

## **Oral Submission on the Holidays Amendment Bill**

### **Regulatory Impact and Compliance Cost Statement**

I record our regret that the regulatory impact and compliance cost statement for this Bill is another unquantified and not very serious guess at the implications of legislation for those impacted by it. It is simply unacceptable to state that “it is not possible to identify the magnitude of this problem”.

The “problem” in question is, of course, the notion of relevant daily pay that is not apparently an “unintended consequence” of the Holidays Act because this Bill neither addresses it nor alleviates what the regulatory impact statement rightly calls the “perverse incentives” arising from the adoption of relevant daily pay as the baseline for all leave payments.

Indeed, the value of the statement as any check on the quality of the proposed legislation is affirmed in its final paragraph where it is stated that compliance costs will be mitigated in part by the fact that basic concepts in the Act are unchanged. This is technically correct. Relevant daily pay is unchallenged. Relevant daily pay remains in this Bill and relevant daily pay will render nugatory the marginal tweaking set out in this Bill that are asserted to “correct the unintended consequences” that have flowed from the application of the principal Act, and will continue.

### **Productivity**

Labour market productivity, competitiveness and flexibility are critical building blocks of the Government’s stated objectives to achieve accelerated, sustainable economic growth. The priority accorded these objectives by the Government is sufficiently significant as to have prompted it to establish a Working Group on Workplace Productivity. Its recently launched website is home to one or two curious observations on economics. Nevertheless, we await the working group’s final report with interest. It may identify how the productivity impacts of this Bill and the principal Act are to be offset. Then again, it may not. I quote:

“Workplace productivity refers to productivity that is affected by firm [sic] decision-making rather than by factors outside of the firm’s control.”

This suggests that the additional compliance impacts and the mandated increased in employee remuneration brought about by the Holidays Act – an Act significantly larger and more complex than the 1981 legislation it set out to simplify – are, in some Canute-like way, irrelevant to enhanced productivity.

What nonsense.

Both the OECD in its last country report, and the Treasury, in analysing New Zealand’s growth performance, have recently expressed concern at interventions in the labour market that cumulatively and over time would constrain

growth. Their point and ours, in the context of this Bill, is quite simple: the sky will not fall in on passage of this Bill. But it will ensure over time, with all the other recent interventions in the labour market, diminished labour market flexibility, increased cost and risks of creating a new job and slow growth. In sum, increasing labour market productivity, the Government's stated objective, will become less easily, not more, attainable.

Why? Holidays legislation as a statutory intervention should be a statutory statement of minima, a floor to ensure basic decent, and reasonable provisions are available for all employees in all workplaces. The adoption of the principle – in an unremarked, unannounced and unconsulted manner – of relevant daily pay ensures that no employer is able to pay any employee more for not working than they can for those working. This guarantees perverse incentives. If it was possible to legislate for good behaviour, taxpayers would not need to pay the bills for a police force or a justice system. Plainly, this is not so and it is nonsense to proceed with labour market intervention on any other basis, whether in respect of employers or employees.

Effectively, the Holidays Act to which this Bill owes its existence, is a statutory intervention that mandates significant increases in wages and salaries by two means: the principle of relevant daily pay that is neither a floor nor a ceiling, but rather open-ended, and second, by the mandated addition of a further week's annual leave. In the process the legislation lumps all payments for absences from the workplace in one pot, leaves open the ceiling of payments that may apply and delivers a compliance complexity that adds to these costs. As with the Employment Law Reform Bill, it attacks workplace freedoms and choice by providing an arbitrary straitjacket, not of minima, but one that is guaranteed open-ended.

In our considered view, the Bill before this committee will not mitigate any consequences of the principal Act. The only real unintended consequences of the Act are that the Government has been embarrassed into bringing down an amendment Bill only six months since the ink dried on it. But, while relevant daily pay remains the underpinning of the Act, none of the "fixes" in the Bill will address anything of significance. It is simplistic to suggest that issues related to public holidays or sickies are the problem, or to make meaningless calls for evidence of the level of absences. They are simply symptoms of issues that begin and end with the perverse incentives thrown up by the introduction of relevant daily pay. If this principle is not addressed this Committee may look forward to a busy procession of amendment Bills that would add only to the size of the principal Act.

We submit simply that relevant daily pay be replaced with ordinary pay that would have a capacity to recognise the multiplicity of workplace arrangements that are in place or may be negotiated to enhance labour productivity in a globally competitive market place. Without this change, the amendment Bill will remain the equivalent of treating the traumatic loss of a limb with a cup of herbal tea.