



Easter Trading

▸ SUMMARY OF SUBMISSIONS



Introduction

The Government has undertaken a Quality Regulation Review (QRR) with a focus on improving the quality of regulation as they affect the business environment. The aim of this review is to provide opportunities for continuous improvement in regulatory and business practices to support New Zealand's economic growth.

As part of this review business and industry organisations were invited to make submissions to the QRR. The submissions to the QRR highlighted a need to address inconsistencies between three pieces of legislation:

- the **Sale of Liquor Act 1989**;
- the **Shop Trading Hours Act Repeal Act 1990**; and
- the **Holidays Act 2003**.

The inconsistencies are:

- 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 1990 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.

The Department of Labour and the Ministry of Justice undertook to provide options for Cabinet to consider resolving these inconsistencies. The aim of the options is to resolve these inconsistencies whilst balancing the competing interests of business owners, employees and the wider community. Three key decision areas were identified for consideration. These are:

- restrictions under the Shop Trading Hours Act Repeal Act 1990 and Sale of Liquor Act 1989 on Easter Sunday;
- the status of Easter Sunday under the Holidays Act 2003;



- enforceability and penalty regime for the Shop Trading Hours Repeal Act 1990;
 - employee protection,
 - leaseholder protection,
 - enforcement, and
 - penalties.

A joint Department of Labour and Ministry of Justice discussion document highlighted the key areas of concern and encouraged the public to provide their views on options for possible changes that could be made to the three Acts.

This report summarises the submissions that we received on the Sale of Liquor Act 1989, the Shop Trading Hours Act Repeal Act 1990 and the Holidays Act 2003. The report also identifies the key concerns raised by submitters and sets out the preferred options of submitters.

The Ministers of Labour and Justice will separately make announcements regarding the outcomes of this review.



Getting Your Views

A key consideration for us has been to hear and understand the different perspectives as a response to this review. We sought employers, unions, industry groups, individual and other groups in society to provide their views.

We collected your views in two ways, by:

- putting out a discussion document highlighting the key areas of concern and making a general call for submissions from employers, unions, industry groups, individuals and other groups in society, between mid November 2007 and 25 January 2008; and
- meeting with key stakeholders in December 2007
 - industry groups (Hospitality Association of New Zealand, New Zealand Retailers Association, National Association of Retail Grocers and Supermarkets of New Zealand, Foodstuffs New Zealand and New Zealand Winegrowers)
 - the New Zealand Council of Trade Unions
 - Business New Zealand
 - the National Distribution Union.

We received 107 individual submissions, as detailed in the table below. The Department also received 3,951 less detailed submissions from members of the National Distribution Union who

broadly supported the NDU position and provided personal reasons for this and recounted personal experiences as evidence for their support. This gives a total of 4,058 submissions overall. Twelve of the submissions included or were related to the Sale of Liquor Act 1989.

Submitter Type	Number of Submitters
Business Interest	7
Community Organisation	8
Employer	15
Employer Organisation	13
Government	2
Individual (Employee)	31
Local Body	11
Religious Body	13
Union	3
National Distribution Union Members	3951
Unknown	4
Total	4058

The options for reform provided in the discussion document are set out in this report on pages 11-18 with submitter's response to them.

What you told us

This section summarizes the feedback you gave us surrounding your concerns with the three key areas of decision making, as indicated on page 1.

Restrictions under the Shop Trading Hours Act Repeal Act 1990 and the Sale of Liquor Act 1989

1. Lack of consistency in the legislation

Currently there is inconsistency in area exemptions, particularly holiday and tourist destinations and shops that may remain open based upon what they sell. These inconsistencies lead to confusion and inequities between areas and businesses.

Some submitters note that tourist destinations have changed since the exemptions were granted leaving significant trading inequities.

