New Zealand Law Society
Te Kāhui Ture o Aotearoa

Employment Leave Bill

Submission of the New Zealand Law Society Te Kāhui Ture o Aotearoa

14 April 2026

1 Introduction

1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Employment Leave Bill (**Bill**) which seeks to replace the Holidays Act 2003 and establish a new legislative framework for employment leave.[1]

1.2 This submission, prepared with input from the Law Society's Employment Law Committee,[2] raises various rule of law and drafting concerns, which require careful consideration by the Select Committee and officials. These include (among other things):

(a) issues impacting the overall simplicity, clarity and workability of the legislation, and

(b) concerns regarding certainty and transparency within the proposed remediation process.

1.3 The Law Society **wishes to be heard** in relation to this submission.

2 Uncertainty arising from the shift to an hours-based leave accrual system

2.1 The Bill creates a new hours-based accrual system for some types of leave accruals and leave payments. The Regulatory Impact Statement (**RIS**) for the Bill explains that this change seeks to prioritise "simplicity, clarity, and workability".[3]

2.2 A central feature of the new system is the term 'standard hours', which is defined in clause 6 to mean the hours that, under the employment agreement, the employer requires the employee to work, and for which the employee must be paid regardless of whether they in fact work those hours. Clause 6(2) requires these standard hours to be "specified" in either an employment agreement, a work roster, or a notional roster.

2.3 This definition of 'standard hours' will not suit employment arrangements where there are flexible and fluctuating working hours and/or working arrangements where the hours of work are not (and likely cannot) be specified in an agreement or a roster. The Employment Relations Act 2000 (**ERA**) does not require there to be agreement about standard hours. Rather, it allows (in section 65(2)(iv)) for either agreed hours of work or "an indication of the arrangements relating to the times the employee is to work", and (in section 67C) for either guaranteed hours or agreed flexibility.

2.4 It is also unclear what the position will be where the employee's work hours are not specified in the employment agreement in the way envisaged in the Bill. Section 67C of the ERA (Agreed hours of work) does not *require* such specificity in the employment agreement. To the contrary, it permits flexibility in terms of working hours, days, and start/finish times.

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1 Explanatory Notes of the Bill.

2 More information about this committee is available on the Law Society's website: www.lawsociety.org.nz/professional-practice/law-reform-and-advocacy/law-reform-committees/employment-law-committee.

3 Ministry of Business, Innovation and Employment *Regulatory Impact Statement: Holidays Act Reform* (7 July 2025) at [55].

2.5 The uncertainty in the Bill is therefore problematic because the term 'standard hours' is referenced in, and is therefore relevant to, the scope and application of key leave and holidays provisions in the Bill – these include, for example:

(a) annual leave entitlements,[4]

(b) public holiday entitlements,[5]

(c) alternative leave entitlements,[6]

(d) sick leave entitlements,[7]

(e) bereavement leave entitlements,[8]

(f) family violence leave entitlements,[9] and

(g) leave payment provisions.[10]

2.6 Alongside the definition of 'casual hours', the definition of 'standard hours' effectively acts as a gateway test for eligibility for entitlements under the Bill, and any uncertainty arising from the expectation that hours will be specified will have ripple effects on the application and scope of other provisions throughout the Bill.

2.7 These concerns are compounded by drafting issues with other provisions in the Bill, which further reduce the clarity and workability of the Bill. We discuss these in more detail further below – see, for example:

(a) section 3 of this submission, which discusses ambiguities arising from other definitions in the Bill (in clauses 5 and 8);

(b) section 7, which discusses issues arising from bereavement and family violence leave provisions (in clauses 93 and 111);

(c) section 9, which discusses issues arising from provisions regarding payments for work done on public holidays (in clause 124); and

(d) section 11, which considers issues arising from provisions on maintaining leave records (clauses 133 and 140).

