



COVERSHEET

Minister	Hon Brooke van Velden	Portfolio	Workplace Relations and Safety
Title of Cabinet paper	Employment Leave Bill: Approval for Introduction	Date to be published	30 March 2026

List of documents that have been proactively released		
Date	Title	Author
February 2026	Employment Leave Bill: Approval for Introduction	Office of Workplace Relations and Safety Minister
5 March 2026	Employment Leave Bill: Approval for Introduction LEG-26-MIN-0031 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 following reasons:

- Legal professional privilege
- Confidential advice to Government
- Free and frank opinions
- Negotiations

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Office of the Minister for Workplace Relations and Safety

Cabinet Legislation Committee

Employment Leave Bill: Approval for Introduction

Proposal

- 1 This paper seeks approval for the introduction of the Employment Leave Bill (the Bill).

Policy

- 2 The Bill provides for the Holidays Act 2003 (the Act) to be replaced to give effect to Cabinet's August 2025 policy decisions [ECO-25-MIN-0124] for new employment leave legislation. The Bill holds a Confidential advice to Government on the 2026 Legislation Programme Confidential advice to Government
- 3 The Bill also makes amendments to other pieces of legislation, including the Employment Relations Act 2000, KiwiSaver Act 2006, Legal Services Act 2011, Minimum Wage Act 1983, the Parental Leave and Employment Protection Act 1987, Parental Leave and Employment Protection Regulations 2016, Public and Community Housing Management Act 1992, Social Security Act 2018, Social Security Regulations 2018, and the Volunteers Employment Protection Act 1973 to give effect to relevant aspects of Cabinet's decision.
- 4 Cabinet has previously agreed to policy proposals that will reform:
 - 4.1 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 who work more than their standard hours, there will be a leave compensation payment (LCP) in lieu of leave.
 - 4.2 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.
 - 4.3 How leave is paid – rather than performing multiple different calculations to determine the correct rate of payment, the same hourly leave pay rate will be used for all types of leave. It will be based on an employee's lowest wage rate for the day of leave. Fixed allowances will also continue to be paid in full during leave. [ECO-25-MIN-0124]
- 5 Since Cabinet's policy decisions to enable the drafting of the Employment Leave Bill have been announced, I have received largely positive feedback

from a wide range of stakeholders. I have also spoken at public meetings across the country to reach a range of sectors and different types of businesses. Feedback from these public meetings has provided valuable input into the drafting process. Additionally, my officials have been working with a small group of legal and payroll experts to ensure the drafting decisions made are simple and workable, and minimise unintended consequences.

Further policy decisions made under delegated authority

- 6 The settings explicitly agreed to by Cabinet in August 2025 focused on the 'big ticket' changes needed to reform employment leave. Cabinet authorised more detailed decisions that are necessary for the legislation to be made under delegated authority, provided these were consistent with the overall policy framework and Cabinet's explicit decisions [ECO-25-MIN-0124 refers].
- 7 Some of the matters Cabinet authorised under delegated authority are significant – in particular, the details of a statutory remediation process for claims under the Holidays Act 2003; and the transitional provisions (which will determine how parties switch between the old and new leave systems).

Report back on the design of a statutory remediation process to address claims under the Holidays Act 2003

- 8 Cabinet agreed to create a statutory estimation process for remediation calculations to deal with claims of non-compliance with the 2003 Act, with the details to be decided under delegated authority [ECO-25-MIN-0124 refers].
- 9 The intent is to establish a system that is more time-efficient than a full line-by-line remediation process, 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 pursuing legal action to recover underpayments under the 2003 Act (based on a line-by-line analysis).

