



## COVERSHEET

<b>Minister</b>	Hon Brooke van Velden	<b>Portfolio</b>	Workplace Relations and Safety
<b>Title of Cabinet paper</b>	Reforming employment leave legislation	<b>Date to be published</b>	23 September 2025 2pm

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
August 2025	Reforming employment leave legislation	Office of Workplace Relations and Safety Minister
13 August 2025	Reforming employment leave legislation ECO-25-MIN-0124 Minute	Cabinet Office

### 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 confidential advice to Government and legal professional privilege.

## In Confidence

Office of the Minister for Workplace Relations and Safety

Cabinet Economic Policy Committee

## Reforming employment leave legislation

### Proposal

1. This paper seeks policy decisions for new employment leave legislation: a simpler and more workable replacement for the *Holidays Act 2003* (the Act).

### Relation to government priorities

2. The proposals in this paper relate to the Coalition Government's priorities to rebuild the economy and improve the quality of regulation.
3. Passing reforms to the Holidays Act to simplify the law, give businesses certainty and reduce compliance costs is an action under the Government's Going for Growth plan.
4. Confidential advice to Government

### Executive summary

5. New Zealand's employment leave legislation is broken. Despite good intentions, virtually all employers have, at times, got aspects of its calculations wrong. In the lead up to the 2024 general election, a Simpson Grierson survey found 63% of employers identified Holidays Act simplification as their top priority. Several Ministers from different parties have tried and failed to fix the problem, and they publicly wished me luck when I got the job.
6. The nub of the problem is that employees' entitlements to holiday pay are denoted in weeks, but hours vary for many employees. Parties then have to figure out how to define a working week for each employee, which can be challenging for employees who work variable hours. This basic problem has led to enormous complexity, confusion, and widespread non-compliance, as people have tried to muddle through each circumstance as best they could.
7. The previous Government attempted to fix the Act, and I gave its proposed solutions a fair airing. However, the feedback I received was that much more could be done to simplify the legislation. Large and small employers, and employees themselves, need to be able to understand the law and apply it with confidence, and those proposed solutions missed the mark.
8. I am proposing to 1) Align the accrual of sick and holiday leave under the same set of rules, 2) Denote the accrual in hours worked and 3) Provide for a leave compensation payment (LCP) of 12.5% in lieu of accruing leave for any hours worked above an employee's standard contractual hours or all hours if they have no contractual hours, 4) Increase entitlements for those on parental

leave by having annual leave accrue at the full rate while on parental leave and paid at their usual pay on return to work.

9. These changes will lead to the system being much simpler to administer and understand, meaning employees are much more likely to get their correct entitlement to leave, or otherwise receive LCP.
10. From an employer perspective, the net financial impact of the changes to leave pay will depend on the nature of the working arrangements they use. For arrangements with extra hours, the cost of LCP will be at least partly offset by the decrease in the cost of leave pay when leave is taken. For casual employment, leave-related costs will generally increase (effectively, a pay increase of around 4%), but employers will have more certainty and compliance will be more straightforward. Rough public sector costings generally identified small net reductions in leave costs, if leave was paid according to the proposed minimum standard. However, the actual public sector impacts will depend on the results of bargaining.
11. This paper summarises my proposed system and its impacts, with additional detail provided in the annexes. The overall approach will be a significant improvement to the current Act because employees will know what they are entitled to and employers can be confident they are getting it right.

#### **Setting the scene: New Zealand's leave legislation is holding the economy back**

12. Since 2015 when the Labour Inspectorate undertook targeted compliance work, it has been apparent that non-compliance with the Act is widespread, due to the significant complexity. Key drivers of that complexity include the expectation that all employment situations should be catered for in a single leave system, and ensuring that employees received at least as much pay while on leave as at work.
13. While some casual and fixed-term arrangements can make use of the current Pay-As-You-Go (PAYG) leave system for annual leave,<sup>1</sup> the main leave system also has to accommodate casual arrangements, standard 9 to 5 work arrangements, shift work, and variable rosters. The need to accommodate all types of work arrangements has led to a complex system of multiple different leave payment calculations, and in many cases judgement is required when deciding which one to use.
14. I am consistently told that fixing the Holidays Act is the number one priority for the business community. In its 2023 pre-election survey, Simpson Grierson found that 63% of employers selected Holidays Act simplification as their top priority for an incoming government to address – for the fourth election in a row. Business leaders remind me that the Holidays Act is a prime example of excessive compliance costs hindering business growth (and therefore employment opportunities). Fixing the Holidays Act is rightly part of the Going for Growth Plan – and it's an action that businesses are asking for.

---

<sup>1</sup> In limited circumstances, some employees can be paid holiday pay as PAYG. This means they are paid 8% of their gross earnings on top of their pay instead of getting four weeks of paid annual holidays each year.

15. To avoid wasting work already done, Cabinet agreed to a targeted consultation on a draft Bill that largely reflected the previous Government's decisions [CAB-24-MIN-0334]. This consultation was completed in September 2024.
16. The feedback we received confirmed that more fundamental reform was needed. Many submitters indicated that the draft Bill would not have been a significant improvement on the Act. In fact, there were some who believed that what we put out for consultation was *more* complex and would have higher compliance costs than the legislation we have now.
17. Over the past several months, I have been working to design a system that large and small employers can readily apply. To inform my design decisions and test the impacts and workability of policy choices, I have sought feedback from a small group of lawyers, employers/employer representatives and technical experts. I have also considered feedback from the targeted consultation on the exposure draft regarding specific design features. My officials also sought opportunities for targeted consultation with employers and have been working alongside lawyers and a payroll software provider to inform their advice on workability.

**Meet the Smiths: A family navigating a complex Act**

James runs a small plumbing business, employing six staff. His wife, Mary, works part-time at a clothing store, while their daughter, Alice, attends university and works casually at a cafe. Under the current system, James struggles to calculate and pay annual leave for his staff with variable hours. Mary receives 10 sick leave days per year despite only working two days per week. Alice receives PAYG in lieu of annual leave, although she and her employer are unsure whether she should have access to sick leave as a casual worker.

18. In this paper, I have used an example of a hypothetical family to illustrate how the impacts of the proposed policy changes could be experienced by different groups.

**I seek agreement to the design of a new leave system**

19. To simplify the leave system, I propose to reform:
  - How leave is earned – for most employees, instead of annual and sick leave being provided as lump sum entitlements held in weeks and days, leave will be accrued in hours, starting at day one. For casual employees and for employees that work more than their contractual hours, there will be financial compensation in lieu of leave.
  - How leave is taken – for every hour an employee takes off work, they will use an hour of the accrued leave, without the need to determine what portion of weeks and days of their entitlement they have used.
  - How leave is paid – rather than performing multiple different calculations to determine the correct rate of payment, employers will use a single calculation for payment of leave based on an hourly base rate, across all leave types.

## Introducing hours-based accrual and the leave compensation payment

20. Because the current Act attempts to provide one core system for all working arrangements, the result has been a lack of clarity for employers and payroll providers about which rules to apply in which situations. Instead, my proposal is to use a more bespoke approach that will better cater for New Zealand's range of working arrangements, with two broad systems as follows:
- a core system for contractual hours where employees will accrue leave and use it to take paid time off; and
  - a leave compensation system for leave earned on other hours (casual work and paid additional hours worked by permanent or fixed-term employees above their contracted hours), where employees receive compensation at the time hours are worked, removing the need for complex leave entitlement and pay calculations to accommodate these variable hours.
21. For every hour worked, employees will either accrue paid time off or receive a leave compensation payment.
22. Estimates of the proportions of employees within each system are provided in the table below (based on Stats NZ December 2024 HLFS data).

<i>Core system</i>	<i>Both systems (LCP for some additional hours)</i>	<i>Leave compensation payment only</i>
93% of employees (permanent employment relationship)	9-12% of employees	5% of employees ('casual employees')

### *In most cases employees will accrue leave for every hour worked*

23. For every contractual hour<sup>2</sup> worked by an employee from day one of employment, they will earn (accrue) a portion of their annual leave and sick leave entitlement. I propose setting the statutory minimum accrual rates to produce equivalent outcomes to the status quo (employees working 5 days, 40 hours a week would receive the hourly equivalent of 4 weeks annual leave and up to 10 days sick leave). As with the status quo, employers and employees may negotiate terms and conditions above the statutory minimum.
24. The two key areas where employees may notice a difference in entitlements are in situations where employees change their hours, and in sick leave entitlements for part-time employees.
25. Currently, annual leave balances automatically "scale" to match the working week of the employee when they reduce or increase their hours (for example, if an employee increases their standard weekly hours of work, they effectively receive an increase in leave balance immediately without having to 'earn' it,

<sup>2</sup> In this paper, an employee's 'contractual hours' – on which leave would accrue – are all hours specified (or derivable) in an employment agreement that the employee is required to work, cannot refuse to work and must be paid for. On this definition, casual employees do not have 'contractual hours'.

and if they reduce their hours, they effectively receive a reduction in leave balance).

26. Under the new system, leave balances will reflect hours actually worked in the past, without any scaling for increases or decreases in standard hours. Compared with the status quo, employees who increase their standard hours might notice their leave doesn't go as far. Equally, employees who decrease their standard hours won't see any reduction as they would have in the past. An hour of leave will retain its value, regardless of changes in working hours. Employers will no longer need to monitor and re-calculate annual leave balances whenever employees agree to different working patterns. Overall, the approach is designed to avoid unnecessary complexity and reflect what has been earned based on hours previously worked.
27. There will also be changes to sick leave entitlements for part-time employees. This Government has previously agreed to adopting a pro-rata approach to sick leave (rather than all employees receiving the same entitlement of 10 days regardless of whether they work full or part-time) [CAB-24-MIN-0181 refers].
28. I consulted on a pro-rata approach that ensured a minimum five-day entitlement, with tiered increases up to a maximum of ten days for those working five-day weeks. The methodology was designed to align with the previous Government's other decisions on the exposure draft. Feedback received suggested this proposal was overly complex.
29. I therefore propose to align sick leave accrual with annual leave by adopting hours-based accrual with no minimum entitlement, however the calculations will ensure full-time employees with standard five-day working patterns will receive the equivalent number of days per year as the status quo. This will ensure employees receive a sick leave entitlement that is proportionate to the amount they work.

