



## COVERSHEET

<b>Minister</b>	Hon Michael Wood	<b>Portfolio</b>	Workplace Relations and Safety
<b>Title of Cabinet paper</b>	Queen Elizabeth II Memorial Day Bill: Approval to Introduce	<b>Date to be published</b>	2 November 2022

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
19 September 2022	Queen Elizabeth II Memorial Day Bill: Approval to Introduce	Office of the Minister of Workplace Relations and Safety
19 September 2022	Cabinet minute CAB-22-MIN-0397 - Queen Elizabeth II Memorial Day Bill: Approval to Introduce	Cabinet Office
12 September 2022	Cabinet minute CAB-22-MIN-0386 - Additional Item: Queen Elizabeth II Memorial Day	Cabinet Office

### Information redacted

**NO**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

## In Confidence

Office of the Minister for Workplace Relations and Safety

Cabinet

## Queen Elizabeth II Memorial Day Bill: Approval to Introduce

### Proposal

- 1 This paper seeks Cabinet's approval to introduce the *Queen Elizabeth II Memorial Day Bill* (the Bill). The Bill provides for a day of commemoration on 26 September 2022 to acknowledge the long and dedicated service of Her Majesty Queen Elizabeth II to New Zealand, and for the commemoration day be observed as a public holiday in New Zealand.

### Cabinet agreed to implement a one-off public holiday to acknowledge the service of Queen Elizabeth II

- 2 Her Majesty Queen Elizabeth II passed away on 8 September 2022, in the 71st year of her reign as Queen of New Zealand.
- 3 New Zealand will mark the passing of Queen Elizabeth II with a State Memorial Service on Monday 26 September. The Service will be held in Wellington Cathedral of St Paul and will be televised.
- 4 On 12 September 2022 Cabinet agreed to introduce legislation to implement a one-off public holiday, called Queen Elizabeth II Memorial Day (QE II Memorial Day) to also take place on Monday 26 September 2022. It noted that this is fitting to mark the death of our longest serving and much-loved Sovereign [CAB-22-MIN-0386].
- 5 Cabinet agreed that QE II Memorial Day be treated as a public holiday for the purposes of the Holidays Act 2003, and that that Act will apply, with any necessary modifications, to the observance of the day (meaning that the standard public holiday rules will apply for working on the day and paying employees)<sup>1</sup>. It also agreed that QE II Memorial Day is to be treated as day on which a school must close. Cabinet noted that no shop trading restrictions or restrictions on the sale of liquor will apply to the day.
- 6 Cabinet agreed that the Bill be introduced as soon as practicable and invited me to issue drafting instructions to the Parliamentary Counsel Office to give effect to its decisions. PCO have now finalised the Bill for introduction, reflecting Cabinet's decisions. It is attached.

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<sup>1</sup> If 26 September is an 'otherwise working day' for an employee, they will be entitled to a paid day off work. All employees who work on 26 September must be paid time and a half. If an employee works and it is an 'otherwise working day' the employer must also provide the employee with an alternative paid day off work.

**I have clarified two matters for the purpose of finalising drafting**

7 Cabinet authorised me to take further policy decisions consistent with the policy decisions agreed by Cabinet. These relate to two issues which were surfaced during the drafting process.

- i. *Whether, like other national public holidays, QE II Memorial Day will be considered a 'working day' for statutory deadlines and timeframes expressed in terms of working days, and for private contractual provisions where these rely on working days.*

Around 300 statutes define and/or refer to the term "working days" (or alternatively, "business days"). The term is typically used for the purpose of setting out a statutory timeframe within which a legislated or contractual action must be taken or a notice period that must be given. Days that are national public holidays under the Holidays Act 2003 are excluded from all statutory definitions of 'working day'. A decision was therefore needed on whether QE II Memorial Day should be treated the same.

Officials from the Ministry of Business, Innovation and Employment (MBIE) engaged with a range of government agencies, and with the New Zealand Law Society, to understand the consequences of treating, or not treating, QE II Memorial Day as a 'working day'. They all supported QE II Memorial Day being a non-working day.

Feedback included that:

- Organisations throughout New Zealand are now aware that QE II Memorial Day will be a public holiday, and are used to national public holidays being treated as non-working days. They are therefore likely to have begun putting contingency plans in place. Any shift in that policy would involve those terms potentially needing to be changed back again.
- Treating QE II Memorial Day as a working day (for the purpose of statutory timeframes) when most people are in fact not working would give rise to confusion and mixed messages.
- Making QE II Memorial Day a 'working day' for statutory purposes means that more people will likely need to work on that day to ensure statutory and contractual deadlines are met. That will increase costs for the public and private sectors.

For these reasons, I have decided that QE II Memorial Day should not be considered a 'working day', as per all other national public holidays.

- ii. *Whether, like all other public holidays, QE II Memorial Day be a non-release day for the Department of Corrections and Oranga Tamariki.*

## IN CONFIDENCE

Corrections and Oranga Tamariki have requested that, in line with all other public holidays, QE II Memorial Day should be a 'non-release day'. This means that no inmates will be released from correctional facilities on 26 September 2022.

