

Submission

to the

Commerce Select Committee

on the

Shop Hours Amendment Bill 2015

This is about ensuring that vulnerable workers can count on having time off for things that strengthen community and family life.

Cardinal John Dew, November 2015

Since the market tends to promote extreme consumerism in an effort to sell its products, people can easily get caught up in a whirlwind of needless buying and spending... Many people know that our current progress and the mere amassing of things and pleasures are not enough to give meaning and joy to the human heart, yet they feel unable to give up what the market sets before them.

Pope Francis, *Laudato Si'* (paragraphs 203 and 209), 2015

If retail hours are liberalised, the communal nature of the Easter holiday is likely to be lost regardless of any specific protections introduced to allow workers to refuse work. Many people are simply unable to refuse work through financial necessity or employer pressure. If shops are open, there will be empty places at the family dinner table, in Church congregations, at hui, at community events, at sports tournaments, and at a range of other communal gatherings, because some people will choose to be engaged in purchasing items and thus others will be required to stand at tills to serve them.

Caritas submission to the 2008 review of Easter Trading and Holidays Legislation

Position on Bill

We oppose this Bill and do not wish it to proceed.

We would like to speak to the Select Committee in support of our submission. The contact person for this submission is Lisa Beech, Advocacy and Research Manager, Caritas Aotearoa New Zealand

lisa@caritas.org.nz; 021-2884388

Outline of key points

- **We oppose this Bill** and do not wish it to proceed.
- **Families and communities need time together to be able to flourish:** We need to strengthen family and community bonds and connections, which are achieved through a wide range of activities including

many that take place at Easter when shops are mostly closed and most workers have leave – these include church services, hui, school and family reunions, sports gatherings, local events and festivals.

- **Reducing consumerism is more important than extending commercial activity:** We all need to reduce our consumption. This is increasingly important following the Paris Agreement, where the international community has committed to reducing our carbon emissions, which requires us all to live more simply. We simply cannot afford to keep producing and consuming goods just as a form of recreational activity.
- **Protecting our few shop-free days:** The retail community gained 51 shopping days in 1990, while the church and community sector retained only 3.5 shop-free days. Despite this, the few historic exemptions that were allowed to remain have constantly created pressure for further extensions.
- **Failure to analyse or consider the impact on community events:** The extensive analysis of options in the Regulatory Impact Assessment considers the impact of various policy options on employers, workers, consumers and local government. However, there is no analysis of the impact of changes on community groups and community activities. We strongly disagree with the Regulatory Impact Assessment and Cabinet Paper's conclusions that there are no negative impacts for workers and for groups in the community, including faith groups.
- **Our primary concern is to protect vulnerable retail workers** who have long opposed and continue to oppose the extension of trading hours, along with many other low-paid workers who will inevitably be required to work if shops are open, such as cleaners and security workers. The protection of Easter, originally as an important Christian day, has taken on significance far beyond that of a religious festival.
- **There are insufficient protections in the Bill to ensure that workers will be able to refuse work,** given the context of other employment changes such as dismissal without reason during a probationary period of employment. In the context of zero-hours and other forms of casual employment relationships, the most vulnerable workers are often simply not in a position to refuse any work that is offered to them.
- **We do not believe the Bill can be or will be effectively enforced,** especially given the increased complexity of trading hours in different regions and localities, and because MBIE indicates that enforcement of shop trading hours is not a current priority.
- **This is not a new proposal:** This Bill has been proposed and promoted as a new approach to the issue of Easter trading hours. However, the proposal to devolve decision making about trading hours to local authorities was previously proposed and rejected by Parliament in Todd McClay's 2009 and Steve Chadwick's 2006 private members' bills.
- **Inconsistency and confusion:** Although proposed as a solution to the inconsistencies of the present exemption arrangements, the proposal itself will produce many more inconsistencies. The Regulatory Impact Statement acknowledges the likely confusion that will result from having different rules within regions.
- **We disagree with the Bill of Rights assessment by the Ministry of Justice that the Bill does not engage with the right to manifestation of religion.** There are many ways that people's connections to faith communities are being slowly eroded away, including the increasing number of workplaces open on Sundays and holy days. To ensure all people have access to cultural events and traditions of significance to them we need to address structural pressures that discourage people from participating or make it difficult for them to do so.
- **We urge Members of Parliament to genuinely use their conscience vote on this issue and not vote along party lines at the second and subsequent readings of this Bill.**