**The Smiths: Simpler and more proportional leave**

Under the proposals, Mary earns sick leave in proportion to the actual hours she works. While she'll now accrue less than her full-time colleagues, it better reflects her working hours – she only needs two days of leave to cover a week away from work – her full-time colleagues will need five days.

James has been using an hours-based accrual model for years, and was unaware that this approach might make it more difficult to prove compliance with the Holidays Act. These changes greatly reduce his risk of non-compliance and are reasonably easy for him to adopt.

*When employees use leave, they will be paid at a simple hourly rate*

30. The payment for accrued leave (annual leave and sick leave) will be based on current base rate of pay, expressed as an hourly rate. This is significantly simpler than the status quo, which requires different calculations for different leave types, with employers required to make judgements about the most appropriate payment methodology where working arrangements make it difficult to establish the usual rate of pay (by calculating average earnings over a reference period for example).



31. For employees paid piece rates (common in fruit picking, for example), an hourly rate will be derived reflecting their average hourly earnings. This is necessary because these employees' wages are often entirely made up of piece rates (reflecting the amount of fruit picked, for example), so there is no 'hourly base rate' to fall back on.
32. Where employees receive a fixed allowance as part of their regular pay (for example, a contractual higher duties allowance), these allowances will continue to be paid in full during periods of leave. This is a simpler approach for employers and will make it easier for employees to understand what they are being paid.
33. In a shift from the status quo, employees who ordinarily receive other payments – including penal rates, variable allowances, commission payments and annual bonuses – won't have those payments reflected in their leave pay. However, I would note that employees will in future receive 12.5% as leave compensation for any additional hours (i.e. hours that must be separately compensated above the guaranteed contractual hours stated in an employee's employment agreement).
34. In all of these decisions it is important to note the proposed leave payment rules are a statutory minimum, with parties free to agree a more generous pay rate that more closely matches usual pay (for example, through the bargaining process).

**The Smiths: A single payment for leave**

Currently, when one of his plumbers goes on annual leave, James has to calculate their ordinary weekly pay and their average weekly earnings and pay the greater of these for the period of leave. He does this by looking at their gross earnings, which might also include certain other payments, like a variable late night call out allowance or an allowance for providing their own tools.

Under the new system, there is only one payment for leave, based on the plumber's hourly rate. James can now apply this with confidence, knowing he's made the right payment. He even sees a slight decrease in the cost of leave, because it no longer reflects the late night call out allowance, since this can't be triggered when on leave. In light of this, James revisits his approach to incentive payments such as late night call out allowances and decides to offer them to his workers on a more generous basis, given these will no longer contribute to his overall annual leave liability.

*Employees will receive a leave compensation payment for additional/non-contractual hours*

35. In addition to their standard contractual hours, some employees also pick up additional paid hours and shifts as they become available (e.g. during seasonal peaks). Accounting for these variable hours is currently highly complex.
36. Under the current Act, an employee's annual leave pay reflects all payments (including for additional hours or overtime rates) that they would have received if they had been at work or, if it is greater, in an average week over the previous year. If they take a week of leave, the employee might therefore

earn more than they would have if they had worked in that specific week, and different leave pay each time they take leave. This system is complex and it can be difficult for employees to understand their leave payments.

37. There are two main options to simplify compensation for additional hours. Employees could either earn (accrue) additional hours of leave; or they could be compensated as they go via a monetary payment.
38. If employees earned leave on all hours of work, including additional hours, this would result in larger leave liabilities for some employers. For example, part-time employees who work more at certain times of the year could end up with large annual leave balances, which might become difficult for employers to manage when their hours return to their normal pattern. Further, it is likely that complementary rules for 'taking' leave on additional hours would need to be developed, which would add a great deal of complexity to the system.
39. My preferred solution is monetary compensation in lieu of accruing annual and sick leave, for all additional hours worked by employees over and above their contractual hours. This 'leave compensation payment' would be paid at the time the additional hours are worked – an immediate benefit, rather than a stored entitlement. These separate arrangements for additional hours will help keep the leave system simple for the vast majority of employees.
40. There is a decision to make regarding the rate at which leave compensation is paid. I recommend a rate of 12.5%. The 12.5% figure monetises the value of foregone annual leave (which is paid at 8% when the Pay-As-You-Go (PAYG) approach is used under the current Act) and sick leave (whose monetary value would be equivalent to a further 3.85% loading, if the full entitlement was used), with a small addition to recognise other factors (e.g. the relative insecurity of these types of work hours). The rate should not be set too low, as doing so would risk incentivising employers to offer relatively more 'non-guaranteed' hours, rather than the permanent or secure hours that many employees value.
41. I acknowledge that this rate will represent an increase in cost for employers (and an increased benefit for employees) in situations where employees would otherwise have not used their full sick leave entitlement. However, I have recommended this amount to maintain equivalence with the status quo as much as possible.
42. I note that this 'top up' approach may be perceived as double-compensating employees who already receive special overtime or penalty rates for working additional hours. However, the new leave compensation payment serves a different purpose to any premium rates that currently exist in the labour market: the leave compensation payment is related to the foregone accrual while premium rates are often offered as an incentive for work at undesirable times.
43. The net cost impact of paying LCP on additional hours will be situation-specific. The cost of LCP will be at least partly offset by the decrease in the cost of leave pay when leave is taken. This is because pay received for additional hours, along with other variable payments, will no longer be reflected in an employee's leave pay. In some cases, there may be an overall



reduction in leave costs despite the LCP on additional hours. The range of net impacts is described further in the financial implications section of this paper.

*Casual employees will also receive financial compensation in lieu of annual and sick leave*

44. By definition, casual employees do not have to accept any work offered under their employment agreement, and employers are not required to make any work available to them. Estimated to be around 100,000 or 4.5% of employees (typically in the hospitality, retail and health care sectors), casuals typically have variable, unpredictable working patterns. The notion of stored leave entitlements and the ability to use these is difficult to reconcile with arrangements of this kind, where there is no expectation of an enduring employment relationship.
45. The current Act allows 'intermittent and irregular' employees to be paid an 8% PAYG loading instead of receiving annual leave, but does not require it. For sick leave, the Act provides an eligibility test whereby many casuals do, technically, become entitled to sick leave – although they are unlikely to benefit from this entitlement in practice due to impracticality and compliance issues.
46. The consultation on the previous exposure draft asked respondents whether they thought there should be more flexibility around using PAYG. Of the 62 respondents, 47% supported expanding the circumstances in which PAYG can be used and removing the need for complex eligibility criteria and reviews. 62% of employers supported the idea, with only 11% disagreeing.
47. In my view, a simpler solution is to monetise annual *and* sick leave for all casual employees, by paying the same 12.5% loading described above. Replacing the earned leave system with an LCP payment for all casual workers accepts the reality that these employees are unlikely to benefit from storing up paid leave in the same way that regular employees do. Instead, the compensation payment provides an immediate financial benefit which the employee could use however they wish. In many cases, the payments will be more generous than the status quo. The system is simple to understand and reduces risks for employers associated with leave for casual employees.
48. The shift to LCP for casual employees will likely increase leave-related costs for the employers currently paying PAYG (an 8% loading) to casuals, due to the higher LCP rate (12.5%) which compensates for full use of the sick leave entitlement. Full sick leave use is an unlikely scenario for these employment arrangements (many of the affected employees will have no effective access to a sick leave entitlement under the status quo), however, full compensation guards against the risk of casual employees receiving less entitlement than the status quo.

**The Smiths: Leave entitlements for casual work**

Alice earns leave compensation for each hour worked, paid along with her usual pay. As a result, she receives more cash in hand rather than accruing annual and sick leave. If she chooses not to accept work offered to go on holiday, that time will be unpaid (the same as casual workers currently using PAYG now). When Alice calls in sick one morning, she

won't be paid for the shift she misses, because her pay included upfront payment in lieu of sick leave entitlements.

Using the leave compensation payment means her employer doesn't need to track leave balances or reassess her eligibility for sick leave if her shifts become more regular (but she can still turn them down), simplifying compliance and ensuring Alice is correctly compensated.

