

NEW ZEALAND BUSINESS ROUNDTABLE

**SUBMISSION ON THE HOLIDAYS BILL AND
THE HOLIDAYS (FOUR WEEKS ANNUAL
LEAVE) AMENDMENT BILL**

MAY 2003

1.0 Introduction

- 1.1 This combined submission on the Holidays Bill and the Holidays (Four Weeks Annual Leave) Amendment Bill is made by the New Zealand Business Roundtable (NZBR), an organisation comprising primarily chief executives of major New Zealand businesses. The purpose of the organisation is to contribute to the development of sound public policies that reflect overall New Zealand interests.
- 1.2 This submission provides a high-level assessment of the Holidays Bill and the Holidays (Four Weeks Annual Leave) Amendment Bill. In particular, it examines broad issues relating to the regulation of holidays in a modern and diverse labour market. Both bills are addressed together given the fact that they raise similar issues, although we recognise that the member's bill is not a government bill.
- 1.3 This submission does not provide a clause-by-clause assessment of the Holidays Bill. For such an assessment, we would commend the comprehensive and detailed submission provided to the committee by Business New Zealand.

2.0 Key elements of the Holidays Bill

- 2.1 The stated objective of the Holidays Bill is to modernise and simplify the current holidays legislation. The Holidays (Four Weeks Annual Leave) Amendment Bill seeks to increase the minimum number of weeks of paid annual leave to four. The key elements of the bills are set out briefly below.

Holidays Bill

Annual Holidays

- 2.2 In relation to annual holidays, the Holidays Bill:
- Retains the current provision of three weeks paid annual holiday for all employees (although a proposal to increase this to four weeks is included in the Holidays (Four Weeks Annual Leave) Amendment Bill).

Public Holidays

- 2.3 In relation to public holidays, the Holidays Bill:
- Retains the same 11 public holidays as the current Holidays Act 1981.
 - Proposes different payment terms for public holidays.
 - Removes separate provisions relating to rate of pay for working on a public holiday in factories and undertakings.
 - Proposes that, if an employee works on a public holiday that would otherwise be a working day for that employee, the employee is entitled to another day's holiday. This 'alternative holiday', as it is called, comes on top of the time-and-a-half payment for hours worked on the public holiday.

- Creates a double liability for seven-day operations when Christmas and New Year holidays fall on a weekend, since employers will have to give public holidays to those who work on the calendar days and those who work on the Monday/Tuesday following.

Sick Leave and Bereavement Leave

2.4 In relation to sick leave and bereavement leave, the Holidays Bill:

- Gives employees an entitlement to sick/bereavement leave after completing six months' current continuous employment.
- Provides that an employee is entitled to five days' sick leave and three days' bereavement leave (for close family members) or one day's bereavement (for those not listed in the Bill as close family members). The latter is only provided if the employer 'accepts' that the employee has suffered a bereavement.
- Lists the factors that employers should take into account in determining whether to grant one day's bereavement leave. These include closeness of association to the deceased, whether the employee has responsibility for funeral arrangements, and cultural responsibilities.
- Allows employees to carry over sick leave - up to 15 days per year - to the following year.

Enforcement

2.5 The Holidays Bill significantly increases penalties for offences (from \$500 under the current Act to \$5,000 for an individual and \$10,000 for a company or other body corporate).

Informing Employees

2.6 The Holidays Bill requires that employers must inform the employee about his or her entitlements when the employee enters into an employment agreement.

Holidays (Four Weeks Annual Leave) Amendment Bill

2.7 The Holidays (Four Weeks Annual Leave) Amendment Bill proposes an increase in the number of weeks' annual leave from three to four.

3.0 Comment

3.1 The NZBR welcomes the objectives of the Holidays Bill - in particular its intention to recognise the significant changes that have occurred in the labour market since the Holidays Act 1981 came into effect and its intention to clarify and simplify employees' holiday entitlements.

3.2 The current Holidays Act, in place for more than 20 years, is clearly out of step with New Zealand society today and the needs of a modern labour market. The labour market has changed significantly since the early 1980s, as evidenced by the growth in non-standard employment (ie part-time

employment, self-employment). The overarching labour legislation is much more liberalised now than it was in earlier times. The Holidays Act is complex, lacks clarity and is difficult to enforce. We strongly support reform of the existing holidays legislation.