“allowing shops to trade based on what they are predominantly selling is now illogical”

“the [Shop Trading Hours Act Repeal] Act [1990] is anomalous historically and geographically—it discriminates between 1980 tourist and visitor destinations and post-1990 tourist and visitor destinations which, in many instances, are now significantly different”

“there are inconsistencies both between the legislation as well as inconsistencies within the Sale of Liquor Act. The

inconsistencies within the Sale of liquor Act are unnecessary, confusing and unduly compliance cost excessive on hotel and tavern on-licences”

“there are totally illogical inconsistencies. Clubs, restaurants and hotels can trade but taverns, cafes, brasseries and bars cannot on Good Friday and Easter Sunday”

“the Sale of Liquor Act needs to be simplified to ensure that the present confusion over who is and who isn’t entitled to sell alcohol on public holidays is clarified”

Other submitters commented that these inconsistencies are not significant enough to require legislative change. Inconsistencies in exemptions between the Shop Trading Hours Act Repeal Act 1990 and the Sale of Liquor Act 1989 are justified because the Acts have different purposes and rationales.

“retail legislation has long distinguished between liquor and other merchandise, in recognition of liquor’s social impact ... [the inconsistencies] are not necessarily in opposition to greater social good and mostly not very serious.”

“we do not consider the inconsistencies in rationale for trading restrictions between the Sale of Liquor Act 1989 and other legislation necessarily need to be addressed. Because of the potential harm that alcohol poses to both the drinker and others there is good rationale for having greater restrictions on the sale of alcohol than on other commodities”



2. Trading impacts upon families

Some submitters inform us that New Zealanders want to spend more time with their families. Trading restrictions provide guaranteed days off for retail workers which are important in allowing families to spend time together. Many family and community activities take place over the Easter weekend, facilitated by the break in trade.

“the closure of shops on Easter Sunday and the other days is essential to their preservation as days for a ‘common break’ to be taken. The taking of ‘common breaks’ is a vital component of community, family and national cohesion.”

“Government should be doing more to promote a work/life balance, and to promote more time and opportunities for families to come together”

Other submitters also note that while enforced time off does facilitate family time, it is also overly paternalistic.

“while this [family time] is a laudable objective, it is rather paternalistic for society to dictate that this must occur and reflects a ‘we know what’s best for other people’ type attitude”

3. Easter Sunday has religious significance

New Zealand’s history and tradition is significantly based on Christianity. Trading restrictions were introduced with the intent to allow individuals and businesses to observe the day without interference.

We are informed by submitters that over fifty percent of New Zealanders affiliate with Christianity, and Easter Sunday is an important day in the Christian calendar.

“the traditional Christian way of life is part of the cultural fabric and inheritance of our society, whether people are of the Christian faith or not, and therefore should remain as inviolate parts of that fabric”

“Good Friday, Easter Sunday, Christmas Day and ANZAC Day hold “special significance”. It seems a perfectly “logical reason” to prevent conventional trading by hotels and taverns to ordinary members of the public on the days of Good Friday, Easter Sunday, Christmas Day and ANZAC Day, precisely because of the special socio-cultural significance these days hold”

Other submitters also note because New Zealand is a secular state and becoming increasingly culturally diverse, Government should be mindful of other religious perspectives in the community.

“it is not the position of the Crown to restrict the trade of any business on a day of religious observance. It gives the impression that the Crown favours one set of religious beliefs over others”

4. Trading restrictions have financial implications upon businesses and the economy

Trading restrictions limit businesses opportunities to make a profit. In particular, tourism makes a significant contribution to New Zealand’s economy.

Some submitters consider that the removing trade restrictions will enhance the visitor experience of tourists over the Easter period and strengthen the economic benefit of tourism.

"[trading restrictions have] ramifications on tourist cities as visitor destinations, particularly as over Easter a number of large events will be organised ... this [[restrictions]] harms visitor perception of the destination"

5. Freedom of choice

Some submitters comment that businesses should have freedom of choice as to how they run their businesses and when they open. Consumers should also have the freedom to choose to shop and employees the freedom to work if they so choose.