*Employees will earn paid leave during parental leave, but not during some other non-working periods*

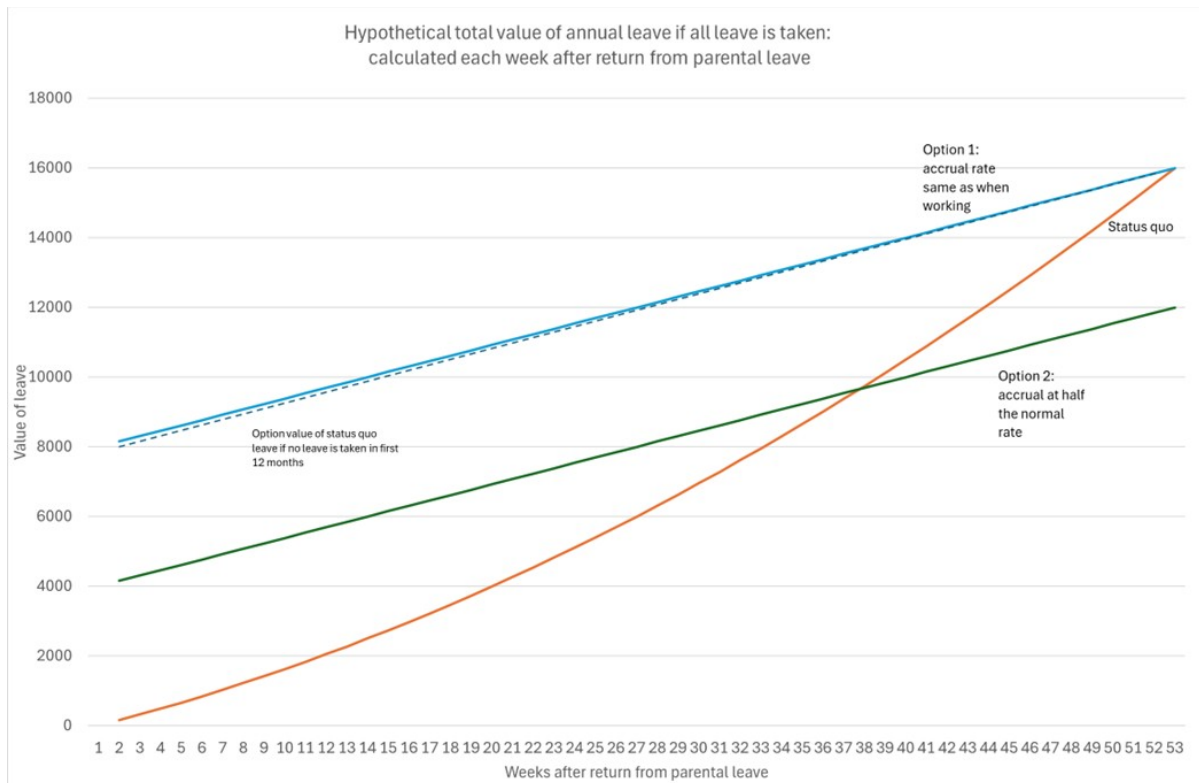
49. Decisions are required on how much leave employees should 'earn' while on parental leave, and the payment for leave on their return to work. In the past year, around 37,000 employees took time off to begin paid parental leave (around 1% of the employed labour force).<sup>3</sup> Currently, annual leave continues to be earned while employees are on parental leave, but they may receive much less pay than usual depending on when they take their leave after returning from parental leave. The continuation of annual leave entitlement recognises that new parents returning to the workforce are likely to need leave (i.e. the right to take time away from work) on their return.
50. However, in recognition of the potential cost impact on employers of leave entitlements continuing, the current rules impose a legislative "override". The "override" means that when an employee takes annual leave during the 12 months following parental leave, they are often paid less than their usual leave rate. The status quo – while complex – seeks to balance employer costs with employee benefits.
51. Many large employers (including most Public Service agencies) avoid this complexity by going above the minimum and paying leave at the usual rate even in the first 12 months after parental leave. However, most small employers and some public sector workforces<sup>4</sup>, use the statutory minimum approach to limit costs.
52. My proposed shift to hours-based accrual means the status quo is not an option. Achieving simplicity will mean paying all annual leave (whenever it's taken) according to the proposed single hours-based payment rate, without any situation-dependent payment rules.
53. Further, I believe that new parents taking annual leave after returning from parental leave should be paid at their normal leave rate, so they are not financially disadvantaged when taking time off work. However, I recognise this will increase the cost for those employers who pay consistent with the current minimum standard.
54. There remains a key choice about whether a person accrues annual and sick leave at the normal rate while on parental leave. There are two options:
  - Option 1: Accrual at the same rate as if the employee was at work (my preferred option): Employees would see no change in leave entitlement

<sup>3</sup> Based on data from 1 April 2024 to 31 March 2025. This figure does not include employees who took parental leave but were ineligible for parent leave payments (e.g., did not meet the working hours threshold or worked for an international organisation).

<sup>4</sup> For example, Health New Zealand collective agreements for some specific workforces (such as nursing and midwifery) state the 'override' applies.

(time) on return to work compared to the status quo and would receive their usual leave pay whenever they take that leave. This is an increase in benefit for employees compared with the status quo.

- Option 2: Accrual at a lower rate (e.g. half of the usual accrual rate per standard hour the employee would have worked): Employees would return to work with half the accrued leave hours they would under either the status quo or option 1. They would (unlike the status quo) get paid at their usual leave pay rate for all annual leave taken (regardless of how soon after parental leave they take it), but would have less leave available to take.
55. Under both options, the employee would accrue leave at the full rate upon return to work.
  56. Option 2 can be seen as a different way of delivering the compromise between ensuring employees have access to leave and the cost to employers of providing that leave (as is attempted under the status quo). While the status quo preserves the entitlement to leave with compromises to the value of leave, option 2 preserves the value of leave but compromises on the amount of leave accrued.
  57. The net monetary effect of option 2, while dependent on when an employee takes leave, is likely to be closer than option 1 to the status quo in most cases. Whether an employee would be better off overall under option 2, compared to the status quo, depends on the value an employee places on access to 'time off' immediately on return to work and pay for that leave at a lower rate, versus the monetary value of the leave.
  58. The following chart provides a stylised picture of the value of annual leave earned during and after a 12-month period of parental leave, under each of the options. The model is based on an employee who earns \$50 per hour and works 40 hours per week, both before parental leave and after their return to work. The value of the leave at each point in time is its value if all leave earned during and after parental leave was taken at that point.



59. As shown in the chart, the cost increase (i.e. the gap between the orange and blue lines) only occurs in the first 12 months after return from parental leave. The benefit of accrued leave will only be realised if the employee returns to work (rather than resigning from their job during the parental leave period, for example).
60. This policy issue has been tested during consultation on the previous exposure draft (though a partial accrual option was not presented). It is fair to say feedback from the public is likely to be mixed. Of the 67 respondents to relevant questions in the exposure draft consultation, 36% supported a full accrual option, while 40% supported an option that would remove the current payment override but stop leave accruing during parental leave.
61. There are competing views of what is considered 'fair' (e.g. it is important to support parents in the workplace vs. leave should be earned for the work you actually do). Concerns were also raised about the cost to businesses, particularly small business. Of the 21 employer responses on this topic, 13 favoured the option where no leave is accrued while on parental leave and leave taken after returning to work is paid at the full rate, while 6 preferred the option with full accrual during leave and full payment upon return to work.
62. After careful consideration, I propose that employees on parental leave should accrue leave in full for the duration of that period, immediately payable at the full rate (option 1). Having the same amount of leave available at its full rate of pay will be a considerable benefit to employees. On balance, I consider this benefit outweighs the cost increase placed on employers in this instance, given the overall savings to employers I expect to occur from having a simpler and more workable leave system.

63. I have, however, decided that leave should *not* accrue in the following circumstances:
- while an employee is on most forms of unpaid leave (with the exception of jury service and volunteers' leave under the Volunteer Employment Protection Act);
  - when an employee is receiving ACC weekly compensation.
64. These represent a departure from the status quo. However, I have received feedback that accumulating annual leave while on ACC leave risks resulting in a significant financial liability, particularly for small employers, if the employee is off work for a long period of time. For example, there are approximately 8,700 long-term claims that are not expected to move off weekly compensation due to injuries, sensitive claims or long-term service.

### **Determining matters of detail**

65. Developing new legislation will require many decisions on matters of detail, complementing the 'big ticket' changes I have described above. I seek delegated authority to make such decisions as I work towards finalising a Bill.
66. For Cabinet's visibility, I have provided at Annex One a full account of the design decisions I have made to date, based on which I intend to issue drafting instructions (under delegated authority). The decisions cover a range of topics but at a high-level aim to achieve system simplicity, and to integrate the new elements with other settings that I am not proposing to change significantly (such as bereavement leave, family violence leave, and public holidays). Among other changes, the design decisions:
- Flesh out the detail on which 'unworked periods' should attract leave accrual, and the payment methodologies for leave and leave compensation payments;
  - Provide a methodology for working out the days on which employees can use leave, if they don't have guaranteed/certain days of work;
  - Make workability changes to the rules for annual closedowns;
  - Adjust the 'cashing up' rules for annual leave to reflect the shift to a new hours-based entitlement system;
  - Make consequential changes to KiwiSaver legislation, which have been worked through with the Minister for Revenue, and to several pieces of legislation (across a range of portfolios) that use the Act's definition of 'ordinary weekly pay' (see decision 18 in Annex One).

### **Implementation**

67. I am proposing that all parts of the new legislation come into force at the same time, with a 24-month implementation period between the date of Royal assent and when the new legislation comes into force, with an exception for the schooling sector as discussed below. I am also proposing that specific transitional provisions provide clarity about the way payroll providers and employers should transition to the new legislation, for example how they



should treat existing leave balances (detailed in Annex One). However, such transitional provisions will not, on their own, address all the complexities stemming from existing contractual entitlements (e.g. entitlements to weeks of leave). Confidential advice to Government

68. As part of the implementation planning, I have also considered how to deal with outstanding remediation claims for non-compliance under the existing Act. My main concern is the high cost of calculating what is owed given the complex, dynamic calculations needed. I am proposing to provide a statutory mechanism that will allow employers to estimate any liability for non-compliance. The details are yet to be designed, but I intend that this approach will be significantly less onerous and more time-efficient than a full line-by-line remediation process for all employees (both current and former) while compensating employees for their minimum entitlements based on the likely degree of non-compliance. Legislation would provide certainty for employers by preventing employees who had received a valid estimate of their arrears from then pursuing legal action to recover specified underpayments (based on a line-by-line analysis).
69. Once the new legislation comes into force, MBIE will be the agency responsible for it, with the Labour Inspectorate enforcing and monitoring the new leave system. MBIE will develop a plan to support payroll providers, employers and employees during the implementation period. MBIE will monitor employers' experiences with the new legislation and will be alive to the potential for minor changes being needed in the future.
70. I propose that the Minister for Workplace Relations and Safety be required to report back on the implementation of the new legislation three years from the date of its commencement. Further information about implementation, and the risks associated with it, are included in the regulatory impact statement.

