



## **Holidays Act 2003 Review**

### **Ministry of Business, Innovation and Employment (MBIE)**

#### **The Salvation Army New Zealand, Fiji, Tonga and Samoa Territory**

#### **Background**

- The Salvation Army is an international Christian church and social services organisation that has worked in New Zealand for over one hundred and thirty years. The Army provides a wide-range of practical social, community and faith-based services, particularly for those who are suffering, facing injustice or those who have been forgotten and marginalised by mainstream society. We are passionately committed to our communities as we aim to fulfil our mission of caring for people, transforming lives and reforming society through God in Christ by the Holy Spirit's power.<sup>1</sup>
- We have over 90 Community Ministry centres and Churches (Corps) across the nation, serving local families and communities. Many of our social services have direct or indirect with housing and the rental market. These include our Salvation Army Social Housing (SASH), our Transitional Housing contracts with Ministry of Social Development, and our foodbanks and financial mentors that often work with people in housing crisis and/or living in a private rental situation but who are struggling to make ends meet in this position.
- This submission has been prepared by the Human Resources section of The Salvation Army. This submission has been approved by Commissioner Andrew Westrupp, Territorial Commander of The Salvation Army's New Zealand Fiji Tonga and Samoa Territory. Our responses below are based on the question format supplied by MBIE.

#### **Our Responses**

1. Have we accurately captured the broad range of business arrangements that can contribute to difficulties with the Act?

**Yes**

2. Are there other specific types of business arrangements for which compliance with the Act is more difficult?

#### **Payment for annual leave following parental leave**

**The Salvation Army (TSA) has two main concerns with the framework for paying annual leave (AL) following parental leave. The two main concerns are:**

- (1) the current method of calculating payment for AL following parental leave is difficult for employees to understand; and**
- (2) it is unusual that the method of calculation of AL is included in a separate piece of legislation to the Holidays Act (Parental Leave and Employment Protection Act 1987).**

---

<sup>1</sup> <http://www.salvationarmy.org.nz/our-community/mission/>

We believe it would be more logical to have the method of calculation within the Holidays Act.

TSA is supportive of the current parental leave entitlements but believe that the current entitlement of staff to accrue annual leave when they are on parental leave is something that should be reviewed.

When a staff member is on extended unpaid leave for reasons other than parental responsibilities, for example if an employee takes an unpaid sabbatical, the staff member does not accrue annual leave during the period of their absence. It seems unusual for the entitlement to annual leave to only arise when someone is on unpaid leave due to parental responsibilities rather than if someone is on unpaid leave for any other reason.

TSA believes that the Taskforce should consider what the rationale around employees earning annual leave during parental leave is and assess whether the government parental leave payments for some of this time affect the original ideas behind why annual leave accrues while on parental leave.

**Definition of casual employment**

Incorporating a definition for 'casual employee' in legislation may assist with compliance with the Holidays Act. It would be logical for such a definition to be included in both the Employment Relations Act 2000 and the Holidays Act.

At the moment there are generally accepted rules for what constitutes a 'casual' employment arrangement but there are no clear rules and case law needs to be referred to in situations which are unclear. This can be a time-consuming process and specialist knowledge is often required.

Determining whether an employee is employed in a casual arrangement correctly has implications for the way they are paid, particularly whether they can receive 8% loading on their pay. TSA see a clear definition of what constitutes a 'casual' employee is important to ensure employees receive appropriate leave entitlement and employers do not have a financial liability they did not expect. In addition, better definitions of flexible and variable working arrangements may create better understanding and better outcomes for employees and employers.

3. Have we accurately captured the broad range of working arrangements that can contribute to difficulties with the Act?

**Yes**

4. Are there other specific types of working arrangements which raise particular difficulties in terms of compliance with the Act?

**No, but there is sometimes confusion around flexible vs variable vs casual arrangements.**

5. Do you have anything further to add about the role of the Labour Inspectorate as a regulator of the Holidays Act?

**TSA supports the educational work done by the Labour Inspectorate to enable employers to better understand the Holidays Act. This ensures issues are resolved at a low level and any future risks are prevented.**

**Given the known complexities within the Holidays Act TSA believes that the Labour Inspector should work with employers and provide assistance where possible to resolve any actual or potential breaches of the Act. Education and support should be the first action taken as in many cases employers want to comply with the requirements of the Holidays Act but they may be unaware of an issue or they don't fully understand aspects of the legislation and how it should be applied.**

**If employers are not open to working with the Labour Inspectorate then TSA accepts that more formal processes may need to be followed to achieve compliance.**

6. What role do you think the Labour Inspectorate, or any other agency or institution, should have in relation to any future holidays legislation?