"businesses, like the rest of the community, have differing views about what Easter means to them ... each business should have the choice about whether or not they wish to open on this day"

6. Availability of alcohol will lead to an increase in alcohol related harm

Some submitters especially in the health sector comment that any proposal that would increase availability of alcohol would lead to an increase in alcohol related harm. The Police submitted that opening up these days would lead to an increase in alcohol related violence, especially in public spaces.

"any increase in availability of alcohol on public holidays could increase the number of (totally avoidable) acute hospital admissions and emergency callouts"

"any proposal to increase the availability of alcohol would be contrary to the object of the Sale of Liquor Act"

"would send the wrong message to the public"

Status of Easter Sunday under the Holidays Act 2003

1. Lack of consistency in the legislation

Currently Easter Sunday is not a public holiday despite being a restricted trading day and Easter Monday is the public holiday despite its lack of religious or cultural significance. This reflects a time when working on Sundays was unlikely. As work hours have diversified this has caused employees who work on Easter Sunday and not Easter Monday to miss out on additional compensation. This inconsistency was highlighted as requiring change to protect employees and promote equal treatment.

It was commented:

"that Easter Sunday is not considered a public holiday in law, when Good Friday and Easter Monday are, appears to reflect a time when trading on Sunday, let alone Easter Sunday, seemed far less likely"



2. Easter Sunday as a public holiday will have financial implications on businesses

If Easter Sunday's status is changed to a public holiday, either through mondayisation or as a 12th public holiday, an increase in labour costs will occur for employers.

Employers inform us that their economic viability has recently been adversely affected by an increase to four weeks annual leave and the introduction of Kiwisaver. This has placed many businesses in an increased vulnerable position to absorb additional costs.

"the Horticulture sector is currently not in a financial position to absorb additional costs ... [MAF] stress that many businesses are struggling and falling further into debt just to say operational."

Other submitters note that these financial implications may cause small businesses to close over Easter Sunday. This removes the freedom of choice for some businesses to open and negatively impacts upon the tourism industry.

"creating a public holiday renders opening on Easter Sunday non-viable for the majority of businesses"

3. Easter Sunday has religious significance

Some submitters comment that Easter Sunday's significance for Christians mean that it should be recognised as a public holiday.

"we are a country that has our social structure and laws based on Christianity"

Other submitters comment that as New Zealand is a secular state it should not impose any particular religious observations on its citizens.

"Easter Sunday is a Christian holiday which does not accurately reflect New Zealand as a multi-ethnic society"

4. Employees have a right to be recognised for working on a day of significance

Easter Sunday has traditional and religious significance for a majority of New Zealanders. A number of sectors currently require employees to work on Easter Sunday, such as in the essential services, and should be recognised for this.

We are told that Easter Sunday as a public holiday would create fair treatment and extra protection for employees that are required to work.

"it is still a special day for many New Zealanders and if you are required to work there should be compensation"

"we recognise that it will result in additional costs for a range of essential services ... but believe the workers in those industries deserve the recognition of their work on a holiday weekend"

Enforceability and penalty regime for the Shop Trading Hours Repeal Act 1990

Employee and Leaseholder Protections

1. Employees may be subjected to employer coercion to work

Employees are concerned that any refusal to work will have ongoing consequences both on their co-workers who must take the burden of the work and on their working relationship with their employer. This may result in pressure to work both by employers and workmates. Many employers use subjective “performance” pay systems which are not favourable to employees. These place pressure on employees to comply with employer requests.

“shop workers face great pressure to work—from their employers but also [through] concern that their workmates will be under pressure to work harder if they refuse”

Employees also comment that employers may use financial incentives to coerce employees into working. Many submitters consider that employees should be able to refuse to work without negative repercussions upon their employment situation.

“workers should have the right to refuse work on each occasion—an employment agreement should not be able to override this right”

2. Leaseholders in malls may be forced to open

Malls are made up of mostly small businesses and as such have little choice about when to open because of contractual obligations in their lease.