*Transitional provisions for the schooling sector*

71. The Minister of Education has advised that the schooling sector will not be in a position to comply with the Bill within the 24-month implementation period, due to the need to overhaul its central payroll system. This is expected to take a minimum of 5 years and possibly up to 10 years. This will involve upgrading or replacing the current system to meet contractual commitments and new legislative requirements, a funding approval and design process, negotiating changes to work practices and related elements in the collective agreements, and migrating data once the system is developed. To accommodate this, I propose that the Bill will come into force for the schooling sector by Order in Council, but no later than 10 years after the Bill is passed.

**Cost-of-living implications**

72. The introduction of LCPs will change the timing of when some employees receive compensation for leave. Some employees will likely appreciate the flexibility of receiving more money up front, while others may find it difficult to budget for future periods without work when facing immediate everyday expenses.

73. The Ministry for Social Development (MSD) has highlighted that, for the approximately 10% of beneficiaries who are in employment (30,000-40,000 people), there is a complex interaction between increased wage rates and their disposable income. In some cases, already high effective marginal tax rates mean that additional earnings from work may not result in more disposable income. This is because as their income from work increases, other supplementary assistance they receive reduces. Receiving LCP could mean that some people reduce their hours of work to maintain their level of disposable income. On the other hand, depending on how much an employee is already earning, being paid LCP on some or all working hours could represent a net gain for them. Benefit interactions could therefore impact beneficiaries' decisions about additional working hours, and (in some cases) their ability to save LCP for the future. However, this would not affect beneficiaries' incentive to remain on benefit or exit the benefit system.
74. MSD also noted that, if an employee did choose to save LCP, this may be treated as a cash asset by MSD and this may impact their ability to access hardship assistance or other supplementary assistance.
75. MSD noted that in situations where leave payments are less under the new leave system than they are currently, and where there is reduced access to sick leave for part-time employees, this may disincentivise employment for some clients. I do not agree that the changes are material enough to impact incentives to work, and would nonetheless expect the Government's expectations of work requirements for job-seeking beneficiaries to continue regardless of incentives.

## Financial implications

### *Economy-wide benefits and costs*

76. In the long run, the change in proposed entitlements should not change overall remuneration as bargaining parties seek to reach equilibrium. If entitlements increase under the proposed system, employers could seek to lower future increases in base rates. Conversely, if entitlements decrease under the proposed system, employees could seek higher future increases in base rates. The goals of this policy, therefore, should be simplicity and accuracy, and reducing the time taken to make sure people get what they're owed.
77. In general, all parties will have greater clarity and certainty, and employers will be better able to systematise rules. Employers will benefit from a reduced likelihood of inadvertent non-compliance (and subsequently avoid the need to incur remediation expenses). Employers will also benefit from lower direct leave-related costs in some cases (e.g. reduced sick leave costs for part-time workers), but the overall direct costs will be situation-specific.
78. Under the proposed system, employers will need to pay LCP at 12.5% of payments that make up leave pay in compensation for both annual leave and sick leave. In situations where employees are not currently eligible for sick leave, the net effect will be an overall increase in leave-related costs (by



about 50%), which will effectively amount to a pay rise of around 4.2% (at most).

79. For employees who have some contractual hours but also work additional hours, under the current system, the employer will be taking into account those additional hours when undertaking the multiple calculations of leave pay when the employee takes annual leave or sick leave. For some employees with extremely high additional hours, this can mean their leave pay can be significantly higher than their ordinary pay rate. Under the proposed system, compensation for leave will be made at the time the additional hours are worked. This will bring forward the cost for the employer but it will increase the certainty about the cost of the leave component. The overall change in the cost of leave for these employees will depend on a range of factors. However, the higher the proportion of additional hours relative to contractual hours, the more likely it is that there will be an overall increase in the cost of leave.
80. While greater simplicity is expected to reduce ongoing administrative costs, compliance burden, and remediation costs for all employers, there will be initial implementation and transition costs. This includes payroll system, human resource and employment relations changes. It is not possible to estimate those costs at an economy-wide level.
81. The impacts on small business will depend on the type of contractual arrangements they use to employ their workforce. If their workforce works regular hours in accordance with their contractual hours, then employers will benefit from the simplicity of the new leave accrual and payment rules. However, some small businesses are likely to have a high proportion of casual employees and/or staff who work a high proportion of additional hours on top of their contractual hours. This is a typical pattern in the horticultural, hospitality and retail sectors. In these scenarios, leave-related costs could increase (particularly for casual employment).

*Costs of leave provision for public service departments*

82. Estimates of the ongoing costs of the changes compared to the status quo have been sought from public service departments – focusing on the impact of using leave compensation payments for additional and casual hours<sup>5</sup>. Agencies were asked to complete a survey asking for high-level estimates based on information readily accessible. Twenty-nine responses were received. An important caveat is that the estimates assume that the leave pay rate payable under the new system only includes the minimum elements (the applicable rate plus fixed allowances).
83. A more detailed summary of the costings exercise including implications for Health and Education, as well as the assumptions and limitations, is provided in **Annex Two**. The implications for the public service at a high level:
  - For employees with contractual hours, most agencies estimated a small net decrease in overall annual leave costs compared to the status quo (based on the proposed statutory minima). The reduction in the costs of

<sup>5</sup> A high proportion of public service employees are salaried with little variability in their hours or pay, meaning there will not be a significant overall difference in costs to the status quo and LCP will not apply to the majority.

annual leave pay is due to payments such as overtime rates, penal rates, one-off payments and non-fixed (event-based) allowances not being reflected in leave pay under the proposals. The higher the use and value of those types of pay, the greater the net reductions will be. Confidential advice to Government

- Most public service departments employ very few casual staff (or none at all) meaning LCP impacts will not be relevant in most situations. Confidential advice to Government

- Confidential advice to Government

84. Confidential advice to Government

*Costs of implementation and administration in the public sector*

85. Estimating these costs is not possible for most agencies due to the significant resource that would be required to make a full system assessment of all the changes and the cost of engaging payroll providers to complete the exercise. It will depend on the current state of agency systems and the outcomes of collective bargaining.

**Legislative implications**

86. New legislation will be required to implement the new leave system, which will repeal and replace the current Act. Confidential advice to Government

87. Confidential advice to Government

The new legislation will be binding on the Crown, but, like the current Act, will not apply to the Armed Forces as defined in section 2(1) of the *Defence Act 1990*. The Bill will be an omnibus Bill and will make necessary (related) policy changes to other Acts, as well as consequential changes.

Legal professional privilege, Confidential advice to Government

## Impact analysis

### Regulatory Impact Statement

89. The impact analysis requirements apply to the proposals in this paper. MBIE has prepared a Regulatory Impact Statement (RIS). The RIS is attached.
90. A quality assurance panel with members from MBIE and the Ministry for Regulation has reviewed the Regulatory Impact Statement Holidays Act Reform, produced by MBIE and dated 14 July 2025. The panel considers that it partially meets the Quality Assurance criteria. This rating is attributable to the limited consultation undertaken on the recommended option. This limits the availability of information to support cost/benefit analysis, and fully informed comparison between the options.

### Climate Implications of Policy Assessment

91. The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this policy proposal, as the threshold for significance is not met.

### Population implications

92. The proposals in this paper will benefit a wide range of New Zealanders by lowering the costs of compliance and risks of non-compliance, to ensure workers receive their correct entitlements. The impacts on workers and businesses will depend on their specific arrangements.

### Human rights

93. Legal professional privilege

### **Use of external resources**

94. One contractor (December 2024 to June 2025) was used to manage the overall delivery of the work programme. Three firms have been engaged to provide legal and payroll expertise and were used on an “as needed” basis during the policy development phase.

### **Consultation**

95. The following Public and non-Public Service departments and agencies were consulted: The Treasury, Te Kawa Mataaho Public Service Commission, Te Puni Kōkiri, The Department of the Prime Minister and Cabinet, Inland Revenue, Ministry of Business Innovation and Employment (Small Business and Manufacturing, Building and Construction and Tourism and Hospitality) and the Ministries for/of Education, Health (including Health New Zealand), Justice, Social Development, Foreign Affairs and Trade, Ethnic Communities, Disabled People, Women, Pacific Peoples, Primary Industries, Housing and Urban Development and Regulation.

### **Communications**

96. Subject to Cabinet’s agreement, I intend to issue a press release regarding the design of the new leave system and the next steps toward the introduction of new legislation. The statement will emphasise the following aspects of my proposals:
- Employees haven’t been getting their correct entitlements because the Holidays Act is too complex.
  - We are simplifying the Act so that employers will know what they need to do, and employees know what they should be getting.
  - In most situations, leave entitlements will remain broadly consistent with the status quo. What will change is how some people earn their annual and sick leave. For most, there will be no difference. For some, rather than earning “time” to use in the future, they will be paid for this leave as they earn it.
  - Under the new system, sick leave entitlements will be accrued based on contractual working hours so that they are proportionate.
  - Parental leave entitlements will be more generous than the status quo, by removing the override and ensuring parents (a majority of which are women) are paid their full rate of pay for annual leave when they return to work.

### **Proactive release**

97. I intend to proactively release this Cabinet paper, subject to redactions in line with the Official Information Act 1982.

