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Employment Leave Bill 2026

Submissions on behalf of The Law Association of New Zealand by the Employment Law Committee

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Kia ora koutou

INTRODUCTION

1. The Law Association of New Zealand (TLANZ) is an independent membership organisation representing more than 9,000 legal professionals across Aotearoa New Zealand. TLANZ maintains expert law committees that contribute to law reform and policy development across a wide range of legal and regulatory areas.

2. This submission is made by the Employment Law Committee of TLANZ. The Employment Law Committee comprises practitioners who specialise in employment law and work across private practice, in-house legal teams, unions, and as sole practitioners and barristers. Members of the Committee also include academic leaders in employment law. Practitioners within the Committee represent a cross-section of clients across a wide range of industries and are therefore well placed to comment on the practical implications of the Employment Leave Bill (Bill).

3. The Committee engages regularly with key stakeholders in the employment law sector, including the Employment Court, the Employment Relations Authority, WorkSafe, and other employment-related institutions. Through this engagement, the Committee maintains a strong understanding of both the legislative framework and its practical operation in workplaces.

4. TLANZ welcomes the opportunity to provide this submission to the Education and Workforce Committee on the Bill. The Committee welcomes the Government's commitment to replacing the Holidays Act 2003 with a clearer and more workable statutory framework and is broadly supportive of the policy direction and intent of the Bill.

EXECUTIVE SUMMARY

5. In the Committee's view, the Bill represents a significant and positive step toward addressing longstanding complexity, uncertainty, and systemic compliance issues within the current framework. In particular, the move to an hours-based accrual model, the simplification of leave payment calculations, and the introduction of structured transition and remediation pathways are changes that are likely to improve legal certainty and compliance outcomes across the system.

6. Notwithstanding this support, the Committee considers that certain aspects of the Bill may pose compliance challenges, particularly for employers with complex or non-standard workforce arrangements. There remains scope for targeted refinement to ensure that the Bill operates effectively across diverse working arrangements.

7. The Committee has not sought to undertake a clause-by-clause review. Instead, this submission focuses on a number of discrete areas where targeted clarification, refinement, or additional guidance would materially improve the workability of the Bill and support an orderly transition to the new regime.

8. The Committee's recommendations are intended to be constructive and practical. They are directed toward ensuring that the Bill achieves its underlying policy objectives while maintaining flexibility, clarity, and usability for both employers and employees across a range of industries and working arrangements.

SUBMISSIONS

Clause 3 – Purpose

9. Clause 3 reframes the purpose of annual leave as providing employees with paid time away from work, without reference to the long standing concept of "rest and recreation" which is currently provided for under the Act. While we understand that this change reflects a deliberate policy shift away from assessing how employees use their leave, we consider that the removal of this concept may have unintended consequences in practice.

10. The concept of rest and recreation has historically served an important interpretive and practical function. It has provided context for the way annual leave entitlements are applied, particularly in circumstances where leave intersects with employee wellbeing, fatigue management and health and safety obligations. Its inclusion has not generally operated as a basis for intrusive scrutiny of employees' private activities, but rather as a high-level purpose that informs good-faith decision-making.

11. In some industries, we are aware of employees who seek to take annual leave from one employer to undertake secondary employment. In those contexts, employers have previously been able to consider whether approving annual leave would genuinely support rest and recreation, particularly in safety-critical environments where cumulative fatigue presents a material risk. The removal of any reference to rest and recreation may limit employers' ability to manage those risks in a principled and proportionate way.

12. Additionally, the change in framing may also affect how employers can approach requests to take annual leave in place of sick leave, or to exhaust annual leave balances in circumstances where the employee is unwell or injured. This includes:

    (a) requests to substitute annual leave for sick leave;
    (b) to use annual leave while receiving ACC entitlements; or
    (c) to exhaust accrued annual leave balances during periods of incapacity.

13. At present, employers may legitimately point to the restorative purpose of annual leave when declining such requests, particularly where leave would not meaningfully support recovery. Without this framing, there is a risk that annual leave becomes treated solely as a financial entitlement, disconnected from its underlying purpose.

14. We are concerned that removing all reference to rest and recreation risks repositioning annual leave as a commodified entitlement, rather than one that supports wellbeing and sustainable participation in work. This would represent a significant departure from the historical purpose of the entitlement and may sit uneasily alongside wider employment and health and safety frameworks that place increasing emphasis on fatigue management and worker wellbeing.

