

21 August 2021

Right Honourable Michael Wood
Minister for Workplace Relations and Safety
Private Bag 18888
Parliament Buildings
Wellington 6160

Open Letter to Michael Wood Minister for Workplace Relations and Safety – The New Holidays Act Cannot Fail – MBIE's Better Rules Methodology

Dear Minister

This letter clearly states that the New Zealand Payroll Practitioners Association (NZPPA), representing over 1500 members, has serious reservations about MBIE's current approach to updating the Holidays Act, especially the unproven methodology of Better Rules.

The present Holidays Act has cost New Zealand businesses billions of dollars. (DHBs recently stated underpayments would total at least \$1B.) NZPPA works with payroll and businesses every day. The already widely reported impacts of this Act are only the tip of the iceberg. Businesses face real problems in trying to pay employees correctly with this unworkable legislation.

Yes, there is a range of reasons for the issues. They include the Act's vague and unclear definitions, MBIE's failure to show any leadership, the design of payroll systems, the Act's application by payroll practitioners, and how businesses have decided to follow the Act's requirements. We now have another chance to make this Act workable. However, we have serious concerns given NZPPA's experience with MBIE and what it has seen in MBIE's plans for creating a new workable Act.

MBIE lacks the knowledge, skills or even creditability to deliver a workable Holidays Act. MBIE is a risk-averse organisation that spends more time playing it safe through its spin doctors and hype and has a total lack of leadership to provide what business and payroll needs. In its present form, NZPPA believes MBIE will fail. Ultimately, your government will also fail to deliver a new workable, logical Act that is fit for purpose for employers, payroll and, of course, employees.

The Holidays Act has been a political hot potato with all parties (past and present) failing to do anything constructive to resolve the issues or, at the very least, actively involve payroll in making it more workable. NZPPA was involved in the 2011 review. This was a wasted effort with politics coming first over practical solutions to resolve the Act's issues. The

problems with the current legislation were not something that MBIE discovered in 2012. It was present from the Act's implementation in 2004; however, no political party or government department would listen. Since NZPPA's formation in 2007, we have made numerous attempts to highlight the issues, but no political party or government department of the day would listen.

The coalition government started the Holidays Act review, which has created a solution without real payroll input. NZPPA was involved in a payroll group asked to review the report. However, this was only two weeks before the report was due to go to the Minister. It was just lip service so that it could be claimed payroll had been involved. The coalition government then sat on that report for over a year (and please don't use Covid as an excuse). When your government came to power, all recommendations were magically agreed, and the next steps were handed over to MBIE.

MBIE is promoting the Better Rules process as a way of drafting legislation in plain language that fits with systemising software. It is an unproven methodology and has never been applied to complex legislation like the Holidays Act, which has to be transferred to payroll systems. This process has been complicated by the Holidays Act review with even more calculations, timeframes and far more moving parts than the current Act. Instead of making an Act more straightforward so the employer, the employee, payroll and even MBIE can understand, your government decided to back the Holidays Act review and go in the opposite direction.

NZPPA wants to clarify that based on years of experience, MBIE does not have the skills, knowledge, or even creditability to apply its Better Rules to the complexity of the Holidays Act. Their army of fixed-term Gen Y staff with no experience working in a real business or knowledge of payroll makes them incapable of providing practical solutions for businesses and payroll. There are billions of dollars going through payroll regarding employee leave in New Zealand. Aside from the current Holidays Act issues, government, business, and payroll cannot afford to put this at risk through the MBIE Better Rules methodology. The Kiwi adage "she'll be right" can't be considered the measure of success for this essential work.

I want to highlight some of the things seen in the MBIE's Better Rules project up to this point. In the first meeting of the Better Rules project, it was shocking to see in their handwritten diagram (that they seemed quite proud of) showing all the elements of the Holidays Act (including leave types), they had forgotten there is a leave type called Public Holidays. It was quite amusing that MBIE, the keepers of the Holidays Act, had forgotten about this major issue with the Act. But that was OK because MBIE states that it is part of the flexible and robust process.

The next important aspect of Better Rules is that it would be done in sprints, so it gave a sense of urgency. This was great as it could be interpreted that finally government and its minions were taking the Act's issues seriously. That first meeting was when MBIE started to spout the virtues of the incredible success of the ACC project. It has been interesting to see since then that the ACC system changes are being reported as a failure, causing more work with little return.

In the project group, MBIE talked about the core group in the secret sanctum of the Better Rules process that included payroll providers whose only claim to fame is nearly all have had major issues with Holidays Act compliance. NZPPA can name the group members, and to be honest, some of them should not be there as they have not kept their payroll systems updated and offer some of the worst service to business clients who are now stuck with their software. These are payroll providers that, when issues are raised, duck and dive and put all the blame on the businesses using their software rather than taking responsibility for the failure of the base system. The bottom line is some providers should not be there! But they are, and MBIE states they have learnt a lot from them.

