



COVERSHEET

Minister	Hon Brooke van Velden	Portfolio	Workplace Relations and Safety
Title of Cabinet paper	Holidays Act Reform: Outcomes of Consultation on Exposure Draft and Next Steps	Date to be published	14 October 2025

List of documents that have been proactively released

Date	Title	Author
December 2024	Holidays Act Reform: Outcomes of Consultation on Exposure Draft Bill and Next Steps	Office of Workplace Relations and Safety Minister
9 December 2024	Holidays Act Reform: Outcomes of Consultation on Exposure Draft and Next Steps CAB-24-MIN-0488 Minute	Cabinet Office

Information redacted

YES

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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

Holidays Act Reform: Outcomes of Consultation on Exposure Draft Bill and Next Steps

Proposal

- 1 This paper reports back to Ministers on the outcomes of targeted consultation on an exposure draft of the Employment Leave Bill (the Bill) and notes a proposed change to the direction of the Holidays Act reform.

Relation to Government priorities

- 2 These decisions relate to the Government's priorities to rebuild the economy and improve the quality of Government regulation.

Executive Summary

- 3 Issues with the Holidays Act 2003 (the Act) have been a longstanding concern for employers, employees, and payroll providers. There is widespread agreement that the Act is not fit-for-purpose, but based on the recent consultation process, there is not a clear consensus on how interests should be balanced in the new legislation. Improving the legislation remains a high priority for business and will help ensure workers understand and receive their entitlements.
- 4 Work has been underway for some time to find enduring, workable solutions to the longstanding and widespread issues with the Act. Previous work to reform the Act was focused on options that would maintain tripartite consensus and ensure employees were no worse off compared with the status quo. This approach limited the ability to explore some of the simplest solutions.
- 5 In September 2024, Cabinet agreed to the release of an exposure draft of the Bill and the content of a consultation document, which sought feedback on the technical and policy details of the Bill, as well as some limited alternative options.
- 6 Feedback from targeted consultation indicates a preference for more ambitious change, with 61 percent of submitters across all groups indicating that investing time in significant changes to the annual leave system would be worthwhile.
- 7 Taking into account the feedback from submitters, I believe a fundamentally different approach to Holidays Act reform is needed. My intended direction of travel includes developing advice on:
 - a core system that uses hours-based accrual for annual leave entitlements for work arrangements where hours tend to be agreed, and are usually predictable

- enabling greater use of “pay as you go” (and potentially expanding it to some other leave types in addition to annual leave), and
 - alternative provisions for complex, variable or unique working arrangements.
- 8 I expect to provide detailed advice to Cabinet by mid-2025. At this time, Cabinet can consider whether it wishes to proceed, or whether it wishes to delay the Bill beyond the length of the Parliamentary term in order to allow further policy work.

Background

- 9 Issues with the Act are well established. Its intention to provide a system for the provision of leave with the flexibility to apply to all working arrangements has led to a lack of clarity for employers and payroll providers about which rules to apply in which situations. This has ultimately resulted in widespread non-compliance and remediation programmes across public and private sectors.
- 10 Fixing the Act is consistently one of the top priorities of businesses when asked what the Government should be doing to deliver change in the Workplace Relations and Safety portfolio.
- 11 The previous Government began work on improving the Act in 2018. Its review of the Act was based on a number of objectives, including the aim to protect overall entitlements for employees and maintain tripartite consensus. These objectives placed significant constraints on the range of policy options that could be considered, including options that would have optimised the simplicity and clarity of the legislation.
- 12 Given how advanced the previous Government’s Bill was in terms of legislative drafting, this Government agreed to some policy changes, and to consult on whether the Bill is fit-for-purpose. Over the five years the previous Government had worked on the Holidays Act reform, the proposals had not been fully tested with the public.
- 13 The policy changes this Government agreed to were constrained to those that broadly aligned with the current drafting and underlying framework of the Act, to enable faster progress towards the release of an exposure draft.
- 14 In September 2024, Cabinet agreed to the release of an exposure draft of the Bill and the content of a consultation document, which sought feedback on the technical and policy details of the Bill and also alternative options [CAB-24-MIN-0334].
- 15 My public communications in relation to the Bill have always made it clear that this Government is not committed to the contents of the Bill if they are not fit-for-purpose. In other words, the Government would not just be consulting on whether the Bill is workable, but whether it is the right approach. There was then an invitation for participants to share views on alternative policy solutions.

Outcome of consultation

- 16 The Ministry of Business, Innovation and Employment (MBIE) selected 100 stakeholders comprising employers, employees, and technical experts, across various industries, sectors, and population groups to take part in a targeted consultation. The consultation document and exposure draft Bill were provided to these stakeholders in early September, with 76 submissions received.
- 17 Feedback was sought on the workability, balance of objectives, and potential impacts of the proposals in the exposure draft. Participants were also asked their views on alternative options, including a fundamental change to hours-based accrual, and whether it would be worth investing time to design and draft more significant changes to the Bill.

