



## COVERSHEET

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|-------------------------------|---|-----------------------------|--------------------------------|
| <b>Minister</b>               | Hon Brooke van Velden                         | <b>Portfolio</b>            | Workplace Relations and Safety |
| <b>Title of Cabinet paper</b> | Holidays Act Reform: Further Policy Decisions | <b>Date to be published</b> | 19 June 2024                   |

### List of documents that have been proactively released

| <b>Date</b> | <b>Title</b>   | <b>Author</b>                                     |
|-------------|--|---|
| May 2024    | Holidays Act Reform: Further Policy Decisions  | Office of Workplace Relations and Safety Minister |
| 10 May 2024 | Regulatory Impact Statement: Holidays Act reform – Further Policy Decisions                  | MBIE  |
| 22 May 2024 | Holidays Act Reform: Further Policy Decisions – Minute of Decision<br>ECO-24-MIN-0081 Minute | Cabinet Office                                    |
| 21 Dec 2023 | Holidays Act Review: background, progress and next steps                                     | MBIE  |
| 28 Mar 2024 | Holidays Act Review: Policy decisions for an exposure draft of the Bill                      | MBIE  |

### Information redacted

**YES**

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.

Some information has been withheld for the reasons of privacy of natural persons, confidential advice to Government, free and frank opinions, and legal professional privilege.



# Cabinet Economic Policy Committee

## Minute of Decision

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

### Holidays Act Reform: Further Policy Decisions

Portfolio                      Workplace Relations and Safety

On 22 May 2024, the Cabinet Economic Policy Committee:

#### Background

- 1        **noted** that:
  - 1.1      in May 2018, the previous government agreed to establish a tripartite Holidays Act Working Group to make recommendations on options for the provision of, and payment for, holiday and leave entitlements and any other matters relating to the Holidays Act 2003 (the Act) [DEV-18-MIN-0098];
  - 1.2      in March 2020, Cabinet agreed to endorse in full the recommendations of the Holidays Act Taskforce as the basis for a substantially amended Act, invited the Minister for Workplace Relations and Safety to issue drafting instructions, and authorised them to make further decisions on issues that may arise during drafting [DEV-20-MIN-0035] (the 2020 Cabinet decisions);
- 2        **noted** that, from 2021 to 2023, the Minister for Workplace Relations and Safety made decisions under the authority delegated by Cabinet to address technical issues, and the Parliamentary Counsel Office (PCO) commenced work on drafting **Confidential advice to Government** Bill, but work has been on hold since June 2023;
- 3        **noted** that, despite refinements made, the detailed methodologies and processes that the previous government agreed to result in inevitable complexity, would require significant changes to payroll systems, and represent a significant and costly compliance burden;

#### Changes to existing Cabinet policy decisions

- 4        **noted** that the following policy changes and additions to the 2020 Cabinet decisions (set out in detail in Appendices Two, Three and Four to the paper under ECO-24-SUB-0081) would simplify obligations and reduce compliance costs while broadly aligning with the existing policy decisions and underlying entitlements model:

**Annual leave (AL) (Appendix Two)**

- 4.1 **agreed to:**
- 4.1.1 rescind the 2020 Cabinet decision that employees continue to become entitled to four weeks' annual leave (AL) after 12 months' continuous employment; and instead
  - 4.1.2 introduce a weeks-based accrual system with a clear set of parameters to support its operation;
- 4.2 **agreed to** adjustments to the provisions in the Act that relate to employees' rights to take AL, employers' rights to require an employee to take AL and to the rules for exchanging AL for payment to reconcile them with a weeks-based accrual system;
- 4.3 **rescinded** the 2020 Cabinet decision that employers must allow employees to take AL in advance beyond their 'pro-rata entitlement' during an annual closedown period;
- 4.4 **agreed to:**
- 4.4.1 rescind the 2020 Cabinet decision that the methodology for determining the hours an employee would have worked on a day of leave (AL and other leave types) be based on a 'calendar day' average; and instead
  - 4.4.2 introduce a formula that uses an average across all days of work in pay periods that started in the previous 13 weeks;
- 4.5 **rescinded** the 2020 Cabinet decision to introduce an audit requirement for employees who have guaranteed hours of work and work additional hours so that, in these situations, guaranteed hours are used as the basis of leave calculations;
- 4.6 **agreed to** amend the 2020 Cabinet decision to introduce a four-part test for paying AL as a regular part of an employee's pay (pay-as-you-go) and to require employers to review its use every 13 weeks;
- 4.7 **authorised** the Minister for Workplace Relations and Safety to make decisions on the detail of provisions for using pay-as-you-go in order to align with the following approach:
- 4.7.1 provide objective criteria for using pay-as-you-go that do not require the application of judgement;
  - 4.7.2 reduce the administrative burden and compliance costs of the review process during employment;