Leaseholders in malls are concerned that they may be compelled to open on Easter Sunday despite any personal reservations towards opening. We are told that leaseholders need to be protected at least in the interim until renegotiation of their lease contract.

“we are concerned that the liberalisation of Easter trading will mean that businesses may be obliged to open, particularly if Malls require lessees to open”

“it is essential that leaseholders not be penalised should they choose not to open if they are otherwise required to trade as part of their lease”

Some of these submitters recognise that while leaseholders need protection this cannot be indefinite as having all stores open is essential to the operation of establishments such as malls.

3. There are alternative mechanisms for managing protections

The Employment Relations Act 2000 allows employers and employees to bargain in good faith and reach outcomes that reflect their mutual interests.

Some submitters note that current legislation such as the Employment Relations Act 2000 and the Holidays Act 2003 are sufficient protection for



employees. As such protections can be bargained into their employment agreements.

“existing protections for employees are more than adequately provided for through employment collectives and individual contracts”

Other submitters comment that lease agreements are subject to commercial negotiation, and this should not be interfered with. It is argued that businesses choose to be a leaseholder with the knowledge of the provisions that apply to a lease.

“the person has the choice to be a leaseholder or otherwise in a mall ... he or she does so knowing the provisions that apply to a lease insofar as trading hours are concerned”

Other suggestions expressed included that existing protections in the Shop Trading Hours Act Repeal Act 1990 should be transferred and included into any new legislation.

Penalties

1. Current penalties are ineffective

The current penalties for breaching trade restrictions (maximum \$1000 under the Shop Trading Hours Act Repeal Act 1990) are ineffective at deterring businesses from breaching restrictions. The penalties have rarely been applied by the Courts in cases and are often seen as a business expense of trading rather than a penalty.

Comments from submitters include:

“penalties should be meaningful, aimed at discouraging employers from breaching the legislation”

“smaller penalties may only encourage shop trading restrictions to be breached”

“the penalties should be effective, rather than being seen as a cost of trading”

2. Penalties must be able to be enforced

The current lack of enforcement of penalties allows breaches of the legislation to continue. As it is not cost effective to enforce the penalties this has rarely been pursued. Any penalties must be able to be enforced and upheld by both Labour Inspectors and Courts.

It was commented:

“the current cost of enforcing the penalty is higher than the fine itself”

3. Current penalties are unreasonable

Those submitters that supported freedom of choice for businesses felt that penalising businesses for choosing to open is unreasonable and unjustified. Comments included that the Act is outdated, impractical and unsupported in the wider community. The Courts have reflected these social attitudes by failing to implement penalties for breaches.

“the Courts and the community have clearly expressed the view that current legislation is not supported. It would therefore be perverse to increase penalties available under the legislation”

What you want us to do

Shop trading and Sale of liquor

Restrictions under the Shop Trading Hours Act Repeal Act 1990 and the Sale of Liquor Act 1989

The discussion document provided three options for submitters to provide comment on:

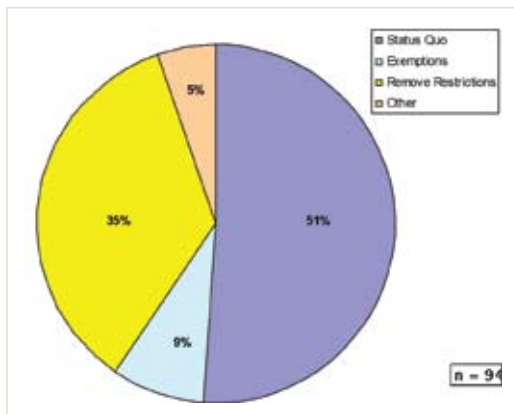
1. retain the status quo;
2. reinstate the exemption-making for shop trading to exempt specific areas from trading restrictions and enable sale of liquor exceptions to be considered at the same time; or
3. remove the trading restrictions under the Shop Trading Hours Act Repeal Act 1990 and Sale of Liquor Act 1989 for Easter Sunday