2.8 Together, these provisions have the potential to impact the accessibility, predictability and certainty of the resulting legislative framework: where they do so, they will undermine the rule of law, and raise questions as to whether the underlying policy objective of these reforms to ensure the new framework is simple, clear and workable will be met.[11]

2.9 Therefore, while an hours-based framework might be simpler *in principle*, we are of the view that the classification of hours and rostering must continue to account for complex

4 Clause 22.
5 Clause 50.
6 Clause 62.
7 Clause 72.
8 Clause 88.
9 Clause 101.
10 Clause 120.
11 RIS at [33].

working arrangements (which include, for example, variable shifts, mixed duties, and fluctuating work patterns). These can be difficult to accommodate within an hours-based system (as evident from the drafting of this Bill) but, crucially, they should not rest on a requirement that hours be specified in the employment agreement or roster.

2.10 If the Bill is to pass in its current form, without amendment, there would remain:

(a) considerable ambiguity regarding the entitlements available to employees who work unspecified hours, or for whom there are no standard hours in an employment agreement or roster; and

(b) a risk that employers could fail to specify standard hours in an attempt to avoid the minimum leave obligations, which would see impacted employees 'falling through the cracks' and failing to receive any leave or holiday entitlements under the Bill.

2.11 We therefore urge the Select Committee to carefully consider whether the legislative drafting that is intended to support the proposed hours-based system meets its underlying policy objectives, or whether the Bill requires amendments to ensure there is clarity in the Bill for both employees and employers. If the definition of 'standard hours' is to remain unchanged despite the concerns we have raised, the Bill should, at the very least, include a mechanism empowering the Labour Inspector to determine an employee's standard hours if there is disagreement between the employer and the employee (and such a provision could be modelled on clauses 9 to 11 of the Bill, which relate to the determination of notional rosters).

2.12 The remainder of this submission focuses on issues arising from other provisions in the Bill, and improvements that can be made to those provisions if this Bill is to proceed. These comments are set out in clause-order.

3 Other definitions in the Bill

Meaning of 'start date' (clause 5)

3.1 Subclause (b)(i) of the definition of 'start date' refers to "the first date on which the employee is rostered to work for the employer". Practitioners have noted that employees may not necessarily start their employment on a day that they 'work', or on a 'rostered' day (as contemplated in subclauses (b)(i) and b(ii)) (for example, where the employee attends an induction or paid training prior to their first rostered day).

3.2 We recommend simplifying this definition by deleting subclauses (i) and (ii) in subclause (b) and amending subclause (b) to state "if the employee's employment agreement does not specify a start date, *the date on which the employee commences work (including any paid training) for the employer*" (changes italicised and underlined).

Meaning of 'work roster' (clause 5)

3.3 A 'work roster' is usually determined by the employer, and not "agreed by the employee and their employer" (as required under subclause (a) of this definition). Collective agreements also typically enable rosters to be set and notified by the employer provided a certain amount of notice is given (often 14 days). Practitioners have observed it would

be unusual for a roster to be "agreed" between the employer and employee, and that would be impractical where it covers large numbers of employees. It is therefore unlikely that the definition proposed in the Bill (which requires satisfaction of the requirements in subclause (a) as well as (b)) will capture all work rosters.

3.4 We recommend amending this definition by changing "and" between clauses (a) and (b) to "or". This change would mean a roster would come within the definition in the Bill if it meets the requirements in subclause (a) *or* (b).

Meaning of 'casual hours' (clause 8)

3.5 Casual employees may not always have an employment agreement that specifies the matters in subclauses (a) and (b) because they do not have an ongoing employment relationship, and tend to work 'as and when required'. We therefore suggest deleting the words "under the employee's employment agreement" to cover situations where a written agreement does not exist, or where there is a collective agreement or template individual employment agreement in place that does not specify those matters.

4 Otherwise working days

Determining when a public holiday is an otherwise working day (clause 13(2))

4.1 Clause 13 sets out the test for determining whether a public holiday is an 'otherwise working day' in circumstances where an employment agreement does not specify the days, or a pattern of days, on which the employee works. Subclause (2) provides that a public holiday is not an otherwise working day if subclause (1)(b) applies, and "there have been no days of the week that correspond to the public holiday" in the period specified in subclauses (a) and (b).