Decisions on the key parameters of the remediation process included in the Bill

- 10 The main parameters for the remediation approach set out in the Bill are as follows:
 - 10.1 The timeframe for backpay requires employers to estimate arrears covering six years from when the Holidays Act ceases to be in force. This timeframe reflects the six-year limitation period for employment-related claims but is more advantageous for employees, as the six-year window will not 'shrink' while an employer completes the process.
 - 10.2 Using the statutory methodology will be optional for employers. If an employer does opt in, their employees' consent to the method is not required (requiring consent would be a barrier to timely settlement).
 - 10.3 Employers will in general have two years from commencement of the new legislation to complete the statutory remediation approach. This

IN CONFIDENCE

time-limited opportunity is consistent with the objective of incentivising the timely resolution of historical issues.

- 10.4 Any appeals or claims already made under the Holidays Act (in the Employment Relations Authority or Court) that have progressed beyond the preliminary stages should be able to continue. This approach strikes the best balance between maximising certainty, and minimising retrospective effects. A permanent effect on claims (i.e., full and final settlement) would only occur when the employer completes the remediation methodology.
- 11 While the design of the remediation approach will restrict employees' ability to pursue legal claims, care has been taken to ensure that these restrictions are appropriately targeted. I am satisfied that the settings are an appropriate and proportionate way to achieve my policy objectives.

Impact of proposed approach

- 12 The introduction of a new statutory remediation process will make it simpler for employers who wish to take a workforce-wide approach to address past underpayments and faster for employees to receive such underpayments (rather than responding to individual claims), and has been designed not to disadvantage employees.
- 13 Given the complexity of resolving existing Holidays Act claims, there may be cases where employers and employees alike recognise that current remediation processes (based on line-by-line calculations) will take many more years to work through, and pivoting to an estimation approach would result in employees receiving more timely compensation. My intention is that the details of the statutory method will become public as soon as possible after the passage of the Employment Leave Bill, so that all parties can consider what it could mean for them.
- 14 The existing obligation on employers to act in good faith throughout the remediation process is likely to minimise any incentives for employers to delay settlements until the new remediation process is available. Further, the proposed approach does not affect employees' ability to pursue claims with the Employment Relations Authority while the Holidays Act remains in force (further dampening any incentives for employers to delay resolution of the non-compliance).

Work remaining to implement a methodology in secondary legislation

- 15 A statutory remediation approach will need to contain detailed calculations not typically featured in primary legislation. The Bill sets out the key parameters for an estimation methodology, while the detailed methodology itself will be provided in secondary legislation.
- 16 I seek delegated authority from Cabinet to make the further policy decisions needed to design the secondary legislation. This approach will allow an efficient decision-making process and is effectively an extension of the

IN CONFIDENCE

existing delegated authority to make remediation-related decisions for the purpose of the Bill. I will report back on the final design decisions when seeking Cabinet's agreement to the regulations.

- 17 Before recommending secondary legislation, the Minister must consider data on past remediations, consult on the methodology with representatives of employers and employees, and be satisfied that it provides "reasonable compensation" to employees and is useable by a range of different employers.

Report back on delegated decisions on transitional provisions

Transitional provisions to address the interaction of contractual and statutory entitlements

- 18 Fundamental differences between the current Act and Bill may create challenges for an orderly transition (e.g. shifting from 10 days' sick leave to a pro-rata approach). Free and frank opinions, Negotiations

- 19 Free and frank opinions, Negotiations

- 20 Addressing this issue falls within the authority delegated to me to make decisions on transitional arrangements. As such, the new Act will state a deadline (three years from enactment of the new legislation) for parties to reach agreement on contractual terms that are consistent with the framework of the new legislation (e.g., agreements that express annual leave in units of 'hours' rather than 'weeks'). If no agreement is in place by that deadline, the minimum statutory terms would be deemed to override any contradictory terms in agreements (including terms that may be more favourable than the new minimum standard).

- 21 A three-year timeframe balances incentives on both employers and unions, or employers and employees on individual agreements. As collective agreements are typically in force for a period of up to three years, it ensures that bargaining is required within the window provided for reaching agreement. Furthermore, as the deadline would come into effect one year after commencement, it effectively limits to one year the time that an employer could be required to demonstrate compliance with two parallel systems (i.e., the terms of an inconsistent contract and the new statutory minimum).