Recommendation

15. We recommend that clause 3 is amended to retain an express reference to "rest and recreation", alongside the updated language regarding paid time away from work.

16. Specifically, we recommend clause 3(1)(a) be amended by adding:

i) annual leave to give employees the opportunity to take paid time away from work ***for rest and recreation.***

Clause 5 – Include Definition of a "Part-Year Employee"

17. Clause 32(5) defines the concept of a "part year employee". While we support the inclusion of this concept, the operative definition appears only within clause 32(5) and is not expressly cross referenced in clause 5 (the interpretation clause). This creates an avoidable navigability issue in a Bill of significant length and complexity.

Recommendation

18. We recommend a minor drafting amendment to clause 5 to define a part year employee and expressly state that "a part year employee has the meaning set out in section 32(5)". This would improve clarity and accessibility without altering the substantive policy intent.

Clause 8 – Definition of "Casual Hours"

19. We support the introduction of clause 8 and how the bill defines "casual hours", as it helps clarify when work is genuinely casual.

20. However, the current drafting does not fully reflect the way casual employment has been understood and applied in practice, as set out by case law. In particular, while the definition addresses whether the employer is required to offer work and whether the employee is required to accept it, it does not address whether there is a legitimate expectation of further work arising between engagements.

21. Case law has made clear that this expectation is a critical distinguishing feature. In *Jinkinson v Oceana Gold (NZ) Ltd*, which is the leading case on casual employment, the Employment Court noted that "…where the conduct of the parties gives rise to legitimate expectations that further work will be provided and accepted, there will be a corresponding mutual obligation on the parties to satisfy those expectations".[1] The absence of a legitimate expectation of future work is therefore central to distinguishing genuine casual arrangements from employment that has, in substance, become ongoing.

22. The common law already provides a settled framework for identifying genuine casual employment, including the absence of any legitimate expectation of further work. Leaving this feature unaddressed in the statutory definition risks creating uncertainty and increasing litigation risk as parties seek to reconcile the Bill with existing case law. Therefore, reflecting this principle expressly in clause 8 would support alignment with established authority, rather than reopening questions about what constitutes casual employment.

[1] *Jinkinson v Oceana Gold (NZ) Ltd* [2009] ERNZ 225 at [52].

Recommendation

23. We recommend that clause 8 be refined to include an additional sub clause (c), confirming that there is no expectation of any further offer of employment by the employer at the end of each period of causal engagement, as follows:

> **8 Meaning of casual hours**
>
> In this Act, unless the context otherwise requires, casual hours mean the hours that an employee works if, under the employee's employment agreement, -
>
> (a) the employer is not required to offer any work to the employee; and
> (b) the employee is not required to accept any work offered by the employer; and
> *(c)* ***there is no legitimate expectation of any further offer of employment by the employer, or acceptance of work by the employee, at the end of each period of engagement.***

Clauses 9, 10 and 11 – Notional Roster

24. Clauses 9, 10 and 11 introduce a notional roster framework for determining leave entitlements where an employee's standard hours, days or times of work cannot be readily identified. While the intent of providing a mechanism for these situations is understood, we consider aspects of the notional roster provisions, as drafted, are unlikely to be workable in practice.

25. Clause 9 requires a notional roster to be agreed in writing and kept up to date. In practice, this will be difficult to apply, particularly where employees' work patterns change frequently or are inherently variable. The requirement for agreement, combined with an obligation to continually update the roster, risks repeated negotiation and re agreement, creating significant administrative burden. For many large employers, and those with unionised or shift based workforces, this is unlikely to be practicable.

26. For those larger, and particularly unionised or shift-based workforces, certain of our practitioners with employer clients consider requirement for a notional roster to be agreed and kept up to date presents further difficulty. Changes to working patterns commonly occur at scale and may involve consultation or agreement processes, meaning that repeated updates to a notional roster create ongoing administrative and bargaining burden.

27. Importantly, this burden does not resolve the underlying issue of accuracy, as variability in hours and duties is structural rather than exceptional. In these settings, the concept of a notional roster risks becoming a compliance exercise divorced from how work is actually performed.

28. There is also uncertainty in the role a notional roster is intended to play. Although described as "notional", the provisions require it to reflect actual work patterns and to be revised as those patterns change. This blurs the distinction between a notional construct and an operational roster, and risks undermining the purpose of introducing a simplified mechanism in the first place.

