



COVERSHEET

Minister	Hon Brooke van Velden	Portfolio	Workplace Relations and Safety
Title of Cabinet paper	Holidays Act Reform: Consultation document for targeted consultation	Date to be published	14 October 2024

List of documents that have been proactively released		
Date	Title	Author
August 2024	Holidays Act Reform: Consultation document for targeted consultation	Office of Workplace Relations and Safety Minister
August 2024	Appendix Two: Summary of key proposals and alternative options included in the consultation document	Office of Workplace Relations and Safety Minister
28 August 2024	Holidays Act Reform: Approval to Consult ECO-24-MIN-0177 Minute	Cabinet Office
17 June 2024	2324-3811 Holidays Act Reform: Decisions on sick leave for the exposure draft	MBIE

Information redacted

YES

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

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

In Confidence

Office of the Minister for Workplace Relations and Safety
Cabinet Economic Policy Committee

HOLIDAYS ACT REFORM: CONSULTATION DOCUMENT FOR TARGETED CONSULTATION

Proposal

- 1 This paper seeks agreement to the content of the attached consultation document that will accompany an exposure draft of the Employment Leave Bill (the Bill). These documents will be released for targeted consultation in September 2024. The purpose of the consultation is to seek feedback on opportunities to improve the simplicity and workability of the Bill, and on alternative options that go beyond the Bill.

Relation to government priorities

- 2 The Coalition Government's Action Plan for the period 1 July – 30 September 2024 includes beginning consultation on the reform of the Holidays Act 2003 (the Act).

Executive Summary

- 3 Work has been underway for some time to find enduring, workable solutions to longstanding and widespread issues with the Act. On 27 May 2024, Cabinet noted my intent to release an exposure draft of the Bill for targeted consultation this year, to demonstrate this Government's commitment to reforming the Act.
- 4 I am seeking agreement to the content of the attached consultation document (Appendix One) for release alongside the Bill in September 2024. The purpose of the targeted consultation is to seek feedback from the various stakeholders who are impacted by the legislation, including those who work with it on the ground, to ensure the final Bill is robust and will resolve the longstanding issues. Consultation will include 100 participants who represent payroll, employer and employee perspectives, to provide technical feedback on the workability of changes to the Act.
- 5 The Bill largely reflects decisions made by the previous Government, along with improvements agreed by Cabinet in May 2024 to increase simplicity, reduce compliance costs and improve workability, and a new proposal to pro-rate sick leave entitlement. Consulting on the Bill will provide an opportunity to consider whether more substantial shifts from the previous Government's decisions are needed
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- 6 The consultation document sets out issues with the Act, explains the changes proposed in the Bill, and explores alternative options. Key issues are highlighted upfront to help direct participants to issues that matter most to them. Targeted and open questions are asked throughout the document to elicit specific technical feedback, views on the Bill, and to invite alternative solutions.
- 7 At the end of the consultation document, participants will be asked to identify the issues that matter most to them and explain why. This information will inform

decisions on next steps, including consideration of areas that require further policy development Confidential advice to Government

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Background

- 9 Issues with 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 there is ongoing debate over what a replacement Act should look like, and how interests should be balanced.
- 10 On 27 May 2024, Cabinet noted my intent to release an exposure draft of a Bill that would replace the Act (named the Employment Leave Bill) for targeted consultation with a representative sample of stakeholders (discussed in paragraphs 24-28 below) in September 2024. It also noted my intent to seek Cabinet agreement in August 2024 to the content of a consultation document that will accompany the Bill [CAB-24-MIN-0181].
- 11 The exposure draft of the Bill released for targeted consultation will largely represent policy decisions made by the previous Government.¹ It will also include improvements agreed by Cabinet in May 2024 intended to simplify, improve workability, and reduce costs and complexity, and increase certainty.
- 12 Some of the key changes Cabinet agreed include:
- 12.1 shifting to a weeks-based accrual system for annual leave,
 - 12.2 simplifying the process for calculating annual leave entitlement and the framework for using pay-as-you-go for annual leave,² and
 - 12.3 consolidating the payment method for other leave types so that only one calculation is required.
- 13 Cabinet also agreed that the Bill should include a pro-rata approach for providing the minimum 10-day sick leave entitlement so that there is some proportionality between an employee's sick leave entitlement and the quantum of work they perform per week.