- 3.3 The Holidays Act is a significant source of concern and frustration for employers. In 2002, a reported 75 percent of all complaints to the Labour Inspectorate and 26 percent of all enquiries to the Employment Relations Service Info Line related to the holidays legislation. Furthermore, a 1999 survey conducted for Simpson Grierson showed that:
- just over half of employers wanted the Holidays Act either repealed or amended, while only 27 percent wanted it left as is;
 - 51 percent of employers said they had problems calculating pay for annual leave and a similar percentage said they had problems calculating pay for statutory holidays; and
 - 70 percent of employers said they sought outside advice to help them apply and interpret the Act.¹
- 3.4 More recently, one out of five firms in a Ministry of Economic Development survey conducted in 2001 identified the Holidays Act as having a negative impact on firm performance or productivity. Higher proportions of firms in the agriculture, forestry, fishing and accommodation and cafe and restaurant industries reported negative impacts from the Holidays Act.²
- 3.5 Despite our support for reform of the Holidays Act, we do not support the changes proposed in the Holidays Bill, nor do we support the proposed extension of annual leave entitlements to four weeks, as proposed in the Holidays (Four Weeks Annual Leave) Amendment Bill. We recommend that both bills be withdrawn.
- 3.6 We have three broad concerns with the bills. These are:
- a The proposed changes lack a sound policy basis. In particular, they are not derived from a first-principles assessment of the rationale for regulating holidays or the role of holidays legislation in a modern labour market;
 - b the proposed changes will achieve only minor, if any, reductions in compliance costs for employers; and
 - c the increased entitlements will have a detrimental impact on New Zealand firms, and will work against government efforts to move New Zealand into the top half of the OECD income rankings.

¹ Simpson Grierson (1999) 'Ten Key Facts from the Simpson Grierson Holidays Act Survey', *Media Release*, 27 October.

² Knuckey, Stephen *et al* (2002) *Firm Foundations 2002 – A Study of New Zealand Business Practices and Performance*, Ministry of Economic Development, pp 187 and 190.

3.7 Each of these is discussed in turn.

a Lack of sound policy basis

3.8 The first broad concern with the proposed Holidays Bill changes is that they lack a sound policy basis. In particular, the changes do not appear to be anchored by a first-principles assessment of:

- the rationale for regulating holidays; or
- the appropriateness of holidays legislation in a modern and diversified labour market.

3.9 As a result, the proposed changes do not address the fundamental weaknesses with the Holidays Act and are unlikely to be sustainable. In our view, the Holidays Act needs more than tinkering. It needs a fundamental rethink if it is to reflect changes in both the policy environment and the labour market since the current Act was passed in 1981.

The rationale for regulating holidays

3.10 Two principal arguments are typically advanced for government regulation of labour market decisions concerning holidays. First, it is argued that employees are in an unequal bargaining position relative to employers and need to be protected by holidays and other labour market regulation in order to avoid 'unfair' outcomes. Second, it is argued that holidays must be regulated in order to help protect the health and safety of workers.

3.11 Each of these is discussed in turn.

Protection against unequal bargaining power

3.12 In our view, this argument, although it permeates all aspects of employment relations law, is fallacious. It misunderstands the nature of markets and competition. In particular, it does not recognise the important role that competition plays in protecting workers against 'exploitation' by employers. In competitive labour markets, firms compete with other firms for workers' services, and wages and working conditions are set through voluntary exchanges that yield mutual gains. The extent of bargaining power held by each side depends on the availability of alternatives. At any given time, labour market conditions may appear to favour employees or employers. However, there is no systematic long-run bias in favour of employers. This would seem especially true in New Zealand, where employers are generally small and where unemployment rates have, in recent years, been low by worldwide standards.

3.13 Employees and employers are not involved in a 'zero-sum' game in which they compete with one another, as seems to be assumed by those who subscribe to the unequal bargaining position view. Employees do not compete with employers, but with each other and with the unemployed for

jobs. Similarly, employers compete with other employers for labour services. As one authority on labour law has stated:

If such an inequality did govern the employment relationship, we should expect to see conditions that exist in no labour market. Wages would be driven to zero, for no matter what their previous level, the employer could use his (inexhaustible) bargaining power to reduce them further, until the zero level was reached. Similarly, inequality of bargaining power implies the employee will be bound for a term while the employer ... retains the power to dismiss at will. Yet in practice we observe both positive wages and the right to quit at will.³

- 3.14 Thus, if the unequal bargaining position argument were true, it would have the following implications:
- holidays and leisure time in general would have been driven down internationally, whereas the trend has been in the opposite direction;
 - the government should regulate all aspects of the employment contract, not just holidays; and
 - it would apply just as much to the self-employed who deal with large firms as clients. The logic of this argument therefore is that self-employed people should also be obliged to have a set number of holidays.
- 3.15 It is also worth noting that the current arguments that deregulation of holidays would adversely affect employees are similar to those made by unions at the time of the passing of the Employment Contracts Act in the early 1990s. At that time, the claim was that wages and other working conditions would be cut with deregulation. Experience has shown these arguments to be without foundation. The idea that only employers, and not employees, will have any choice about work or time off is equally fallacious.
- 3.16 We should also recognise that employees and employers have become more sophisticated labour market participants as a result of operating under the less regulated environment created by the Employment Contracts Act. Thus, there can be no argument that the transition to a deregulated environment would lead to one group having an advantage over another during the transition phase.