- 22 The purpose of the backstop is to support employers to give effect to the legislation – strong incentives provide for orderly transition to the new legislation. In providing for the backstop, it is not the intention that any employer (public sector or otherwise) should rely on it as a means of reducing employees' entitlements. While this proposal constitutes a limit on the

freedom of contract, I consider this to be justified in this case. This approach provides strong incentives on all contracting parties to reach agreement on provisions that reflect the new Act, and will substantially contribute to a more orderly and efficient transition to the new legislation.

Transitional provisions of a technical nature

- 23 Decisions on developing transitional provisions were made under delegated authority, to stipulate what steps are required of all parties during the move from an entitlement system (based in 'weeks' and 'days') to a system that centres on hours-based accrual [ECO-25-MIN-0124].
- 24 In consultation with payroll and legal experts, my officials have developed formulae in the Bill that set out exactly how leave balances must be either converted to hours (in the case of employees with standard hours), or paid out in cash (in the case of employees with casual hours, who will under the new Act receive the Leave Compensation Payment instead of accruing leave).
- 25 Further provisions ensure that employees who commenced employment in the 6 or 12 months before the Bill commences benefit from that period of service, in terms of accrued sick leave, and other leave entitlements. The Bill also clarifies precisely when implementation must occur (focusing on the first pay period after commencement, rather than specific dates, at the request of payroll providers).
- 26 I understand that feedback from technical experts on these transitional provisions has been positive – both from a workability and a fairness standpoint.

Report back on record keeping and penalty provisions

Record keeping

- 27 The *Employment Relations Act 2000* requires an employer to keep records in sufficient detail to demonstrate that they have complied with minimum entitlement provisions. To support employers to meet this requirement in relation to leave entitlements, and successfully implement the new legislation, the Bill (like the Act) sets out specific information that an employer must keep in an employee's Leave Record. The information requirements are designed to minimise administrative burden while also providing clarity, certainty and transparency. The Leave Record information requirements include:
 - For each leave type – leave that has accrued, dates on which it has been taken, payments for leave and leave balances.
 - Cashed up annual or alternative leave – hours cashed up and payments made.
 - Public holidays – payments for public holidays worked and not worked.
 - Leave compensation payments – the amount of payments and the number of hours they relate to.

- Payments for annual and alternative leave when an employee's employment ends.

Penalty provisions

28 Decisions have been made under delegated authority regarding the provisions in the Bill that will result in liability for a penalty for non-compliance when breached. Examples of the matters covered by the provisions include failure to:

- correctly provide minimum leave entitlements;
- enable the taking of leave in accordance with the legislative requirements;
- follow the correct processes for cashing up leave;
- follow the rules for having annual closedowns;
- correctly provide entitlements related to worked and non-worked public holidays;
- keep and provide access to an employee's leave record.

Report back on further policy decisions made under delegated authority

How the Act applies in situations where employees have more than one role with an employer

29 Some employees have multiple roles with the same employer, under either one or multiple employment agreements. The lack of clarity in the current Act about how it applies in these situations has led to uncertainty and litigation. To provide clarity, the Bill will specify that its provisions apply to each of an employee's roles separately. This reflects feedback from employers in sectors where the multiple-job situation arises (e.g. the health sector).

How the Act applies in situations where employees receive an averaged salary

30 The core system in the Bill is based on hours paid being the same as hours worked. Since this does not hold in an averaged salary arrangement (where employees are paid the same amount of their annual salary each pay period despite variations in hours), clarity is needed about whether leave accrues and is on paid or worked hours, and how the hourly leave pay rate should be calculated.