4.2 It is unclear how there can be circumstances where no days of the week correspond to the public holiday. It may be that this clause contains a drafting error. We invite the Select Committee to seek advice from officials on this point, and to make necessary amendments to clause 13 to ensure these provisions are workable.

Requirement for employer to notify employee of otherwise working day (clause 15(1))

4.3 Where a public holiday is to be treated as an otherwise working day, clause 15(1)(a) requires employers to notify employees, as soon as practicable, whether they satisfy the test in clause 13 and the number of hours that they would have worked on that day.

4.4 This notification requirement will be onerous and impractical for employers with large numbers of employees who satisfy the clause 13 test, including where the employee is notified through their pay statement, as permitted under clause 15(3). The Select Committee could consider whether such notification is necessary where the 'otherwise working day' test *is* satisfied.

4.5 However, as it is likely to impact fewer employees, the requirement to notify employees for whom a public holiday *is not* an otherwise working day (clause 15(2)) could be retained if this provision is considered to be important.

5 Annual leave

Meaning of 'standard hour' (clauses 23(1)(a) and 30(2)(a))

5.1 Clauses 23(1)(a) and 30(2)(a) refer to 'standard hour' (singular). While there is a definition in clause 5 of 'standard hours' (plural), which cross-refers to clause 6 (also plural), it is unclear whether the singular 'standard hour' in clauses 23 and 30 comes within the clause 6 definition.

5.2 This singular term also features in clause 73(1) (which relates to sick leave), and creates uncertainty as to whether the employee accrues sick leave at a rate of 0.0385 per hour *worked*, and if not, how the rate is to be calculated.

5.3 Some cross-references to the definition in clause 6 could therefore be helpful within these provisions, if the intention is for the plural definition to apply to the singular phrase. In making this recommendation, we acknowledge the Legislation Act 2019 provides that words in plural include the singular.[12] However, given the highly technical nature of this term, it would be helpful to expressly clarify this in the Bill.

Accruing annual leave for each standard hour (clause 23(1))

5.4 Clause 23(1) provides that an employee accrues annual leave for each standard hour in a pay period. For an 'averaged salary employee' (**ASE**) (which is an employee who works standard hours that vary between pay periods), leave accrues for each standard hour or part of a standard hour that they work in a pay period (and not each hour for which they are paid).

5.5 When read alongside the meaning of 'standard hours' in clause 6, this clause raises the following concerns:

(a) An employee's usual working hours might not reflect what is set out in their employment agreement due to undocumented changes that occur over time or the employer regularly 'requiring' them to work longer hours. Even where the employee regularly works more hours than is expressed in the employment agreement, if those are not specified as being their standard hours in the employment agreement,[13] they will not accrue annual leave for those hours. (Payment may be a different matter, via the leave compensation payment.)

(b) There is potential for employers to exploit this calculation methodology by reducing the 'standard hours' of work specified in the employment agreement and 'requiring' (whether or not that is overt) the employee to work more than those hours on a regular basis. In turn, the amount of annual leave the employee accrues will not reflect their actual hours of work.

5.6 We note the following clauses also contain similar provisions, and give rise to similar concerns where either the employment agreement or roster does not accurately reflect the hours regularly worked by the employee:

12 Section 19.
13 Clause 6(1).

(a) clauses 81(1) and 82(2), which relate to sick leave;

(b) clauses 94(2) and 95(2), which relate to bereavement leave; and

(c) clauses 112(2) and 113(2), which related to family violence leave.

5.7 We urge the Select Committee to seek advice from officials as to how this issue can be resolved, and make necessary amendments to relevant clauses of the Bill.

Requirement to wait until the start date anniversary (clauses 5 and 25)

5.8 The Bill carries over the requirement in the Holidays Act for employees to remain employed for 12 months before they can use their annual leave entitlements.[14] In each 12-month period *after* their first 12-months, the employer must allow the employee to take leave (as specified in clause 25(1)).

