



## National Council of Women of New Zealand

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Wahine O Aotearoa

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### Review of the Holidays Act 2003

#### Introduction

The National Council of Women of New Zealand (NCWNZ) is an umbrella organisation representing 46 nationally organised societies and national members. It has 28 Branches spread throughout the country to which women from national and local societies are affiliated. The Council's function is to serve women, the family and the community at local, national and international levels through research, study, discussion and action. NCWNZ has a longstanding history of encouraging the promotion of social and health issues, particularly as they affect women.

NCWNZ has contributed in many ways to Employment issues and wishes to convey our thanks for this opportunity for consultation.

We canvassed our Employment Standing Committee and nationwide membership for their responses to the issues identified in this Review.

#### i. The calculation of relevant daily pay (RDP)

- a) Discuss any specific complexities and costs associated with calculating RDP.

Members considered the current provisions to be based on sound simplified provisions compared to the 1981 Act. They believe most employers have processes in place i.e. computer programmes, that assist in the calculation of RDP. One Branch expressed concerns that major amendments to the current provisions could result in complicating the process, creating confusion for employers and employees and increasing the cost for employers to implement.

- b) Is there an alternative calculation that would be easier to make without returning to the ordinary pay calculation under the Holidays Act 1981?

Suggestions for alternative calculations received from members to simplify the current process to assist employers within complex work arrangements: that the calculation of RDP is applied over a defined period i.e. 4 pay period under s.9(3) of the Act; exclude bonus payments from RDP; change the calculation to a simple % of current rate that the employee earns.

#### Conclusion:

While members overall accepted that the current provisions are sound and fair they have suggested areas to consider to simplify the process. However they recommend caution as changes may result in additional costs for employers or further complicate the process and create confusion for employees.

Trading the fourth week of annual leave for cash at the employee's request





- c) What are your views on an employee and employer agreeing to trade the employee's fourth week of annual leave (or some other part of the employee's minimum annual leave entitlement) for cash?

The majority of responses received from members did not support this proposal. In their view it is important that employees, for health and social reasons, have the opportunity to have work life balance. It is especially important for families, that taking leave from employment means the family can have time together. Members do not believe annual leave should be treated as a commodity with a monetary value.

A minority of members accepted the flexibility for employees to trade only the fourth week for cash, but only if both parties agree. They considered that the fourth week annual leave cash amount would be useful for employees who may face one off unforeseen short term financial need.

The NCWNZ Resolutions regarding Holidays 6.2.2.5 1998 states: -

"That NCWNZ urge the Ministry of Labour to ensure that in any review of the Holidays Act 1981, three weeks paid annual leave remains as the minimum legal requirement, unable to be negotiated for cash"

We strongly request that the three week paid annual leave is enshrined in the Holiday Act 2003 as the minimum legal requirement and fully protected from any negotiation for cash.

- d) Are there any specific issues, for example, criteria or costs and benefits that the Group should take into consideration?

Members expressed their concerns regarding the hidden costs to our society if employees do not take leave. They questioned which is of most benefit to our society, money or leave.

A few responses mentioned the difficulties some employers encounter replacing employees on leave impacting on their business' ability to fulfill orders and increased costs by employing temporary leave cover. However it was not believed employees should be 'bribed' to forgo leave and stay to work. It was also mentioned that 'cash for leave' must not be a cost saving exercise for employers.

- e) If you think an employer and an employee should be able to agree to trade the fourth week's leave for cash, what protections do you see would be necessary to ensure entitlements are not reduced and employees' choice to trade the fourth week is genuine?

There was concern expressed that pressure may be put on vulnerable employees, in particular women in lower paid positions who have limited bargaining power or access to independent, advice, to accept cash for their fourth week. Special concerns were raised regarding migrants who may not be fully familiar with the employment legal rights in this country and the fourth week can be forgotten.

Most members fully agreed that employees should not be subjected to any overt or subtle covert pressures to sign any request to accept cash for their fourth week of annual leave. If established that this has occurred members believe any agreement should be null and void, with no negative financial implications for employees.



There was a suggestion that boundaries should be provided around how many periods the fourth week of annual leave could be traded for cash otherwise this may become the norm - traded every annual leave year for duration of employment.

**Conclusion:**

The majority of NCWNZ membership responses do not support this proposal.

**ii. Allowing all employers and employees to agree to transfer the observance of a public holiday listed in the Act to another day**

- f) What are your views on employees being able to transfer public holidays to another day, for example, observing Ramadan instead of Good Friday?

Most responses considered the Ramadan example inaccurate as Ramadan is not one day.

Some responses expressed the view that as a multicultural society we should recognise the significance of all religious and cultural days that are important to families and communities. In their view there should be greater flexibility for employees to transfer the religious observance from one public holiday to another day. However although this was acknowledged other members considered this should be negotiated individually between employees and employers as all business have different dynamics therefore what would work for one would be unworkable for another. An employer may incur additional costs employing a covering employee for this day. Also members questioned the legal requirements that will limit an employer's ability to remain open on a public holiday i.e. Anzac Day, Good Friday.

The majority of Members agreed that employees should have the option of applying for annual leave to observe particular religious celebrations.

7. If you have done this previously have there been any issues with transferring?

As an example Branches noted that Jewish employees appear to have no problem negotiating to obtain a day off for Jewish Holy days.

8. What protections do you see would be necessary to ensure entitlements are not reduced and employees' choice to transfer the public holiday is genuine?

One particular view was that employees could present a wide range of reasons as to why they wish to transfer from one public holiday to another day. Not all will be valid and genuine and this will add another layer of responsibility onto employers to determine.

It was noted that some members did not support any transfer of Public Holiday pay entitlements to Annual Leave taken in place off.