Improved health and safety

- 3.17 A second key argument is that regulation of holidays is necessary to safeguard the health and safety of New Zealand workers. However, the health and safety argument does not stand up to analysis for several reasons:

³ Epstein, Richard A (1984) 'In Defense of the Contract at Will', *University of Chicago Law Review*, 51, p 972.

- the number of leave days proposed represents a small percentage of the 104 days that employees regularly have off as weekends or equivalent days off. The contribution that these 15 days would make to overall health and safety outcomes is therefore likely to be small;
- workers who take leave may in fact be using the time for other activities (eg working at a second job, running a business part-time, engaging in education and training or undertaking home improvements). Therefore, the amount of 'rest and recreation' that people enjoy while on leave may be small or even non-existent. For this argument to carry much weight, the government would need to restrict employees' activities while on leave (and outlaw children!) – an impossible task; and
- legislation that is specially designed to protect the safety of workers, such as the Health and Safety in Employment Act 1992, already addresses this issue.

The appropriateness of holidays legislation in a modern and diversified labour market

3.18 A second broad concern is that there is no clear role for holidays legislation in a modern and diversified labour market. The existing Holidays Act 1981 and changes proposed in the Holidays Bill largely relate to the traditional labour market of 20 years ago, where many individuals worked 8 hours per day, 5 days per week and the nature of work was quite different from that of today. For example, it appears to be predicated on a discrete model of 'work' in which employees are engaged in manual labour that cannot be carried on outside the workplace. But the reality of today's labour market is that increasing proportions of the population:

- are self-employed and not covered by holidays legislation at all;
- are salary earners rather than wage earners. Increasingly, they have their work defined by outputs rather than inputs and are left some discretion about how and when to achieve their outputs; and
- work with their brains rather than their hands. For many people the idea of set amounts of holidays is largely meaningless, as they may well continue to think, talk and write about work-related matters while formally on holiday.

3.19 Some evidence on the work patterns of New Zealanders is available from the Time Use Survey conducted in 1998/99. It shows that, while the majority of workers in New Zealand continue to undertake paid work during 'traditional' daylight working hours, fully one quarter of paid working time is carried out outside these times. In addition, 60 percent of working days from Monday to Friday involved some work outside the 'core period' of 8 am

to 6 pm.⁴ In this respect, New Zealand work patterns are similar to those in other developed economies.⁵

- 3.20 The New Zealand labour market has undergone considerable change in other respects as well. Key among these has been the growing importance of 'non-standard' work (ie. work that is not permanent full-time work as a wage and salary earner). For example, between the mid 1980s and late 1990s:
- self-employment grew from 9.5 percent to around 13 percent of total employment; and
 - part-time employment grew from around 17 percent to 24 percent of total employment.⁶
- 3.21 The flexible working arrangements and greater diversity of lifestyles that characterise society today mean that holidays legislation is becoming less relevant. As a result, the benefits that might flow from the Holidays Act are declining, while the costs to employers who operate under it either stay the same (since employers must invest in understanding the provisions as long as they have employees covered by them) or increase as such rigidities become more of an obstacle to succeeding in the global marketplace. For example, New Zealand holiday arrangements do not line up with the needs of suppliers and customers in other countries – a significant factor in a small trading nation such as New Zealand. In addition, business practices have changed enormously over the past 20 years, whereas holidays legislation has not changed significantly since it was enacted around 50 years ago.
- 3.22 Even for 'manual' workers, leave is just one part of an employee's remuneration package. It is not clear that the government should concern itself with the details of the way that the rewards of employment are distributed. The trend in both legislation and workplace practice has been to allow the parties to an employment contract – particularly employees – to decide this for themselves. There would seem to be little or no rationale for legislation that cuts across freely negotiated contracts between employees and employers, particularly given the flexible industrial relations arrangements that have existed in New Zealand.
- 3.23 An additional factor is that individuals' work preferences will differ markedly according to their age and family circumstances. For example:
- young single people may well be willing to work six or seven days a week, including public holidays, at least over some period, in order to save a deposit for a house, save for their education or accrue sufficient

⁴ Callister, Paul and Sylvia Dixon (2001) *New Zealanders' Working Time and Home Work Patterns: Evidence from the Time Use Survey*, New Zealand Department of Labour Occasional Paper 2001/5, August, pp 65-66.

⁵ *Ibid*, pp 67-68

⁶ Carroll, Nick (1999) *Non-standard employment: a note on levels, trends and some implications*, Labour Market Bulletin 1999, pp 105-106.

leave to take a long trip overseas. They may therefore be willing to trade off leave for pay on a different basis from any specified in legislation; and

- parents with children may have other priorities, calling for more regular time off, and may demand a higher payment for having to work on holidays, especially at short notice.