29. Additionally, clauses 10 and 11 provide for a Labour Inspector to determine a notional roster where agreement cannot be reached, including by reference to historical work patterns. While a regulatory backstop is appropriate, we are concerned that the Bill does

not provide employers with a clear and practical fallback where agreement is not reasonably practicable. Reliance on Labour Inspector determinations as the only alternative is likely to increase disputes, delay, and litigation.

30. It is submitted that the framework would be materially improved by providing an express alternative mechanism.

Recommendation

31. We recommend that clauses 9, 10 and 11 be amended as follows:

Clause 9

(a) Clause 9 should be amended to provide that, where it is not reasonably practicable for an employer and employee to agree a notional roster, agreement is not required as a precondition to determining standard hours for leave purposes.

Clause 10

(b) Clause 10 should be amended to allow an employer, without Labour Inspector intervention, to unilaterally determine a notional roster by applying a prescribed averaging method (for example, a rolling 13-week average of hours worked), where a notional roster is not practicable. This mechanism should sit alongside the Labour Inspector's powers, rather than being available only through regulatory determination.

Clause 11

(c) Clause 11 should be consequentially amended to reflect this alternative mechanism, making clear that a Labour Inspector's role is backstop in nature, rather than the primary means by which a notional roster is established where agreement is impracticable.

Clauses 27–29 and 31–32 – When annual leave is taken

32. Clauses 27–29 and 31–32 set out the framework for determining when annual leave may be taken by reference to an employee's standard hours, whether those hours are specified in an employment agreement, a work roster, or a notional roster, and include additional provisions for part-year employees. We support the intent of these provisions, which seek to give effect to the shift to an hours-based leave regime and to provide greater structure and consistency around the taking of annual leave.

33. However, the drafting of these provisions uses different formulations when referring to the unit of leave (including references to "hours" and "standard hours") across clauses 27–32, without expressly clarifying whether these terms are intended to operate identically in all contexts. In practice, this may create uncertainty when determining how and when annual leave may be taken, particularly where these provisions are applied across different employment arrangements and working patterns.

34. Further, while clauses 28 and 29 separately address circumstances where standard hours are specified in a work roster and a notional roster, the Bill does not expressly clarify the relationship between these provisions, or when a work roster should be relied on in preference to a notional roster. In circumstances where employment agreements specify total hours but do not specify days or times of work, this lack of clarity may result in increased reliance on notional rosters and inconsistent application across workplaces.

35. Similar issues arise in relation to part-year employees under clauses 31–32. While we support the inclusion of specific provision for part-year employees, further clarity as to how annual leave is to be taken across working and non-working periods would assist both employers and employees, particularly where part-year arrangements are longstanding or where patterns of work change over time without corresponding updates to employment agreement.

Recommendation

36. We recommend that clauses 27–29 and 31–32 be clarified, either through targeted legislative amendment or authoritative guidance, to:

    (a) ensure consistent use of the terms "hour" and "standard hour" across the provisions governing the taking of annual leave; and

    (b) expressly clarify the intended relationship between clauses 28 and 29, including when standard hours specified in a work roster are to be relied on instead of a notional roster.

37. Providing this clarification would improve certainty for employers and employees when determining the days and hours on which annual leave may be taken, support payroll implementation, and reduce the risk of disputes arising from uncertainty in the mechanics of taking leave, as opposed to any substantive disagreement about entitlement.

Clause 37 – Cash Up of Annual Leave

38. Clause 37 addresses the consequences of incorrectly cashing up annual leave, providing that where annual leave has been cashed up in breach of the Act, the employee retains the payment, and the leave entitlement continues to apply.

39. The automatic retention of the payment by the employee, coupled with the reinstatement of the leave entitlement, is likely to result in a windfall outcome that is disproportionate to the nature of the breach. Particularly given breaches of the Act are often inadvertent and, particularly in cash up situations, may have been made in good faith to assist an employee.

40. We acknowledge that this provision broadly reflects the current legal position, including established case law under the Act, however, that position is best understood as a consequence of the structure and drafting of the existing Act, rather than as an endorsement of the fairness of the outcome in every case. The courts have recognised that rigid outcomes in overpayment contexts can produce unfair or disproportionate results but have been constrained to apply the law as enacted in the current Act.