Initial analysis of submissions shows that for many, the exposure draft Bill did not hit the mark, and there is an appetite for further change

- 18 Many submitters indicated that the general framework of the Bill is not a significant improvement on the current Act, and that a fundamental change would better address longstanding issues. There are strong views (61 percent of submitters who responded to this question) that investing time to design and draft more significant changes to the annual leave system would be worthwhile. This figure was higher for technical experts (70 percent) and employers (67 percent).
- 19 Key reasons for wanting more change are:
 - the Bill is still too complex
 - it does not work for variable working patterns, and
 - it could result in increased administrative burden and costs.
- 20 Concerningly, there were some submitters who believed that the Bill would increase complexity and compliance costs. One explanation from a major payroll provider was that “while the new rules are clear, they are not necessarily less complex, and therefore may still be difficult for some employees and employers to readily understand or explain”.
- 21 The Law Society stated “the provisions in the draft Bill, and the proposed rules and processes, appear to be unnecessarily complex and difficult to follow, with some practitioners observing the provisions in the draft Bill appear to be more complicated than the existing provisions in the Holidays Act 2003”.
- 22 Many employers explained that most payroll systems are currently based around hours already, so shifting to an hours-based system would not be a radical shift. One small business argued “[an] hours-based system will be the simplest and cleanest for employees and employers. An hour is the only consistent thing that is the same for every employee. This would remove all calculations, assumptions, ambiguity around what constitutes a “week” for different employees”.
- 23 The general tenor of submissions, particularly from technical experts and employers, suggests to me that progressing with the exposure draft Bill is not going to meet the expectations of many for the Holidays Act reform, nor will

small technical changes to the current Bill suffice. The Employers and Manufacturers Association, in its submission, acknowledged the time and work required to take the Bill in a different direction but argued “starting afresh may bring the better outcome for business”.

- 24 My officials advise me that moving to an hours-based accrual system would require drafting a fundamentally different bill to the current exposure draft. Given the strong support for this option, and weak support for the exposure draft Bill, I intend to develop proposals using this approach.

Proposed policy approach for a new Bill

Simplicity must be the overarching objective of the Bill

- 25 In my view, the current balance of objectives is not consistent with the Government’s ambition. It is not enough to have a ‘workable’ Bill, we should also strive to reduce complexity and compliance costs as much as possible. While the objectives of simplicity, workability, flexibility and proportionality are all important, there needs to be a much greater focus on simplicity.
- 26 Optimising for simplicity will mean shifting away from a one-size-fits-all approach. The current Act works best for a standard 40-hour, 5-day week but work patterns have become increasingly diverse. Work arrangements with variable hours and/or a degree of unpredictability about the timing of future work are particularly challenging to account for. It can be difficult to determine what is a working day, how many hours somebody would have worked on that day, and what they would have earned on that day. Trying to create a single approach that could apply in every situation will inevitably lead to complexity, as we have seen with the status quo and exposure draft of the Bill.
- 27 Optimising for simplicity will also mean moving away from the premise of the current Act, which is that an employee is not financially worse off when taking leave. This premise has led to significant complexity and additional costs. Businesses have been forced to do multiple calculations to figure out what an employee would have earned if they had worked. In some cases, employees are being paid more for a day’s holiday than they would have received if they had gone to work. I have heard from some employers who have questioned whether the status quo is fair, where they are required to pay higher levels of annual leave as a result of providing their employees one-off bonuses or if the employee had a short-term increase in hours. Removing the constraint that the employee is not financially worse off when taking leave opens up additional design options for providing leave in a simpler way.

Greater simplicity can be achieved by moving away from a “one-size-fits-all” approach

- 28 I am signalling the direction of travel at this time, as subsequent radical changes to direction requested at a later date will likely mean it will be difficult to pass a Bill this term.
- 29 My preferred approach is to make the core system simpler by developing and applying alternative arrangements for some non-standard work arrangements. I would like to see a system that will meet the varied needs of New Zealand’s labour market, where small businesses make up 97 percent of all firms. The

proposed system draws on policy design elements from the Australian approach, where these may be beneficial in the New Zealand context.