Conscience and consultation with Churches

1. Proposals to extend Easter trading hours arise almost every year. Caritas is aware of over 10 attempts to change this law since 1990, but this does not include the annual discussion media discussion of the issue. A great deal of time, which we would have preferred to spend directly with communities, has been taken up in revisiting an issue that has been defeated on numerous occasions when put to a conscience vote. This will not diminish but will increase if the proposals in this Bill are passed, as these conversations will take place over and over again within local authority processes.
2. We are concerned that this was initially introduced as a government bill, and indications were that Members of Parliament would be whipped to vote on party lines. It is deeply troubling that an issue which has always been voted on as a conscience issue could become a party vote at the whim of the Executive branch of government. The implications for this are significant if a particular political party decided to introduce a whipped government bill on other traditional conscience vote topics such as abortion, euthanasia or alcohol.
3. We are very pleased that the Speaker has ruled that this would be voted on as a conscience issue; however we noted that the vote at the first reading still appeared to be split on party lines, with a number of Members of Parliament who have consistently voted against liberalising Easter trading voting to send this Bill to Select Committee.
4. **It is very important that Members of Parliament genuinely exercise their conscience votes when this Bill returns to the House for the second and any subsequent reading. Members of Parliament must vote on this issue genuinely in accordance with their beliefs and consciences, and not along party lines.**
5. The Bill of Rights assessment of this Bill notes that the Ministry of Justice does not believe the Bill engages with the right to freedom of thought, conscience or religion under s13, or the right to manifestation of religion or belief under s15. Section 13 states:

Everyone has the right to freedom of thought, conscience, religion and belief, including the right to adopt and hold opinions without interference.

The freedom of conscience requires the freedom to act according to a person's conscience. It would be ironic if this Bill which purports to be about giving choice to local authorities, employers and consumers, were to be passed through Members of Parliament being to vote against their consciences.
6. It is important that in forming their consciences on this issue, Members of Parliament consult with affected groups in their communities, as no consultation took place in the development of this Bill. It was disturbing to read in the Regulatory Impact Statement that:

MBIE has not been permitted to consult with other stakeholders, or to consult more widely about shop trading on other restricted days (RIS paragraph 5).
7. The Cabinet paper anticipates opposition from the Council of Trade Unions, but makes no mention of Churches despite our consistent record of speaking out on and participating in every discussion about Easter trading that we have been invited to take part in. Neither does it mention other groups in the community who have consistently expressed concern about the impact on their events and plans, such

as sporting groups and Māori groups who hold hui regularly at Easter. As we have said on previous occasions, failing to consult with Churches about a proposal regarding Easter Sunday is equivalent to failing to consult the armed forces or the RSA about a proposal regarding ANZAC Day. We are key stakeholders in this discussion, and we expect to be consulted.

8. We disagree with the Bill of Rights assessment (referred to above) by the Ministry of Justice that the Bill does not engage with the right to manifestation of religion. There are many ways that people's connections to faith communities are being slowly eroded away, including the increasing number of workplaces open on Sundays and holy days. To ensure all people have access to cultural events and traditions of significance to them we need to address structural pressures that discourage people from participating or make it difficult for them to do so.

Devolving decision making about Easter trading hours to local authorities

9. It has been claimed, in the Parliamentary debate and by some media commentators, that devolving the decision about Easter trading hours to local authorities is a new way to approach this issue. It is very obvious that this is not a new approach, as this Bill is based on Todd McClay's 2009 private members' bill, which was defeated at its first reading. Steve Chadwick's 2006 private members' bill also proposed handing decision making over to local authorities.
10. We endorse and repeat the letter of the New Zealand Catholic Bishops Conference which was sent to all Members of Parliament at the time of the second reading on the two 2006 private members' bills:
We do not support the government delegating authority for fundamental decisions about working hours to local authorities. We believe this will result in widespread Easter trading by default, as regions and employers find themselves compelled to introduce trading in the face of competition and other pressures. (New Zealand Catholic Bishops Conference, 2007)

