

Submission

By



to the

Transport and Industrial Relations Select Committee

on the

**Holidays (Transfer of Public Holidays) Amendment
Bill**

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Holidays (Transfer of Public Holidays) Amendment Bill

Introduction

Business New Zealand welcomes the introduction of this bill which addresses one difficulty caused by the Supreme Court's 2007 decision in *New Zealand Airline Pilots' Association Industrial Union of Workers Incorporated v Air New Zealand Limited*. As the bill's explanatory note indicates, the Supreme Court's interpretation of s44 (2) of the Holidays Act 2003 (the Act - to the effect that a public holiday may be *observed* on some other day but may not be *transferred* to another day), has meant that in shift work situations, parties may no longer agree on what constitutes a 'day' for public holiday purposes. Consequent upon the Supreme Court's decision, many existing collective agreement arrangements are now no longer legal.

It should be noted, however, that the bill purports to fix only the lesser problem caused by the Supreme Court's interpretation of the Holidays Act and it is most regrettable that employees and employers are no longer able, by agreement to transfer an actual public holiday to some other day, to the disadvantage of both. Business New Zealand would have wanted the bill to remedy the latter difficulty and in so doing restore the law reflect fully the legislation's original intention. Business New Zealand urges the Government to address this matter at the earliest opportunity.

Recommendation

That the bill proceed.

Discussion

As noted in the introduction to this submission, the purpose of this bill is to deal with a problem that can arise in shift work situations where part of a shift begins or ends on one or other of the official public holidays set out in s 44(1) of the Act. Until the *Air New Zealand* decision referred to in the introduction, it was permissible for parties to agree to determine for themselves which particular period of time would constitute the named public holiday, rather than confining the holiday period to the 24 hours of the day itself. Redefining the holiday period in this way allowed shift employees a whole day off without any shift work interruption. As the bill's explanatory note points out, arrangements of this kind are agreed to meet the needs of both employees and employers.

The bill does not deal with the Supreme Court's prohibition on transferring an entire public holiday day to some other day but will allow for greater agreement flexibility where shift work overlaps two calendar days. For that reason it is to be welcomed.

Recommendation

That the bill proceed.

BUSINESS NEW ZEALAND

Business New Zealand is New Zealand's largest business advocacy organisation.

Through its four founding member organisations – EMA Northern, EMA Central, Canterbury Employers' Chamber of Commerce and the Otago-Southland Employers' Association – and 70 affiliated trade and industry associations, Business NZ represents the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

In addition to advocacy on behalf of enterprise, Business NZ contributes to Governmental and tripartite working parties and international bodies including the International Labour Organisation, the International Organisation of Employers and the Business and Industry Advisory Council to the Organisation for Economic Cooperation and Development.