31 Accordingly, after consultation with stakeholders, the Bill will clarify:

- 31.1 Leave will accrue based on the actual number of standard hours that fall in a pay period (avoiding the need for any future adjustments).
- 31.2 The hourly leave pay rate will also be calculated based on the actual number of standard hours that fall in a pay period (meaning the leave pay rate will vary but the averaged salary will not).

How leave accrues during unworked periods under the new leave system

I N C O N F I D E N C E

- 32 To ensure there are no legislative gaps (e.g., unworked periods that are not specifically mentioned in the legislation) a principles-based approach will be used to ensure clarity about leave accrual during *all* unworked periods.
- 33 Leave will accrue during periods of paid leave under the Act or any other legislation, paid contractual leave (with provision for parties to agree it will not accrue) and absences under any other legislation during which they are not required to be paid by the employer (for example, parental leave, volunteers leave and jury service).
- 34 Leave will not accrue during periods in which an employee receives first-week or weekly accident compensation or is on unpaid leave not provided for by statute.

When and how a Labour Inspector can determine a notional roster

- 35 The Bill includes a requirement for parties to agree a notional roster for leave purposes when an employee has standard hours, but the number and/or days and times those hours are worked are not clear.
- 36 A Labour Inspector (LI) will be able to determine the notional roster under the following circumstances:
 - 36.1 In a forward-looking context when parties are unable to agree.
 - 36.2 In a retrospective context, if they are completing an investigation related to leave taken in the past and either:
 - 36.2.1 one was not in place in relation to a period of leave in question and parties can't agree, or;
 - 36.2.2 the LI considers the roster in place is not reflective of the employee's actual pattern of standard hours, such that it would not enable them to accurately determine the employee's leave entitlement.
- 37 To determine a notional roster, the LI must also consider an employee's employment agreement and work patterns over a 13-week period.

When and how whole public holidays can be transferred

- 38 The Holidays Act provides that an employer and employee may agree in writing that an employee will transfer their entitlement to a whole public holiday. This means that the employee takes a paid day off on another day and works and is paid as normal on the public holiday.
- 39 To address stakeholder concerns that it is not always clear when this provision can be applied, the Bill will clarify that a transfer agreement can only be at an employee's request. This distinguishes it from a situation where an employer asks or requires an employee to work on a public holiday and the employee is entitled to be paid time and half and to accrue alternative leave.

I N C O N F I D E N C E

What employer liability will be if LCP has been provided incorrectly under the new leave system

- 40 To provide certainty to employers and Labour Inspectors, and to ensure the smooth operation of the new system, it will be critical to provide clear liability rules for employers who have not provided LCP correctly.
- 41 Employers would be liable in the following ways:
- 41.1 If an employer has not provided LCP in relation to an hour, they are liable for all accrued leave the LCP the employee should have received.
- 41.2 If an employer has been accruing leave instead of paying LCP, the employee retains the incorrectly accrued annual and sick leave and there is no liability for the LCP that should have been paid. Before the error is corrected the employee and employer may agree to cash up all or some of the incorrectly accrued annual leave.
- 41.3 If an employer has been providing LCP instead of accruing leave, the employee retains the incorrectly paid LCP and there is no liability for the leave that should have accrued.
- 41.4 The period specified for correcting incorrect leave entitlements is eight weeks.

How to define reference periods for pay calculations

- 42 A number of provisions in the Bill require a calculation over a quarterly (13 week) reference period. Stakeholders have consistently raised concern that this would require the inclusion of partial pay periods and the splitting of pay period data.
- 43 Based on feedback from payroll providers, the Bill will use a consistent reference period description for all calculations: *pay periods that start in the 93 days before the pay period in which a relevant day falls*. Only whole pay periods will be included regardless of pay frequency – 13 weekly pay periods, 6 fortnightly pay periods and 3 monthly pay periods.

Impact analysis

- 44 A regulatory impact statement (RIS) was prepared in accordance with the necessary requirements and was submitted at the time Cabinet approval of the policy relating to the Bill was sought [ECO-25-MIN-0124]. The RIS is published on MBIE's website [<https://www.mbie.govt.nz/dmsdocument/31278-regulatory-impact-statement-holidays-act-reform-proactiverelease-pdf>].

