



CHARTERED ACCOUNTANTS™
AUSTRALIA + NEW ZEALAND

12 October 2018

Holidays Act Review
Ministry of Business, Innovation and Employment
PO Box 1473
Wellington 6140
New Zealand
via email: holidays.act.review@mbie.govt.nz

Dear Sir or Madam

Holidays Act 2003 Review

Chartered Accountants Australia and New Zealand welcomes the opportunity to provide a submission to the Ministry of Business, Innovation and Employment on the Issues Paper – *Holidays Act 2003 Review*. We have focused our feedback on the key areas where we consider we can add the most value to the consultation.

Appendix B provides more information about Chartered Accountants Australia and New Zealand.

Key points

- We support the review of the Holidays Act 2003 by the Taskforce and acknowledge that the Act is a complex piece of legislation which is difficult to apply to the current diverse range of working arrangements.
- We recommend that the Act is rewritten to provide a clear and simple set of principles and to address modern flexible working practices.
- We recommend consideration be given to frameworks adopted by other jurisdictions which offer examples of how changing working practices can be addressed.

Should you have any queries concerning the matters discussed above or wish to discuss them detail, please contact Karen McWilliams via email at karen.mcwilliams@charteredaccountantsanz.com or phone (612) 8078 5451.

Yours sincerely,

Peter Vial FCA
Group Executive – Advocacy & Professional Standing, New Zealand & the Pacific
Chartered Accountants Australia and New Zealand

Karen McWilliams FCA
Business Reform Leader
Advocacy & Professional Standing
Chartered Accountants Australia and New Zealand

Australia: 1300 137 322
New Zealand: 0800 4 69422
service@charteredaccountantsanz.com

Outside of Australia: +61 2 9290 5660
Outside of New Zealand: +64 4 474 7840
charteredaccountantsanz.com



Appendix A

General Comments

We support the review of the *Holidays Act 2003* (the Act). As noted in the Issues Paper, there is widespread non-compliance with the Act and it is generally accepted that this is due both to issues with the implementation of the legislation in payroll systems and the business processes that support these, and issues with the legislation itself.

The Act is a complex piece of legislation that has not been updated to integrate changing work practices adequately (i.e. shifting from the standard 9 to 5 Monday to Friday working weeks). The Act, as it is currently written, does not provide users with the ability to apply a consistent approach as it contains a mix of complex calculations and vague definitions that do not provide sufficient guidance for application. Examples from the Act include requirements for specific details such as pay calculations (paragraph 53) as well as areas that require judgement such as the definition of a 'week' for the purpose of the annual holidays entitlement when it is not obvious (paragraph 51).

Some of our members have expressed the view that currently there is not a great understanding of the Act and its practical application has resulted in errors, poor quality of records kept and inadequate software solutions. Some have also expressed the view that there is a clear disconnect particularly in areas where variable employment circumstances are common such as calculations of leave entitlements for employees who have complex and uncertain salaries (e.g. commissions based, employees paid in different payment cycles)

We note that the Act's purpose is to "promote balance between work and other aspects of employees' lives by providing minimum entitlements". In order to achieve this we consider it important that the Act is clear, simple and accommodating of up-to-date work practices.

In order to overcome the complexity of the Act and to ensure that entitlements and calculations to leave are fair for employees, we recommend that the Act is rewritten to provide a clear and simple set of principles and to address modern flexible working practices. We suggest that high level principles are embedded into the Act and further details on practical application (calculations and definitions) are included within accompanying regulatory guidance. For example, the Act would define 'sick leave' and the guidance would provide specific examples of what types of sickness or injury would be considered and suggested calculations for varying employment arrangements such as for a shift employee that works irregular hours could be illustrated. This guidance will allow for greater flexibility in making amendments to keep up to date with the diverse range of working arrangements across New Zealand. This would provide the flexibility that embedding prescriptive rules in the Act would not.

Other Jurisdictions

We suggest that the Taskforce considers frameworks in other jurisdictions that are principles based such as Australia's Fair Work Act 2009 and the Fair Work Regulations 2009 legislation which is enforced by the Fair Work Ombudsman. Australia's framework aims to "provide a balanced framework for cooperative and productive workplace relations" and is predominately principles based. The Act does not include specific details such as calculations but it does provide clear definitions and is accompanied by practical guidance provided through the Fair Work Ombudsman.

Questions

8 Are you aware of other cross-cutting issues with the design of the current Act? If so, what are they?

The Act does not clearly specify what is included in 'gross pay' nor does it address the status or applicability of back pay as it relates to 'gross pay'.

The current title of the Act (Holidays Act 2003) does not reflect the comprehensive range of leave entitlements included within the Act such as sick leave and bereavement leave. We suggest that the Act is renamed to reflect its wide-ranging nature such as “Leave from work Act”.

9 In your opinion, what are the main reasons that make the Holidays Act difficult to comply with for employers?

The Holiday Act is overly complex and does not deal with modern flexible working arrangements.

10 Do you agree with the description of the issues relating to annual holidays here and in Annex Two? If not, why not?

Yes – the Issues Paper has identified issues that employees and employers encounter when trying to interpret and understand the legislation.

11 Are you aware of other issues relating to annual holidays? If so, what are they?

The Act does not clarify what types of sickness or injury are covered by sick leave. For example, it does not allow for time taken for a routine diagnostic or screening procedure but might for a procedure for a person who has been diagnosed with an illness.

17 How could holiday entitlements be provided for in a way that reflects the flexible working arrangements we have in New Zealand, including any arrangements we expect to see in the future?

As most businesses and payroll systems account for annual leave on an accruals basis in hours we suggest that the same methodology is reflected within the Act (for example hours x 7.7%). This could address the difficulties that arise when employees have variable hours.

16 Are the broad principles that underpin the Holidays Act (that entitlements are to be determined in relation to the work pattern at the time the leave is taken and that employees should not be financially disadvantaged by taking leave) still appropriate?

Yes, the broad principles are still appropriate. However, we consider that, due to the complexity of the Act, and the fact that it does not consider flexible working arrangements, the principles are not being adequately applied resulting in inadvertent disadvantages to employees.

18 How could the different calculations for holidays and leave payments be simplified?

We recommend simplification of the formula, for example it could be based on the higher of the current hourly pay rate or an average of the gross pay for the last 52 weeks.

Appendix B

About Chartered Accountants Australia and New Zealand

Chartered Accountants Australia and New Zealand is a professional body comprised of over 120,000 diverse, talented and financially astute members who utilise their skills every day to make a difference for businesses the world over.

Members are known for their professional integrity, principled judgment, financial discipline and a forward-looking approach to business which contributes to the prosperity of our nations.

We focus on the education and lifelong learning of our members, and engage in advocacy and thought leadership in areas of public interest that impact the economy and domestic and international markets.

We are a member of the International Federation of Accountants, and are connected globally through the 800,000-strong Global Accounting Alliance and Chartered Accountants Worldwide which brings together leading Institutes in Australia, England and Wales, Ireland, New Zealand, Scotland and South Africa to support and promote over 320,000 Chartered Accountants in more than 180 countries.

We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents 788,000 current and next generation professional accountants across 181 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications to students and business.