Support for the different options regarding Shop Trading is represented in the table and chart below:

	Status Quo	Exemptions	Remove Restrictions	Other
Business Interest	1	1	5	0
Community Organisation	3	2	7	1
Employer	3	1	9	0
Employer Organisation	0	0	6	0
Government	0	0	0	1
Individual (Employee)	20	2	0	1
Local Body	5	0	5	1
Religious Body	12	0	0	1
Union	3	0	0	0
National Distribution Union Members	3435	89	40	0
Unknown	1	2	1	0
	3583	97	73	5



What to do with Shop Trading Restrictions



Submitters in the 'other' category provided comment without a preference or provided an alternative option. The alternative options included following an Anzac Day model with trading after 1pm

and maintaining the status quo whilst removing all current exemptions.

"[removing restrictions] would not require trading on the days in question but would give shop owners the opportunity to open should they consider it worth their while to do so"

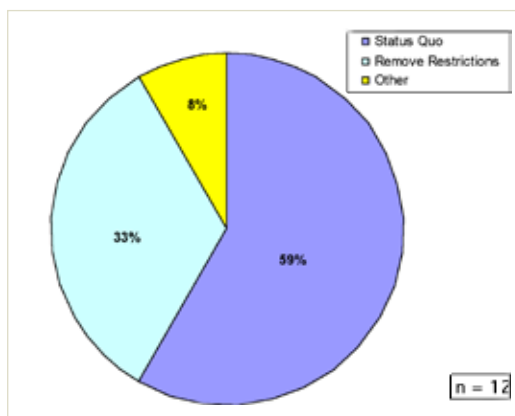
"a survey released by the Newmarket Business Association found 73% of retailers oppose shop trading on Easter Sunday"

"on a survey of the Business Association for Mercury Bay 84.2% of respondents said Easter Sunday should be treated as any other Sunday"

Support for the different options regarding Sale of Liquor is represented in the table and chart below

	Status Quo	Exemptions	Remove Restrictions	Other
Business Interest	0	0	1	0
Community Organisation	2	0	0	0
Employer	0	0	1	0
Employer Organisation	1	0	1	1
Government	2	0	0	0
Individual (Employee)	0	0	1	0
Local Body	2	0	0	0
	7	0	4	1

What to do with Sale of Liquor Restrictions



Submitters in the 'other' category provided comment without a preference.

"[by removing restrictions] the only difference is not the ability of hotels, taverns and off-licences to trade on Easter Sunday but removing the current requirement for patrons in hotels and taverns to either dine or stay on premises as lodgers"

"the Association supports the ability of all retailers, including liquor retailers, to have the same unrestricted right to make their own decisions in respect of trading on Easter Sunday"

🔗 Status of Easter Sunday

The discussion document provided four options for submitters to provide comment on:

1. retain the status quo;
2. increase the number of public holidays

to 12 by making Easter Sunday the 12th public holiday;

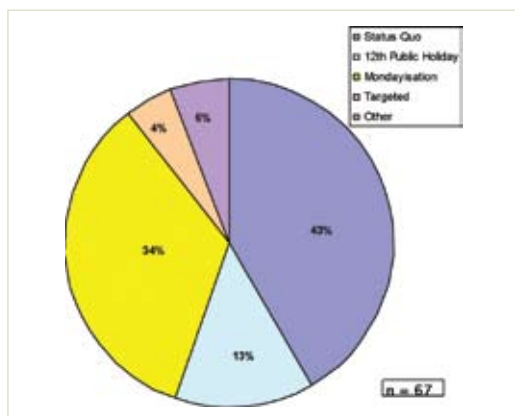
3. maintain the number of public holidays at 11 by making Easter Sunday a public holiday, subject to 'mondayisation' arrangements similar to Christmas and New Year holidays when the fall on Sunday; or
4. treat Easter Sunday as if it were a public holiday for employees of businesses affected by new amendments 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.