41. We submit that the proposed Bill should address this drafting deficiency by providing that, where annual leave has been incorrectly cashed up, the payment becomes a debt repayable to the employer, while the corresponding annual leave entitlement is reinstated to the employee, so that the employee is not disadvantaged. This would avoid windfall outcomes while preserving employee protections. Importantly, this approach does not expose employees to unfair recovery. The courts have already recognised, in overpayment cases, that repayment may be refused where it would be inequitable in the circumstances.

42. In *Foai v Air New Zealand Ltd,*[2] the Employment Court acknowledged that employees are entitled to assume they are being paid correctly, and that compelling repayment may be inequitable on the facts. This decision confirms that equity considerations can already appropriately limit recovery if there are circumstances where requiring repayment would be unfair.[3]

43. Further, we note that any repayment mechanism would continue to operate subject to the Wages Protection Act 1983, meaning recovery could not occur through unilateral deductions from wages and would typically require employee agreement (for example, to a repayment schedule) or another lawful process following consultation.

Recommendation

44. We recommend that the wording of section 37 be amended as follows:

> **37 Incorrect payment for cashed-up annual leave**
>
> (1) If an employer incorrectly pays out annual leave, —
>
> a. the employee's entitlement to take the annual leave incorrectly paid out remains in force as if the payment had not been made; and
>
> b. the amount of the incorrect payment is recoverable by the employer as a debt.
>
> (2) For the purposes of subsection (1), an employer incorrectly pays out annual leave if—
>
> a. the employer pays out annual leave that the employee did not request to cash up; or
>
> b. the employer pays out more annual leave than the employee requested or was entitled to request to cash up; or
>
> c. the employee requests to cash up more than the maximum percentage of annual leave permitted under section 33(2) and the employer pays that additional amount.
>
> (5) Recovery under subsection 1(b) is subject to equitable considerations, including whether recovery would be inequitable in the circumstances.
>
> (6) Any recovery under subsection 1(b) must not be affected by unilateral deductions from wages, and may occur only—
>
> a. by agreement (including an agreed repayment schedule); or
>
> b. by lawful process.

Clause 54(2) – Public Holidays

45. We note a potential drafting error in clause 54(2), where the inclusion of an additional "not" appears to invert the intended meaning of the provision. As currently drafted, this creates ambiguity and may lead to unintended consequences in determining entitlement to public holidays, particularly in relation to the "otherwise working day" test.

46. Given the central importance of public holiday entitlements and the risk of inconsistent application, we consider this issue should be clarified to ensure the provision operates as intended.

[2] *Foai v Air New Zealand Ltd* [2012] NZEmpC 57.
[3] *Foai v Air New Zealand Ltd* [2012] NZEmpC 57.

Recommendation

47. We recommend that clause 54(2) be amended to read "If a public holiday falls on a day that is ~~**not**~~ an otherwise working day for an employee…".

Clause 80 – Sick Leave – Proof of Sickness or Injury

48. Clause 80 sets out the circumstances in which an employer may require proof of sickness or injury in support of sick leave.

49. We submit that the Bill provides a good opportunity to review the wording of the clause to ensure that it captures what needs to be provided by way of the content of medical certificates. In practice, employers frequently receive certificates that provide minimal information, are issued by persons who are not clearly health practitioners, and/or state broad and open ended periods of unfitness for work without any meaningful detail (for example, it is common to see the wording of: "I assessed [name] on [date] and they are unfit to attend work until [date]"). This creates difficulty for employers seeking to assess fitness for work, manage absence, and meet their health and safety obligations.

50. In our view, there is an opportunity to improve clarity and consistency by recognising that medical certificates should contain sufficient information to enable employers to understand prognosis, likely duration of incapacity, and any relevant work-related limitations, to the extent that this is relevant to the employee's employment. This would align with existing professional standards and supports a more constructive approach to managing absence and return to work.

Recommendation

51. We recommend that clause 80 be amended, or supplemented by express statutory guidance, to provide that where an employer is entitled to require proof of sickness or injury:

    (a) the proof must be provided by a health practitioner, as defined in section 5(1) of the Health Practitioners Competence Assurance Act 2003; and

    (b) the certificate must comply with applicable professional standards or guidance (such as Medical Council of New Zealand guidance), as amended from time to time.