5.9 Lawyers have observed that the requirement to wait for 12 months to take annual leave remains a pain point for new employees and for employers and payroll managers alike. Given the availability of more real-time payroll data, the Select Committee could consider whether this Bill now presents an opportunity to shift to a pro-rata accrual-based system for annual leave, which would allow employees to take it sooner than their 12-month anniversary.

Notice of requirement to take annual leave (clause 30(2)(b))

5.10 Clause 30(2)(b) allows an employer to direct an employee to take annual leave by giving 14 days' notice. However, this clause does not explicitly state whether this applies to 'accrued' leave (i.e., leave the employee is not yet entitled to take) or only 'entitled' leave, which crystallises at the 12-month point.

5.11 It could therefore be helpful to clarify if this power (to give notice to take leave) extends to leave the employee has earned pro-rata, but for which the anniversary date has not been reached.

Employees who are ASE

5.12 There is reference to 'ASE' several times in the Bill, for example in clause 23(1). While this acronym is defined in clause 5 of the Bill, it is not immediately apparent what this means from the context of those clauses We suggest that the first time this acronym is used in a section, both terms (as defined in clause 5) are used alongside each other (i.e., 'averaged salary employee or ASE').

6 Sick leave

Proof of sickness (clause 80(4))

6.1 A medical practitioner may sometimes not be able to certify that a person who is their patient's spouse, partner or carer "cannot attend work" because of sickness or injury affecting their patient: whether or not an employee who is not the sick or injured person

14 Clause 5 ('start date anniversary') and clause 25.

is able to attend work is not a medical issue that can be determined by a health practitioner in every circumstance.

6.2 A certificate from a health practitioner which states the employee's spouse, partner or person dependent on them for care is sick or injured should be sufficient. This can be achieved by deleting the opening words to clause 80(4)(b) "the employee cannot attend work because—".

Taking sick leave on standard hours (clauses 81(2) and 82(2))

6.3 As discussed above at [5.4]-[5.7] (in relation to clause 23(1)), the reliance on 'standard hours' being specified in the employment agreement may mean an employee does not accrue sick leave at a rate that actually reflects their working hours. Clause 81(2) provides that an employee may take sick leave on any standard hours in the employment agreement, but those might not reflect their usual hours of work.

7 Bereavement and family violence leave

Bereavement leave and family violence leave for part-days (clauses 93 and 111)

7.1 While it may be helpful for employees to take only a part day as bereavement leave, the mechanisms for calculating that part day are lengthy and onerous, requiring cross-referencing between clause 93(3) and six subsequent clauses. Similar issues arise in relation to clause 111, which explains how family violence leave could be taken in whole or part days. We recommend simplifying these clauses (including by reducing the extent of cross-referencing that is required to understand and apply the legislation) in order to improve the clarity and accessibility of these provisions.

Ability to take leave in whole or part days (clauses 93 and 111)

7.2 Clauses 93 and 111 permit employees to take bereavement and family violence leave in whole or part days (rather than on an hourly basis, consistent with other entitlements under the Bill). It is not immediately clear why these leave entitlements are distinguished in the Bill in this way, and guidance on this point could be helpful.

Proof of family violence (clause 109)

7.3 It can be difficult to ascertain what is requisite 'proof' of family violence, particularly as the violence could have occurred prior to the employee becoming employed by that employer.[15] Some guidance as to what comprises 'proof' could be helpful. Alternatively, the Bill could be amended to provide that the employer cannot unreasonably dispute the proof that is provided.

15 See clause 103(2)(b).

8 Calculation of leave payments

Leave payment (clause 122(2)(b)(ii))

8.1 Clause 122(2)(b)(ii) provides that an employer must calculate and pay an employee's leave payment "in the pay period in which the leave is taken" if an employee takes sick leave, alternative leave, bereavement leave, or family violence leave.

8.2 Where an employee takes sick leave, bereavement leave or family violence leave, the employer may have little or no notice of this occurring and may have paid the employee for that pay period already (as some pay periods provide a few days' pay in advance), or the payroll run may have passed its cut-off point for processing. For those types of leave, it may not be possible to pay the employee "in the pay period in which the leave is taken". We recommend amending this clause to enable payments to be made in the following pay period as well.