Support for the different options is represented in the chart and table below:

	Status Quo	12th Public Holiday	Monday-isation	Targeted	Other
Business Interest	3	1	0	0	2
Community Organisation	2	0	4	0	0
Employer	4	1	3	1	0
Employer Organisation	11	0	4	0	1
Government	0	0	1	0	0
Individual (Employee)	5	5	3	1	0
Local Body	2	0	2	1	0
Religious Body	0	1	3	0	0
Union	0	0	2	0	1
Unknown	1	1	1	0	0
	28	9	23	3	4

Status of Easter Sunday



National Distribution Union members did not provide comment on Easter Sunday's status, however, 2307 members mentioned that employees should be paid time and a half if required to work.

Submitters in the 'other' category provided comment without a preference or provided an alternative option. The only alternative option presented was the removal of public holidays to be replaced by annual leave days. This suggestion has been considered out of the scope of the review.

The majority view if Easter is to be treated as a public holiday is through Mondayisation. This option balanced employee protection whilst limiting employer cost implications to an acceptable level. The least support was for option 4 as this exacerbated current inconsistencies and inequities to an unreasonable level.

“this will mean there is no additional costs for employers who operate on a standard Monday to Friday operation, whilst providing recognition to those employees working a seven day week roster for 24/7 operations”

“[Option Four] would create an additional anomaly and be perceived as unfair by other employees required to work on Easter Sunday”

Enforcement and Penalties

Employee Protection

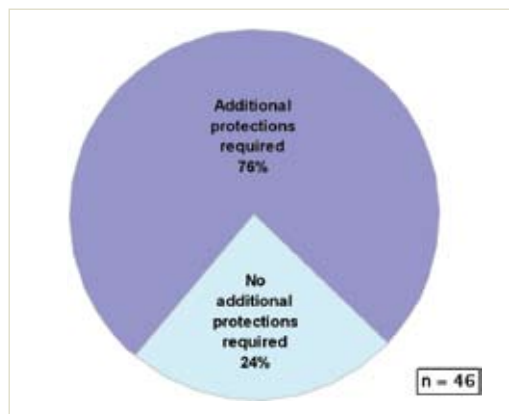
The discussion document provided the recommended protections of the Shop Trading Hours Working Group 2003 for submitters to provide comment on:

- 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.

The support and opposition to this is detailed in the chart below.

Employee Protection



Although not included in the chart 2844 National Distribution Union members supported an increase in employee protections. Of these 2307 members supported a time and a half payment for employees required to work as a protection measure.

Over half of submitters who thought protections additional protections were required explicitly supported a right of refusal for employees. A number of



submitters who supported additional protections were opposed to some of the other suggestions on grounds of impracticality, for example, the use of casual staff.

“suggesting that casual staff could be used in substitution for the regular team is naïve and unrealistic in any industry”

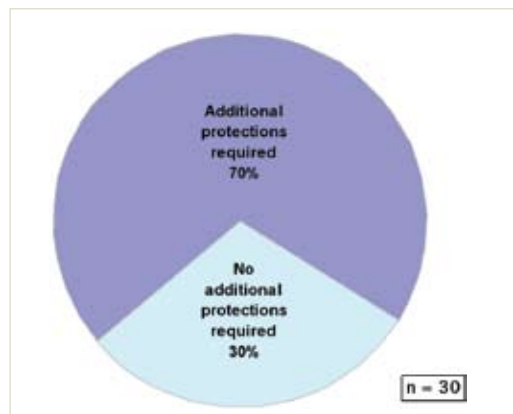
Leaseholder protections

The discussion document provided one recommended option regarding leaseholder protections from the Shop Trading Hours Working Group 2003 for submitters to provide comment on:

- 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.

The support and opposition to this is detailed in the chart below.

Leaseholder Protections



Although not included in the chart 2103 National Distribution Union members supported an increase in leaseholder protections and 26 members were opposed.

