The industries most likely to be affected by this option are:
  - retailers
  - service industries (including emergency services)
  - 24 hour/7 day a week industries
  - public sector employers in, for example: Corrections, District Health Boards, Ministry of Agriculture and Fisheries, Customs, Police and Ministry of Social Development, and
  - agriculture and manufacturing.

---

<sup>2</sup> There will not be a cost impact where Easter Sunday is already treated as a public holiday in employment agreements.

***Option 3: Maintain the number of public holidays at 11 by making Easter Sunday a public holiday, subject to 'mondayisation' arrangements similar to Christmas and New Year holidays when they fall on Sunday***

*Possible benefits*

- making Easter Sunday a public holiday would provide some protections to those employees required to work on Easter Sunday, including employees outside the retail and liquor industries who currently work on Easter Sunday. This would allow them to either observe the day free from work or to receive additional compensation for working
- maintaining the number of public holidays at 11 by making Easter Sunday a public holiday but subject to the same "mondayisation" arrangements that exist for Christmas and New Year would help lessen the costs of having an additional (12th) public holiday and could help mitigate some of the negative reaction from businesses
- retailers with exemptions from restrictions on Easter Sunday may reconsider opening if it is made a public holiday, as they would be required to pay their staff time-and-a-half and provide an alternative days holiday; this may result in employees continuing to have Easter Sunday free from work

*Potential issues*

- any additional public holiday entitlements would have corresponding cost impacts for employers. The industries most likely to be affected by this option are:
  - retailers
  - service industries (including emergency services)
  - 24 hour/7 day a week industries
  - including public sector employers in: Corrections, District Health Boards, Ministry of Agriculture and Fisheries, Customs, Police, Ministry of Social Development, and
  - agriculture and manufacturing.
- employers may seek employment arrangements such as using casual employees or employees who do not normally work on Sundays to reduce public holiday costs and avoid paying for an alternative holiday
- employees outside the retail and liquor industries who currently work on Easter Sunday would receive public holiday rates and a day off adding to the cost of the wage bill
- could cause some confusion about public holiday entitlements, in terms of which day is the public holiday.

**Option 4: Treat Easter Sunday as if it were a public holiday for employees of businesses affected by new amendments to the Shop Trading Hours Act Repeal Act 1990 or the Sale of Liquor Act 1989. This would not apply to those that are currently able to trade under an exemption or exception.**

*Possible benefits*

- treating Easter Sunday as a public holiday for affected retail and liquor employees is a targeted approach which would involve reduced costs compared to adding an additional holiday for all employees who work on Easter Sunday

*Potential issues*

- a targeted approach to providing public holiday entitlements to affected retail and liquor employees only could be perceived as unfair by other employees required to work on Easter Sunday, and would create an additional anomaly to the status quo.

**Questions:**

9. Do you consider that Easter Sunday should or should not be treated as a public holiday? Please explain why or why not.
10. If you consider Easter should be treated as a public holiday, which one of the following statements best describes your view and why?
  - a. Increase the number of public holidays to 12 by making Easter Sunday the 12th public holiday
  - b. Maintain the number of public holidays at 11 by making Easter Sunday a public holiday, subject to 'mondayisation' arrangements similar to Christmas and New Year holidays when they fall on Sunday.
  - c. Treat Easter Sunday as if it were a public holiday for employees of businesses affected by new amendments to the Shop Trading Hours Act Repeal Act 1990 or the Sale of Liquor Act 1989. This would not apply to those that are currently able to trade under an exemption or exception.
11. What information do you have on the potential costs/benefits of any of these options? Please provide any supporting information.

## **Decision area: Consequential Amendments**

If further liberalisation proceeds then consequential amendments to accompany the removal of trading restrictions for the Shop Trading Hours Act Repeal Act 1990 would need to be considered.