Part 2 - Leave entitlements

52. The Bill describes statutory annual leave and sick leave purely in hours with no reference to weeks or days. Annual leave and sick leave are earned, taken and paid in hours.

53. The move to hourly accrual and hourly administration will work well for many workforces and is something we have advocated for due to this. However, it will not account for all workforces and, in fact, will pose some significant compliance difficulties for some employers. For example, in some salary-based workforces with highly variable duties, leave is currently accrued and paid in days on a consecutive-days basis. That model can be more intelligible for employees and better aligned with how remuneration operates.

54. Given the serious issues in trying to convert certain complex workforces into an hourly leave model, we are concerned that the Bill could have the impact of solving some issues but then creating other issues. Therefore, we submit that it is important for the Bill to allow for sufficient flexibility to account for different modern working arrangements.

Recommendation

55. A more flexible approach that allows for alternative time units to be utilised where appropriate would reduce complexity and remove the risk of unintended impacts whilst ensuring the Bill is capable of lawful implementation across a range of workforces.

56. We recommend that the Bill is amended to include some flexibility for employers to use either hours or days as the unit for calculation, similar to the model used in the United Kingdom. We consider it would be appropriate for hours to remain the default approach, with days being available as an alternative option only if is not possible or practicable to apply the hours framework.

57. In circumstances where "days" are adopted as the unit for calculation, it would also be necessary for a calculation methodology to be applied that aligns with the unit of a day. In this specific situation, it may be appropriate to apply a daily leave rate based on a calculation of the employee's earnings over the preceding 12 months, divided by the days worked over that period.

Clause 129 – Leave Compensation Payment

58. Clauses 129 and 132 introduce a Leave Compensation Payment (LCP) mechanism for additional hours, rather than requiring leave to accrue on those hours. We understand that this model is intended to provide certainty and to avoid the accumulation of large leave liabilities in circumstances where hours of work fluctuate.

59. However, the mandatory reliance on LCP for additional hours will, in some cases, produce outcomes that are inconsistent with the broader purpose of the Bill and cause operational difficulties for employers. In particular, the structure of the LCP may create incentives for employees to favour being paid the cash loading rather than accruing leave, and to resist agreement to standard hours.

60. This has the potential to undermine leave as a genuine entitlement that employees are encouraged to take, rather than treat as a financial substitute. In some circumstances, this will discourage employees who work significant additional hours from taking sick leave, as doing so would result in a materially lower payment than if they had worked and received the LCP on those hours. This is likely to particularly be the case in relation to low-income employees. Often those employees are working in roles where there are significant health and safety concerns if they attend work sick (for example, those providing care services to the elderly and sick).

61. The Bill does not currently allow for alternative approaches that may produce the same or better substantive outcomes for employees. In practice, we are hearing that there is a strong preference to accrue leave on all hours worked (including additional hours), while others may prefer the "pay as you go" model of LCP. Either approach would be broadly

neutral in effect for employees – i.e. they either get leave paid at the time or have the ability to take it later.

62. By way of example, we are aware that some employers have concerns about the operation of mandatory LCP for workforces that commonly commence on low guaranteed hours and progressively work significant additional hours as client demand increases. In those environments, the application of LCP on additional hours may create a financial disincentive for employees to agree to an increase in standard hours, even where their working pattern has become regular and predictable. Allowing leave to accrue on all hours worked would better reflect the reality of those arrangements, support access to annual and sick leave, and avoid incentives that undermine the transition to more stable hours.

63. As above in our submission regarding the "hours" model, providing for a single compulsory model limits the ability of employers to adopt the approach that best reflects their operational realities, workforce composition, and risk profile. It may also add unnecessary complexity where employers and payroll systems are already capable of managing leave accrual across all hours.

64. In our view, there is scope to deliver on the intent of the Bill while allowing greater flexibility in how leave entitlements are delivered, without jeopardising employee protections or entitlements. Feedback from employers with large variable-hours workforces indicates that mandatory reliance on LCP may, in some cases, increase cost and complexity without delivering additional benefit to employees.

65. For example, in workforces where employees progressively build up significant additional hours, the 12.5% cash loading applied to those hours can exceed the combined value of accruing annual and sick leave on the same hours, particularly where leave is regularly taken rather than paid out. In those circumstances, accruing leave on all hours worked would be both simpler to administer and more cost-effective, while better supporting the Bill's objective of promoting leave as a genuine entitlement that employees are encouraged to access, rather than a cash substitute.