¹ Based on the Holidays Act Taskforce recommendations [CAB-20-MIN-0100] which it had established in 2018 [CAB-18-MIN-0250].

² Under the authority delegated to by Cabinet I have made decisions on the detail of the provisions for using pay-as-you-go (PAYG) (paying annual leave as a regular part of an employee's pay) that will be included in the Bill. My decisions include the following objective criteria for using PAYG that do not require the application of judgement:

- i. The employee does not have agreed hours of work in their employment agreement AND
- ii. The employee works for an average of 12 hours or less per seven-day period AND
- iii. The employee has at least two, separate, continuous periods of seven days or more during which work is not performed in every six months.

In order to reduce the administrative burden and compliance costs of the process for reviewing PAYG during employment, I have also agreed to extend the review period from 13 weeks to six months.

- 14 Under the authority delegated to me by Cabinet, I have made decisions on the detail of the pro-rata approach that will be included in the Bill. The approach retains a five day ‘floor’ for all employees who are eligible for sick leave and an entitlement scale that provides four tiers of entitlement based on the average number of days employees work per week: five days (for employees who work one-two days per week), seven days (for employees who work three days per week), eight days (for employees who work four days per week), and 10 days (for employees who work five or more days per week). This decision maintains alignment with design features elsewhere in the Bill, however the consultation document will seek feedback on alternative options.
- 15 The purpose of consulting on the exposure draft of the Bill is twofold. First, we want to seek technical feedback on how workable the proposed changes are for all stakeholders and understand potential impacts and additional ongoing costs associated with implementation. Second, we want to hear what further changes we could make that would achieve greater simplicity and make it easier for businesses to comply and for workers to be paid their correct entitlements. The targeted consultation will help us understand what really matters to those who work with, or are impacted by, the Act.
- 16 This Bill is a step on the way to new legislation, but it is by no means a finished product. I know there are further opportunities to improve the simplicity and workability of the legislation, including consideration of alternatives that go beyond what is in the Bill. We need to know if the Bill is on the right track, or if a fundamentally different approach is needed.

I seek agreement to the content of the consultation document that will support targeted consultation

- 17 The consultation document attached (Appendix One) serves as a guide for participants as they navigate the proposed policy changes set out in the Bill and explore alternative options. It explains each policy change and the issues with the Act they are intended to address, and offers alternative policy options for consideration. Questions are included throughout the consultation document seeking feedback from participating stakeholders about both the proposed changes and alternative options.
- 18 The introduction of the consultation document includes clear messaging that the Bill is not final policy and that more significant changes are possible, both within the current framework and beyond. I want to know which options strike the right balance between the objectives (described in paragraph 21 below) and what benefits, risks and trade-offs need to be considered. Appendix Two provides a list of the key proposals in the Bill and the alternative options stakeholder views are sought on.
- 19 Some examples of alternative options that fit within the current framework include:
- 19.1 replacing the three annual leave payment calculations in the Bill with a single calculation,
 - 19.2 increasing or reducing flexibility to use pay-as-you-go (PAYG) for annual leave, and
 - 19.3 different options for pro-rating sick leave.
- 20 The consultation document also includes some alternative options that sit outside the current framework. These include:

20.1 **Shifting to an hours-based accrual system for annual leave (and/or sick leave): Confidential advice to Government**

[Redacted]

20.2 **Adjusting rules for when calculations of averages are made so that they can be calculated at a fixed point in time, rather than each time leave is taken: Confidential advice to Government**

[Redacted]

20.3 **Reducing the extent to which variable aspects of work and pay are reflected in leave entitlement and pay calculations: Confidential advice to Government**

[Redacted]

21 The consultation document seeks feedback on whether the changes proposed in the Bill or alternative options strike the most appropriate balance between the following policy objectives:

21.1 **Simple but clear:** new frameworks, processes, rules, and criteria should be as simple as possible, while providing clarity and certainty for employers about their obligations and rights.