These are:

- adequate employee protection against compulsion to work on Easter Sunday
- adequate leaseholder protection against compulsion to open on Easter Sunday, and
- increased penalties and improved enforcement powers for breaches of the remaining trading restrictions.

The Ministry of Justice do not consider that consequential amendments would be required to the Sale of Liquor Act 1989 because of existing penalties under this Act and the remedies available to the Liquor Licensing Authority in respect of the licence.

The Department of Labour has two concerns regarding the penalty regime in the Shop Trading Hours Act Repeal Act 1990:

- fine levels in the Act for breaching the Act are statutorily set at an amount that does not exceed \$1,000. The Department questions the significance of these penalties as a deterrence to offending and re-offending. Retailers appear to consider the fines minimal compared with the costs associated with not trading and include fines as a cost of doing business on a restricted trading days, and
- powers of Labour Inspectors to enforce the Act. The current Act does not have specific enforcement provisions. This has caused difficulties, particularly when retailers have refused to provide their details, as Labour Inspectors do not have the right of entry into a business trading under restriction or provisions to deal with obstruction.

## **Options**

### ***Option for Employee Protection***

The Department of Labour believes that the best option for employee protection would be the protections recommended by the Shop Trading Hours Working Group in 2003, which are:

- employees in shops opening to trade on Easter Sunday would, on each occasion, have an absolute right to refuse to work on that day unless they expressly agreed otherwise
- an employee's express agreement to work could not be specified in their employment agreement or be a condition of their employment
- where employees chose to exercise their right not to work on Easter Sunday, then employers would be able to engage casual staff, on each such occasion, to work solely on that day
- the protection would apply only to shops opening as a result of the new exemption or amendment, and not to shops who may already open to trade on Easter Sunday, and
- where employers wished to open to trade on Easter Sunday, they would be required to give employees reasonable notice of their intention to open so that they could determine employee availability for work on that day.

### **Questions:**

12. If there are changes to shop trading and sale of liquor restrictions, do you consider that there should be additional protections for employees? Please explain why or why not.
13. Do you consider that the above proposals are adequate and appropriate? Please explain why or why not.
14. If there are changes to shop trading and sale of liquor restrictions, do you consider that employee protections should be targeted to only apply to employees in businesses affected by these changes? Please explain why or why not.

### ***Option for Leaseholder Protections***

The Department of Labour believes that the best option for leaseholder protections is the standard leaseholder protections recommended by the 2003 Shop Trading Hours Working Group, which is:

- where retailers' leases provided for mandatory opening on available trading days, nothing in the lease could be read as requiring the retailer to open on the newly liberalised days (unless the retailer could already open then) for the duration of that lease or until its renegotiation.

**Questions:**

15. If there are changes to shop trading and sale of liquor restrictions, do you consider that there should be additional protections for leaseholders? Please explain why or why not.
16. Do you consider that the above proposals are adequate and appropriate? Please explain why or why not.
17. If there are changes to shop trading and sale of liquor restrictions, do you consider that leaseholder protections should be targeted to only apply to businesses affected by these changes? Please explain why or why not.

***Options for Penalties***

The Department of Labour believes that there are three options to address concerns regarding fine levels for breaches of the Act, these are:

1. increase the penalty maximum consistent with employment relations legislation. The Department would suggest in the case of an individual a penalty not exceeding \$5,000, or, in the case of a company or corporation, a penalty not exceeding \$10,000.
2. introduce a minimum penalty. The Department would suggest \$1000 for repeat offenders and shop owners who have previously been warned not to open.
3. provide Labour Inspectors the power to impose instant fines. The infringement fee may be set in the Act. The standard type of model for infringements of this type, however, is for the Act to enable infringement fees to be issued, and the amount of the infringement to be set via regulation. The Department would suggest a fine of no less than \$500 and not more than \$3000.

**Question:**

18. Do you consider that penalties for breaching shop trading restrictions need to be increased? If so, which option or options do you support for increasing penalties? Please explain why you do or do not support this option or options.