A branch raised concerns that employers may wish to transfer public holidays to another day to allow them to open at a lower cost on that day. Therefore, protection may be required to ensure transference of Public holidays does in fact occur for purely business operational reasons not financial reasons.

**Conclusion:**

Overall the majority of Members supported the employee's right to celebrate their own particular religious day within our multicultural society. However, they do not support transferring the observance of a public holiday listed in the Act to another. The process was considered unworkable for employers.



There was strong support for provision for negotiation, written into Individual Employment Contracts between individual employees and employers, to take annual leave for individual religious observances.

**iii. The accumulation of alternative holidays (days in lieu)**

9. What are your views on employees accumulating a number of days in lieu (alternative holidays)?

Only one view objecting to employees accumulating a number of days in lieu (alternative holidays) was received as it was felt employees should take their annual leave and not accumulate in lieu (alternative holidays).

The majority of views held no objection with suggested boundaries i.e. no financial impacts for employers; arranged by mutual agreement; timeframes for taking, only valid for a limited period i.e. 3 months; limit on days accumulated in one employment year i.e. 10-20 days; not part of any entitlement calculations; unable to be traded for cash. To be agreed within negotiation of Individual Employment Contract.

**Conclusion**

The majority of NCWNZ membership responses support this proposal.

**iv. The treatment and entitlements of casual employees in relation to holidays and leave**

10. Discuss your understanding of what casual employees are entitled to under the Act.

The majority of members indicated some understanding of the current entitlements for casual employees under the Act i.e. 8% of gross pay; no sick leave and no bereavement leave entitlement. The majority of Branch responses indicated they believed the Act, under section 28, provides a workable guidelines and processes for determining whether an employee is casual and their payment entitlements.

11. Discuss any complexities associated with calculating holiday and leave entitlements and payments for casual employees.

No Comments received

**v. Do you have any examples of casual employees being advantaged or disadvantaged by the application of the Act?**

The majority of Branch responses indicated casual employees may experience disadvantages under section 28 of the Act due to lack of knowledge provided to employees of their rights, their vulnerable position and the variability in the hours worked. It was noted by one Branch that Statistics NZ's Survey of Working Life March 2008, casual employees are more likely to be women and that women have less annual leave than men. They are also more likely to have a percentage added to their pay instead of annual leave. It is believed that access to holiday leave entitlement is



another inequity faced by women workers. It was noted that any absence of pay slips provided to casual workers reduces their ability to know if they are paid correctly.

### **Conclusion:**

Overall the majority of member's responses believed the current entitlements under section 28 of the Act are satisfactory however any potential for disadvantaging employees needs to be readdressed and more employee information is required.

#### **vi. Treatment of public holidays**

- vii. What are your views on the significance of the 11 public holidays listed in the Act? (These are: Christmas Day; Boxing Day; New Year's Day; 2 January; Waitangi Day; Good Friday; Easter Monday; ANZAC Day; Queen's Birthday; Labour Day; and Provincial Anniversary Day.)

All members supported the retention of the current 11 public holidays as a significant aspect of our culture that enables families and groups to spend quality time together. Members opposed any changes in the status of our current Public Holidays. Any changes would in member's opinion have implications on family groups reducing their work life balance and reduce the importance of the particular Public Holiday.

One Branch highlighted the fact that in comparison with OECD countries the current number of New Zealand Public Holidays sets us below 17 other countries.

### **Conclusion: -**

All members oppose any changes to our current Public Holidays provisions.

#### **viii. Shop Trading on Easter Sunday and its interface with the Holidays Act 2003.**

- ix. **Do you consider that Easter Sunday should be recognised as a public holiday?**

The majority of member's responses supported Easter Sunday to be recognised as an official public holiday in law and protected. Easter Sunday is considered by some members as important a religious day as Good Friday. In one Branch's view the current lack of recognition of Easter Sunday as a public holiday in law dates back to the days when no Sunday trading took place.

In other member's views Easter Sunday is useful as it provides an extended holiday providing a long weekend for families. It was acknowledged that not all New Zealanders recognise the religious significance; however members still wish to restrict Easter Sunday Trading.

- x. **If so should it be "Mondayised" in the same way as, for example, Christmas Day is under the Act and replaces Easter Monday as a public holiday?**

A narrow majority of members do not support Easter Sunday being "Mondayised" for the following reasons: Easter Sunday is only observed on Easter Sunday same as ANZAC Day or retain the status quo; Easter Sunday is a Day not a Date as per Christmas Day; "Mondayise" could result in



employees working on Easter Sunday not being compensated for working on a Public Holiday; do we need to shop on Easter Sunday if so perhaps we need to re-examine society's priorities.

Other members indicated a possibility that they would accept Easter Sunday being "Mondayised" or trade Easter Monday for another Public Holiday between Queens Birthday and Labour Day where there is currently a large gap. One Branch was unable to reach any consensus on this matter.

### **NCWNZ Resolutions**

#### 10.9.4 Shop Trading Hours 2003

That NCWNZ support the provisions in the Shop Trading Hours Repeal Act 1990 which prohibit normal retailing on Christmas Day, Good Friday, Easter Sunday and ANZAC Day morning.

### **NCWNZ Submissions**

**08.01** (Jan 2008) on the Easter Trading and Holidays Legislation.

Conclusion:

"... Although there was no clear consensus the NCWNZ membership opinion reflected that Easter Sunday should continue to have restricted trading, with no change to the Sale of Liquor Act 1989. The majority of responses indicated support for Easter Sunday to be a Public Holiday subject to "mondayisation" arrangements.

#### **Conclusion:**

The majority of responses received from members supported Easter Sunday treated as a Public Holiday. The same majority rejected the "Mondayised" concept for Easter Sunday.

Elizabeth Bang  
**National President**

Juanita O'Brien  
**Convener Employment Standing Committee**