Nearly half of submitters in support of additional protections explicitly supported a right of refusal, however, many submitters noted that this should only be an interim measure.

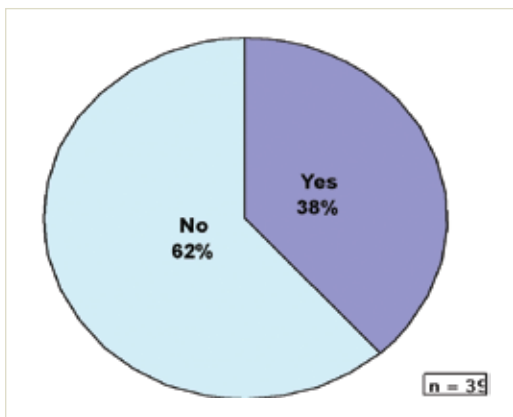
“existing leaseholder businesses should not be forced to open immediately upon the introduction of any liberalisation. However, neither can a business refuse to open forever when having all stores open on a particular day is fundamental to the overall operation of the establishment, such as a mall”

Enforcement

The discussion document suggested:

- Labour Inspectors should be responsible for enforcement and can exercise entry and inspection powers similar to those they have under the

Should Labour Inspector Powers of Enforcement be Increased?



Employment Relations Act 2000.

Submitters provided comment on whether labour inspectors powers of enforcement should be increased with reference to this suggestion. Support and opposition to this is detailed in the chart below.

Many submitters opposed increasing Labour Inspectors powers of enforcement because they thought restrictions should be removed and as such powers of enforcement should also be removed.

Penalties

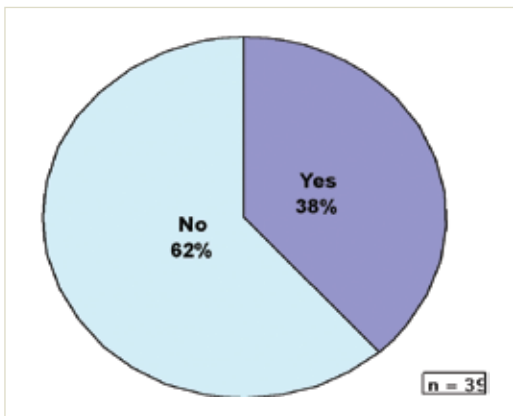
The discussion document provided options for increasing penalties for submitters to provide comment upon:

- status quo;
- increase the maximum penalty consistent with employment relations legislation. 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;
- introduce a minimum penalty. The Department of Labour suggests \$1000 for repeat offenders and shop owners who have previously been warned not to open; and
- 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 fee for the type of infringement to be set via regulation. The Department of Labour suggested a fine of no less than \$500 and not more than \$3000.

Support for these options and other suggested options are detailed in the chart below:



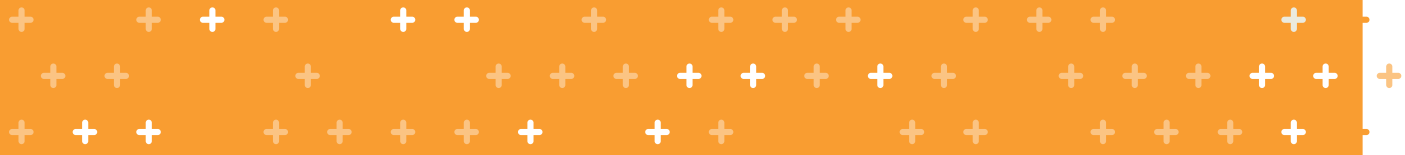
Should Penalties be increased?



Although not included in the chart 1678 National Distribution Union members supported an increase in penalties, and 273 members were opposed.

Other suggestions raised by submitters included the need for a fine to be linked to the turnover or profit for the day. A suggestion that this fine ranged from 100-120% of sales. Another alternative was forcing the business to close on another day.

Of those who opposed increasing penalties, a majority wished to have penalties removed.



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