66. We are also concerned with potential windfall for employees, who have minimal standard hours, and work significant additional hours, when sick leave is taken. This is because the definition of "relevant hour" in clause 129(3) provides that an employer must pay LCP to LCP employees for each additional hour that the LCP employee "does not work because they take sick leave, alternative leave, bereavement leave, or family violence leave". This would mean that LCP employees are entitled to an LCP payment for hours not worked when on sick leave and appears to amount to double dipping that defeats the purpose of LCP (i.e. the amount is paid in lieu of accumulating annual and sick leave for those specific hours).

Recommendation

67. We recommend that clauses 129 and 132 be amended to allow employers, as an alternative to paying LCP on additional hours, to accrue leave on all hours worked (standard and additional). The LCP should remain available as an option, rather than the sole mechanism.

68. We further recommend that the definition of "relevant hour" in clause 129(3) is amended to remove the requirement for an employer to pay LCP to LCP employees for each additional hour that the LCP employee "does not work because they take sick leave, alternative leave, bereavement leave, or family violence leave".

Clause 130A – Pay Statements

69. Clause 130A introduces a requirement for employers to ensure that employees are provided with pay statements containing specified information for each pay period.

70. We support the approach taken in clause 130A, particularly the requirement that employers must ***provide access*** to pay statements, rather than requiring active or physical provision in every case. This reflects current employment and payroll practices, where many employers make pay statements available through secure employee portals, payroll systems, or other electronic platforms.

71. In our view, clause 130A strikes an appropriate balance between transparency for employees and practicality for employers. It also appropriately reflects modern payroll systems and working arrangements.

Clause 156 – Remediation Framework

72. The Bill proposes a statutory remediation framework to address historic non-compliance with leave entitlements, including the ability for employers to resolve liabilities through a prescribed process and payment, with a view to achieving finality.

73. We recognise that, in principle, a clear and structured remediation framework has the potential to provide certainty for employers and employees and to bring long-running compliance issues to an end. Given the scale and complexity of historic non-compliance with the Act, a mechanism that supports efficient and consistent resolution is likely to be welcomed.

74. At the same time, we acknowledge that some employers have already undertaken extensive and resource-intensive remediation processes. For those employers, the introduction of a statutory remediation option may feel inequitable, particularly where it offers a more streamlined pathway for employers who have not yet addressed historic non-compliance. This tension is understandable and reflects the difficult balance the Bill seeks to strike between pragmatism, consistency, and fairness.

75. We also note that key aspects of the remediation framework are to be set out in secondary legislation. While we understand the need for flexibility, the absence of detail at this stage creates uncertainty for employers who currently have remediation processes underway, or who are considering whether to proceed now or await the new framework. There is a risk that this uncertainty may delay remediation activity rather than accelerate it.

76. Feedback from certain of our practitioners who act for large employers with complex payroll, rostering and workforce arrangements indicates that this uncertainty is particularly acute where employers are concerned about whether participation in remediation will deliver full and final resolution of historic liability. In the absence of clear statutory finality, employers may be reluctant to commit significant time and resources to remediation processes if there remains a risk of subsequent claims or disputes. This hesitation risks delaying remediation activity, contrary to the Bill's objective of encouraging timely resolution of historic non-compliance.

Recommendation

77. To ensure that the remediation framework has its intended effect of encouraging timely resolution of historic non-compliance, we recommend that the Bill provide greater certainty as to the legal effect of completed remediation. In particular, where an employer has completed an approved remediation process in accordance with the Bill, that process should result in full and final settlement of Holidays Act liabilities for the covered period.

78. Accompanying this, a related amendment should be made to section 149 of the Employment Relations Act 2000 (ERA) to allow for MBIE mediator sign-off for remediation compensation payments made under section 149 of the ERA. This would provide employers and employees with confidence that remediation delivers genuine legal finality and would reduce the risk that uncertainty discourages or delays participation in the remediation framework.

Clauses 165-166 – Amendments to the Employment Relations Act 2000

79. We support the amendments relating to Part 6A of the Employment Relations Act 2000 as part of the transition to the new leave framework which set the requirements for when an employer restructures their business and if, as a result of a restructuring, an employee chooses to transfer to the new employer.