- 30 The status quo has one approach to leave for most working arrangements, with a very limited exception for paying annual leave on a “pay as you go” basis for some casual and fixed-term work.¹ The advantage of the status quo is that the significant majority of employees receive paid holidays at the time they take their leave. The disadvantage is a complex system that businesses have struggled to comply with.
- 31 I have asked officials to design a core system based on hours-based accrual. I also propose enabling greater use of “pay as you go” (and potentially expanding it to some other leave types in addition to annual leave) and alternative provisions for complex, variable or unique working arrangements.
- 32 The system would use **hours-based accrual** for annual leave entitlements for work arrangements with agreed, predictable hours. Moving from weeks-based entitlement to hourly accrual will better reflect how people take leave in practice and how many payroll and financial systems already accrue leave and account for leave liability. I will return to Cabinet with advice on the final policy decisions on the detailed design, including how leave is accrued, taken, and paid.
- 33 To enable the core system to be simpler, I propose **expanding use of “pay as you go”** holiday pay beyond eligible casual and fixed-term employees to some situations, for example, where employees’ hours are variable or unpredictable. These employees would be paid a “top up” on their hourly rate as a proxy for some leave entitlements (not just annual leave). This would have the effect of separating the time leave is taken from the payment for leave for an increased number of employees. The scope of this category will depend on policy design.
- 34 Finally, I propose designing a system that will allow for alternative leave provisions, as long as eligible employers can demonstrate overall that they **meet or exceed the statutory minima**. This option is yet to be designed but is likely to apply to sectors with unique characteristics that may not be able to comply with the two models above, for example the schooling sector or oil rig workers who work “month-on, month-off”.
- 35 A number of submitters also wanted alignment between the approach for annual leave and for sick leave. My priority is the annual leave system and some of the changes outlined above will help this alignment, but I have asked officials to consider what further alignment may be possible.

Greater simplicity will not come without some cost – there will be choices about where those costs fall

- 36 Prioritising simplicity over other objectives will require consideration of various trade-offs. These trade-offs will depend on the final design choices which will be made over the coming months.

¹ Officials do not have data on how many employees are currently paid annual leave on this basis, but estimate it is less than 5%.

- 37 Under the status quo an employer needs to pay an employee at the greater of their ordinary weekly pay or average weekly earnings. Average weekly earnings include payments like bonuses, incentive payments, commission, allowances and penal rates. Under the status quo, employees can be paid more when they take annual leave than if they had actually worked – which can affect incentives and proportionality. Decisions will need to be made for how to calculate hours-based accrual, which may lead to different outcomes. If it is decided that leave payments are based on guaranteed or agreed hours only, employees may receive less in their pay packet when taking leave than they do now and could receive less than if they had worked. Alternatively, it may change incentives for employers to readjust by offering a higher base salary, or offer bonuses or other financial incentives they might not have otherwise considered.
- 38 The size and net effect of the pay as you go “top up” may involve trade-offs between employers and employees. If an upfront “top up” is paid as a proxy for certain leave types for employees with variable/no fixed hours, the weekly cost to the employer may be higher but could be offset by not having to provide paid leave at a later date. The net effect will depend on the final design of the policy and what employers currently offer.
- 39 At the moment, the use of “pay as you go” annual leave is tightly regulated to only a few types of casual and fixed-term employment arrangements. Extending its use to a wider range of employment arrangements has benefits in terms of simplicity, but is a significant change. Employees will still be financially compensated for their leave. This approach will suit people who would rather have the payment upfront and determine how they use it, while others will lose the convenience of not having to think about cashflow when they take leave.

The status quo is fundamentally broken, and change is needed this term

- 40 While there appears to be strong support for moving away from key aspects of the exposure draft framework, submitters were concerned about how a radically new direction could affect timeframes for delivery. I understand their concern, given it has taken five years to get to this point. I believe it is unacceptable to require the public to have to wait even longer for change.
- 41 I have directed officials to design these changes at pace so that legislation can be passed this term, and employers and employees will get the simplicity and certainty they have been calling for.
- 42 This timing is an ambitious ask and will require officials to work innovatively, alongside external experts. Because the timeframes mean that there will be limited ability to test solutions widely to ensure workability, officials will work alongside lawyers and payroll experts.
- 43 Passing legislation this term also means that we will only have time to work up one policy design, rather than several different options to compare. This will limit the options Cabinet can consider but is likely to improve the robustness of the proposed option.
- 44 I will provide Cabinet with advice on the detailed design by mid-2025, alongside information on the regulatory and fiscal implications. Cabinet can

consider whether to proceed on the basis of this advice, or to delay the Bill beyond this Parliamentary term in order to allow further policy work to take place.

45 I anticipate the need for:

- delegated authority to make policy decisions on any matters arising, and
- Confidential advice to Government

46 Confidential advice to Government, Legal professional privilege

Financial implications

47 There are no direct financial implications resulting from this paper for Cabinet to consider at this time. External resources are required to support the work Confidential advice to Government

48 The changes to leave requirements will also impact Government as an employer. However, because the detailed policy design work has not yet been undertaken it is not possible to estimate the financial impacts of the new legislation at this stage. MBIE will consider the fiscal implications as policy advice is developed, including on the health and education sectors, and I will provide an update in the mid-2025 Cabinet paper.

