



New Zealand Nurses Organisation

Submission to the Department of Labour

on the

**Interface between the Shop Trading Hours Act
Repeal Act 1990, Sale of Liquor Act 1989 and
Holidays Act 2003**

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EXECUTIVE SUMMARY

1. The New Zealand Nurses Organisation (NZNO) is a Te Tiriti o Waitangi based organisation which represents over 40 000 nurses and health workers. NZNO is the professional body of nurses and the leading nursing union in Aotearoa New Zealand. Our Māori partner, Te Runanga o Aotearoa, represents NZNO and Māori in nursing and health. Our members include nurses, midwives, students, kaimahi hauora, health care workers and other health professionals.
2. The NZNO welcomes the opportunity to comment on the Easter Trading and Holidays Legislation and support the New Zealand Council of Trade Unions submission.
3. Though the changes to the legislation under discussion do not impact directly on NZNO members, they do affect their families and their communities.
4. As health care workers, NZNO members have firsthand experience of what it means to have to work every day of the year and the impact that has on personal and family life. Their experience suggests that there is a heavy personal and social price to pay for not being able to rest and participate in seasonal and holiday activities with their families. It is a price worth paying for public health and safety, but not for unnecessary commerce.
5. Current evidence-based, best practice workforce initiatives, including the Ministry of Labour's Work/Life Balance project and Flexible Working Hours legislation, are directed at improving the work/life balance by ensuring adequate rest and relaxation, and public holidays are a key feature of that. Proposals to extend trading over Easter reverse and undermine this trend.
6. NZNO notes evidence that the retail sector is the least generous in terms of work/life balance in the workforce (Yasbeck, 2004). Since most businesses in

Aotearoa are small and owner-operated, it follows that any liberalization will unfairly penalise an already underprivileged workforce.

7. With an increasing proportion of the population living in busy cities and mall-dominated suburbs, it is even more important to protect mental and physical health by guaranteeing a few quiet and pollution-free days.
8. Chronic illness due to or exacerbated by stress is the largest health problem Aotearoa New Zealand faces. The Easter holiday weekend, coming just before the onslaught of winter, provides an oasis of rest. By taking it away or compromising it, there is a high risk that lack of rest and time to de-stress will manifest in increased illness and, ironically, lack of productivity.
9. An exhausted workforce, with no opportunity to nourish personal and social relationships is not only less productive, it is needy. The long-term costs to the population, in terms of health and the use of resources, far outweigh of transitory benefits of trading that benefits only a very small section of the community.
10. NZNO also urges that consideration for New Zealanders should be the sole motivation in considering proposals which affect the traditional Easter holiday, and not the needs of tourists or business people. Every country has its own customs and traditions which should be, and usually are, respected by tourists. Shop trading hours differ markedly from country to country and are set for the prevailing conditions and culture, not the convenience of visitors.
11. NZNO is strongly in favour of retaining the Easter weekend as a statutory holiday and opposes the changes under consideration.

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

NZNO does consider the law in Aotearoa New Zealand should generally treat Easter as a holiday weekend because there is a health risk to workers and employers who will be pressured into working when they should be resting, and to the many people living in urban and suburban commercial environments. NZNO believes the government has a duty to protect public health and workers rights and to promote the sustainable use of resources.

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.

NZNO does not think it necessary or even possible to legislate to avoid every conceivable inconsistency, but it does believe that most people are capable of understanding the concept that Easter weekend is a holiday weekend. It is entirely inconsistent and illogical, however, to lose a public holiday in order to provide a common rationale for shop trading and liquor licensing hours.

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?

See above. The overwhelming majority of businesses have fewer than five employees so the variation in perspective between owner, employer and customer is likely to be slim. Consistency of legislation is not the issue – retaining a much needed public holiday is.

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.

The question presupposes that only one of the above will be NZNO's preferred position which is not the case, especially since both the first options qualify for the status quo description. NZNO does not see a problem with the way the Acts work together so option (a) best describes our view.

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.

No comment

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)?

NZNO considers that exemptions should be rare and specific and not granted on the basis of commercial imperatives in order to preserve Easter as a holiday weekend. Provision is already made for the purchase of essential items and others can be purchased on the other 362 days of the year. The purpose of the weekend is to provide for rest for New Zealand workers and their families, not to provide shopping opportunities for anyone else. Exemptions should only be provided on the basis that they contribute to the social, cultural, faith objectives of New Zealanders.