80. These provisions address the issue of the transfer of leave entitlements which, for some time, has been recognised as an anomaly in practice. While the practice has been unlawful under the existing framework, it has nevertheless been a common approach in business transactions given it generally works in the best interests of all parties involved.

81. Providing express legislative ability to transfer leave entitlements will give employers and employees greater certainty and confidence when engaging in those processes. This clarity is likely to support more constructive engagement during transitions and reduce the risk of inadvertent non-compliance.

82. We also note that this approach reflects a long-standing consensus that the position required clarification, and we understand that it aligns with recommendations previously made through tripartite processes. In that respect, the amendments are a welcome and pragmatic step.

Schedule 1 – Length and Complexity of Transitional Provisions

83. The Bill introduces a comprehensive new leave framework that will require significant changes to existing employment agreements, payroll systems and operational practices. We consider it inevitable that there will be areas of disagreement during the transition process, particularly where existing entitlements must be converted or re characterised under the new regime.

84. Given the breadth and technical complexity of the changes introduced by the Bill, we consider that explicit statutory clarity and supporting guidance will be essential during the transition period, including expressed provisions that one-year after the commencement date the minimum statutory entitlements will override any inconsistent contractual

provisions in an employment agreement. The implementation of the new framework will require employers to reconfigure payroll systems, convert existing leave balances, and apply new categorisations of hours and entitlements. Where transitional rules are unclear or open to interpretation, this materially increases the risk of inconsistent application and technical non-compliance during the transition period. Clear legislative parameters and guidance would assist payroll implementation, support nationally consistent outcomes, and reduce disputes arising from system and conversion issues rather than substantive disagreement.

85. We recommend that formal guidance be given on the application of the transitional provisions, including worked examples and agreed interpretations, and by clearly delineating the parameters within which payroll and system changes are to be implemented during the transition period. Providing a clear and reliable source of guidance would reduce the risk that technical or system-driven issues give rise to inconsistencies or disputes and would support an orderly and consistent transition to the new regime.

86. We set out below a few specific examples we recommend specifically requires clarity within the Bill.

Multiple transition dates / tests

87. Schedule 1 of the Bill sets out the process for converting or transferring entitlements and obligations from the current Act into the new legislative framework. As currently drafted, several aspects of this Schedule are likely to impose significant cost and operational challenges for employers and payroll providers. Certain provisions would benefit from further clarification to prevent inconsistent application.

88. By way of example, the Bill introduces a range of transition triggers, with distinct dates and requirements. For instance, some obligations must be met from the "first pay period" following commencement of the potential new Act, others from the date of "commencement" itself, and there is a separate one-year timeframe for updating specific employment agreement terms. This results in a fragmented approach to implementation. In turn, this could risk non-compliance.

89. We consider this complexity could be reduced if there was a single operative date. A single operative date should be achievable given the two-year lead in period between Royal Assent and commencement of the potential new Act.

Overlap of new rules and current Act during first 12 months after commencement

90. As currently drafted, any *new* employees commencing employment in the 12 months after commencement of the potential new Act would be required to be employed on terms and conditions reflecting the potential new Act. On the other hand, the entitlements and payments under the potential new Act will not apply to *current* employees until the employee's first pay period *after* commencement (and, in addition, employment agreements for *current* employees do not need to be updated until 12 months after commencement). In turn, this may result in employers being required to operate a number of payroll systems at the same time, including:

(a) one for any *new* employees who are subject to the new laws set out in the potential new Act;

(b) one for *current* employees until the start of their first pay period after commencement; and

(c) one for *current* employees who may have enhanced entitlements in their employment agreement / a collective agreement that will potentially continue for up to 12 months after commencement.

91. As above, this complexity could be reduced if there was a single operative date.

Potential disputes

92. We are concerned that, without clear limits, disputes arising solely from the application of the transitional provisions may become the subject of strike action or lockouts. In our view, this would be undesirable and inconsistent with the purpose of the transitional framework, which is to enable an orderly and technical shift to the new system.

93. There is precedent for legislating that unions and employees cannot participate in lawful industrial action, even where it otherwise relates to bargaining, if the issue in dispute arises from legislatively defined processes, rather than substantive terms and conditions of employment.

94. By way of example, the Fair Pay Agreements Act 2022 (FPA) (since repealed) included express restrictions on industrial action in relation to fair pay bargaining.[4] A similar approach would be appropriate here, where disagreements relate to the application of statutory transition rules rather than bargaining outcomes.