### **Recommendations**

The Minister for Workplace Relations and Safety recommends that the Committee:

1. **Note** that, in line the previous submission [CAB-24-MIN-0488], the proposals in this paper take a new approach to reforming the Holidays Act 2003 (the Act), prioritising simplicity and clarity, with some reductions in employee outcomes where this is justified by the overall efficiency gains;
2. **Note** that recommendations 3-22 seek agreement to the major policy decisions, with more detailed design elements proposed to be decided by the Minister for Workplace Relations and Safety under delegated authority (see recommendation 25 and Annex One);

*Moving to hours-based accrual for annual leave and sick leave*

3. **Agree** to introduce hours-based accrual for annual leave and sick leave for all contractual hours of work, at rates that produce equivalent outcomes to the status quo for employees working 5 day, 40 hour weeks:
  - i. 0.0769 (i.e. 4/52) of an hour of annual leave;
  - ii. 0.0385 (i.e. 2/52) of an hour of sick leave – up to a cap of 160 hours stored entitlement (reflecting the 20 day cap under the status quo);
4. **Agree** that annual leave and sick leave:
  - i. accrue, at the same rates, on contractual hours during any paid leave, parental leave under the Parental Leave and Employment Protection Act, and during the other unworked periods specified in Annex One;
  - ii. not accrue while an employee is on unpaid leave, or receiving accident compensation under the Accident Compensation Act 2001 (as detailed in Annex One);
5. **Note** that full leave accrual while on parental leave, combined with the recommended approach to leave payments in recommendations 10-12, will result in an additional benefit to employees returning from parental leave, and an additional cost to employers (depending on when leave is taken) compared to the status quo;
6. **Note** an alternative option, partly reflecting the compromise that exists under the status quo (where leave earned during parental leave can initially be paid at a reduced rate), would be for leave to accrue at a lower rate (e.g. half of the usual accrual rate per contractual hour the employee would have worked);

*Requiring the use of a leave compensation payment system*

7. **Note** that in limited circumstances, monetising leave rather than earning annual leave and sick leave as 'paid time off' for every hour worked can simplify the overall leave system;
8. **Agree** that additional hours worked by employees who have some contractually guaranteed hours of work each week, and all hours worked by casual employees, should attract a leave compensation payment (LCP) instead of accruing annual leave and sick leave;



9. **Agree** that the LCP rate be set at 12.5% for every relevant hour worked (noting that further details for the basis of this payment are set out in Annex One);

*Moving to a single leave payment methodology*

10. **Agree** that there be a single approach to the calculation of hourly leave pay rate for all leave types based on an employee's wages or piece rates, as relevant;
11. **Agree** that during leave, any fixed allowances (excluding those that compensate for elements that are not incurred when on leave) must continue to be paid in full;
12. **Note** that the proposed pay methodology will significantly simplify the payment system, but will exclude additional pay components such as commission, variable allowances and bonuses, resulting in lower leave payments for some employees compared to the status quo;

*Implementation and transition period*

13. **Note** that employers, payroll providers and employees will need time and support to understand the new legislation and implement the required changes in their payroll and business systems;
14. **Agree** that (with the exception of the schooling sector) there will be an implementation period of 24 months between the date the new legislation receives Royal assent and the date it comes into force (note further details about the transition approach are included in Annex One);
15. **Agree** to create a statutory estimation process for remediation calculations to deal with claims of non-compliance with the Holidays Act 2003, with the Minister for Workplace Relations and Safety to decide the details of the approach under delegated authority;
16. Confidential advice to Government
17. **Invite** the Minister for Workplace Relations and Safety to report back on implementation three years from the new legislation being in force;

*Extended transition period for the schooling sector*

18. **Note** that the schooling sector (State and State integrated schools) would not be able to comply with the Employment Leave Bill within the 24-month implementation period due to the need to overhaul the schools' central payroll system and agree and implement changes to employment conditions for school employees;
19. **Note** that the Ministry of Education has estimated it may take up to 10 years from the Employment Leave Bill's passing to complete the work that will enable the schooling sector to comply;

20. **Agree** that the Employment Leave Bill will come into force for the schooling sector at a date that is set by Order in Council but no longer than 10 years after the Employment Leave Bill is passed;
21. **Note** that the Holidays Act 2003 will continue to apply to the schooling sector up until the time that the Employment Leave Bill comes into force for the schooling sector;
22. **Note** that the Ministry of Education would need to remediate school employees for breaches under either the Holidays Act 2003 or the Employment Leave Bill (if switching to having that Bill apply occurs before full compliance is achieved);

*Seeking Cabinet authorisations*

23. **Authorise** the Minister for Workplace Relations and Safety to issue drafting instructions to give effect to the policy decisions in this paper;
24. **Note** the detailed design specifications proposed in Annex One, which aim to achieve system simplicity and integrate the new elements with other rules that I am not proposing to change significantly (such as those for bereavement leave, family violence leave, and public holidays);
25. **Authorise** the Minister for Workplace Relations and Safety to decide the design specifications described in Annex One, and to make further policy decisions (additional to those in Annex One) during the legislative drafting process that are consistent with the decisions and overall policy framework described in this paper;
26. **Note** that the additional decisions to be made by the Minister under delegation will include decisions on:
  - i. transitional, record keeping and penalty provisions, and the details of a statutory estimation process for remediation calculations;
  - ii. minor and technical changes (if necessary) to the policy settings specifically agreed by Cabinet;
27. **Note** that the Minister for Workplace Relations and Safety will report back on policy decisions made under the above delegation when the draft Bill is considered by the Cabinet Legislation Committee and seek approval to significant policy decisions (such as the details of a statutory estimation process);
28. **Note** that, where features of the Holidays Act 2003 are not described or altered by the policy decisions outlined in this paper, the presumption is that the status quo, and/or minor improvements to the status quo agreed to in previous Cabinet decisions, will be carried over into the new legislation.

Authorised for lodgement

Hon Brooke van Velden

**Minister for Workplace Relations and Safety**



## Annex One: Detailed design decisions to inform drafting instructions for a new Employment Leave Bill

*Key: Impact rating*

<b>Minimal change</b> from status quo (e.g., existing rules are adapted to the new framework, but outcomes are equivalent).		<b>More change</b> from the status quo (some winners and losers, but the scale of change is small).		<b>Significant change</b> from the status quo (simplifying the leave framework results in larger changes for some employees and employers).	
---	--	---	--	---	--

Design element	Key shift	
<b>Earning leave</b>		
<i>1. Accrual of annual leave and sick leave during periods not worked</i>		
<b>1.1</b> Annual leave and sick leave will accrue on contractual hours during the following unworked periods: <ol style="list-style-type: none"> <li>paid leave provided under the Act and other legislation (paid by an employer);</li> <li>parental leave provided under the Parental Leave and Employment Protection Act (PLEPA). The amount of leave accrued will be based on contractual hours as at the point parental leave commences, except where the employer and employee have agreed to a temporary change in contractual hours lasting three months or less, in which case leave accrual would be based on the employee's usual contractual hours;</li> <li>jury service;</li> <li>volunteers leave provided under the Volunteers Employment Protection Act 1973 (VEPA).</li> </ol>	<p>The first list (periods when leave <i>will accrue</i>) aligns with the status quo: these periods already count as 'continuous employment' under the Act. However, I am proposing to change the payment rules for parental leave. This proposal is discussed in detail in paragraphs 52-68 of the Cabinet paper.</p> <p>Basing leave accrual during parental leave on an employee's usual contractual hours (in some cases) ensures that women are not disadvantaged by temporary changes in hours in the lead-up to childbirth.</p>	
<b>1.2</b> However, employees will not accrue leave during the following unworked periods: <ol style="list-style-type: none"> <li>unpaid leave (at any time, for any purpose, other than those referred to in 1.1)</li> <li>when receiving weekly accident compensation under the Accident Compensation Act 2001. Leave will, however, accrue for hours worked and while on statutory paid leave during these periods (e.g., for employees on a return-to-work plan or using sick leave to top up compensation).</li> </ol>	<p>The second list (periods when leave <i>will not accrue</i>) differs from the status quo:</p> <ul style="list-style-type: none"> <li>Currently, employees continue to earn leave during the first week of unpaid leave, and when unpaid leave is provided for certain purposes (sickness, bereavement, family violence). I consider it simpler for all unpaid leave to be treated in the same way (i.e., no accrual).</li> <li>Currently, employees earn leave while on ACC. This practice can impose unreasonable costs on employers and I don't consider it to be justified.</li> </ul>	



	This point is further discussed in paragraphs 63-	
<b>1.3</b> If an employment agreement includes a contractual obligation to work but doesn't specify all the information needed to determine someone's leave entitlements (such as the number of hours the employee must work on particular days), then it must include a notional roster that will be used for leave purposes. If the parties cannot agree, the Labour Inspectorate can determine an employee's notional roster for leave purposes.	Benefits both employers and employees by removing ambiguity around leave eligibility. Currently, if someone's days and times of work are not clear, the Act requires the parties to exercise judgement to decide whether a particular day (in the future) is one on which leave can be used, and if so, how many hours of leave must be taken. Requiring leave-eligible days and hours to instead be specified in the employment agreement will remove one area of complexity and potential dispute.  This requirement won't prevent parties from agreeing to highly flexible working arrangements. The notional roster will be just that – notional – and will only be binding for leave purposes.	
<i>2. Entitlement to existing bereavement leave and family violence leave provisions</i>		
<b>2.1</b> Bereavement leave and family violence leave will still be allotted in days, with no change to existing entitlement levels.	Retains unit of days for bereavement and family violence leave, to reflect the events-based nature of these leave types.	
<b>2.2</b> All employees will become entitled to bereavement leave and family violence leave from the first day of employment.	Provides for all employees to access bereavement leave and family violence leave from the first day of employment, aligning their access with accrual for annual and sick leave from day one. This stipulation removes the complexities around determining when and whether an employee becomes entitled to leave; it also aligns the entitlement renewal date for family violence leave with an employee's employment anniversary date.  This simplification will benefit employees and address long-standing complexity and confusion.	
<i>3. Entitlement to payment for unworked public holidays / alternative holidays for worked public holidays</i>		
<b>3.1</b> For the purposes of providing entitlement to payment for unworked public holidays, or alternative holidays for worked public holidays, a day is considered an Otherwise	Provides clarity and certainty for all parties by introducing a 50% test to remove the need for	