***Option for Increased Powers of Enforcement***

The Department of Labour believes that the Shop Trading Hours Act Repeal Act 1990 could be more effectively and efficiently enforced if the Act specified that Labour Inspectors are responsible for enforcement and provided that Labour Inspectors could exercise entry and inspection powers similar to those they have under the Employment Relations Act 2000.

**Question:**

19. Do you consider that Labour Inspector's powers of enforcement need to be increased? If so, is this option adequate and appropriate? Please explain why you do or do not think this is the case.

## **APPENDIX 1: HISTORY OF AMENDMENTS TO THE SHOP TRADING HOURS ACT REPEAL ACT 1999, SALE OF LIQUOR ACT 1989 AND HOLIDAYS ACT 2003**

Changes to the **Shop Trading Hours Act Repeal Act 1990** have been considered a number of times and these attempts, with the exception of the amendment considered and passed in 2001, have been unsuccessful. Table 1 provides a brief historical overview. Final outcomes of proposed changes have traditionally been decided as a conscience vote by Parliament.

Table 2 provides a brief historical overview of the **Sale of Liquor Act 1989**.

Submissions to the Members' Bills, Easter Sunday Shop Trading Amendment Bill and Shop Trading Hours Act Repeal (Easter Trading Amendment Bill) commented on Easter Sunday and its status as a public holiday. Table 3 provides a brief historical overview. The Quality Regulatory Review has provided the first opportunity for government to consider any change to Easter Sunday as a public holiday under the **Holidays Act 2003**.

**Table 1: Shop Trading**

<b>Bill</b>	<b>Sponsor</b>	<b>Description</b>	<b>Result</b>
<b>Shop Trading Hours Act Repeal Bill</b>	Government Bill	The Shop Trading Hours Act Repeal Act 1990 repealed the 1977 Act and removed trading restrictions except for Christmas Day, Good Friday, Easter Sunday, and before 1pm on ANZAC Day.	Passed 1990
<b>Shop Trading Hours Repeal Act (Easter) Amendment Bill</b>	Initially introduced by the late Robert Anderson and re-introduced by Katherine O'Regan (National) 1997	This Bill followed a number of shop trading prosecutions in 1995 involving Mt Maunganui retailers. These cases focused on the definition of "personal" goods and proposed unrestricted trading on Easter Sunday.	Did not proceed following Select Committee 1997
<b>Shop Trading Hours (Repeal of Restrictions) Bill</b>	Patricia Schnauer, (ACT) 1997	This Bill proposed total deregulation of shop trading hours, so that shops would be able to trade on any day of the year.	Did not proceed to Select Committee 1997
<b>Shop Trading Hours Act Repeal Amendment Act 2001</b>	Government Bill. Introduced in March 2001.	This Bill allowed garden centres to open on Easter Sunday.	Passed April 2001
<b>Rotorua District (Easter Sunday Shop Trading) Bill</b>	Steve Chadwick, (Labour). Introduced October 2002	The focus of this Bill was to provide partial exemption from the Shop Trading Hours Act Repeal Act 1990 in order to allow shops in the Rotorua District to be open on Easter Sunday from 9am to 5pm.	Did not proceed following Select Committee, March 2003.
<b>Shop Trading Hours Act (Abolition of Restrictions) Amendment Bill</b>	Rodney Hide, (ACT) initially introduced by Patricia Schnauer and re-introduced in 1999, as the Shop Trading Hours (Repeal of Restrictions Bill)	Initially this Bill proposed removal of trading restrictions for all except ANZAC Day. The Bill was substantially amended by the Commerce Committee to reflect the 2003 Working Group's proposal to remove restricted trading on Easter Sunday, which would give employees the right to refuse to work that day, and provide leaseholder protection.	Did not proceed following Select Committee, May 2004.