Consistency

11. The primary reason given for revisiting this contentious issue is the question of consistency, because tourist centres like Rotorua and Wanaka seeking the same opportunity for Easter trading as places like Taupo and Queenstown who have historic exemptions.
12. Caritas has previously acknowledged there are some issues to be addressed here (please see our 2008 submission to the Department Labour review of Easter for a fuller discussion of this question) – but we have always noted that a genuine attempt to address these inconsistencies must include considering whether to remove the historic exemptions, rather simply considering how to extend them.
13. However, we do not believe this current proposal will do anything to resolve the inconsistencies about Easter trading. In fact it seems likely to create a whole new level of inconsistency, and will enormously increase the complexity of rules around Easter trading. Inconsistencies will exist between regions, within regions, and potentially within cities. Branches of the same business may be open in one location and closed in another.
14. The Regulatory Impact Statement acknowledges that the general public, business and employees could “find the changes and their implementation complex and confusing” because of these inconsistencies, and also the inconsistency with rules on Good Friday, Christmas Day and ANZAC Day.

15. If local governments grant exemptions to Easter trading in one section of their locality and not others, they will also find that they will not just consider this issue once, but will be asked to revisit it again and again, as local businesses unable to trade will claim they cannot be competitive with commercial activity in a neighbouring area. Regions and employers will find themselves under increasing pressure to extend trading hours every year, including employers and retailers who do not wish to open at Easter and their staff.

Special days

16. Families and communities need time together to be able to flourish. Time together is increasingly under pressure, especially for low-income workers who are frequently working non-standard hours, or are constantly on call.

17. For Christians, Easter is among our most holy and sacred days. But the importance of these days is not only about the time some of us spend in Church. It is about ensuring that people and values we hold dear can take priority over commercial transactions, just for a few days a year. These values include protecting the poor and vulnerable; supporting families and communities to form bonds and relationships of trust; and having time for meaningful rest and engagement with whānau and friends.

18. The small group of 3.5 shop-free days that are available each year have taken on a special significance far beyond their original meaning. We hear from retail and low-paid workers of all faiths and of none that Easter has become one of the few communal moments when most people know they are able to spend time with family and in community activities.

19. We appreciate that there will always be essential and emergency workers, such as medical staff and police, who are always needed at work, and we are grateful for their commitment and sacrifice. But shopping is not an essential or emergency task, and retail workers are not among those who, by the nature of their work, must be available for emergency work.

20. When Sunday trading hours were liberalised in 1990, retailers gained 51 additional retail days each year. The remaining three and a half trading free days have become the focus of collective rest and communal activities for most New Zealanders, an opportunity for gatherings such as hui, unveilings, sports tournaments, family and school reunions, church events, festivals and a range of other gatherings. These have made these days special and valuable opportunities for family and community shared time, which have given these days a value beyond their religious origins alone.

21. The extensive analysis of options in the Regulatory Impact Assessment considers the impact of various policy options on employers, workers, consumers and local government. However, there is no analysis of the impact of changes on community groups and community activities. We strongly disagree with the Regulatory Impact Assessment and Cabinet Paper's conclusions that there are no negative impacts for workers and for groups in the community, including faith groups.

22. We are also seeking more detailed analysis of the impact of increasing or extending Easter trading on community events. For example, the Wanaka Air Show is frequently used as an example of an event where it appears that it is assumed that the financial benefit to the community would be enhanced if shops were open at the same time as tourists attend this particular event. However, extending retail hours could possibly undermine, rather than enhance, these special events. It is possible that special

events are so successful because there are limited other options, and so most people are on holiday and are looking for leisure options. It may be that allowing retail activity, for example in Wanaka, alongside similar exemptions elsewhere, could reduce attendance because more people would be obliged to work, and others would be shopping rather than attending events. Analysis of the overall impacts is needed to give some balance to this debate.