<p>Working Day (OWD) for any employee if:</p> <ul style="list-style-type: none"> <li>i. the employee would have worked on the day according to agreed days of work or an agreed work pattern as set out in their employment agreement; or</li> <li>ii. the employee's work agreement does not specify days of work or work pattern, but the '50% test' is met: i.e., the employee has worked (or been on paid or unpaid leave) on the corresponding day of the week for at least 7 of the previous 13 weeks.</li> </ul> <p>A day will NOT be considered an OWD if it is reasonable to expect an employee would not have worked due to parental leave, volunteers leave, accident compensation or unpaid leave.</p>	<p>employer judgement when it is not clear whether a day is an Otherwise Working Day.</p>	
<p><b>3.2</b> An hours-based accrual entitlement structure will be adopted for alternative holidays. Thus, on a public holiday that is considered an OWD for them, all employees accrue alternative-holiday hours at a rate of one hour for every hour:</p> <ul style="list-style-type: none"> <li>i. actually worked, and/or</li> <li>ii. on call (where there is a requirement to work if called). In this case accrual will be based on the lesser of the number of hours the employee is actually on call or the number of hours they would otherwise have worked on the day (or, if this number cannot be ascertained from the employment agreement, the average daily hours the employee has worked over a specified reference period).</li> </ul>	<p>Aligns alternative-holiday accrual with hours-based accrual for annual leave and sick leave. Employees will no longer automatically receive an entire alternative-holiday day but will instead accrue an alternative-holiday hour for every hour worked. Some employees will receive a reduction in alternative holidays compared to the status quo. As per decision 10.2, employees who work only some of their contractual hours on a public holiday will be paid for the unworked hours.</p>	
<b>Taking leave</b>		
<b>4. Rights and obligations for taking annual leave</b>		
<p><b>4.1</b> Rights and obligations for taking annual leave will be adjusted as follows:</p> <ul style="list-style-type: none"> <li>i. Employers must not unreasonably refuse an employee's request to take any entitlement hours they have accrued from start of employment.</li> <li>ii. In each 12-month period, an employer must allow, if requested, an employee to use their entitlement to take at least 14 consecutive days away from work (including rostered days off that are not leave days).</li> <li>iii. At the end of each 12-month period of employment, employers must allow and can require employees to use any accrued annual leave within the next 12 months (with 14 days' notice).</li> </ul>	<p>Aligns annual-leave rights and obligations with an hours-based accrual model. Employees will be able to take annual leave as it accrues, instead of being required to wait until after the completion of 12 months' continuous employment.</p>	
<p><b>4.2</b> Closedown period rules will be adjusted as follows:</p> <ul style="list-style-type: none"> <li>i. The minimum period for an employer to give written notice to an employee before an annual closedown period (when they require an employee to take</li> </ul>	<p>Adjusts closedown provisions to increase transparency – extending the notice period for an annual closedown from 14 to 21 days and clarifying</p>	



**IN C O N F I D E N C E**

<p>annual leave entitlement) will be extended from 14 days to 21 days.</p> <p>ii. If an employer and employee agree that an employee will discontinue work at other times, the agreement must be recorded in writing (and include the dates of the closure and the leave arrangements that will apply) at least 14 days before the start of the closure.</p>	<p>processes for employers and employees to agree to other periods of discontinuation of work.</p>	
<p><b>4.3</b> In each 12-month period, an employee may request to cash up 25% of their balance of accrued annual-leave entitlement hours as at their last 12-month employment anniversary.</p>	<p>Broadly aligns the cashing-up provision with the current policy intent by allowing employees to cash up 25% of their leave balance. The change will result in some employees being able to cash up more than one week in a year.</p>	
<p><b>5. Parameters for using annual leave</b></p>		
<p><b>5.1</b> Base parameters for using annual leave are as follows:</p> <p>i. In a given seven-day period, an employee can take up to the number of standard hours they would have worked in that period according to their employment agreement.</p> <p>ii. When an employee takes leave, the hours they can be required to work reduce by that number.</p> <p>iii. Leave must not be taken on a day an employment agreement makes clear an employee would never have worked.</p>	<p>Introduces parameters that retain flexibility around when annual leave can be taken, while providing a broad set of constraints to provide certainty about what can be agreed (the current Act relies heavily on judgement about what genuinely constitutes a working week). The parameters ensure proportionality between the amount of annual leave earned in a week and the annual leave that can be taken in a week.</p>	
<p><b>5.2</b> Days and maximum hours that can be taken on a day will be identified as follows:</p> <p>i. If an employment agreement (or roster that has been created when leave is requested) specifies the days or a pattern of days in a work cycle that standard hours are worked and the number of contractual hours that will be worked each day, those are the days and hours leave can be taken.</p> <p>ii. If an employment agreement or roster does not specify when contractual hours would be worked, days and hours of work set out in a notional roster will be used instead (see decision 1.3).</p>	<p>Introduces a clear process for identifying days that can be taken and maximum hours of leave that can be taken on a given day, preventing annual leave from being taken on a day that an employee would not have worked under their employment agreement, or for hours they would not otherwise have worked.</p>	
<p><b>5.3</b> If an employee has contractual hours in their employment agreement, and also periods of seven consecutive days or more when they are not required to work under their employment agreement and will not be paid, an employer and employee may agree to them using annual-leave hours during those periods.</p>	<p>Explicitly allows employees to use annual leave during unworked periods of seven consecutive days or more in situations where it may be beneficial for both an employer and employee (subject to agreement by both parties).</p>	
<p><b>6. Taking and using sick leave, bereavement leave and family violence leave</b></p>		

**IN C O N F I D E N C E**



<p><b>6.1</b> Entitlements to sick leave, bereavement leave and family violence leave may be taken on days and against hours which:</p> <ul style="list-style-type: none"> <li>i. An employee would have worked as specified in an employment agreement; or</li> <li>ii. An employee was rostered to work (includes all situations where specific hours of work have been offered and accepted); or</li> <li>iii. For employees with contractual hours of work, where the employment agreement specifies no days and/or times of work and when leave is notified in advance of a pre-agreed roster, are specified in a notional roster (see decision 1.3).</li> </ul>	<p>Replaces the current requirement for employer and employee to agree whether a day would otherwise have been a working day, in order to establish when sick leave, bereavement leave and family violence leave may be taken. This revision provides greater certainty about which days and hours these leave types can be taken on/against.</p>	
<p><b>6.2</b> Family violence and bereavement leave can be taken in whole or part days, directly proportionate to the number of hours an employee would have worked under their employment agreement, the number of hours they were rostered to work, or the hours set out in a notional roster.</p>	<p>Introduces a framework to enable family violence leave and bereavement leave to be taken in part days (there is no such framework under the current Act).</p>	
<p><b>6.3</b> During periods in which an employee is receiving accident compensation, employer and employee can agree that the employee may use and be paid for:</p> <ul style="list-style-type: none"> <li>i. sick leave or annual leave up to 20% of their contractual hours for their time off work.</li> <li>ii. up to 0.2 days of paid family-violence leave for every whole day they are off work.</li> </ul>	<p>Aligns with the current Act but sets out how different leave types can be used alongside accident compensation.</p>	
<p><b>7. Using entitlement to public holidays and alternative holidays</b></p>		
<p><b>7.1</b> Rights and obligations for taking alternative-holiday hours will be adjusted as follows:</p> <ul style="list-style-type: none"> <li>i. An employer must not unreasonably withhold consent to an employee's request to take accrued alternative-holiday hours.</li> <li>ii. Alternative-holiday hours can be taken on any day an employee could normally work under their employment agreement (except another public holiday). If an employee takes alternative-holiday hours, the number of contractual hours an employee can be required to work reduces by that number.</li> <li>iii. If unable to reach agreement as to when alternative-holiday hours will be taken, an employer can require an employee to take these hours on a date determined on a reasonable basis, with 14 days' notice.</li> </ul>	<p>Aligns rights and obligations for taking alternative holidays with an hours-based accrual model but with greater flexibility than for annual leave (see decision 4.1).</p> <p>Recognises that alternative holidays are additional to the minimum annual-leave entitlement and recognises that an employee has not been able to observe a public holiday.</p>	