<b>Bill</b>	<b>Sponsor</b>	<b>Description</b>	<b>Result</b>
<b>Shop Trading Hours (Easter Trading Local Exemption) Bill</b>	Doug Woolerton, (NZ First). Introduced originally by the Rt Hon Winston Peters in 1998	This Bill attempted to give local authorities the power to decide whether shops can trade on Easter Sunday.	Did not proceed to Select Committee, September 2004.
<b>Easter Sunday Shop Trading Amendment Bill</b>	Jacqui Dean (National).	The proposed amendment was to allow shops in certain areas with significant visitor industries to remain open on Good Friday and Easter Sunday.	Did not proceed past second reading in May 2007.
<b>Shop Trading Hours Act Repeal (Easter Trading) Amendment Bill</b>	Steve Chadwick (Labour).	This amendment sought to enable territorial authorities to decide whether retail shops in their districts may be open on Easter Sunday. The Bill required territorial authorities to consult their communities before making any such decision through consultative procedure provided for in Part 6 of the Local Government Act 2002.	Did not proceed past second reading in May 2007.

**Table 2: Sale of Liquor Act**

<b>Bill</b>	<b>Sponsor</b>	<b>Description</b>	<b>Result</b>
<b>Sale of Liquor Amendment Bill</b>	Government Bill	General Sunday trading restrictions were removed, with the exception of Easter Sunday but a new restriction was added to restrict trading on Anzac Day (before 1pm).	Passed 1999

**Table 3: Holidays Act**

<b>Bill</b>	<b>Sponsor</b>	<b>Description</b>	<b>Result</b>
<b>Holidays Bill</b>	Government Bill	Proposed changes to make entitlements easier to understand and apply than the Holidays Act 1981. No changes to the 11 public holidays in 1981 Act, though some amendments were made that enabled transfer of public holidays for Christmas and New Year from Sunday to Monday when these days fell on a Sunday.	Passed 2003

## **APPENDIX 2: SHOPS WHICH MAY REMAIN OPEN UNDER THE SHOP TRADING HOURS ACT REPEAL ACT 1990**

### Section 4: Certain shops may remain open

1. Section 3(1) of this Act does not apply to a shop if it is –
  - a. A shop where –
    - i. The goods for sale include nothing that is not food, drink, a household item, a personal item, an automotive fuel, an automotive lubricant, an automotive part, or an automotive accessory, of a kind that people may reasonably need to be able to buy at any time; and
    - ii. The quantity of goods for sale is no greater than that sufficient to meet the demands of the people who live or are staying in the area where the shop is, and people (other than people travelling in order to buy goods at the shop) travelling through the area; or
  - b. A shop whose principal business is selling goods falling into one or other of the following categories:
    - i. Goods intended to be bought as souvenirs:
    - ii. Duty free goods (that is to say goods sold from or through any premises licensed as an export warehouse under Part 4 of the Customs Act 1966 to people intending to take the goods out of New Zealand):
    - iii. Prepared or cooked food ready to be eaten immediately in the form in which it is sold; or
  - c. A shop at any public passenger transport terminal, or at any station where public passenger transport services stop, whose principal business is selling goods falling into one or other of the following categories:
    - i. Books, magazines, and newspapers:
    - ii. The categories specified in paragraph (b) of this subsection; or
  - d. A pharmacy; or
  - e. A shop in premises where a bona fide exhibition or show devoted (entirely or primarily) to agriculture, art, industry, and science, or any of those matters, is being held.
2. Section 3(1) of this Act does not apply to a shop in respect of its remaining closed at any time on any day if—
  - a. On the 31st day of July 1990 there was in force in respect of the area in which the shop is situated an order under section 20 of the repealed Act (applied for under section 18(2) of that Act) authorising shops to be open at that time on that day; and
  - b. All conditions (if any) subject to which the order was made are being (or, as the case may be, have been) complied with.