21.2 **Workable:** changes should be readily implementable in existing payroll systems where possible (including those used by large and small businesses), with minimal additional ongoing administrative burden, implementation requirements and compliance costs.

21.3 **Flexible and future proof:** provisions should be applicable to the full range of complex working and remuneration arrangements in the labour market both now and in the future, and support flexibility where it is appropriate for employers and employees to adopt an approach that suits their circumstances.

21.4 **Proportionality of entitlements and obligations:** changes should appropriately balance interests between parties, specifically between the provision of entitlements and transparency for workers and compliance costs for employers.

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[Redacted]

[Redacted]. To help inform these decisions at the end of the consultation, participants will be asked to list the top issues they would prioritise and why.

23 I seek Cabinet agreement for officials to make minor and editorial changes to the consultation document before it is released for targeted consultation.

MBIE officials have selected a representative sample of stakeholders

- 24 Public interest in having a say during consultation has been overwhelmingly positive. During the registration window from 5 June 2024 to 8 July 2024, 773 individuals completed a registration of interest in participating in the consultation. Interest was spread across a good range of employers, employees, and technical experts, across various industries, sectors, and population groups.
- 25 I have recommended, and Cabinet has previously noted, that MBIE will undertake a targeted consultation in order to ensure officials are able to deliver advice following submissions in a timely manner, and to help us stay on track to deliver legislative change by the end of this term.
- 26 MBIE officials have selected 100 individuals from this group to provide a balance of diverse perspectives and technical expertise. A sample size of 100 provides an appropriate balance between quality of feedback and a manageable workload in terms of analysing submissions within the timeframe.
- 27 Of the 100 participants, 40 have been selected for their technical expertise (such as pay system providers, payroll professionals, legal practitioners, human resource providers and accountants), 35 reflect an employer perspective, with a strong focus on small and medium businesses, and 25 reflect an employee perspective. Representative bodies have been included in each group. There is a good spread across industries and representation of population groups within the 100.
- 28 Given the significant interest from the public, there may be some stakeholders who will be disappointed that they were not chosen to participate in the targeted consultation. However, I want to make clear that the public will be able to have their say on final Cabinet policy decisions when the Bill goes through Select Committee. Undertaking full public consultation before the Select Committee stage risks delaying progress on legislative change.

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Cost-of-living Implications

- 30 The purpose of the consultation is to seek feedback on potential costs and impacts of proposed changes in the Bill and alternative options. If required, I will provide further details on cost-of-living implications when I seek final policy decisions from Cabinet
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Financial Implications

- 31 The proposals in the Bill will require many changes to different aspects of pay and leave systems for employers, including the government as an employer.³ The cost of

³ As noted in the September 2022 final report back to Cabinet on the All of Government Payroll Programme to improve government payroll systems, many government agencies' payroll systems are bespoke and aging, and already struggling to adapt to ongoing changes [GOV-22-MIN-0036].

implementation will vary for employers depending on a range of factors, including the type of payroll system they currently use to manage pay and leave.

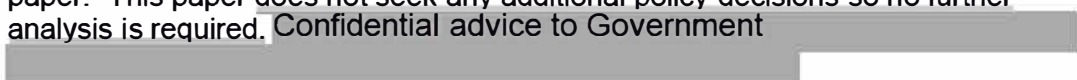
- 32 To help build an understanding of the likely scale of costs, the consultation document asks targeted questions to elicit more details from employers and payroll providers about the anticipated significance of the changes required to business processes and/or systems to implement the proposed changes. MBIE also intends to work with the Public Service Commission and Treasury to develop a tailored questionnaire for public service agencies, seeking information about the costs and implementation considerations for government employers, to inform future advice.