From the first meeting, when the concisely timed sprints were mentioned, nothing was heard except that MBIE wanted us to get the message out about Better Rules to our networks. Of course, that message had to be finely constructed in the MBIE hype and spin workshop (I think this is something like Santa's workshop, minus the elves as they may not be PC in the current environment unless, I guess, they have a Fair Pay Agreement). Still, nothing of substance came out, just words that make no sense or offer any value. The numerous documents that MBIE provides in their waffly emails, many with impressive timeframes on when sprints will be achieved, were a delight to chuckle over. However, they are just documents that don't lead to anything.

Twice in this process, NZPPA sent emails asking when communication would be made as timeframes stated have not been met. Of course, the response from MBIE is this is part of the dynamic methodology of Better Rules, and yes, there has been a delay, but that is expected as it is part of the process. NZPPA was told by a payroll provider inside the core group that the delays were caused because MBIE had NO understanding of the Act's complexity. And the sprints and timeframes did not fit with how the Act and payroll work.

In the latest meeting for the Better Rules group, the amateurish presentation where the convener just read from the slides showed their lack of understanding. Again, nothing of value was put forward. NZPPA received three responses from other group members saying the presentation was unprofessional and what was the point of it anyway. They also questioned how it would make a difference going forward.

MBIE even had a speaker from ACC explain how they used Better Rules for their new system development (although, as stated earlier, it's already been suggested it has not worked).

I even tried to raise issues with the process. However, I was told I could not do so in the group. Instead, I had to raise any issues directly with MBIE, and they would come back to me. So, plainly speaking, I was silenced and am still waiting for MBIE to get back to me on the issues raised. Hence, this open letter to you, Minister, which is now on record.

Another area MBIE does not understand that will further undermine Better Rules even if successful is the current state of New Zealand payroll providers. The Better Rules process aims to help draft legislation that can be systemised into software. This sounds dynamic, forward-thinking and just plain wonderful. Still, MBIE does not seem to understand there are significant issues with payroll providers and their systems used in the New Zealand payroll environment. The Wild West of providers set up shop and make outlandish statements that they are super compliant and give businesses confidence their software will ensure they pay employees correctly. However, that is one of the biggest falsehoods in New Zealand payroll.

NZPPA can provide extensive evidence of payroll providers and systems that have never moved on from the Holidays Act 1981. They have lagged behind current legislation or, when legislation has changed, have not made updates until years later. These systems force payroll to do wrong calculations and are nowhere near what the current Act requires. And they provide little or no support to the business that purchased their software. These are the providers that, when issues are raised by business, duck and dive, stating the business and payroll did not use their software correctly, either in how it's been configured or managed.

For Better Rules to even be successful, a whole new regulatory system will need to be created to ensure that when companies buy a payroll system, they are purchasing compliance based on the Better Rules methodology. This should be backed by real consequences for the payroll provider if their system does not follow the required rules. NZPPA will shortly provide a follow-up open letter to you on our suggestions for a regulatory system that will fix the issues with payroll providers.

So, Minister in conclusion:

- At no point has MBIE EVER provided actual evidence of how their Better Rules will deliver the goods we need in payroll, and we cannot afford to get this wrong.

- MBIE should be part of the process. However, rather than a flash-in-the-pan MBIE experiment, business and payroll should lead this process.
- If you want a real payroll solution to the Holidays Act, have real payroll people in this process.
- Payroll providers need to be involved, but they must also be kept in check as they are in an unregulated industry and make money from the misery their systems have caused for employers and payroll.
- Work on a regulatory system to ensure that businesses see what comes out of the process in the payroll system they use and pay for. And if not, there should be consequences for the provider.
- And finally, businesses and payroll need guarantees that this process will work as it cannot fail. Kindness won't wash as we are talking about money, and payroll does not need a \$685M cycle bridge! (Won't you need that to pay the \$1B owed to DHB employees for Holidays Act underpayments?)

I love payroll and payroll people. NZPPA members want a workable Holidays Act that provides certainty so everyone (employer, employee, union, MBIE and payroll) can easily determine without confusion or differences what is paid when leave is taken.

I do not expect a response as I have written letters to Ministers previously and payroll is always overlooked and side-lined. Still, for NZPPA, this letter is our line in the sand. We have made you aware of the issues, and if you don't take action, any consequences of the Act must firmly lie with you as the Minister of the day, and we will be holding this government to account.

Yours sincerely,

David Jenkins

NZPPA CEO & Acting President NZIPI

PO Box 2, Bluff 0626

Phone: +64 9 480 6458

Email: david@nzppa.co.nz

Web: www.nzppa.co.nz