## **SUBMISSION FORM**

### **INTERFACE BETWEEN THE SHOP TRADING HOURS ACT REPEAL ACT 1990, SALE OF LIQUOR ACT 1989 AND HOLIDAYS ACT 2003**

Please note that any submissions that you make may be the subject of a request under the Official Information Act 1982. To assist the Ministry of Justice and Department of Labour with the processing of any such requests, please indicate below whether or not you would like the contents made a matter of public record. Any request for non-disclosure will be considered in terms of the Official Information Act.

Please indicate if you (please type X in the appropriate box):

- Would be happy for your submission to be released, or
- Would like to be consulted prior to the release.

## **Information about you (optional)**

This submission was made by:

Name: \_\_\_\_\_

Postal Address: \_\_\_\_\_

Organisation (if applicable): \_\_\_\_\_

Role/Position (if applicable): \_\_\_\_\_

**Please answer as many or as few questions as you would like. Please give reasons for your views. You may attach additional pages for your submission.**

1. Do you consider that New Zealand law should in general treat Easter as a holiday weekend? What are your reasons?

---

---

---

---

---

---

---

---

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

---

---

---

---

---

---

---

---

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

---

---

---

---

---

---

---

---

4. Which one of the following statements best describes your view and why?
- a. Shop trading and sale of liquor rules on Easter Sunday should remain as they currently are (status quo).
  - b. Either or both the shop trading and sale of liquor (delete one if you wish) rules should allow for some areas or businesses to have exemptions from trading restrictions on Easter Sunday.
  - c. Either or both the shop trading and sale of liquor (delete one if you wish) rules on Easter Sunday should be the same as any other weekend.

---

---

---

---

---

---

---

---

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

---

---

---

---

---

---

---

---

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

---

---

---

---

---

---

---

---

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

---

---

---

---

---

---

---

---

8. What information do you have on the potential costs/benefits of any of these options? Please provide any supporting information.

---

---

---

---

---

---

---

---

9. Do you consider that Easter Sunday should or should not be treated as a public holiday? Please explain why or why not.

---

---

---

---

---

---

---

---

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

- a. Increase the number of public holidays to 12 by making Easter Sunday the 12th public holiday.
- b. Maintain the number of public holidays at 11 by making Easter Sunday a public holiday, subject to 'mondayisation' arrangements similar to Christmas and New Year holidays when they fall on Sunday.
- c. Treat Easter Sunday as if it were a public holiday for employees of businesses affected by new amendments to the Shop Trading Hours Act Repeal Act 1990 or the Sale of Liquor Act 1989. This would not apply to those that are currently able to trade under an exemption or exception.

---

---

---

---

---

---

---

---

11. What information do you have on the potential costs/benefits of any of these options? Please provide any supporting information.

---

---

---

---

---

---

---

---

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

---

---

---

---

---

---

---

---

13. Do you consider that the above proposals are adequate and appropriate? Please explain why or why not.

---

---

---

---

---

---

---

---

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

---

---

---

---

---

---

---

---

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

---

---

---

---

---

---

---

---

16. Do you consider that the above proposals are adequate and appropriate? Please explain why or why not.

---

---

---

---

---

---

---

---

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

---

---

---

---

---

---

---

---

18. Do you consider that penalties for breaching shop trading restrictions need to be increased? If so, which option or options do you support for increasing penalties? Please explain why you do or do not support this option or options.

---

---

---

---

---

---

---

---

19. Do you consider that Labour Inspectors' powers of enforcement need to be increased? If so, is this option adequate and appropriate? Please explain why you do or do not think this is the case.

---

---

---

---

---

---

---

---

20. Do you have any other comments?

---

---

---

---

---

---

---

---

FOR FURTHER INFORMATION ON EMPLOYMENT RELATIONS VISIT [WWW.DOL.GOV.NZ](http://WWW.DOL.GOV.NZ) OR PHONE **0800 20 90 20**

PLA.10437 SEPT 07



Department of Labour  
TE TARI MAHI