Legislative Implications

- 33 The Bill, when finalised, is proposed to repeal and replace the Act because the proposed changes represent a fundamental change to the legislation and this approach provides scope to modernise the legislation. The Bill retains provisions in the Act unaffected by Cabinet decisions. The Bill will ultimately be binding on the Crown but, like the Act, will not apply to the Armed Forces as defined in section 2(1) of the *Defence Act 1990*.

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Impact Analysis

- 35 MBIE prepared a regulatory impact statement which accompanied the May Cabinet paper.⁴ This paper does not seek any additional policy decisions so no further analysis is required. Confidential advice to Government
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- 36 The Climate Implications of Policy Assessment (CIPA) team was consulted in May 2024 and confirmed that the CIPA requirements do not apply to the policy decisions which the consultation document is based on.

Population Implications

- 37 The content of the consultation document does not have any direct population implications, but the consultation is an opportunity to consult with relevant population groups and ask targeted questions to understand their views on the proposals and how their interests and rights could be affected.

- 38 MBIE officials consulted with five other agencies during the selection process to ensure relevant population groups are represented in the consultation. The Ministry of Health, Te Puni Kōkiri, Ministry for Disabled People, Ministry for Pacific Peoples and Ministry for Ethnic Communities provided recommendations which MBIE considered alongside other factors when selecting the 100 participants for targeted consultation.

⁴ The 2024 RIS is an addendum to the full 2020 RIS to reflect policy changes.

Human Rights

- 39 The proposals in the Bill have all been assessed as appearing consistent with the *New Zealand Bill of Rights Act 1990 (NZBORA)* and the *Human Rights Act 1993*. The exception is the decision to include a pro-rata approach to providing sick leave entitlement which has not yet been assessed. A full assessment of that proposal, along with other options for further policy changes, will be completed by the Ministry of Justice for consistency with the NZBORA before I seek final policy decisions.

Consultation

- 40 The following Public and non-Public Service departments and agencies were consulted on this paper: Department of the Prime Minister and Cabinet (Policy Advisory Group), PCO, the Treasury, the Public Service Commission, Inland Revenue, Office of the Privacy Commissioner, Ministry of Education, Ministry of Health, Ministry of Justice, Ministry of Social Development, Ministry for Culture and Heritage, Department of Internal Affairs, Ministry of Defence, Ministry for Women, Ministry of Disabled People, Te Puni Kōkiri, Te Arawhiti, Ministry for Pacific Peoples, Oranga Tamariki, Ministry for Ethnic Communities, New Zealand Police and the New Zealand Defence Force.
- 41 Treasury provided feedback on the need for sufficient engagement with the health and education sectors to ensure that the proposed changes are workable for them, given the historical difficulties and potential fiscal costs that could arise from implementing changes. Potential impacts for the government as an employer will be assessed through a separate questionnaire (refer to paragraph 32) and, in addition, MBIE intends to continue direct engagement with Health New Zealand (Health NZ) and the Ministry of Education. Free and frank opinions

Communications

- 42 Following Cabinet approval of the consultation document and finalisation of the Bill by PCO, officials will send the Bill, consultation document, and response form to all consultation participants. I will also make a public announcement to confirm that this action in the Q3 Action Plan has been met.

Proactive Release

- 43 I intend to proactively release this Cabinet paper (subject to redactions in line with the Official Information Act 1982).



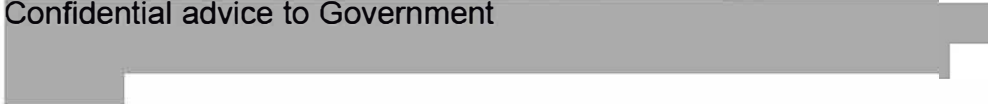
Recommendations

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

1. **note** that in May 2024 [CAB-24-MIN-0181] Cabinet noted the intent to release an exposure draft of the Bill for targeted consultation to test a range of policy options with those who will be affected by the reform, and to report back to Cabinet in August seeking agreement to the content of the consultation document;
2. **note** that, in addition to amending existing Cabinet decisions, Cabinet agreed that the Bill should include a pro-rata approach for providing the minimum 10-day sick leave entitlement and that, as authorised by Cabinet, the Minister for