Calculation of leave payment (clause 123(3)(b))

8.3 Clause 123 sets out how an employer must calculate a leave payment. We recommend amending clause 123(3)(b), which provides for the calculation of leave for casual employees, to clarify that 'relevant hours' are the hours that the employer has offered to the employee and the employee has agreed to work, that they then need to take as leave (rather than being hours that they do not work).

9 Payments for working on public holidays (clause 124)

9.1 Clause 124 sets out how an employer must calculate the amount to pay an employee for working or not working on a public holiday. The length and complexity of this clause could make it difficult for employers to work out what payments need to be made, and how they should be calculated (and it is likely these difficulties would be more acute for smaller businesses which do not have dedicated human resources or payroll teams). It is also possible that there could be challenges in programming existing payroll systems to correctly perform these calculations. Practitioners have noted that these calculations appear to be significantly more complex than those in the Holidays Act, and it is unclear why such a complicated approach is necessary.

9.2 We also note this clause, and subclause (5) in particular, contains a number of cross-references to other subclauses, which are difficult to follow: for example, subclauses (c) and (d) of subclause (5) cross-refer to subclauses (e) or (f); however those subclauses then state they apply only when subclauses (a) to (d) do not apply. These are likely to create confusion, and reduce the clarity and workability of the Bill.

9.3 We urge the Select Committee to seek advice from officials as to whether the drafting and calculations in these provisions could be simplified to ensure employers are more easily able to determine public holiday payments.

9.4 We also offer feedback on other aspects of this clause below.

Hourly rates in employment agreements (clauses 124(2)(a) and 124(3))

9.5 Clauses 124(2)(a) and 124(3) both assume that the employer and employee have agreed on an hourly rate in the employee's employment agreement. An hourly rate would not normally be specified in a salaried employment agreement, and is not a requirement under the ERA or this Bill.[16]

9.6 We therefore recommend amending these clauses to instead specify a mechanism for calculating an hourly rate, should the Select Committee determine that this is the best way to calculate public holiday payments.

Two separate calculations to determine payment (clause 124(2))

9.7 Clause 124(2) requires employers to perform two separate calculations in order to determine payments for work done on public holidays:

(a) calculation of the hourly rate in the employment agreement for a public holiday (under subclause (a)) – and see our comments immediately above; and

(b) a calculation of 50% of the employee's "ordinary hourly rate" (under subclause (b)(i)).

9.8 This dual-calculation approach seems unnecessarily burdensome, and we query whether this provision could be amended to provide a simpler and singular calculation that could be more easily understood and applied by employers and employees.

10 Leave compensation payments

References to "additional hours" (clauses 127, 129 and 130)

10.1 These clauses contain references to the term 'additional hour(s)'. While this term is defined in clause 7 of the Bill, it may not be immediately apparent to readers that the references in clauses 127, 129 and 130 are to a defined term (and this is an important distinction because the defined term clarifies that 'additional hours' are hours for which the employee was paid). We therefore recommend including a cross-reference here to clause 7.

10.2 Alternatively, if the reference to 'additional hour(s)' is not a reference to the term defined in clause 7, this should be made clear in the Bill.

Reference to 'LCP employee' (clauses 5(1)), 127 and 128(1))

10.3 'LCP employee' is defined in clauses 5(1) and 128(1) as an employee as described in clause 127. However, clause 127 does not clarify that this is the purpose of this provision, or contain any reference to the term 'LCP employee'. We recommend amending clause 127 to clarify that the purpose of this clause is to define the term 'LCP employee'.

16 We note that while subclause (5) provides mechanisms for determining an "ordinary hourly rate", that is not the same as an agreed rate in an employment agreement.

The use of cross references (clause 129)

10.4 Like clause 124, this clause, and subclause (3) in particular, includes numerous cross-references to other clauses in the Bill. These can be difficult to follow, and we urge the Select Committee to consider whether the drafting of this clause can be simplified.