<p><b>7.2</b> An employee can request to cash up alternative-holiday hours at any time, and the framework for doing so will align with the framework for cashing up annual leave:</p> <ul style="list-style-type: none"> <li>i. Requests and decisions must be in writing.</li> <li>ii. Requests must be considered by the employer in a reasonable time frame and may be declined without provision of a reason.</li> <li>iii. Employers must not require an employee to cash up alternative-holiday hours, but the process for making a cash-up request may be outlined in an employment agreement.</li> <li>iv. Employers may have a policy preventing alternative-holiday-hours cash-ups.</li> </ul>	<p>Allows cash-up of alternative-holidays hours at any point, removing the requirement for employees to wait 12 months before cashing up an alternative-holiday day (as such a requirement would not be feasible in an hours-based accrual framework).</p>	
<b>Payments for leave</b>		
<b>8. Payments for leave taken</b>		
<p><b>8.1</b> Base parameters for leave payments are as follows:</p> <ul style="list-style-type: none"> <li>i. The hourly leave pay rate is the lowest of any wage rates specified in an employee's employment agreement that would otherwise apply on the day leave is taken. (For salaried employees, the wage rate will be the salary attributable to a contractual hour of work.)</li> <li>ii. For employees paid wholly or in part by piece wages, the hourly leave rate is an hourly average of piecework wages (including any base wage for time), calculated over all pay periods that started in the 52 weeks before the start of the pay period in which leave was taken.</li> <li>iii. For employees who receive allowances, any fixed allowances (excluding those that compensate for expenses that are not incurred when on leave) must continue to be paid in full.</li> <li>iv. For employees paid wholly or partly by way of commission, who do not have a base hourly wage rate that is equal to or higher than the minimum hourly pay rate payable to them under the Minimum Wage Order, the employee must receive an hourly leave pay rate that is at least equal to that amount.</li> </ul>	<p>Introduces a single payment calculation for all types of leave (including unworked public holidays) to remove complexity from the leave payment system. Payments reflect salary and wages (with an average for piece wages) but will not include the variable components of pay such as bonuses, commission payments, or variable allowances. This approach departs from the principle that an employee receives no less pay than if they had worked – a change that will have a greater impact for employees with variable pay structures.</p>	
<p><b>8.3</b> Annual leave must be paid no later than the pay period it is taken in, though employees and employers may agree that leave will be paid before it is taken.</p>	<p>Provides a clear and practical rule for when employers must pay annual leave but retains flexibility for alternative agreements.</p>	
<b>9. Payments for cashed-up leave or when employment ends</b>		
<p><b>9.1</b> For annual leave or alternative-holiday hours cashed up or paid out when</p>	<p>Aligns payment rules for cashed-up annual leave and</p>	



employment ends, the minimum pay rate will be the lowest wage rate specified in an employee's employment agreement (for any day or time of work) on the date employment ends or a request to cash up leave is made. The same rules as in decision 8.1 will apply to employees paid wholly or in part by way of piece wages or commission.	alternative holidays with payment rules for outstanding leave when employment ends; also aligns both sets of rules with the single-payment calculation policy (see decision 8.1). Different rules currently apply to each situation.	
<b>9.2</b> The new leave legislation does not require an employer to pay an employee for public holidays that fall after employment ends but within a period of annual leave paid out at the end of employment.	Removes the requirement for employers to pay leave for any public holidays that fall during a period of annual leave paid out at the end of employment.	
<b>10. Payments for public holidays</b>		
<p>10.1 For every hour an employee works on a public holiday, they must be paid an additional 50 percent (T0.5) of their ordinary hourly rate of pay, or any higher agreed-upon rate for working on a public holiday.</p> <p>10.2 If any additional contractual payment rate applies to an hour worked on a public holiday, that rate will also continue to be applied separately to the ordinary hourly rate of pay and be additive to the T0.5 in decision 10.1 (unless the contractual rate is for working on a particular day of the week or on a public holiday, in which case only the greater of the contractual rate or T0.5 will apply).</p> <p>10.3 Further parameters for T0.5 are as follows:</p> <ul style="list-style-type: none"> <li>• In addition to any ordinary hourly rate of pay, T0.5 applies to all wages for piecework paid on a public holiday (and in total must be applied to no less than the minimum wage rate payable under the Minimum Wage Order);</li> <li>• T0.5 does not apply to payment types other than the ordinary hourly pay rate, including allowances, commission or incentives;</li> <li>• For employees paid wages wholly or in part by commission, the minimum hourly amount to which T0.5 can be applied will be the minimum wage rate payable to them under the Minimum Wage Order.</li> </ul>	<p>Amends the current terms so that – rather than T0.5 applying to all payments received when an employee works on a public holiday – T0.5 will apply only to the ordinary hourly rate of pay.</p> <p>Retains the 2004 amendment to exclude additional contractual hourly rates for working on a particular day or public holiday from the additional T0.5.</p> <p>For any other additional contractual rates (e.g., overtime or night rates), T0.5 is a separate component of pay, rather than being assessed on top. For example, if an employee's ordinary hourly rate were \$30 and there were also a contractual T0.5 overtime rate, <i>\$30 ordinary hourly wage rate + (\$30*T0.5 public-holiday rate) + (\$30*T0.5 overtime rate) = \$30 + \$15 + \$15 = \$60 per hour of overtime on a public holiday.</i></p>	
<b>10.4</b> If an employee works some but not all their contractual hours on a public holiday, they will be paid leave pay for the unworked hours (and in accordance with decisions 10.1–10.3 for the worked hours).	Introduces a requirement that employees be paid leave pay for contractual hours not worked on a public holiday. This requirement connects with decision 3.2 above, which means that alternative-holiday entitlements will no longer apply to the unworked hours.	
<b>11. Leave compensation payment (LCP)</b>		



<p>11.1 For every relevant hour worked (see recommendations 7 – 9 of the Cabinet paper), the LCP rate of 12.5% (T0.125) (or any higher agreed-upon rate) applies to the employee's ordinary hourly rate of pay.</p> <p>11.2 If any additional contractual payment rate applies to an hour worked for any purpose, that rate will also continue to be applied separately to the ordinary hourly rate of pay and be additive to the T0.125 in decision 11.1.</p> <p>11.3 Further parameters for LCP are as follows:</p> <ul style="list-style-type: none"> <li>• In addition to any ordinary hourly rate of pay, T0.125 applies to all wages for piecework paid in relation to a relevant hour (and in total must be applied to no less than the minimum wage rate payable under the Minimum Wage Order);</li> <li>• T0.125 does not apply to payment types other than the ordinary hourly pay rate, including allowances, commission or incentives;</li> <li>• For employees paid wages wholly or in part by commission, the minimum hourly amount to which T0.125 can be applied will be the minimum wage rate payable to them under the Minimum Wage Order.</li> </ul>	<p>Because the LCP and contractual rates serve different purposes, it is appropriate that employees receive both LCP and any other contractual additional rates (such as rates for working overtime, at night or on weekends).</p> <p>Applying LCP separately to the ordinary hourly rate (rather than on top of all contractual wages) provides a proportionate outcome, best replicating what an employee would receive if they were to accrue and then take the leave.</p>	
<p>11.4 For all relevant hours worked on a public holiday (see recommendation 6 of the Cabinet paper), the LCP (T0.125) and T0.5 for working on a public holiday apply as separate components of pay (e.g., if an employee's ordinary hourly rate were \$30, <math>\\$30 + (\\$30.00 \times T0.5 \text{ public-holiday rate}) + (\\$30.00 \times T0.125 \text{ LCP}) = \\$48.75</math> per relevant hour worked on a public holiday).</p>	<p>Applies T0.5 and T0.125 as separate components of pay (rather than T0.125 being applied on top of T0.5), in order to maintain consistency with decisions 10 and 11 above for how those payments interact with other contractual additional rates of pay.</p> <p>This approach is also consistent with decision 3.1, under which an employee who only works casual hours is entitled to paid public holidays per the 50% test.</p>	
<b>Enforcement</b>		
<b>12. Penalties</b>		
<p>12.1 Employers will be liable for penalties should their failure to meet specified obligations undermine minimum leave-related entitlements, otherwise impact on the legislation's purpose, or undermine its enforcement.</p>	<p>Allows for updated penalty provisions to be specified during the drafting process, to ensure that provisions reflect the intent of the current Act.</p>	
<p>12.2 In line with recommendation 24 of the Cabinet paper (delegated authority), the Minister for Workplace Relations and Safety will make decisions to specify the provisions that will result in liability for a penalty when breached, guided by the general approach</p>		



outlined in decision 12.1.		
<b>13. Records</b>		
<b>13.1</b> In line with recommendations 24 and 25 of the Cabinet paper, the Minister for Workplace Relations and Safety will update the information requirements for Leave Records and Wage and Time Records, with priority being given to simplifying and minimising administrative burden, while also aiming for clarity, certainty and transparency.	Allows for technical updates to record-keeping requirements to support implementation and ensure accurate and accessible records for leave entitlements.	
<b>13.2</b> Parameters for the extension of leave record retention periods are as follows: <ul style="list-style-type: none"> <li>i. A Labour Inspector who has begun any investigation, proceedings or enforcement action that is expected to continue beyond the six-year retention period may give notice to an employer requiring them to retain all or any part of an employee's leave and/or time and wage records that are relevant to that investigation, proceeding or enforcement action;</li> <li>ii. The Employment Relations Authority or the Court may also give such a notice or extend or renew a notice already in place.</li> </ul>	Establishes parameters for when leave records must be retained for longer than six years. The existing Employment Relations Act and Holidays Act require employers to retain an employee's leave records for a minimum of six years. It is currently not clear what employers' obligations are to retain records when issues have been raised that may take longer than 6 years to resolve, what triggers obligations to keep records longer, and how long records should be held for.	
<b>Related policy amendments to other Acts</b>		
<b>14. Requirement to provide pay statements (Employment Relations Act)</b>		
<b>14.1</b> The <i>Employment Relations Act 2000</i> will be amended to include a requirement for an employer to provide a pay statement (i.e., a statement that includes information necessary for an employee to understand and track their pay and leave entitlements) to each employee in each pay period.	Introduces the requirement for employers to provide pay statements and for pay statements to include sufficient information to allow employees to determine whether their pay and leave have been calculated correctly. Provides transparency of leave entitlements for employers and employees, provides certainty for employers about what information is relevant, and removes the need for an employee to have to request information.	
<b>14.2</b> The following information must be included in pay statements: <ul style="list-style-type: none"> <li>i. general employment information</li> <li>ii. payments made in the pay period (itemised by category)</li> <li>iii. statutory leave taken in the pay period</li> <li>iv. deductions from payments in the pay period</li> <li>v. net pay in the pay period</li> <li>vi. employer contributions in the pay period</li> <li>vii. statutory-leave balances</li> </ul>		
<b>14.3</b> Failure to comply with new pay-statement requirements will be included as an	Enables Labour Inspectors to enforce new	



