

## Strategic objective and impact assessment for Option 1 (Status Quo)

### *Auckland's People – Positive Impact*

- There are likely to be positive impacts for Auckland's people with more people retaining a guaranteed day off for family, whānau, leisure, cultural and religious activities.
- Aucklanders and tourists can still access shops selling essential supplies, attractions, restaurants and cafes which can all legally open for trade.
- Key themes include 'It's only a couple of days a year / No need to shop every day', 'Gives employees time off', 'People should spend the weekend with their families'.
- People most likely to support this option include Females, South Aucklanders, people over 60, Pacific Peoples, Christian churches, social organisations, faith groups, and Māori who completed the Public Engagement Survey.
- There are clear benefits from ensuring a balance between work and time off on, including productivity, and engagement and employee health and wellbeing.<sup>1</sup>
- New Zealanders have among the longest working hours in the OECD<sup>2</sup>. Research based on Census 2013 data showed 31 per cent of New Zealanders felt they did not have enough quality time with their children<sup>3</sup>.
- Due to its increasing diversity there are a wide range of faith groups in Auckland. Faith groups were in support of retaining Easter Sunday as a religious holiday. They were also supportive of having more religious holidays for non-Christian religions.

### *Auckland's Economy – Neutral Impact*

- Some retailers and services can legally trade.
- May create an uneven playing field for Auckland businesses that do not get the opportunity to open for trade on Easter Sunday, and who may want the opportunity to gain a share of spending on the day. This theme was highlighted by 11 per cent of Research Survey respondents, and by businesses and business organisations.
- Arguably under the status quo the principle of freedom of enterprise may not be supported. However, New Zealand has among the most liberal trading hours in the world, and the benefits to businesses through revenue on the day are uncertain. There is no evidence to suggest that retaining the 3.5 restricted trading days will be detrimental to most businesses. Several stakeholders in support of the status quo believed that tourists had plenty of access to tourist attractions, restaurants and essentials under status quo.
- There may be some shift to online trading on Easter Sunday including to overseas businesses in line with an ongoing trend<sup>4</sup>. Family First suggested in order to prevent the transfer to online spending New Zealand shops would need to be open 24 hours, seven days a week.
- The Ministry of Business Innovation and Employment's Labour inspectorate is responsible for the enforcement of Shop Trading Hours Amendment Act 2016 (the Act) but indicates it is focused on responding to complaints, rather than proactively investigating breaches of the Act. Its resources are now prioritised toward serious exploitation of employees<sup>5</sup>.

<sup>1</sup> United Kingdom Department of Innovation and Skills: Costs and Benefits to Business of Adopting Work Life Balance Working Practices: A Literature Review, Deborah Smeaton, Kath Ray, Genevieve Knight, Policy Studies Institute, Published June 2014

<sup>2</sup> Approximately 14 per cent of employees work very long hours - more than average of 13 per cent across the OECD [New Zealand OECD – Better Life Index]

<sup>3</sup> Statistics NZ – Family and Household Connections: NZGSS 2014.

<sup>4</sup> Service IQ, A Profile of the Retail Sector in New Zealand, 2014, Infometrics

<sup>5</sup> MBIE Regulatory Impact Statement Easter Sunday Shop Trading, 14/07/2015

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- Recent data show a low number of complaints about breaches of the Act, which could indicate that people are less concerned about such breaches. In recent years the number of complaints fell from ten in 2013 to three in 2017. Only four fines were issued. The Ministry highlights the number of businesses breaking the law is likely to be much higher than reflected in complaints data<sup>6</sup>.
- Businesses that choose to open for trade without an exemption under the Act can be liable for a fine of \$1000, although a fine of \$500 is most common<sup>7</sup>.
- Businesses that were the subject of complaints were large hardware retailers, car retailers, and Chinese dry goods companies. In most cases where complaints are made businesses are given a warning rather than a fine.
- The Ministry highlights a strong overlap between businesses that breach the Act by opening and wider problems with employment conditions and poor business practices. Some of the businesses breaking the law are overseas owned or migrant operated<sup>8</sup>.
- Some employees would take the opportunity to work and gain an additional day's wages.