Worker protection

23. This Bill is a step up on what was proposed in 2006 and 2009, because of the explicit provision that workers can refuse to work on Easter Sunday without giving a reason, something we had specifically requested in the 2008 review and other discussions.
24. However, on balance, we still do not consider this gives sufficient protection to vulnerable retail workers, because of the increasingly casualised nature of many of these employment relationships, which give greater power to employers. Under the probationary employment legislation, employers can dismiss employees on probationary periods without giving a reason. However, there are also numerous other more subtle reasons that vulnerable workers describe how they can be penalised for being unavailable for work, such as reduction in rostered hours.
25. In the context of zero-hours and other forms of casual employment relationships, the most vulnerable workers are often simply not in a position to refuse any work that is offered to them.
26. **We do not believe the Bill can be or will be effectively enforced**, especially given the hugely increased complexity which is anticipated, and because MBIE indicates that enforcement of shop trading hours is not a current priority. The Regulatory Impact Statement makes it clear that MBIE has not been actively monitoring or enforcing the status quo, and does not prioritise this work:
The Labour Inspectorate focuses on enforcing breaches involving serious exploitation of workers. MBIE considers that breaches of the Act do not constitute 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. (RIS paragraph 11)
27. We disagree with the analysis of the RIS and Cabinet paper that “there are no significant negative impacts for employees associated with the proposed amendment”. The Bill will increase the vulnerability of groups of retail and service workers who are already vulnerable. Additionally, this analysis only considers the situation of individual workers, and does not assess the impact on low-paid workers, their families and communities as a whole.

The global context of this current proposal to extend Easter trading

28. This is the Jubilee of Mercy in the Catholic Church – a time that Pope Francis has called to ask the Catholic and wider community to reflect and put into practice our concern for our neighbour. We ask you in the context of the Jubilee of Mercy not to consider this Bill from the perspective of consumers - people with leisure time who want to go shopping. But rather we ask you to consider this primarily from the perspective of the most powerless workers who have little choice but to accept work they are offered if the shops are open.

29. In the Biblical tradition, a Sabbatical or Jubilee year is about taking time for renewal and refreshment. It is about allowing workers to take a rest, and allowing the land to lie fallow and to rejuvenate itself. The Jubilee tradition outlined in Leviticus includes a period when no productive work is undertaken and people return to their families:

It shall be a Jubilee for you; you shall return, everyone of you, to your property and everyone of you to your family...you shall not sow, or reap the undergrowth, or harvest the unpruned vines. It is a Jubilee, it will be holy to you. (Leviticus 25:10-12)

This is not about placing heavy restrictions on people, but rather about freeing people, for a short period once in a while, from the imperatives of commercial activity, to ensure that human needs are met, and the rights of people, of communities and of the land take priority.

30. This Bill is also proposed against the backdrop of the Paris Agreement and Pope Francis's particular contribution to that discussion, his encyclical *Laudato Si'* about care of our common home. At this time, with the environmental crises facing our planet, we need to reduce consumerism rather than extending commercial activity.

31. We all to reduce our consumption. This is increasingly important following the Paris Agreement, where the international community has committed to reducing our carbon emissions, which requires us all to live more simply. We simply cannot afford to keep producing and consuming goods just as a form of recreational activity.

32. To ensure that the world is left in a habitable state for future generations, we need urgently to change the way we live. That requires a change of mindset that means we think differently about each other as human beings and about our relationship with nature. As Pope Francis says:

A community can break out of the indifference induced by consumerism...actions cultivate a shared identity, with a story that can be remembered and handed on. In this way, the world and the quality of life of the poorest are cared for with a sense of solidarity. (Laudato Si' 232)

33. Protecting our few days of collective rest is important for many reasons; for the sake of stressed and pressured families who have little time with each other; for the sake of social capital in communities - the bonds of relationship and friendship which take such a long time to build up and are sometimes so easily lost or lightly discarded; for the sake of the most vulnerable retail and service workers who have less and less control of their working hours and working lives; for the sake of those employers and retailers who would prefer also to take a break at Easter but will be pressured into opening if other shops are open. But also for the sake of our society and our planet, we need to find more opportunities to nurture each other and the earth. That isn't achieved by limitless economic growth, or 24-hour-a-day, 7-day-a-week consumerism.

34. If Easter trading is extended as a result of this Bill, some individuals may have short-term financial gains, but in the long run we will all be poorer. We ask that this Bill does not proceed.