Meaning of 'LCP'

10.5 The Bill contains numerous references to the acronym 'LCP', and we presume this refers to 'leave compensation payment'. However, while the term 'LCP employee' is defined in the Bill, no equivalent definition is offered in relation to this acronym. To improve the clarity of the Bill, we recommend including a definition in the Bill.

11 Leave records

Requirement for employers to keep leave records (clause 133)

11.1 Clause 133(1) requires employers to include in an employee's leave record all of the information specified in subsections (1) to (32). The information required under this clause is far more granular than what is currently required under section 81 of the Holidays Act. This will place an increased administrative burden on employers, and in particular, small employers who operate without payroll software. We do not express a view here as to whether or not these higher standards of record-keeping are objectionable (and it may be that each of these requirements are necessary), but simply wish to note here the practical impacts of this clause on many employers – noting that the average number of employees employed by New Zealand organisations is very small (4.2 employees on average).[17]

Numbering of subclauses (clauses 133(1) and 140(2))

11.2 The subclauses which sit under subclause (1) of clause 133 are numbered using Arabic numerals (similar to the numbering of the subclause they sit under). This numbering style is inconsistent with the style used elsewhere in the Bill, and creates two sets of subclauses with Arabic numerals (for example, 133(1)(1)), which can cause confusion. We recommend structuring these subclauses using the following format to improve the structure and clarity of the Bill:

(a) Arabic numerals;

(b) then, alphabetical letters (and double alphabetical letters where the number of subclauses exceeds 26 (i.e., (aa), (ab), etc);

(c) then, Roman numerals,

11.3 We note the subclauses which sit under subclause (2) of clause 140 are similarly numbered, and would benefit from the renumbering as suggested above.

17 See here: https://regions.infometrics.co.nz/new-zealand/business/size-of-businesses (Regional Economic Profile: New Zealand, 2025).

Location of definitions (clause 133(5))

11.4 It could be helpful to place the definitions in clause 133(5) in a new, separate clause, or amongst the other 'interpretation' provisions in clause 5 of the Bill. This could assist with making clause 133 more digestible.

Access to family violence leave records (clause 136(3))

11.5 It is unclear whether this provision is intended to be a bar to an application for non-party disclosure under section 24 of the Criminal Disclosure Act 2008, where a defendant is seeking disclosure of family violence leave records. As drafted, this clause could be interpreted as having that effect (and there may be good policy reasons for this). In any case, the drafting of this clause should be amended to clearly reflect how this clause is intended to apply in such circumstances.

12 Enforcement provisions

Power to award interest (clause 149)

12.1 Clause 149 of the Bill empowers the Employment Relations Authority (**Authority**) to award interest on unpaid leave payments. This clause is unnecessary, as clause 11 of Schedule 2 of the ERA already empowers the Authority to make such awards. Further, the reference in clause 149(3) of the Bill to Schedule 2 of the ERA:

(a) effectively confers on the Authority a discretion to award interest that must not exceed its preexisting discretion to award interest; and

(b) enables the application of Schedule 2 of the Interest on Money Claims Act 2016 in a roundabout way (i.e., with the Bill referring to the ERA, which in turn refers to the Interest on Money Claims Act).

12.2 For these reasons, we recommend deleting clause 149. If it is to nevertheless remain, we recommend substituting the phrase "under clause 11 of Schedule 2 of the Employment Relations Act 2000" in subclause (3) with "in accordance with Schedule 2 of the Interest on Money Claims Act 2016".

Presumption of continuous employment (clause 150)

12.3 Clause 150 provides for the presumption that an employee's employment is continuous if they are dismissed and then re-employed less than a month later. Subclause (2) provides this presumption could be overturned by the Labour Inspector where the requirements in subclauses (2)(a) and (b) are satisfied.

12.4 It is unclear why the ability to overturn this presumption is limited to the Labour Inspector. Presumably, it should be open to the Authority to do the same. The Select Committee should seek advice from officials on this point, and expand subclause (2) to also empower the Authority to overturn such presumptions if it is appropriate to do so.

