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# Shop trading hours amendment bill

Draft submission to the Commerce Select Committee

... 2016

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LGNZ is New Zealand's national organisation of local authorities. All 78 councils are members and membership is voluntary. We represent the national interests of councils and lead best practice in the local government sector. Our purpose is to deliver our sector's vision: "Local democracy powering community and national success," which we deliver through the provision of advocacy, advice, business support and member training.

We would like to the opportunity to speak to our submission.

## Introduction

Thank you for the opportunity to comment on this Bill which allows territorial authorities, through the adoption of a bylaw, to remove restrictions within all or part of their districts that prevents shops from trading on Easter Sunday. The Bill reinforces a fundamental principle for local government and LGNZ which is that local matters should, as far as practicable, be resolved by local communities through their elected representatives.

Public policy involves balancing the interests of the public as a whole with the interests of individuals and their communities. In certain cases the national public interest requires that policy or regulations are applied consistently throughout New Zealand. In other cases, however, it is in the public interest to allow local diversity. Easter Sunday is such an example, as the existence of exemptions testifies.

The ability to allow local diversity is appropriate for a number of reasons. On the one hand it allows communities which have a strong religious or spiritual belief in the importance of Easter Sunday to ensure it remains a day with no or minimal commerce. It also allows communities which have different values or are host to significant visitor populations to take a different approach.

We need a process that allows communities to make these choices.

Although exemptions to trading restrictions on Easter Sunday already exist there is no established process for extending these exemptions in response to changing circumstances. The result is that some cities and districts are disadvantaged compared to their peers. LGNZ's view on this matter goes back to 2005 when our annual general meeting adopted a resolution to this effect. The resolution stated:

That LGNZ in partnership with Rotorua District Council lead a national campaign to gain an amendment to the Shop Trading Hours Act Repeal Act 1990 that will allow territorial local authorities in consultation with their communities throughout New Zealand to make a decision as to whether Easter Sunday trading should be allowed in the region.

The argument made to the annual general meeting emphasised the number of domestic and international visitors in many parts of New Zealand during Easter and the desire of some communities to include retail shopping in their visitor experience. Communities need the opportunity to respond to new visitor trends if that is their wish.

We support the purpose of the Bill which is to empower communities through their councils only to allow trading however we do have a number of specific matters with the content of the Bill and these are discussed below.

## Specific comments

### Section 5A: Power to make bylaws to permit shops to open on Easter Sunday

Sub-section 5A(2) requires that a bylaw include “either or both” a map of the area or a “description of the locality of the area” to which the bylaw, permitting shops to open, applies. Sub-section 5A(3) states where both are employed and there is an inconsistency the description prevails. In our experience a map is probably a clearer indication of boundaries than text which is likely to be more ambiguous.

**LGNZ recommends** that where a council includes both a map and a description of the area to which a bylaw should apply and there be an apparent inconsistency between the two that the map should then prevail.

### Section 5B: Bylaw must be consistent with the NZ Bill of Rights

The Bill requires, consistent with the LGA 2002, that each council must, when developing a bylaw to allow shop trading, consider the implications of the New Zealand Bill of Rights. LGNZ sees no reason for this requirement for a number of reasons:

1. The purpose of this proposed bylaw making power is very specific (unlike the bylaw making powers in the LGA 2002) and we do not believe that Parliament should enact a Bill where there is a likelihood that implementation would infringe the Bill of Rights. Therefore by definition this requirement should be redundant;
2. The requirement unnecessarily increases the cost to councils of developing the bylaw, as legal advice will inevitably be required. It also exposes councils to a risk of judicial review;
3. The impact of the bylaw should be the same in every city or district therefore if clarification was required a specific statement to the effect that any bylaw made under this Act was consistent with the Bill of Rights would be appropriate.

**LGNZ recommends** that Section 5B is either removed or replaced with a statement to the effect that any bylaws made under this Act are deemed to be consistent with the NZ Bill of Rights Act.

### Section 5D: Review of bylaws

This Section deals with the process for reviewing bylaws. Sub section (1)(b) states that a territorial authority “must review a bylaw ..... no later than 5 years after the date on which it is made”. This is consistent with the LGA 2002 provision that bylaws are reviewed five years after adoption. However, the LGA 2002 goes further by requiring that bylaws must be reviewed every ten years following their initial five year review (S. 159). The current Sub-section (1)(b) as drafted may create some uncertainty as to the frequency of reviews after five year period.

**LGNZ recommends** that Sub-section (1)(b) is amended to make it clear that, after a bylaw made under this act is reviewed, further reviews must occur in accordance with S. 159 of the LGA 2002 (i.e. every ten years).

### Existing exemptions retained

The Bill makes no changes to the existing exemptions to Easter Sunday trading. These exemptions apply, in full or part, to a number of districts and cities. We are not sure that it is helpful to retain the existing exemptions and their presence undermines the intent of the Bill which is to allow communities, through their councils, to determine exemptions. Should the Committee agree with this argument a phase out or transition period would be appropriate.

**LGNZ recommends** that the existing exemptions to the Shop Trading Hours Act 1977 are removed after a suitable transition period.

### Conclusion

We are pleased that the Bill addresses the unfairness in the current legislation which allows only a select few to trade on Easter Sunday. The current framework is too inflexible to respond to the speed of change in our regions and districts. Not only do community values change over time but as we have seen it is impossible for legislation to predict which cities and districts will successfully, over time, reconstruct themselves as popular visitor centres

The Bill also recognises that there are some situations where there is no over-riding policy rationale for national consistency and that in these situations territorial authorities, working with their communities, are the appropriate level of government to determine locally appropriate policy and regulatory settings.

LGNZ looks forward to discussing these matters with the Select Committee.

Lawrence Yule

President

LGNZ