Compliance

- 45 I consider that the Bill complies with the following:
- 45.1 the principles of the Treaty of Waitangi;

- 45.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993 (I have identified some rights that may be potentially engaged; this is explained below);
- 45.3 the disclosure statement requirements (a disclosure statement has been prepared and a final draft is attached to this paper);
- 45.4 the principles and guidelines set out in the Privacy Act 2020;
- 45.5 relevant international standards and obligations
Legal professional privilege
- 45.6 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

Human rights

Natural justice

- 46 The statutory remediation process may engage the principle of natural justice set out in section 27 of NZBORA. Specifically, section 27(1) provides that every person has the right to observance of the principles of natural justice by any tribunal (which includes both the Employment Relations Authority and the Employment Court). This right includes the right to be heard. Where employers opt to make use of the statutory remediation approach, this may have the effect of limiting the affected employees' right to be heard in relation to proceedings for breaches of the Holidays Act 2003.
- 47 I consider that if this right is engaged, any such limitation on the right to justice would be justified. This is because the current legislation has proven to be unclear and unworkable for a large number of employers. Remediation under the current Act (where employers proactively address historical non-compliance, to avoid challenge in the Authority or Courts) is complex and costly and, in the context of a transition to new legislation, unlikely to achieve the objective of ensuring employees and employers can readily address historical underpayments. As such, the statutory remediation approach will provide a new way for parties to reach a fair and certain outcome which is not overly burdensome for either party. Allowing legal claims under the Holidays Act 2003 to proceed in parallel with the statutory remediation approach would run counter to the objective of achieving a swift, fair resolution, and could see uncertainty maintained for several years after the transition to new legislation.
- 48 I note that safeguards built into the design of the legislation further strengthen the justification for the above limitation on the right to justice. In particular, employers must still act in good faith when using the remediation framework, and employees affected will have access to the employment institutions in the event that an employer fails to follow the statutory framework correctly.

Freedom of contract

- 49 The transitional provisions requiring employment agreements to be expressed in terms that are consistent the new legislation (discussed in paragraphs 18 – 23) interferes with the principle of freedom of contract. Ordinarily, parties are free to express the terms of an employment agreement however they wish, with the onus then falling on an employer to demonstrate that the terms agreed to comply with minimum legal requirements.
- 50 While freedom of contract is an important principle that underpins our legal system, I consider the limitation is justified in this instance as the new legislation will be fundamentally changing the law (which will then underpin private contracts in the future).

Discrimination

- 51 While the new legislation will apply equally to all employees, there is an argument that the impact of a reduction in sick leave entitlements, due to the shift to hours-based accrual, will disproportionately affect women and disabled people who are over-represented among part-time employees.¹ This may engage the right to freedom from discrimination under section 19 of NZBORA (as a form of indirect discrimination).
- 52 MBIE’s view is that these indirect effects do not amount to discrimination, and I agree. Nonetheless, if NZBORA rights are engaged in this context, I would consider the limitation to be justified as I expect the change will enhance employers’ confidence to employ part-time workers, which will be of overall benefit to employees seeking part-time work arrangements. Further, this change would restore balance to sick leave settings (as the status quo is considered by many to provide disproportionate entitlements to part-time employees).

Note added 30/03/2026 for proactive release: The Ministry of Justice has assessed that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act. The assessment can be found at: <https://www.justice.govt.nz/assets/Documents/Publications/20260310-Employment-Leave-Bill.pdf>. The assessment does not identify discrimination against women or disabled people.

International obligations

- 53  Legal professional privilege

¹ StatsNZ HLFS March 2025 (women) and June 2024 (disabled people).