13 The remediation process (clause 156 and Schedule 3)

13.1 The Bill will provide for a remediation process through provisions in Schedule 3, and regulations made under clause 156:

(a) Clause 156 confers on the Executive a broad regulation-making power to define the substantive content of the remediation process.

(b) Schedule 3 addresses the procedural aspects of the remediation process.

13.2 Both sets of provisions give rise to concerns, as we discuss below.

Retrospective effect of the remediation process

13.3 Clause 156(3)(b) clarifies that the remediation process will have retrospective effect, and could be used to remediate underpayments and payment failures which occurred up to four years prior to the Bill receiving Royal assent (**remediation period**).

13.4 Retrospective provisions tend to raise rule of law concerns, and are generally appropriate only in very limited circumstances (for example, where it is entirely to the benefit of those who will be impacted).[18] While a retrospective remediation process might be appropriate in some circumstances (for example, where it enhances access to justice, and benefits and ensures fair outcomes for all involved in the process), it could also be inappropriate where, for example, it affects settled expectations and legal certainty, and results in adverse outcomes for some involved in the remediation process.

13.5 It is unclear whether the proposed retrospective provisions in the Bill are appropriate: retrospectivity has not been identified as an issue in the Departmental Disclosure Statement (**DDS**),[19] and (unless it is in a redacted portion) it is not discussed in the RIS. Consequently, it is unclear, for example:

(a) what information (including evidence regarding live remediations and advice on retrospectivity),[20] exists to support the approach taken in the Bill;

(b) whether retrospectivity has the potential to adversely impact either employers or employees (for example, by reducing or extinguishing some employees' statutory entitlements to compensation); and

(c) whether the proposed length of the remediation period (and extent of retrospectivity) is appropriate, or whether it should be adjusted to ensure equitable outcomes for both employers and employees.

13.6 For these reasons, it is difficult to express a view on whether or not the retrospective application of clause 156 is objectionable. The Select Committee should request further information on these matters from officials, and consider whether amendments are needed to address any concerns which have not been disclosed in the DDS or RIS.

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18 New Zealand Law Society *Strengthening the rule of law in Aotearoa New Zealand* (June 2025) at [7.2]. Also see: Legislation Design and Advisory Committee *Legislation Guidelines* (2021 ed) at page 58.

19 Ministry of Business, Innovation and Employment *Departmental Disclosure Statement: Employment Leave Bill* (9 March 2026).

20 The RIS simply notes, at page 25, that "many live remediations are ongoing".

Reduced scrutiny of the design of the remediation process

13.7 It is questionable whether it is appropriate to design a retrospective remediation process via regulations. These regulations will be secondary legislation,[21] and will not benefit from the same level of Parliamentary and public scrutiny that will be given to primary legislation. It may be more appropriate for these substantive provisions relating to the remediation process to be included in the Bill itself (or a future amendment bill). This would ensure the remediation process is designed in a more transparent manner, with opportunities for public feedback and greater Parliamentary scrutiny.

Impacts on settled matters

13.8 As currently drafted, it is unclear whether the remediation process can be used to relitigate settled matters. Where that occurs, concerns could arise regarding fairness for the employers and employees who have been through expensive and complex remediation processes over the past decade or more, and would now be required to participate in a further process to determine liability.

13.9 If clause 156 is to remain, we recommend expressly confirming in the Bill that the remediation process can only be used for matters that are unresolved or 'live' at the time the Bill comes into force.[22]

Other concerns regarding fairness

13.10 Clause 156(4) provides that regulations may prescribe a minimum amount that an employer who elects to follow the remediation process is required to pay under the process (**minimum amount payable**). An employer would not be required not make a payment to an employee whose entitlement is below the minimum amount payable.

13.11 This gives rise to several concerns:

(a) Employees who are owed small amounts may receive nothing, and yet, their employer's liability would be treated as discharged. This could disproportionately affect part-time or casual workers, and raises questions about whether similarly-situated employees will be treated consistently.

(b) It is unlikely the remediation process will ensure fairness for both the employer and employee where a payment threshold bars an employee from receiving a payment they are otherwise entitled to receive.