### *Auckland's Māori & the Māori Plan – Neutral Impact*

- The Auckland's Māori strategic objective seeks to ensure the Treaty of Waitangi and customary rights will be honoured. The Māori Plan seeks to achieve healthy and prosperous Auckland for Maori. The two most relevant priorities in the Māori Plan as they relate to the Easter Sunday trading decision is Priority 4: Enable Māori aspirations for thriving self-sustained Marae.
- Māori concepts of 'whakawhanaungatanga', 'kaitiakitanga' and 'manaakitanga' in the Maori Plan could arguably be supported via retention of the status quo (Option 1).
- The concepts of 'kaitiakitanga' and 'rangatiratanga' may also be applicable as impacts in relation to more shops open (Option 2). There was a mixed view from Māori stakeholders on the issue with, 51 per cent of Māori completing the Research Survey preferring more shops open. Conversely, 72 per cent of Māori completing the Public Engagement Survey form preferred the status quo.
- Māori stakeholders (including union leaders and churches) highlighted Easter Sunday was an important day for spending time with whānau as well as marae working bees, unveilings and sports tournaments/events. These activities support 'Kotahitanga' (togetherness, collective action)<sup>9</sup>.
- A Māori union leader noted that if employers wanted people to work on Easter Sunday they should be prepared to pay time and a half. They also highlighted concerns around the ongoing liberalisation of shop trading over time and its impact on employees.
- Māori have relatively high levels of employment as retail employees<sup>10</sup> and increasingly as business owners<sup>11</sup>. Some Māori employees may also be precarious workers<sup>12</sup>. Retaining the status quo would mean more of these employees retain a guaranteed day off. Although, some Māori employees may prefer to work.

<sup>6</sup> DOIA 1617-1597 MBIE OIA request –Number of Auckland Complaints from 2013-2017 for Easter trading only, July 2017

<sup>7</sup> MBIE Regulatory Impact Statement Easter Sunday Shop Trading, 14/07/2015

<sup>8</sup> Based on discussion with MBIE – Labour Inspectorate, June 2017

<sup>9</sup> Māori Dictionary – Māori dictionary.co.nz

<sup>10</sup> In 2013, 13.5 per cent of Māori in Auckland were employed as sales employees, following professionals 18.3 per cent and managers 15 per cent.

<sup>11</sup> In 2013, 17.2% of Māori who were self-employed were in the Wholesale, Retail and Accommodation & Food Services industry

<sup>12</sup> New Zealand Christian Council of Social Services – Fact sheets on Poverty Fact sheet 5: Getting a job doesn't solve the poverty problem <http://nzccss.org.nz/work/poverty/facts-about-poverty/fact-5-getting-a-job-doesnt-solve-the-poverty-problem/>

### Strategic objective and impact assessment for Option 1 (Status Quo)

- Some Māori businesses<sup>13</sup> would not get the opportunity to trade on Easter Sunday under the status quo. Māori tourism businesses would retain the ability to trade under either option.
- Engagement with Māori, Pacific people and diverse ethnic groups via intercept surveys at the Papatoetoe Night market and the Manukau Institute of Technology showed a preference amongst part time retail employees for the Option 2 (more shops open), whereas full-time retail employees favoured Option 1 (status quo).
- In the Research Survey, there was no statistically significant difference between the preferences of employees / non employees<sup>14</sup>.