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Workplace Relations and Safety has made decisions on the detail of the approach that will be included in the consultation document;

3. **note** that the purpose of the consultation document is to seek feedback on the technical and policy details of the proposals in the Bill and on alternative policy options;
4. Confidential advice to Government

5. Confidential advice to Government

6. **agree** to the content of the attached consultation document for release alongside the exposure draft of the Bill in September 2024, and that officials may make minor and editorial changes before it is released for targeted consultation;
7. Confidential advice to Government


Authorised for lodgement

Hon Brooke van Velden
Minister for Workplace Relations and Safety

Appendix Two: Summary of key proposals and alternative options included in the consultation document
(Blue represents areas where this Government took decisions in May 2024 on changes to previous Cabinet policy decisions)

	Key areas of change	Key proposals in the Bill	Summary of alternative options included in the consultation document
Annual Leave (AL)	Provision of entitlement	A weeks-based accrual system whereby entitlement accrues continuously during employment.	Design an hours-based accrual model for all or some employees (and shifts in the end-to-end system to support this).
	Taking AL - rights and obligations	Adjustments to align rights and obligations related to taking AL with weeks-based accrual.	<ul style="list-style-type: none"> › Provide the ability to cash up more than one week of AL 'in' each year. › Extend the minimum notice period before an employee can be required to take AL.
	Determining use of AL	A new methodology for determining use of AL entitlement that removes the requirement for agreement between parties about what a 'working week' means for an employee. It provides a formula that is applicable to all working arrangements and does not require the application of judgement.	<ul style="list-style-type: none"> › Alternative options for specific groups of employees including those who: <ul style="list-style-type: none"> › work guaranteed and additional hours (option: instead of guaranteed hours use an average). › have agreed hours of work that differ between weeks (option: use specific instead of average weeks). › have no agreed hours (options: use an average of hours worked over 52 weeks rather than a quarter and provide ability to calculate averages at fixed points in time rather than each time leave is taken). › Provide the ability for employers and employees to agree to a different method than the one prescribed for determining how an employee's AL entitlement will be provided and its use.
	Payments	<ul style="list-style-type: none"> › AL payment method: A new 'greater of three' calculation methodology: Ordinary Weekly Leave Pay, Quarterly Average Leave Pay (QALP), Annual Average Leave Pay (AALP). › Gross earnings: New expanded definition to clarify which payment types are included. › One payment calculation for AL when employment ends (because of shift to accrual). › AL payment rules for employees who have had a period of parental or volunteers leave: rather than AL pay being based only on AALP, payments based on the normal method. 	<ul style="list-style-type: none"> › Payment method: the current 'greater of two' calculation or a shift to a single calculation (similar to FBAPS). › Timing of calculations: calculate QALP and AALP at fixed points in time (once a quarter, or every six months) rather than every time leave is taken. › Gross earnings: clarify the status quo or narrow the definition. › Cash value of board and lodgings: a modernised rule for including this in leave payments. › AL payment rules for employees who have had a period of parental or volunteers leave: retain current payment rule or adjust rules so that AL does not accrue during these periods, but AL payment at the full rate.
	Pay-as-you-go (PAYG) (AL paid with regular pay)	New objective criteria for determining eligibility for using PAYG along with a clear framework for reviewing its use during employment.	<ul style="list-style-type: none"> › Increase flexibility around using PAYG so it can be used for more employees or remove ability to use PAYG but ensure rules for calculating pay are simple and practical. › Remove requirement to review use of PAYG during employment, so it could be used indefinitely once agreed.
	Annual Closedowns	New provisions related to establishing and having annual closedowns to provide greater clarity and transparency.	<ul style="list-style-type: none"> › Do not introduce a requirement to establish a closedown window before an annual closedown takes place. › Provide the ability for employers to have more than one annual closedown period per year.
Sick, Bereavement and Family Violence leave	Provision of sick leave entitlement	<ul style="list-style-type: none"> › A pro-rata approach for providing the minimum 10-day sick leave entitlement which retains a five-day 'floor' for all eligible employees with a four-tier entitlement scale based on days of work per week. › In the first year of employment entitlement accumulates over the first six months. 	<ul style="list-style-type: none"> › Pro-rate the full ten-day sick leave entitlement. › Adjust the scaling approach so there are more or fewer tiers. › Provide a mechanism to account for days an employee works in addition to guaranteed hours of work. › Design a weeks or hours-based sick leave accrual model for all or some employees (and shifts in the end-to-end system to support this).