Consultation

- 54 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, Office of the Privacy Commissioner, Ministry of Business Innovation and Employment (Corporate Governance and Intellectual Property; Small Business and Manufacturing; Office of the Deputy Secretary, Building, Resources and Markets; Systems and Markets; and Tourism and Hospitality) and the Ministries for/of Education (including Education Payroll Limited), Health (including Health New Zealand), Justice, Social Development, Foreign Affairs and Trade, Internal Affairs, Ethnic Communities, Disabled People, Women, Pacific Peoples, Primary Industries, Housing and Urban Development and Regulation.
- 55 Policy development took place with input from employer representatives, and external legal and payroll experts. Aspects of the drafting were tested with a small feedback group, made up of legal and payroll experts.

Binding on the Crown

- 56 As noted in the August Cabinet paper, the Bill will be binding on the Crown, but like the current Act, it will not apply to the Armed Forces as defined in section 2(1) of the Defence Act 1990. As explained in paragraph 60.2, commencement of legislation will be delayed up to 10 years for the schooling sector and will come into effect via an Order in Council.
- 57 The Bill will be an omnibus Bill and will make necessary (related) policy changes to other Acts, as well as consequential changes.

Allocation of decision-making powers

- 58 The Bill allocates decision-making powers between the Chief Executive of MBIE, the Labour Inspectorate, and the Employment Relations Authority and Courts in a similar way as the current Act.
- 59 The criteria relating to the qualifications and responsibilities of decision makers and the procedures that they follow have been applied.

Associated regulations

- 60 As explained in the body of this paper, regulations will be required to bring two aspects of the Bill into operation:
- 60.1 The details of the estimation calculations for the statutory remediation approach will be contained in secondary legislation. I estimate the required regulations will be small size and medium complexity.
- 60.2 For the schooling sector, the Employment Leave Act may come into effect via Order in Council (if it is possible for commencement to occur ahead of the 10-year deadline already agreed by Cabinet). Any

commencement Order would be of small size and low complexity, and its timing is unpredictable.

Other instruments

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

Definition of Minister/department

- 62 The Bill will not contain definitions of “Minister”, “department”, or “chief executive of a department”. Rather, it will include a provision saying that existing definitions from the Employment Relations Act will apply to this Bill as well. Accordingly, the Cabinet Office agrees that consultation on this issue is not required.

Commencement of legislation

- 63 The general commencement is two years after Royal assent, except for the schooling sector.
- 64 The Minister of Education has advised that the schooling sector is unable to comply within the general implementation period due to the need to overhaul its central payroll system. Commencement for the schooling sector will be 10 years after Royal assent or earlier by Order in Council. This is covered in the explanatory note of the Bill.

Parliamentary stages

- 65 The Bill should be introduced by 10 March 2026 Confidential advice to Government
- 66 It is proposed that the Bill be referred to the Education and Workforce committee for a four month Select Committee process.

Proactive Release

- 67 I intend to proactively release this Cabinet paper, subject to redactions in line with the Official Information Act 1982, within 30 days of final Cabinet decisions.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that the Employment Leave Bill holds a Confidential advice to Government priority on the 2026 Legislation Programme Confidential advice to Government

I N C O N F I D E N C E

- 2 **note** that the Bill will reform how leave is earned, taken, and paid, with an aim to provide simplicity and clarity and improve compliance;
- 3 **approve** the Employment Leave Bill for introduction, subject to final approval of the government caucus and sufficient support in the House of Representatives;
- 4 **authorise** the Minister to approve minor and technical changes to the Bill, prior to its introduction;
- 5 **authorise** the Parliamentary Counsel Office to make minor proofreading and editorial changes to the Bill, prior to its introduction;
- 6 **note** that the Departmental Disclosure Statement is not final and will require adjustments to reflect any minor and technical changes made to the Bill prior to its introduction;
- 7 **agree** that the Bill be introduced by 10 March 2026;
- 8 **agree** that the Government propose that the Bill be:
 - 8.1 referred to the Education and Workforce committee for consideration;

