



Shop Trading Hours Amendment Bill

Commerce committee

The Salvation Army New Zealand Fiji and Tonga Territory Submission

BACKGROUND

1. The Salvation Army is an international Christian and social services organisation that has worked in New Zealand for over one hundred and thirty years. The Army provides a wide-range of practical social, community and faith-based services, particularly for those who are suffering, facing injustice or those who have been forgotten and marginalised by mainstream society.
2. We have over 90 Community Ministry centres and Churches (Corps) across the nation, serving local families and communities. We are passionately committed to our communities as we aim to fulfil our mission of caring for people, transforming lives and reforming society through God in Christ by the Holy Spirit's power¹.
3. This submission has been prepared by the Social Policy and Parliamentary Unit of The Salvation Army. This Unit works towards the eradication of poverty by encouraging policies and practices that strengthen the social framework of New Zealand.
4. This submission has been approved by Commissioner Robert Donaldson, Territorial Commander of The Salvation Army's New Zealand, Fiji and Tonga Territory.

THE SALVATION ARMY PERSPECTIVE

5. The Salvation Army is **opposed** to the passing of this Bill into law.
6. The Salvation Army believes an important part of ensuring the flourishing of our families and communities is ensuring that consumerism at all costs does not become the dominant narrative in law making and reform.
7. We believe that removing Easter Sunday as a guaranteed national restricted trading day prioritises commercialism over the small number of days that many New Zealanders view as sanctuaries, whether for religious significance, or for meaningful rest and time with whanau and in the community.

¹ <http://www.salvationarmy.org.nz/our-community/mission/>

8. We also submit that this Bill cannot create meaningful “choice” for shop workers as it purports to do. It disproportionately impacts upon a certain demographic, including the equitable interests of those who are often working on low, insecure incomes, and does not provide appropriate mechanisms for these workers to adequately exercise their rights in practice.

Religious Significance

9. The Salvation Army is a Christian organisation that celebrates and prioritises Easter Sunday as the central day of observance in the Christian faith.
10. The Salvation Army also acknowledges and celebrates that New Zealand is today a multi-cultural and multi-faith, nation. Our services are provided freely to those who need it, regardless of religious beliefs and without discrimination.
11. We celebrate diversity, but also believe that Easter Sunday still holds significance for New Zealand as a nation. This is reflected in the historical and continuing tradition of observance of Christmas and Easter as periods of public holidays and restricted trading days. Three of New Zealand’s limited 3 ½ restricted trading days are of significance in the Christian calendar.
12. Removing Easter Sunday as a guaranteed national restricted trading day arguably creates a precedent for the further encroachment of commercialism into the small number of days that many New Zealanders view as sanctuaries.

Challenging consumerism

13. The concept of a “Sabbath” is rooted in the concept that human beings require adequate rest if they are to thrive in their work, meet their obligations and enjoy life to the full. Conversely, the absence of a day of rest denies the human need for physical and emotional rest and renewal. In the midst of increasing commercialism and an accelerating pace of life, the observance of a Sabbath, whether on Sunday or otherwise, reinforces the natural rhythm of rest and activity.
14. The Salvation Army believes that in addition to the religious significance, prioritising set days in the year that enable meaningful rest and renewal is an important part of encouraging human flourishing and social capital in New Zealand society.
15. For many workers in New Zealand, Easter weekend is an important and rare opportunity for rest and to spend time with family and friends, even if it is not for religious observance. Easter weekend provides New Zealand workers with guaranteed time off work to take part in sports tournaments, marae gatherings, community and school events, and church or other religious and cultural activities.

16. Outsourcing the responsibility to local Territorial Authorities makes a statement that the Government is not prepared to centrally govern that these days are important, or that they are a priority in the New Zealand calendar.
17. The view that there should be a small number of days guaranteed free of materialism has been reflected in the repeated failure over the years of multiple attempts to liberalise Easter trading hours. Over the past 25 years there have been more than 10 attempts to make changes to Easter trading law without success².
18. The Salvation Army promotes the importance of days in the yearly calendar that enable all New Zealanders, whether Christian or not, to be able to experience rest and renewal with their families and communities.

Significance to low paid workers

19. In working with the Government, The Salvation Army seeks to promote Biblical values, including justice, truth, mercy, equity, human rights and peace, as part of its convictions and practice. We believe these values are also common across many religions and worldviews.
20. Particularly relevant to this Bill is the value of equity. We encourage the Select Committee to focus on the equitable interests of those whom this Bill will primarily affect: shop workers and other associated workers such as cleaners and security guards. New Zealand's minimal 3½ restricted trading days are of particular significance to these workers, given that they are often expected by their employers to work on public holidays so that the shops stay open, when others are able to enjoy rest and time with their families.
21. Whilst the Bill seeks to protect against employers requiring their employees to work on Easter Sunday, The Salvation Army is concerned about the power imbalances that exist and the ability of employees to be able to meaningfully refuse work on Easter Sunday, even if this right is technically in the law. Our Employment Relations Act 2000 actively acknowledges "the inherent inequality of power in employment relationships".
22. There has been much emphasis in debates in the House on this Bill about "choice": choice to shop, and choice for workers to not work on Easter Sunday. However shop workers, cleaners and security staff tend to be some of the lowest-paid in the workforce. In common with most low-paid workers, there is a significant discrepancy between their rights and choice in *principle* and their ability in *practice* to exercise those rights.
23. For example we believe that it is significant that The Ministry of Business, Innovation and Employment (MBIE) has highlighted that there has been a high level of non-compliance with employment standards, such as employees being paid less than the minimum wage, not receiving annual holiday entitlements and not having employment agreements. Seventeen per cent of respondents to Statistics New Zealand's Survey of Working Life (2012) reported

² Julianne Hickey "Government decision on Easter trading will impoverish communities" (26 August 2015) Caritas Aotearoa New Zealand <www.caritas.org.nz>

that they were not receiving at least one of these minimum employment standards³. Such rights are in our legislation, but are not necessarily enforced effectively. This is reflective of the power imbalances that exist in reality in many employment relationships.