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.

NZNO notes that the rationale behind the two Acts is different which may be a basis for considering each separately, but holds no strong opinion.

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

NZNO endorses the sentiments in the NZCTU submission regarding the risks to consumers associated with increased opportunities for consumer spending; the unfair pressure on workers and employers in the retail sector; and the waste of resources. NZNO repeats that any temporary financial benefit to a small sector of the community is far outweighed by the social and health risks associated with lack of opportunity for the whole population to enjoy “time out”.

Stress and overwork and over-stimulation, not to mention overeating and drinking, are all major contributing factors to the chronic illnesses which dominate our health statistics. The many government and community initiatives aimed at reducing those negative “lifestyle” (on the basis of their economic and social cost) – for example Push Play; Healthy Eating Healthy Action; and the Department of Labour’s own Work/Life Balance project- would be adversely affected if the proposed changes were to take place.

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

Easter Sunday should be treated as a public holiday, and should include those people working in the retail sector because a public holiday is the only way of ensuring the opportunity for complete rest and exemption from noise, pollution and other daily stresses.

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.

NZNO notes that for those in the retail industry there are not currently 11 public holidays – there are exactly three and a half. Once again choices are limited (and confusingly worded) and there is no option here for expressing a different idea. NZNO does not support option c). Option (b) is not acceptable since we wish to keep both Easter Sunday and Easter Monday as workers holiday as we have at present. If a 12th public holiday were proposed it should fall on a weekday and we suggest that the Southern winter solstice as marked by Matariki, a celebration unique to Aotearoa New Zealand would be most appropriate.

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

NZNO notes evidence that the retail sector is the least generous in terms of work/life balance in the workforce (Yasbeck, 2004) and wage rates are low in comparison with other sectors. It follows that any liberalization will unfairly penalize an already underprivileged workforce. Since most businesses in Aotearoa are small and owner-operated, many retailers will be multiply pressured by commercial imperatives, by increased wages, and by losing a rare holiday.

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.

Even without changes there should be greater protections for workers whose shops are already open on the three-and-a-half protected days. Workers should have the right to refuse work on each occasion – an employment agreement should not be able to override this right (by making employment conditional on an agreement to work). This right could be extended to all public holidays and all industries.

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

Though the suggested protections are better than the existing ones, NZNO doubts they will be effective as evidence suggests that even with a right to refuse work the pressure to work will be significant, as with shops which consistently open illegally. These protections should be introduced even without further liberalisation and should not be restricted to the retail industry, but should apply as of right to all workers.

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.

See answers to question 12.

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.

Even without changes there should be greater protections for leaseholders whose shops are already open on the three-and-a-half protected days. Leaseholders should have the right to stay closed on each occasion and a lease should not be able to override this right.

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

The suggested protections are slightly better than the existing ones, but again NZNO doubts they will be effective in the face of commercial pressure to open. Such protections should be introduced without further liberalisation.

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.

No. Leaseholder protections should be as of right for reasons outlined above.

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.

Penalties do need to increase and they should be commensurate with the size and nature of the business. They could, for instance, be multiplied by the number of employees employed on the day or linked to turnover. Labour Inspectors should be able to issue instant-fines and those in charge of the shop should be subject to personal prosecution with no indemnity from shop-owner.

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.

Evidently they need to be increased as the current level of breaches indicate they are ineffective at the current level.

20. Do you have any other comments?

NZNO would also like to express its disappointment with the nature of the questions in this document. They are repetitive and unnecessarily narrow in their scope. Discussion has been focused on details disguised as 'inconsistencies' in law rather than giving focus to the real issue which is the threatened loss of an long-established right for all workers, including those in the retail sector – the Easter holiday weekend. NZNO has noted with dismay the increasing

trend towards inviting public submissions yet limiting discussion with questions which effectively constrain the debate by presupposing what the issues are. The development of robust consultative processes being developed would enhance thoughtful and responsible submissions. These can then be analysed without having been restricted or sidelined by limiting questions from the start.

Please note the comments under the executive summary.

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References

Yasbeck, Phillippa. 2004. *The business case for firm-level work-life balance policies: a review of the literature*. Department of Labour, NZ. Retrieved, December 7, 2007 from <http://www.dol.govt.nz/PDFs/FirmLevelWLB.pdf>