Confidential advice to Government

Policy decisions made by the Minister under delegated authority

- 9 **note** that Cabinet authorised the Minister -to make further policy decisions that were consistent with the policy framework agreed to in August 2025, including on the details of a statutory estimation process for remediation calculations, transitional arrangements, record keeping and penalty provisions, and invited the Minister to report back on those delegated decisions [ECO-25-MIN-0124];

Remediation process

- 10 **note** that Cabinet agreed to create a statutory estimation process for remediation calculations, aiming to provide a fair and cost-effective mechanism for employers to address underpayments under the *Holidays Act 2003*;
- 11 **note** that, under delegated authority, the Minister has decided that the Bill will set out the key parameters for an estimation methodology, while the detailed methodology will sit in secondary legislation;
- 12 **note** that the key parameters contained in the Bill are that:
 - 12.1 the Minister, must, before recommending secondary legislation, have regard to data on past remediations, consult on the methodology, and be satisfied that it will be provide reasonable compensation to employees;
 - 12.2 the process will be optional, initiated at the employer's discretion, using a prescribed estimation methodology for current and past employees (looking back six years from the date when the new legislation comes into effect);

I N C O N F I D E N C E

I N C O N F I D E N C E

12.3 to provide certainty, where employers choose to use the methodology, this will have the effect of preventing any new legal claims under the *Holidays Act 2003*, and will pause some claims already lodged (but not well-advanced claims or appeals);

12.4 Completing the estimation methodology will extinguish liability under the *Holidays Act 2003*;

13 **note** that further work is required to design the detailed calculations and method for the estimation approach for secondary legislation (within the parameters established by the Bill);

14 **authorise** the Minister for Workplace Relations and Safety to make policy decisions and issue drafting instructions to the Parliamentary Counsel Office for the secondary legislation referred to in recommendation (12) above;

Transitional arrangements

15 **note** the Minister has agreed to clear transitional provisions governing the conversion of leave entitlements, aligning application of the new legislation with employee pay periods, and ensuring employees whose employment began in the previous 6 or 12 months benefit from this period of service (in terms of leave entitlements);

16 **note** that, to ensure an orderly transition, the Minister for Workplace Relations and Safety has decided that the Bill will include a deadline (three years from Royal Assent) for parties to reach agreement, after which the minimum statutory terms would be deemed to override any contradictory terms in contracts;

Other matters decided under delegated authority

17 **note** that, to maximise the clarity and workability of the legislation, the Minister has made further delegated decisions to complete the legislative framework:

17.1 Clear record-keeping requirements that ensure employers keep all information necessary to comply with the new legislation;

17.2 Penalties apply to provisions that, if breached, would undermine minimum leave-related entitlements, otherwise impact on the legislation's purpose, or undermine its enforcement;

17.3 Where employers hold multiple roles with the same employer, the Bill's provisions will apply to each of an employee's roles separately (reflecting employer feedback);

17.4 For employees paid an averaged salary, leave is taken and accrued based on standard hours that actually fall in a pay period, and the hourly leave pay rate calculated on the same basis to enable the averaged salary to continue to be paid;

I N C O N F I D E N C E

I N C O N F I D E N C E

- 17.5** A principle-based approach to leave accrual during unworked periods, to avoid any unintended gaps that may arise if only rules specific to specified unworked periods were provided;
- 17.6** Clarifying the circumstances in which a Labour Inspector will be able to intervene to determine an employee's notional roster, and the matters the Labour Inspector must take into account;
- 17.7** Clarifying employees' (existing) ability to transfer whole public holidays, including to ensure this must be at an employee's request;
- 17.8** Clarifying employer liability when the employer misapplies the rules for paying the leave compensation payment;
- 17.9** Providing for a consistent, payroll-friendly reference period for all calculations required under the legislation.

Authorised for lodgement

Hon Brooke van Velden
Minister for Workplace Relations and Safety

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