Prison or youth facility releases require support from whānau, social workers and accommodation providers. Securing this support on a public holiday is challenging, and releasing inmates without it could lead to unintended outcomes for the inmate and those around them.

For this reason, I have decided that QE II Memorial Day should be considered a 'non-release day'. Corrections and Oranga Tamariki have systems in place to manage release dates in line with statutory requirements and will apply these as per any other public holiday.

- 8 These two decisions are reflected in the draft Bill.

### **Cabinet agreed that the Government propose the Bill be passed under urgency**

- 9 Cabinet agreed that the government propose that the Bill be passed under urgency by 23 September 2022.
- 10 I propose that Cabinet agrees that the attached *Queen Elizabeth II Memorial Day Bill 2022* be introduced immediately following its meeting on Monday 19 September 2022. I also propose that all stages of the Bill be debated under urgency during that week. The Leader of the House has agreed to this process.

### **Impact Analysis**

- 11 The Treasury has noted that the passing of a long-standing Sovereign is an unprecedented event, and there is no existing exemption ground within the Regulatory Impact Analysis system that this scenario would fall under. Ordinarily, a Supplementary Analysis Report (SAR) or Post-Implementation Review (PIR) would be required for proposals that are not eligible for an exemption; however, given the surrounding circumstances and the fact that the proposed Memorial Day is a one-off event, it considers that there is little value-add to supplementary analysis in this case and will not be requiring a SAR or PIR.

### **Compliance**

- 12 The Bill complies with each of the following:
- 12.1 the principles of Te Tiriti o Waitangi, the Treaty of Waitangi;
  - 12.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
  - 12.3 the disclosure statement requirements. A disclosure statement has been prepared and is attached to this paper;

- 12.4 the principles and guidelines set out in the Privacy Act 2020;
- 12.5 relevant international standards and obligations;
- 12.6 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

### **Consultation**

- 13 In addition to the consultation summarised above (refer paragraphs 7 and 8) the Ministry of Education was consulted on the provisions related to the closure of schools on Queen Elizabeth II Memorial Day and Te Arawhiti was consulted.
- 14 Officials from MBIE also discussed the proposal to implement a one-off public holiday with Business NZ and New Zealand Council of Trade Unions (NZCTU). Business NZ raised concerns about the cost impact on businesses in the current economic context. The NZCTU supports the proposal and agrees that the normal rules for a public holiday should apply (as is proposed).

### **Binding on the Crown**

- 15 The Bill is binding on the Crown to the same extent that the Holidays Act 2003 is binding on the Crown.

### **Creating new agencies or amending law relating to existing agencies**

- 16 The Bill will not create any new agencies or alter the function of existing agencies.

### **Allocation of decision-making powers**

- 17 The Bill does not involve the allocation of decision-making powers between the executive, the courts, and tribunals.

### **Associated regulations**

- 18 No regulations will be needed to bring the Bill into operation.

### **Other instruments**

- 19 The proposed Bill does not include any provision empowering the making of other instruments that are deemed to be legislative instruments or disallowable instruments (or both).

### **Definition of Minister/department**

- 20 The Bill does not contain a definition of Minister, department (or equivalent government agency), or chief executive of a department (or equivalent position).

**Commencement of legislation**

- 21 As drafted, the Bill states that the relevant amendments will come into force on the day after the date on which it receives Royal assent.

**Parliamentary stages**

- 22 I anticipate that on Tuesday 20 September, the Bill will progress through from first reading to third reading under urgency. If the Bill progresses as anticipated, the Bill will receive Royal assent before Friday 23 September 2022. It will then come into force the day after the date on which it receives the Royal assent, which will be before Monday 26 September 2022.

**Proactive Release**

- 23 I intend to proactively release this Cabinet paper on MBIE's website, subject to any appropriate withholding of information that would be justified under the Official Information Act 1982.

## Recommendations

The Minister for Workplace Relations and Safety recommends that Cabinet:

- 1 **Note** that on 12 September 2022 Cabinet agreed to introduce a Bill to implement a one-off public holiday (called Queen Elizabeth II (QE II Memorial Day) on 26 September 2022 to acknowledge the service of Queen Elizabeth II to New Zealand [CAB-22-MIN-0386 refers];
- 2 **Note** that Cabinet agreed the Bill be introduced as soon as practicable, and that the government propose that the Bill be passed under urgency by 23 September 2023;
- 3 **Note** that the draft Bill reflects:
  - Cabinet’s decision that QE II Memorial Day be treated as a public holiday for the purposes of the Holidays Act 2003 and as a day on which a school must close.
  - My further policy decisions (taken under the authorisation Cabinet gave to me) that QE II Memorial Day should, in line with all other national public holidays, not be considered a ‘working day’ and be a non-release day for the Department of Corrections and Oranga Tamariki.
- 4 **Approve** the QE II Memorial Day Bill for introduction;
- 5 **Agree** that the Bill be introduced on 19 September 2022 and have its first reading and pass through all its stages under urgency during that week;
- 6 **Agree** that the Government propose that the Bill be enacted by Friday 23 September 2022.

Authorised for lodgement

Hon Michael Wood

Minister for Workplace Relations and Safety