	Key areas of change	Key proposals in the Bill	Summary of alternative options included in the consultation document
Sick, Bereavement and Family Violence leave	Bereavement leave entitlement	<ul style="list-style-type: none"> › Expanded list of family members on whose death an employee may take three days bereavement leave. › Clarification that an employee may take bereavement leave at any time following the bereavement. 	<ul style="list-style-type: none"> › Do not expand access to three days bereavement leave or reduce extent of expansion. › Create a specific list of people on whose death an employee may take one day bereavement leave. › Introduce a time limit for when bereavement leave entitlement expires.
	Eligibility framework	Employees with agreed hours have access to entitlements from the first day of employment (rather than waiting six months) and other employees after three months if a test is met.	<ul style="list-style-type: none"> › Retain six-month waiting period for all employees who meet eligibility criteria. › Adjust eligibility criteria to be more or less restrictive. › Simplify by removing any eligibility criteria – all employees eligible from day one or after six months. › Accumulation profile - shorter than six months or remove staggering to simplify.
	Criteria for using entitlements	<ul style="list-style-type: none"> › New criteria for days on which leave entitlement may be used: Otherwise Working Day (OWD) concept replaced with criteria similar but distinct from 'OWD' test for public holiday entitlements. › Reframed method for using and paying sick and family violence leave while receiving accident compensation. 	Refer to OWD below.
	Payments	<ul style="list-style-type: none"> › Ability to take part days of leave proportionate to the number of hours that would have been worked on the day. › A new definition of Relevant Daily Pay (RDP) for leave payments and removal of Average Daily Pay (ADP): RDP = base rate for wages/salary, fixed allowances, an average hourly rate of productivity or incentive based payments. 	<ul style="list-style-type: none"> › Use a single calculation but use base only or base pay plus a loading. › A greater of two calculations methodology (RDP or ADP).
Public and Alternative holidays	Entitlement criteria	New criteria for identifying 'Otherwise Working Days' (OWD) for determining whether public holiday entitlements apply, including an objective test '50% test' for employees who do not have agreed days of work.	<ul style="list-style-type: none"> › A higher (or lower) threshold than 50% of corresponding calendar days worked for a day to be an OWD. › A longer or shorter reference period for the 50% test (e.g., one, six or 12 months).
	Transferring whole public holidays	Clarifications to the conditions and processes for agreeing to transfer a public holiday to another OWD (must be by employee request and OWD's identified when transfer is agreed).	
	Payments	<ul style="list-style-type: none"> › A new definition of Relevant Daily Pay (RDP) for leave payments (refer to sick, bereavement and family violence leave payments above). › A new payment calculation for working on a public holiday: 1.5 times pay for hours actually worked plus RDP for any agreed hours not worked. 	
Changes to leave-related provisions in other legislation	Provision of a pay statement	A new legal requirement to provide a pay statement in each pay period to provide greater transparency about leave and pay for employees.	Do not introduce a requirement for employers to provide a pay statement.
	Leave entitlements after a sale or transfer	A flexible approach enabling the treatment of leave entitlements to be negotiated by the incoming and outgoing employers rather than requiring AL to be paid out.	<ul style="list-style-type: none"> › Remove uncertainty by clarifying the status quo. › Creating legislative structures to require employers to give transferring employees a choice about what happens to their leave balances.
	Parental leave payment method	Replacement of the Holidays Act 'Ordinary Weekly Pay' part of the calculation with a four-week average of gross weekly earnings.	