

12 August 2009

Mr Peter Kiely
Chair
Ministerial Advisory Group on the Holidays Act
Department of Labour
PO Box 3705
WELLINGTON

Dear Mr Kiely

Holidays Act 2003 Review

The New Zealand Business Roundtable welcomes the review of the Holidays Act 2003 which is one of the most problematic areas of New Zealand employment law. We believe it needs to be substantially reformed on a first-principles basis.

The starting point for the Review should be the government's primary economic goal of closing the per capita income gap between New Zealand and Australia by 2025. Superior institutions and policies to those in Australia and many other countries will be needed if this challenging goal is to be achieved. Tinkering with existing policies will not suffice. Employment law, including holidays legislation, is one of the most important determinants of productivity and employment growth. Currently, inflexible and inefficient features of employment law are holding New Zealand back.

As a benchmark for the Review, we note that the United States, the world's most productive and wealthy large economy, has no statutory provisions at all governing annual leave or the terms of employment relating to public holidays. This situation has not changed with Republican and Democratic administrations. It is not a preoccupation of unions. Evidence from the United States confirms that firms and their employees are fully able to decide voluntarily on holidays arrangements that suit them best. It also suggests that many workers facing the trade-off between more pay and more leave – particularly low-income workers and workers at the early stages of their careers – prefer more pay.

The Business Roundtable opposed the Holidays Bill and the Holidays (Four Weeks Annual Leave) Amendment Bill and our submission on those bills (copy attached) constitutes our main submission to the Review. Individual member companies will be making more detailed submissions.

In our 2003 submission we addressed the two arguments that are typically advanced for government regulation of holidays.

The first is to offset unequal bargaining power. We explain in our submission why this argument is fallacious. A subsequent study which we published by Geoff Hogbin entitled *Power in Employment Relationships: Is there an imbalance?* (also attached) discusses the fallacy in more detail.

The second argument concerns health and safety. The submission points out that 20 days of annual leave is a small proportion of the 104 days that employees have off as weekends or their equivalent; that workers often work when on leave; and that it makes little sense to regulate employees' leave on these grounds when no similar regulation applies to the self-employed.

Many other points that are relevant to the present Review are made in the attached submission. We would add that in considering views expressed to it by unions, it should be noted that unions now represent only about 1 in 5 workers (much fewer in the private sector) and that the Review should focus on the wider interests of firms and employees. New Zealand unions genuinely concerned about productivity and the national interest should take a leaf out of the book of their US counterparts.

We are aware that the Review will focus on issues such as the calculation of relevant daily pay, 'cashing up' the fourth week of annual leave, transferring public holidays covered by the Act, the entitlements of casual employees, and shop trading on Easter Sunday. On these specific points we support the recommendations of Business New Zealand and other business groups in seeking maximum flexibility in any holidays legislation.

However, in the interests of furthering the government's aim of improving productivity and competitiveness, we ask that the Review approach its task in a broader way and consider the case for more fundamental changes along the lines of those recommended in our attached submission.

Yours faithfully

R L Kerr
EXECUTIVE DIRECTOR

direct dial: +64 4 499 0790
email rkerr@nzbr.org.nz