95. We recommend that the Bill be amended to provide that disputes arising solely from the application or operation of the transitional provisions cannot be the subject of industrial action, during the transition period.

96. This could be achieved by adopting an approach similar to that taken in the FPA Act (since repealed), where industrial action was expressly restricted in respect of bargaining or disputes that arose from legislatively prescribed processes, rather than from disagreement over substantive terms and conditions of employment. In this context, disagreements about the conversion, reconciliation, or technical application of statutory transition rules should be treated as procedural matters and resolved through interpretation, guidance, or dispute resolution mechanisms, rather than industrial action.

97. As such we recommend the following be inserted into Schedule 1 of Part 1 of the Bill (or alternatively in the Employment Relations Act 2000):

[XX] Disputes relating to transitional provisions not subject to industrial action

(1) This section applies to a dispute that arises solely in relation to the interpretation, application, or operation of the transitional provisions of this Act.

(2) A dispute to which subsection (1) applies is not a matter over which a person

[4] Fair Pay Agreements Act 2022, section 24.

can strike.

(3) No person may lawfully engage in a strike or lockout in respect of a dispute to which subsection (1) applies.

Clarification regarding enhanced terms after one-year commencement date

98. Clause 6(5) of Schedule 1 of the Bill provides that certain provisions of an employment agreement must comply with the potential new Act one-year after the commencement date and, if not, the minimum entitlements in the potential new Act will apply. However, the Bill does not expressly address whether the terms in the potential new Act would automatically "trump" enhanced benefits provided for in existing employment agreements and collective agreements. Rather, this is clarified in technical guidance released by MBIE (which is not binding):[5]

> *If, one year after commencement, an agreement still contains terms that conflict with the new Act, the intention is* ***that minimum statutory entitlements will override any inconsistent contractual provisions. This override will apply to all such terms, including those that may currently be more generous than the new minimums.***

99. We recommend the Bill is amended to specifically clarify this issue (rather than relying on non-binding guidance). In particular, we recommend clause 6(5) in Schedule 1 of Part 1 of the Bill be amended by adding:

> *(5) If an employment agreement does not comply with subclauses (2), (3), and (4) (as applicable), the minimum entitlements provided under this Act apply and* ***will override any inconsistent contractual provisions. This override will apply to all such terms, including those that may currently be more generous than the new minimums.***

Interplay with collective agreements

100. New employees who are newly hired within the 12 months after commencement of the potential new Act and who are union members falling within the scope of a collective agreement must, as a matter of law, be engaged on the terms and conditions set out in that collective agreement (or on individual terms that do not conflict with those collective terms). Despite this, Schedule 1 of the potential new Act does not clarify how these statutory requirements will interact in practice. For instance, it is unclear whether the potential new Act will automatically override the terms of any collective agreement for new employees, even where the collective agreement has not yet been amended for current employees.

101. As above, we recommend that this issue is also clarified in the potential new Act.

CONCLUSION

102. TLANZ supports the overall direction and intent of the Bill and considers it a significant step toward addressing the longstanding complexity, uncertainty, and compliance challenges associated with the Holidays Act 2003. The proposed reforms introduce a more coherent and structured framework which, if implemented with sufficient clarity and practical

[5] MBIE Technical FAQ: What's changing with employment leave? Version 3 (19 March 2026), page 38.

guidance, has the potential to materially improve consistency, confidence, and workability across the leave regime.

103. The recommendations in this submission are targeted, practical, and are intended to support the effective operation of the Bill in practice, particularly during the transition period. Drawing on the Committee's experience advising employers across a wide range of industries on leave compliance, payroll implementation, workforce transitions, and remediation, the Committee considers that addressing these matters through the Select Committee process will strengthen the Bill and assist in achieving an orderly and consistent transition to the new regime.

104. TLANZ welcomes the opportunity to contribute to this process and would be pleased to engage further with the Committee on the practical implications of the proposed reforms. If the Committee has any questions regarding this submission, it may wish to contact Committee members Rosemary Wooders (Partner, Bell Gully) or India Townsend (Senior Associate, Simpson Grierson), or Moira McFarland, TLANZ Committee Executive, at moira.mcfarland@tlanz.nz

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Ngā mihi

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The views represented in this submission are not necessarily representative of the views of all TLANZ members but are those of individual TLANZ members or TLANZ committees who have responded to the consultation.