

# **Submission**

By



to

## **Government Administration Select Committee**

on the

## **Holidays (Full Recognition of Waitangi and ANZAC Day Amendment Bill**

**13 September 2012**

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## **HOLIDAYS (FULL RECOGNITION OF WAITANGI DAY AND ANZAC DAY) AMENDMENT BILL**

BusinessNZ welcomes the opportunity to submit on this private member's bill.

### **RECOMMENDATIONS**

1. That the bill not proceed
2. That if the bill should proceed:
  - (a) Clause 5 be amended to read:

#### **New section 45B inserted**

#### **5B Transfer of Waitangi Day and ANZAC Day**

- (1) For the purposes of this subpart, if the public holiday listed in section 44(1)(e) or in section 44(1)(h) falls on a Saturday or a Sunday and:
      - a) the day would otherwise be a working day for the employee, the public holiday must be treated as falling on the listed day;
      - b) the day would not otherwise be a working day for the employee, the public holiday must be treated as falling on the following Monday.
    - (2) To avoid doubt, no employee is entitled to more than one public holiday for either the day listed in section 44(1)(e) or in section 44(1)(h) and
  - (b) Consideration be given to removing the current statutory penal rate for public holidays, making penal payments a matter for agreement between the parties.
3. Consideration be given to determining the Mondayising question by means of a general referendum.

### **DISCUSSION**

1. In light of the history of both ANZAC and Waitangi Days the title of this proposed amendment is a little inapt. The original purpose of both days was to recognise fully their special nature. In the case of ANZAC Day, the 1921 Anzac Day Amendment Bill, according to the then Minister of Internal Affairs, would answer 'a very widespread demand

for the reinstatement of the original request of the returned soldiers — namely, that the day should be treated as a holy day, as a Sunday’.

2. Similarly, the 1960 Waitangi Day Act, which provided for Waitangi Day to be recognised on 6 February (the day on which the Treaty was signed), declared it to be one national thanksgiving, not a public holiday. This changed in 1974 when for a brief period Waitangi Day became New Zealand Day. The Waitangi Day name was restored in 1976.
3. The 1976 Act continues to refer to Waitangi Day as a public holiday but also requires it to be observed on the day of the week on which it falls - doubtless because the Act also sees Waitangi Day as a day of ‘commemoration’. Both ANZAC Day and Waitangi Day relate specifically to New Zealand and therefore have not hitherto been Mondayised because, for that reason, they are days that everyone living in New Zealand can be expected to recognise. This is in contrast to Christmas Day and New Year’s Day which are not days of significance for every New Zealander. The same is, of course, true of Good Friday but that day’s particular significance lies in its association the country’s Christian heritage; Conversely, Easter Monday is in fact a permanently Mondayised Easter Sunday, as at the inception of Easter as a public holiday it was nearly unheard of for Sundays to be worked. This is why Easter Sunday has never been made a separate public holiday.
4. Consequently, Mondayising ANZAC Day and Waitangi Day can hardly be described as ‘full recognition’, or not in the way their framers intended.
5. The above said, times change and views on what constitutes proper recognition can change with them, particularly as the original motivation is forgotten. From a business point of view there is no simple answer to whether the legislation should or should not proceed. Some sectors of the economy, notably the Tourism Industry, are keen for it to do so, seeing it as likely to promote the interests of those operating in their sector. Other businesses are concerned about the additional cost involved, with the Department of Labour estimating this as likely to amount to an extra \$400,000,000.
6. There is also the matter of the obligatory penal rate to consider. Many firms choose not to open on a public holiday precisely because the penal rate cost makes being open for business uneconomic.

7. Therefore for a change of the kind sought to go ahead, it might be better to establish first what New Zealanders themselves consider is appropriate, bringing to their attention the reason for non-mondayisation so that whatever conclusion is reached is based on a proper understanding. The holding of a referendum would seem to be the better response, particularly as the days concerned appear to be viewed now with greater respect than might have been the case in the recent past.

Were the bill to proceed, it is recommended that clause 5 should be reworded as follows (inserting a new section 45B which seems a more logical place for a Mondayising section):

## **5 New section 45B inserted**

### **45B Transfer of Waitangi Day and ANZAC Day**

- (1) For the purposes of this subpart, if the public holiday listed in section 44(1)(e) or in section 44(1)(h) falls on a Saturday or a Sunday and:
  - (a) the day would otherwise be a working day for the employee, the public holiday must be treated as falling on the listed day;
  - (b) the day would not otherwise be a working day for the employee, the public holiday must be treated as falling on the following Monday.
- (2) To avoid doubt, no employee is entitled to more than one public holiday for either the day listed in section 44(1)(e) or in section 44(1)(h).

## **9. APPENDIX**

### **Background Information on BusinessNZ**

- 9.1 Encompassing four regional business organisations (Employers' & Manufacturers' Association, Employers' Chamber of Commerce Central, Canterbury Employers' Chamber of Commerce, and the Otago-Southland Employers' Association), its 71 member Major Companies Group comprising New Zealand's largest businesses, and its 70-member Affiliated Industries Group (AIG), which comprises most of New Zealand's national industry associations, BusinessNZ is New Zealand's largest business advocacy body. BusinessNZ is able to tap into 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.
- 9.2 In addition to advocacy on behalf of enterprise, BusinessNZ contributes to Governmental and tripartite working parties and international bodies including the ILO, the International Organisation of Employers and the Business and Industry Advisory Council to the OECD.
- 9.3 BusinessNZ's key goal is the implementation of policies that would see New Zealand retain a first world national income and regain a place in the top ten of the OECD (a high comparative OECD growth ranking is the most robust indicator of a country's ability to deliver quality health, education, superannuation and other social services). It is widely acknowledged that consistent, sustainable growth well in excess of 4% per capita per year would be required to achieve this goal in the medium term.