infringement offence in the <i>Employment Relations Act 2000</i> .	requirements via infringement notices.	
<b>15. Treatment of leave entitlements in restructuring situations</b>		
<b>15.1</b> In accordance with the May 2024 Cabinet decision [CAB-24-MIN-0181] a requirement will be introduced in the ERA for employers to include the treatment of leave entitlements as a matter in Employee Protection Provisions that they will negotiate with any incoming employer in restructuring situations. However, counter to the May 2024 Cabinet decision, employers will not be required to negotiate whether or not employment will be treated as continuous for the purpose of determining employees' rights and benefits under the PLEPA.	Allows employers to negotiate for employees' annual leave and alternative holidays to be transferred (to an incoming employer) in restructuring situations instead of having to be paid out. The transfer of entitlement reflects common practice.	
<b>15.2</b> In accordance with the May 2024 Cabinet decision [CAB-24-MIN-0181], the following requirements will be introduced in the ERA that support the transfer of leave entitlements when it has been negotiated per decision 15.1: <ul style="list-style-type: none"> <li>• How leave liability will be apportioned between employers must also be negotiated and agreed.</li> <li>• How employee information required by the incoming employer in relation to leave entitlements will be provided must also be negotiated and agreed.</li> </ul> However, counter to the May 2024 Cabinet decision, payment for transferred leave entitlements will not be required to be at least the value of those entitlements at the time of transfer.	Introduces requirements in the ERA to support the transfer of leave entitlements in restructuring situations. Requires (but maintains flexibility around) commercial negotiation about the apportionment of liability and transfer of employee information. Simplifies the rules by not introducing the proposed requirement to calculate the value of entitlement at the time of transfer and pay at least that amount when it is taken.	
<b>15.3</b> For the avoidance of doubt, the ERA will be amended to clarify that if employees not specified in Schedule 1A of the ERA transfer their employment to a new employer (including in restructuring situations involving contracting out), for the purposes of determining their rights and benefits to parental leave under the PLEPA: <ol style="list-style-type: none"> <li>i. the period of employment with the outgoing employer must be treated as a period of employment with the incoming employer; and</li> <li>ii. the incoming employer must treat any notice given to or by the outgoing employer under the PLEPA as if it had been given to or by the incoming employer.</li> </ol>	Extends the existing PLEPA protections in the ERA to other employees in restructuring situations involving the transfer of a trade or business or an undertaking. Clarifies that these requirements should also apply in restructuring situations involving contracting out.	
<b>16. Annual-leave payments following parental leave and some volunteers leave</b>		
<b>16.1</b> The provisions related to holiday pay in the PLEPA and Volunteers Employment Protection Act (VEPA) will be repealed.	Removes the PLEPA and VEPA overrides so that annual leave will be paid at the same rate following these periods as under any other circumstance.	



<i>17. Parental-leave payment methodology</i>		
<p><b>17.1</b> Existing references to ordinary weekly pay in the PLEPA parental-leave payment calculation will be replaced with an average of an applicant's gross weekly earnings for the most recent four regular pay periods (for a weekly pay period), two regular pay periods (for fortnightly or half-monthly pay periods) or one regular pay period (for a monthly pay period) for which employment income information has been filed, as at the date parental-leave payments commence (or as at the date of entitlement transfer). There will also be flexibility for the most recent employment information as at the date of parental-leave application to be used when that is earlier.</p>	<p>Removes reference to Ordinary Weekly Pay (OWP) in the PLEPA, which is used as part of the paid-parental-leave payment calculation, to reconcile with the removal of OWP in decision 8.1 (single-payment calculation).</p> <p>The change reflects the way that Inland Revenue (IR) receives information about employee earnings and will be workable in IR systems, reducing the burden for applicants and employers. It will likely have minimal impact on applicants' payments.</p>	
<p><b>17.2</b> In accordance with the May 2024 Cabinet decision ([CAB-24-MIN-0181]), the commencement clause will provide that the calculation in decision 17.1 come into force from the start of the financial year (1 July) following the date on which the Bill receives Royal assent and that it apply to parental-leave applications received on or after that date.</p>	<p>Makes an exception to the 24-month implementation period instituted for all other changes. Replacement of OWP in PLEPA is independent of other changes, and its implementation affects only IR. The proposed timing is most workable and practical for IR as it aligns with the timing of the paid-parental-leave rate change and other related changes.</p>	
<i>18. Calculation of protected earnings</i>		
<p><b>18.1</b> Existing references to the calculation of protected earnings based on net ordinary weekly pay (OWP) in the Social Security Regulations 2018, Public and Community Housing Management Act 1992, and Legal Services Act 2011 will be removed. They will be replaced with references to net earnings in respect of any pay period (as used for the calculation of protected earnings in Section 165 of the Child Support Act 1991). (The empowering provision in the Social Security Act 2018 will also be amended to allow for this change.)</p>	<p>Removes references to OWP from the protected earnings calculation, to reconcile with the removal of OWP in decision 8.1, and replaces these references with the reference to net earnings in the Child Support Act 1991. This change will align the calculation across legislation. It is likely to reflect common practice and have little practical impact.</p>	
<i>19. Payment for employment education leave and health-and-safety training</i>		
<p><b>19.1</b> Existing references to relevant daily pay (RDP) and average daily pay (ADP) in the Employment Relations Act 2000 (ERA) and Health and Safety at Work Act 2015 (HSWA) will be removed. These Acts will be amended to stipulate that, when an employee goes on leave to attend an employment relations course or health and safety training, they must be paid the wages or salary payable under their employment agreement for each</p>	<p>Removes references to RDP and ADP in the ERA and HSWA, to reconcile with the single-payment calculation outlined in decision 8.1. Payment for leave for employment relations education and health-and-safety training will instead, reflect wages or salary</p>	



hour they would have otherwise worked . If the contractual hours cannot be ascertained (or if the training hours are greater), the employee is to be paid for the number of hours they actually spend on the course/training.	payable under a worker's employment agreement.	
<b>20. KiwiSaver automatic-eligibility rules</b>		
<b>20.1</b> The existing reference in the KiwiSaver automatic-enrolment rules to section 28 (1) (a)(ii) of the Holidays Act will be removed. It will not be replaced.	Removes and does not replace the reference to Pay As You Go (PAYG) in the KiwiSaver Act, since PAYG is to be replaced by the Leave Compensation Payment.  Employees who have an intermittent and irregular work pattern will no longer be excluded from the automatic-enrolment rules for KiwiSaver.	
<b>Transition to the new legislation</b>		
<b>21. Transitional provisions</b>		
<b>21.1</b> In the transition to the new legislation: i. Existing annual-leave, sick-leave and alternative-holidays balances of standard-hours employees must be converted to hours, and existing annual-leave and alternative-holidays balances for casual employees must be cashed up. ii. Annual-leave and sick-leave entitlements that employees have not yet received because they are part-way through a 12-month continuous-employment period must be calculated and added to leave balances.	To protect existing leave entitlements, balances will either be converted to hours (so they work in the new leave system) or cashed up. Sick leave for casual employees will not be converted or cashed up.	
<b>21.2</b> In line with recommendation 24, the Minister for Workplace Relations and Safety is authorised to finalise the specific transitional provisions during the early stages of the drafting process.	Allows for specific transitional provisions to be finalised during the drafting process, as requirements become clearer.	

## Annex Two: Further detail on public sector agency costing exercise

Cabinet has asked for more advice on the fiscal impacts of the proposed changes. A request was sent to Heads of HR of all public service departments, along with New Zealand Police and Defence, for rough, high-level estimates of the ongoing costs of the proposed changes compared to the status quo – focussing on the impact of LCP costs in relation to additional and casual hours. 29 departments responded.

A summary of insights gained from the information provided is below.

### Limitations and assumptions

Costings are high-level estimates only. Precise estimates are difficult due to the complexity of the status quo and the number of variables that influence outcomes.

Agencies applied slightly different methodologies meaning direct comparisons are limited and estimates need to be considered independently. For example, some current cost estimates reflect only specific employee groups, while others reflect entire departments.

Actual costs will depend on the outcome of bargaining (i.e. it is more likely that changes will end up being cost neutral, rather than ending up with net savings).

### Annual leave and LCP cost estimates for contractual and additional hours

A high proportion of employees in public service departments are salaried and work few paid additional hours.

Based on the proposed statutory leave pay method, most agencies estimated a small decrease in the cost of payments for annual leave taken. This decrease is driven by payments such as overtime rates, event-based allowances and on-call payments not being included in the hourly leave pay rate. The higher these payments, the larger the reduction in cost will be under the proposed statutory minimum.

The estimated decrease in the cost of providing annual leave is offset somewhat by the cost of providing LCP for additional hours worked. The cost of LCP depends on the number of additional hours worked (the higher the ordinary rate of pay and the greater the number of additional hours, the higher the cost of LCP). Confidential advice to Government

Confidential advice to Government

### LCP for casual employees

Most departments do not employ or employ only a small number of casual staff.


Confidential advice to Government

Confidential advice to Government


Where casual staff receive PAYG currently, the leave-related cost increase for LCP is proportionately high, especially where these employees do not currently use sick leave (the majority of cases) or work a relatively high number of hours on high pay rates. It should be noted that leave costs are only a small proportion of total labour costs for this group of employees (so a 50% increase in leave costs would only represent a 4% pay increase overall).

Examples:

Confidential advice to Government

A large rectangular area of the document is redacted with a solid grey fill, covering the text following the first example label.

Confidential advice to Government

A large rectangular area of the document is redacted with a solid grey fill, covering the text following the second example label.

Confidential advice to Government

A rectangular area of the document is redacted with a solid grey fill, covering the text following the third example label.

Legal professional privilege

A rectangular area of the document is redacted with a solid grey fill, covering the text following the fourth example label.