**Other leave types (Appendix Three)**

- 4.8 **agreed to:**
- 4.8.1 rescind the 2020 Cabinet decision to require the comparison of two leave calculations for other leave types; and instead
  - 4.8.2 introduce a consolidated single calculation;
- 4.9 **agreed to** a revised accumulation profile for sick leave to take into account the increase in sick leave from five to 10 days since the 2020 Cabinet decisions;

**Amendments to other Acts (Appendix Four)**

- 4.10 **agreed** to replace the reference to Ordinary Weekly Pay (OWP) in the Parental Leave Employment Protection Act 1987 (PLEPA) with a standalone formula that is aligned with the methodology Inland Revenue currently uses for the calculated income estimate of OWP;
- 4.11 **agreed** to:
- 4.11.1 rescind the 2020 Cabinet decision that on the sale and transfer of a business, employees should have a choice about whether to transfer all of their leave entitlements or have them paid out and reset; and instead
  - 4.11.2 for employees specified in Schedule 1A of the Employment Relations Act 2000 (the ERA), retain the status quo which requires the automatic transfer of entitlements if employment is transferred;
  - 4.11.3 for all other employees, replace the 2020 Cabinet decision with a flexible approach that ensures incoming and outgoing employers have to consider the treatment of entitlements when employees transfer rather than always being paid out under the Act;

**Further policy decisions**

- 5 **noted** that the Holidays (Increasing Sick Leave) Amendment Act 2021 increased the minimum sick leave entitlement from five to ten days and that stakeholders have raised concerns about the fairness of the requirement to provide ten days sick leave to all employees regardless of work pattern;
- 6 **agreed** to a pro-rata approach for providing the minimum 10-day sick leave entitlement so that there is some proportionality between an employee's sick leave entitlement and the quantum of work they perform per week;
- 7 **authorised** the Minister of Workplace Relations and Safety to make decisions on the detail of a pro-rata approach;

**Implementation period**

- 8 **noted** that as part of the 2020 Cabinet decisions, the Ministry of Business, Innovation and Employment (MBIE) was directed to develop a transition plan and to report back to Cabinet, and that MBIE completed this work during its 2021-2022 policy design process in consultation with its stakeholder working group;
- 9 **agreed** that the commencement clause provide that the changes agreed by Cabinet in 2020 to the PLEPA and the Volunteers Employment Act 1973 that remove the exceptions to the AL payment rules, and the changes to the availability provisions in the ERA, come into force two months after the date the Bill receives Royal assent;
- 10 **agreed** that the commencement clause provide that the consequential amendment to the PLEPA to replace the Holidays Act OWP calculation comes into force from the start of the financial year (1 July) following the date on which the Bill receives Royal assent, and that it applies to parental leave applications received on or after that date;
- 11 **agreed** that the commencement clause of the Bill provide that the rest of the Bill will come into force 18 months after the date the Bill receives Royal assent;

**Exposure draft**

- 12 **noted** that the Minister for Workplace Relations and Safety intends to:
- 12.1 seek Cabinet agreement in August 2024 to the content of a consultation document;
  - 12.2 release an exposure draft of the Bill in September 2024 for targeted consultation;
  - 12.3 report back to Cabinet in December 2024 on the outcome of consultation;

**Drafting of legislation**

- 13 **Confidential advice to Government**
- 14 **invited** the Minister for Workplace Relations and Safety to issue drafting instructions to PCO as soon as possible, in order to support the release of an exposure draft in September 2024;
- 15 **authorised** the Minister for Workplace Relations and Safety to make further decisions on minor and technical matters that are in line with the policy decisions above and existing Cabinet decisions where necessary;
- 16 **noted** that, subject to the report back referred to in paragraph 12.3 above and the extent of any further policy changes it results in, the Minister for Workplace Relations and Safety anticipates issuing further drafting instructions to PCO **Confidential advice to Government**
- 17 **noted** that the Bill will be binding on the Crown but, like the Holidays Act 2003, will not apply in respect of the Armed Forces as defined in section 2(1) of the Defence Act 1990.

Rachel Clarke  
Committee Secretary

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**Present:**

Hon David Seymour  
Hon Chris Bishop (Chair)  
Hon Brooke van Velden  
Hon Shane Jones  
Hon Simeon Brown  
Hon Paul Goldsmith  
Hon Todd McClay  
Hon Tama Potaka  
Hon Penny Simmonds  
Hon Andrew Bayly  
Hon Andrew Hoggard  
Hon Mark Patterson  
Simon Court MP

**Officials present from:**

Office of the Prime Minister  
Office of Hon Andrew Bayly  
Ministry of Business, Innovation and Employment  
Officials Committee for ECO