24. Low paid workers particularly are at high risk of poorer employment rights and security. There is an established connection between low paid employment and poor working conditions and negative individual and community outcomes⁴. Workers in precarious, low paid employment frequently find themselves in a vulnerable position. Their ability to ask their employer for Easter Sunday off work in practice is not necessarily as simple as has been laid out in the Bill. Financial demands and pressures, fears based on historical bad experiences, unequal relational power dynamics with an employer, and ignorance of remedies available in the case of a breach can all contribute to rights in legislation not being realised.
25. The Salvation Army works with vulnerable families, including those who are working with low, insecure incomes everyday throughout the country, and it is of concern to us that this demographic will be most affected by the Bill.
26. We also note that Easter Sunday is particularly significant for many Pasifika families, given that in the 2006 census just over 8 in 10 Pacific peoples (80.2 percent or 199,983 people) who answered the religious affiliation question identified as Christian⁵. The Ministry of Pacific Island Affairs has identified that Pasifika workers are over-represented in low-paid, semi-skilled or unskilled occupations, such as in retail and cleaning services⁶. Given these statistics, this Bill is likely to disproportionately affect these families and their equitable interests.

SPECIFIC RESPONSES TO AMENDMENT

Clause 15: Enforcement

“Subpart 1: Local Regulation”

27. Whilst the impetus of this Bill was to clarify arbitrary exceptions for certain tourism areas but not others, The Salvation Army submits that this Bill actually further complicates matters by giving every Territorial Authority the power to do something different, even within its own district under clause 15.
28. This has potential implications for effective and consistent enforcement. Whilst this Bill purportedly promises that MBIE will be able to enforce the shop trading rules under local by-

³ Ministry of Business, Innovation and Employment *Regulatory Impact Statement: Strengthening Enforcement of Employment Standards* (2015).

⁴ Katherine Ravenswood “Editorial: Precarious work, vulnerable workers and the Living Wage” (2013) 38(2) *New Zealand Journal of Employment Relations* 1at 2.

⁵ Statistics New Zealand “Quick Stats about culture and identity: Religious Affiliation” 2006 Census <www.stats.govt.nz>

⁶ Ministry of Pacific Island Affairs and Department of Labour *Career Futures for Pacific Peoples* (October 2010) at Section 1: Employment Trends.

laws, The Salvation Army is concerned at the ability of MBIE to do this effectively if there are complex ranges of different rules across multiple areas around New Zealand.

29. In 2013 there were 35 Labour Inspectors for the whole country. From the years of 2012/2013 to 2013/2014, the number of complaints that were resolved by Labour Inspectors fell from 2,063 to 1,563, as did the number of Investigations (1,061 to 856) and Educative engagements (342 to 71)⁷.
30. ***The Salvation Army recommends that a review is undertaken to establish the workload, capabilities and funding for MBIE's Labour Inspectorate in light of the expected new and varied bylaws if this Bill passes.***

“Subpart 2: Employees Rights”

31. MBIE's statistics above do not also necessarily account for employees who are not aware of their ability to make a complaint to MBIE, who feel that they cannot complain, or know what remedies are available in the case of an employment right breach by their employer.
32. Subpart 2: “Employees Rights” in the Bill purports to protect shop employees who may work for an Easter Sunday trader. However, whilst the new section 5J would require notification by an employer of an employee's right to refuse work on Easter Sunday by letter or email, it does not require an employer to inform an employee of their *remedy* rights in the case of a breach. Even if an employee has a letter that informs them that they can refuse to work on Easter Sunday, this is a meaningless notification if they don't know what to do if they choose to exercise that right and suddenly face repercussions or pressure from their employer.
33. ***In light of these dynamics, The Salvation Army recommends that in the event that the Bill does proceed successfully, an additional provision is inserted that requires an employer to disclose key information on remedial matters in their notification letter to their employee, such as:***
- a. ***That compelling an employee to work on Easter Sunday or treating them adversely if they refuse to work would be a “personal grievance”;***
 - b. ***What “compelling” them to work looks like;***
 - c. ***Contact details of the MBIE 0800 Service centre complaint line and website details; and potentially other agencies such as community law centres and citizen's advice bureaus;***
 - d. ***How to access the free employment mediation service.***

34. Requiring sufficient disclosure information in contexts where there may be unequal power dynamics and vulnerability has been utilised before in recent legislation, such as in the amended Credit Contracts and Consumer Finance Act 2003. Section 17 requires that every creditor provides “initial disclosure” of key information, which includes the rights of a debtor,

⁷ Ministry of Business, Innovation and Employment “Labour Inspectorate Information” (31 March 2014) Employment Relations: Services and Support <www.employment.govt.nz>.

and the name and contact details of a dispute resolution scheme in the event of a breach or complaint.

CONCLUSION

- 35.** The Salvation Army opposes this Bill. We believe that it priorities commercialism over centrally ensuring the holistic flourishing of our families and communities, and disproportionately affects the employment rights of those who may be most vulnerable.
- 36.** We note that this Bill has been introduced as a Government Bill, but that the Speaker of the House has allowed a conscience vote. At the heart of a personal or conscience vote is the ability of the member to not vote according to party lines as per voice or party votes. We encourage all MPs to meaningfully use their conscience votes that are available to them in this process if they wish to challenge this Bill.
- 37.** We thank the Commerce Select Committee for this opportunity to submit on this Bill.