**TSA is comfortable with the Labour Inspectorate continuing as the agency that regulates the Holidays Act. Moving the responsibility to another agency is unlikely to improve any outcomes in this area. In addition, creating a new agency would be unlikely to create better outcomes for employers or employees and would add unnecessary additional cost.**

7. Do you agree with the description of the cross-cutting issues set out on pages 15-16? If not, why not?

**Yes**

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

**No**

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

- **Having multiple calculations for one type of leave**
- **Having to determine which calculation should be used for individual employees depending on their type of employment, work patterns etc. which may change and evolve over the course of their employment, e.g. moving from set hours to flexible variable hours, casual to permanent**
- **What is a week? This is difficult for employees who increase their hours after their leave has become entitlement as they may have earned four weeks leave when working less hours so when they increase their hours the value of that entitlement no longer equals four weeks. On the contrary employees who reduce their hours may then have more than four weeks entitlement when taking the leave. So clarification is needed around what a week actually is or alternatively the leave needs to be referred to in hours rather than weeks or day**
- **Being clear about the different calculations for each different type of leave (BAPS leave, annual leave) and the number of options for those calculations.**

**As a large employer, processes that require assessing the work patterns of individual employees can be very time-consuming. Due to the complexity of the decisions being made there is also a higher chance of human error and there is the potential for payroll systems to choose the incorrect calculation, particularly as TSA has a large number of payroll administrators throughout our organisation.**

10. Do you agree with the description of the issues relating to annual holidays set out on pages 17-18 and in Annex Two? If not, why not?

**Yes**

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

**No**

12. Do you agree with the description of the issues relating to BAPS leave set out on pages 18-19 and in Annex Two? If not, why not?

**Yes. In particular, TSA agree that determining what amounts to as an 'otherwise working day' (OWD) for staff on flexible or variable hours can be challenging. A manual process is required to determine if an employee who has been working extra hours/days on a somewhat regular basis for a period of time might be entitled to a public holiday.**

13. Are you aware of other issues relating to BAPS leave? If so, what are they?

**No**

14. Do you agree with the description of the other issues in Annex Two? If not, why not?

**Yes**

15. Are you aware of any further issues you believe should be considered? If so, what are they?

**No**

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?

**TSA agrees that these principles are still valid.**

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?

**Given there are increasing amounts of working arrangements across the workforce that do not fit the traditional 5 day a week, full time work arrangements TSA believes there needs to be significant changes to the provision and calculation of AL.**

**Having four weeks as the basis for entitlement creates difficulties calculating annual leave entitlement where work arrangements are flexible or variable. TSA has a large number of**

staff in part time employment arrangements and a number of these staff have variable hours due to the needs of the service. Determining what a week amounts to for these staff is often difficult.

Approximately four weeks AL per year is necessary to ensure staff have an appropriate work-life balance and have time for rest and recreation but whether the entitlement should be framed in terms of weeks is something that should be reviewed. Having AL entitlement framed in terms of hours rather than weeks could be something that the Taskforce considers.

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

If one calculation could be used for every type of leave calculating entitlements would be much easier. A single calculation (1) provides certainty and clarity to employers and employees about their leave entitlements; (2) standardises the approach for calculating leave across the various types of work; and (3) reduces the confusion and stress that employers face, particularly smaller Non-governmental Organisations or community groups who do not have large personnel/payroll teams.

Alternatively, if one calculation could be used for each leave type, for example AWE for annual leave and OWP for sick leave, the process would be much easier to understand and implement correctly.

19. What changes would make the Act easier to apply to workers with variable hours/days of work?

Not referring to four weeks annual leave but a number of hours based on their circumstances.

20. OTHER

TSA would appreciate the Taskforce reviewing the current limit on “cashing up” annual leave. As a large employer with a significant number of employees working in part time arrangements it is common that staff will not regularly use all of their annual leave entitlement each year. This often results in employees having a significant annual leave balance and wanting to cash up more than one week of leave at a time. This is particularly problematic for employees who have large annual leave balances due to not using their entitlement each year and they have subsequently reduced their hours down considerably such that they may only work one day or a few hours per week thus do not have the ability to use their leave. TSA acknowledges that it is important for staff to be entitled to take leave if they wish and cashing up leave should only be at the request of the employee. TSA regularly receive requests from staff to cash up leave and at times staff are requesting for more than one week of leave to be cashed up. This indicates to TSA that employees would be open to increasing the amount of leave that could be cashed up at one time.

TSA would suggest the following arrangement:

If an employee is employed by an employer for less than 20 hours per week and they wish to have a portion of their annual leave “cashed up” they may make a request to their employer, provided that the leave entitlement was accrued at least two years prior to the request for cash up is made.

**The maximum amount of leave that could be cashed up at any one time would be limited to three weeks.**

**Thank you for the opportunity to provide feedback on this Review. God bless.**

---