### Strategic objective and impact assessment for Option 2 (More Shops Open)

#### *Auckland's people – Neutral Impact*

- More Aucklanders would lose a guaranteed day off if more shops open on Easter Sunday.
- Shop employees, unions, Māori and Pacific people, churches, faith groups, ethnic organisations expressed a concern that there are only a few days in the year (3.5) when people can have a day off to spend with their families.
- Auckland is highly diverse and is home to two thirds of New Zealand's Asian and Pacific Communities<sup>15</sup>. Asian people are highly represented in the retail sector, comprising 15.2 per cent of employees in 2013.
- Of Asian people completing the Research Survey 66 per cent were in favour of Option 2 (more shops open) compared with 34 per cent of Pacific people and 55 per cent of total people.
- In contrast, Easter Sunday is of particular significance to Christians. Around 615,000 Aucklanders identified as Christian in the census<sup>16</sup>.
- Pacific people are highly religious (73 per cent in 2013) viewing their Christian beliefs as integral to their culture and tradition<sup>17</sup>.
- Pacific leaders who shared their views at the Pacific Leaders Fono were especially concerned at the potential change from the status quo.
- Christianity has also been highlighted by stakeholders including Church leaders as the basis of New Zealand's laws and traditions.
- Pacific people are relatively highly represented in the retail and related services and are most frequently in low-skilled, low-paid and unsecure positions<sup>18</sup>.
- Pacific people have low levels of business ownership - 4.1 per cent of Pacific people own their own business compared with 15.4 per cent for the total population<sup>19</sup>.

<sup>13</sup> Data show more than 21,000 Māori run their own business. In 2013, there were 21,700 Māori in business; 14,900 of which were sole traders and 6,800 were employers. This is compared with the total self-employed population of 365,800, with 235,900 sole traders and 129,900 employers. Māori are half as likely to be self-employed as the total population although this increasing alongside a decrease in total self-employment (2013 Census ethnic group profiles: Māori-Statistics NZ)

<sup>14</sup> Waycom Ltd – Easter Sunday Trading Feedback Final Report for Auckland Council, June 2017

<sup>15</sup> Auckland Profile - Initial results from the 2013 Census, May 2014 Social and Economic Research Team Research, Investigations and Monitoring Unit Auckland Council

<sup>16</sup> In 2013 around 615,00 of the 772, 098 people in Auckland, declaring at least one religious affiliation identified as being Christian with Easter Sunday being one of the most significant days of the Christian calendar.

<sup>17</sup> June 2016 Pacific Peoples In Understanding who we are 2016, Census population count 2013.

<sup>18</sup> Pacific People in NZ | How are we doing – Pasifika Futures, 2015

## Strategic objective and impact assessment for Option 2 (More Shops Open)

- Pacific people are concerned that Pacific people will find it difficult / would be unlikely to use the protections in the Act. Research suggests a relatively high proportion of employees are unaware of their employment rights and that some employees are not receiving their entitlements. There are also barriers to the personal grievance process. Unions were also concerned about employees who may be within the first 90 days of a trial period and may be reluctant to ask not to work on Easter Sunday.
- The Rainbow Panel noted there is evidence to show LGBTI people and especially trans people are more likely experience workplace discrimination and may feel uncomfortable using the protections in the Act<sup>20</sup>.
- The Salvation Army in its submission on the Shop Trading Amendment Bill 2016 noted key concerns around equity and worker protection in relation to the Act including:
  - 'that the 'Employment Relations Act 2000 actively acknowledges "the inherent inequality of power in employment relationships'
  - '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'
  - 'an 'established connection between low paid employment and poor working conditions and negative individual and community outcomes'
  - 'the Ministry of Business, Innovation and Employment has highlighted that there has been a high level of non-compliance with employment standards.'
- Research by Ministry of Business, Innovation and Employment on the personal grievance process showed that employees may face barriers to pursuing a personal grievance claim including 'stress and the fear of costs, both of which were exacerbated by the thought of a drawn-out process'.
- 'Seventeen per cent of respondents to Statistics New Zealand's Survey of Working Life (2012) reported that they were not receiving at least one of the minimum employment standards'. Minimum employment standards include employees being paid the minimum wage, receiving annual holiday entitlements and having employment agreements.
- Businesses and business organisations highlight that there are strong protections in place for employees who do not wish to work. They want Council to clearly take account of and highlight this in the context of this decision.
- Some Aucklanders could benefit from having more shops open providing increased convenience and leisure. This is reflected in the 55 per cent of Research Survey respondents and 39 per cent of Public Engagement Survey respondents.
- It is difficult to predict how many shops will choose to open if permitted. Progressive Enterprises indicated that it may only choose to open certain shops where high demand is expected.
- A survey of its members by the Auckland Chamber of Commerce showed that 60 per cent of 1,000 respondents favoured Option 2 (more shops open), with 40 per cent in favour of Option 1 (status quo). A public online survey on the Inside Retail website showed that 62 per cent favoured retailers being able to trade, with 36 per cent opposed<sup>21</sup>.