Legislative implications

49 A Bill will be required to implement the proposals. Legal professional privilege

Regulatory, Population and Human Rights implications

50 MBIE prepared Regulatory Impact Statements (RIS) which accompanied the 2020 and mid-2024 Cabinet papers seeking policy decisions on the Holidays Act reform. This paper does not seek any additional policy decisions, so no further analysis is required. However, I acknowledge further regulatory analysis will be required to support future policy decisions, including information on the size and scale of impacts on employers and employees in different segments of the labour market where possible.

- 51 The Ministry for Regulation has determined that this proposal is exempt from the requirement to provide an interim RIS, on the grounds that it has been addressed by existing impact analysis in the 2020 RIS [CAB-20-MIN-0100] and <https://www.mbie.govt.nz/dmsdocument/13433-regulatory-impact-statement-improving-the-holidays-act-2003-proactiverelase-pdf>. Further regulatory analysis will be required to support future policy decisions.
- 52 Further advice on population and human rights implications will be provided when Cabinet makes final policy decisions.

Use of external resources

- 53 I am advised that officials will require support from external contractors and/or consultants in order to progress this work in the desired timeframe. This will be technical and specialist expertise that is either not available within the Ministry or is otherwise fully committed on other Government priorities. I will provide further information on this when policy decisions are sought, however I note the cost of these resources will be covered from within baselines.

Consultation

- 54 The Department of the Prime Minister and Cabinet, The Treasury, Te Kawa Mataaho Public Service Commission and the Ministries for/of Regulation, Education and Health (including Health New Zealand/Te Whatu ora), have been consulted.
- 55 The Ministry of Education (MoE) and Public Service Commission (PSC) were positive about the change of direction proposed. MoE was supportive of the proposal of alternative arrangements for the schooling sector. Health New Zealand has also expressed support for the change in direction compared to the exposure draft Bill, and interest in whether alternative arrangements may also be appropriate for the health sector. The Treasury raised concerns about the proposed timing of the reforms, in particular the limited time available for policy development and legislative stages.
- 56 Agencies also noted it was not possible to assess the impacts of the proposals on employers (including the public sector) and employees until detailed policy proposals are available. MBIE will continue to work with key agencies (including the Treasury, and the Ministries of Health and Education) in order to ensure that we are in a position to advise Cabinet on the regulatory and financial impacts, including for the Government as an employer.

Communications and proactive release

- 57 I intend to make an announcement relating to the next steps for Holidays Act reform, as set out in this paper. This announcement would acknowledge that the consultation has identified the need for further policy work to simplify the Bill, including consideration of hours-based accrual as the preferred method for annual leave. I will make clear no Cabinet decisions have been made. I do not intend to proactively release this Cabinet paper, as the matters are still under active consideration.

Recommendations

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

- 1 **note** that in September 2024, Cabinet agreed to the content of the consultation document, which sought feedback on the technical and policy details of the Bill and also alternative options [CAB-24-MIN-0334];
- 2 **note** that many employer and technical expert submitters believed the exposure draft Bill could be simplified further, and there were some concerns the proposals would increase complexity and compliance costs;
- 3 **note** that I consider it is now necessary to change the direction of the Holidays Act reform, so that simplicity is prioritised as an objective in order to improve workability and reduce compliance costs;
- 4 **note** that I have asked officials to design a leave system based on a core system using hours-based accrual for annual leave, with consideration of options to:
 - 4.1 expand the use of “pay as you go” to more work arrangements, such as those with variable or unpredictable hours and paying a “top up” on top of the hourly rate for every hour worked for these employees, as a proxy for annual leave (and potentially certain other leave entitlements);
 - 4.2 allow for alternative provisions for eligible employers that can demonstrate overall they meet or exceed the statutory minima;
- 5 **note** that simplifying the exposure draft further by shifting to an hours-based accrual system will require drafting a fundamentally new Bill;
- 6 **note** that the system described above represents a shift away from the status quo which will involve changes to who bears costs and benefits relative to the status quo, with specific policy choices and trade-offs determining the balance and scale;
- 7 **invite** the Minister for Workplace Relations and Safety to report back by mid-2025 to seek final policy decisions, which will include advice on:
 - 7.1 fiscal implications, in particular on the health and education sectors;
 - 7.2 the size and scale of impacts on employers and employees in different segments of the labour market;
 - 7.3 any other regulatory impacts, quantified where possible;
- 8 **note** that if subsequent radical changes to policy direction are requested by Cabinet when final policy decisions are sought in mid-2025, the consequence will likely mean it will be difficult to pass a Bill this term;

9 **Legal professional privilege**

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Authorised for lodgement

Hon Brooke van Velden
Minister for Workplace Relations and Safety

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