(c) It is currently unknown how high the payment threshold is intended to be, and how it will be determined. To what extent it will bar employees from receiving payments? Will the threshold be an arbitrary figure? If so, is an arbitrary threshold appropriate?

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21 Clause 156(6) of the Bill.

22 The RIS is unclear on this point: it simply states "although many employers have already undertaken remediation processes and rectified systems issues, it is expected that many employers will use this approach as the move to a new Act will uncover further non-compliance" (page 23).

(d) Concerns regarding fairness, as well as the lack of transparency around the need for a payment threshold and how it is to be determined, are likely to diminish public confidence in the remediation process.

13.12 We ask the Select Committee to seek advice on these matters, and consider whether it is appropriate to establish such a threshold; if not, we recommend amending the Bill to provide that such a threshold cannot be introduced.

13.13 Even where a threshold might be justified, it is questionable whether this should be set via secondary legislation. We reiterate the points at [13.7] above, and invite the select committee to consider whether a payment threshold should be set and specified in primary legislation rather than in regulations (that is, if a threshold is considered necessary).

Limited consultation requirements

13.14 Clause 156(2)(c) requires the Minister to "consult representatives of employees and employers that the Minister considers appropriate" before making a recommendation to the Governor-General to make regulations under clause 156. This suggests there will be no opportunity for public submissions or opportunities for affected employers or employees to directly engage with the design and development of the remediation process.

13.15 We recommend expanding this clause to require the Minister to undertake meaningful public consultation before making a recommendation to the Governor-General to make a regulation.

Impacts of the early commencement

13.16 The above consultation requirements are referenced in clause 24 of Schedule 1 of the Bill, which clarifies that consultation for the purpose of making regulations before the Bill's commencement date is to be treated as consultation for the purposes of section 156(2)(c).

13.17 While section 156 will come into force on the day after Royal assent,[23] Schedule 1 will only commence on the second anniversary of Royal assent.[24] As a result, it is unclear how these two provisions will operate in tandem prior to the second anniversary of Royal assent (when only one has come into force).

13.18 If the intention is for clause 24 of Schedule 1 to operate alongside clause 156 from the day after Royal Assent, we recommend including this clause in the commencement section in clause 2(2)(a) of the Bill (and making any necessary consequential changes to the wording of that clause).

Concerns regarding procedural provisions in Schedule 3

13.19 We also note the following issues which arise from Schedule 3 of the Bill, which sets out the procedural aspects of the Bill:

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23 Clause 2(2)(a) of the Bill.

24 Clause 2(1) of the Bill.

Extent of suspension of proceedings

13.20 As currently drafted, clause 7(1)(d) of Schedule 3 of the Bill could arguably lead to a stay of any proceeding that includes a claim under the Holidays Act, even if the leave arrears claim is ancillary and/or only part of a broader proceeding. We presume this is unintentional, and invite the Select Committee to clarify the scope of this clause.

13.21 To enhance fairness within the remediation process, we also recommend inserting a new subclause which states an employee is not to be liable for costs, or suspended or otherwise barred from seeking costs, in any Holidays Act claim that is suspended as a result of a remediation process that had not yet been notified.

Unnecessary limitation provisions

13.22 We do not consider it necessary to include section 11 of the Limitation Act 2010 in clause 9(3) of Schedule 3, given the references in that provision to limitation provisions of the ERA and the Holidays Act. We therefore recommend deleting clause 9(3)(c) of Schedule 3.

14 Typographical errors

14.1 We have identified some typographical errors in the Bill which should be corrected (our suggested changes are italicised and underlined):

(a) **Clause 167:** new section 79(2)(a)(i) of the ERA should read "the number of hours that the employee would otherwise *have* worked".

(b) **Clause 169(2):** new section 130(2C)(b) of the ERA should read "providing a copy of, or a certified extract from, ~~*of*~~ the information concerned".

(c) **Clause 176:** new section 12A(2)(a)(1) of the Health and Safety at Work Act 2015 should read "the number of hours that the representative would otherwise *have* worked".

Mark Sherry
Vice-President