### ***Auckland's economy – Neutral Impact***

<sup>19</sup> Ministry of Pacific Peoples, Contemporary Pacific Status Report A snapshot of Pacific peoples in New Zealand, November 2016.

<sup>20</sup> A discussion with the Rainbow Communities Advisory Workshop was held at its meeting on 12 June 2017.

<sup>21</sup> <https://insideretail.co.nz/> Yop polls - Easter trading 'Should retailers be allowed to open on Easter Sunday?'

## Strategic objective and impact assessment for Option 2 (More Shops Open)

- There is limited evidence of an overall benefit to the Auckland economy by permitting more shops to open for trade on Easter Sunday because Aucklanders make up the bulk of spending in the economy and they have set incomes.
- There may be potential for increased gross domestic product from overseas visitor spending if all shops in the central business district were allowed to open on restricted shop days. However, the growth in spending is likely to be limited because most tourist-oriented businesses are already able to operate – restaurants, duty free shops, and shops at public transport locations.
- More businesses may take the opportunity to open on Easter Sunday. This supports the principle of freedom of enterprise and enables a level playing field for businesses allowing them to compete with other businesses for a share of the day's revenue. On the other hand, some businesses may also feel pressure to open when they would otherwise prefer to remain closed if all other shops were opening.
- If all shops in Auckland were permitted to open, businesses would no longer risk being penalised for breaking the law as when they chose to open for trade on Easter Sunday without an exemption.
- More employees could choose to gain an extra day's wages if more shops open for trade. Although, Easter Sunday is not a public holiday and employees will not be eligible for time and a half or a day in lieu.
- The Act extends protections to all employees to not work on Easter Sunday without giving a reason.
- However, some stakeholders are concerned about the ability for precarious employees to utilise these provisions due to lack of awareness, power imbalances between employees and employers, barriers to the personal grievance process including stress, fear of costs and a drawn out process.
- Businesses and business organisations reinforce that there are strong protections in place to support employees who do not wish to work on Easter Sunday. These groups want council to clearly convey and take account of this in its decision making.
- While Option 2 allows for a sub option to allow shops to trade in only parts of Auckland, stakeholder feedback was overwhelming in favour of shops being able to trade in all parts of Auckland (92 per cent of Research Survey respondents and 94 per cent of Public Engagement Survey respondents who indicated their support for Option 2 with similar results for the other engagement methods). In those few instances where trading in only parts of Auckland were raised, malls, city and the central business district were mentioned most often.

### ***Auckland's Māori and the Māori Plan – Neutral Impact***

- Māori stakeholders views are mixed. Slightly more Māori who completed the Research Survey favoured Option 2 (more shops open), whereas Option 1 (status quo) was favoured for Māori completing the Public Engagement Survey.
- Face to face engagement with Māori showed a stronger preference towards retaining the status quo to preserve a guaranteed day off for cultural, whānau reasons, and due to concerns for the ability of Māori employees to refuse to work on Easter Sunday if they're asked.
- For Māori business and employees Option 2 (more shops open) would enable them to generate an additional day's revenue or wages.