3.24 A good example of how the Holidays Bill may conflict with the particular circumstances of individuals is the proposal to limit the ability for annual leave to be provided on a 'pay as you go' basis to employment agreements of less than 12 months. Many employees – for example those employed on a 'permanent' part-time basis – may actually prefer to receive wages in lieu of annual leave. A study by Massey University carried out in the mid-1990s showed that 30 percent of the workers surveyed would prefer to work longer hours and earn more money. Even among parents with children, many may want to work more. For example, Australian Bureau of Statistics figures suggest that 73 percent of parents with children under 12 wanted to work the same or more hours.⁷

3.25 Flexibility in holiday arrangements is therefore a benefit not just to employers but also to employees who will have a variety of preferences. The principles that underlie the Holidays Bill appear to assume that flexibility is a benefit only to employers and conflicts with 'fairness' to employees.

3.26 Given the diversity of work patterns, changes in the operation of firms, and the differing needs of employers and employees, labour market regulations that limit the flexibility to negotiate over holidays can harm the interests of all parties – employees, employers and consumers. Employers may face higher costs as a result of inefficient working arrangements. Consumers may have to pay higher prices or miss out on goods and services that are no longer profitable for firms to produce. Employees may not be able to obtain the working arrangements they prefer. Firms in today's open capital markets must obtain returns that cover the costs of investors' capital. As a result, the cost of inefficient arrangements will ultimately be passed back to workers in lower wages or reduced benefits, to the unemployed if labour costs are not adjusted, or perhaps, in the case of non-traded goods and services, partly to consumers.

Policy implications

3.27 In our view, there is little policy rationale for government regulation of holiday arrangements in New Zealand. The gains from regulation appear to be minimal given changes in society and employment arrangements. The costs will be higher. Regulation is likely to harm the interests of consumers, employees and employers. It will further limit the freedom of firms and workers to determine the arrangements that are most productive and suitable for them. There is ample scope within current industrial relations

⁷ Albrechtsen, Janet (2002) 'The ACTU's call for a French-style work week won't help the unemployed', *The Australian*, 27 November.

arrangements for employers and employees to structure work, pay and holiday arrangements in a way that is satisfactory to both sides.

- 3.28 It is therefore questionable whether the government should concern itself with holidays at all. The only exception to this might be a small number of days a year when there is great popular demand for people in a family or group to be able to take the day off together. Even then, the efficacy of legislation is to be doubted. For example, the tradition of taking Christmas Day off is strong, but, as the service sector expands, the number of people who choose to work that day can be expected to increase. It is unlikely that the presence or absence of statutory protection for Christmas Day would significantly affect this process one way or the other. Certainly, there has been a considerable paring back of closures over the extended Christmas break in recent years, particularly in the retail sector.
- 3.29 The Holidays Bill, like the current Holidays Act, does not address these fundamental issues. Rather it proposes arbitrary 'fixes' on issues such as payment terms for public holidays and sick leave entitlements. There is no principled basis for arguing, as does the Holidays Bill, that those working on a public holiday should be paid time-and-a-half (as opposed to ordinary time, double time or triple time) and receive a day in lieu. Equally, there is no principled argument for setting annual leave at 3 or 4 weeks or sick leave days at 5.
- 3.30 As a result, the proposed reforms would not provide a sustainable solution to existing concerns. The starting point for any legislative re-design should be the proposition that holiday arrangements are a matter for negotiation between employer and employee. Hence, we believe there is no rationale for government regulation of holidays. If this is not acceptable to the government, then the Holidays Act should simply set out minimum leave entitlements for workers and allow employers and employees to negotiate over appropriate compensation and other details (such as whether they wish to contract out of these entitlements, take higher pay in lieu of leave, etc).

b Impact on complexity of legislation

- 3.31 One of the key stated objectives of the Holidays Bill is to provide much needed certainty, clarity and consistency around holiday entitlements. While the Holidays Bill makes some progress in terms of reducing complexity, it also creates new areas of concern. It is unclear whether the net effect is positive or negative. As noted by Graeme Perfect, Employer Services Manager for the Employers and Manufacturers Association (Northern):

From an administration point of view, it's probably a case of two steps forward and two steps back.⁸

- 3.32 For example, standardisation of rules relating to the termination of employment and the abolition of the factories and undertakings clause should make life simpler for employers. On the other hand, proposals such

⁸ Perfect, Graeme (2003) 'Holidays Bill raises tricky questions', *New Zealand Herald*, 18 March.

as the payment of time-and-a-half to salaried employees, the requirement to calculate holiday payments on a 12-month daily moving average and the new special leave provisions and rules around sick leave notification could make things more complex for employers.

- 3.33 In the light of the obvious and clear concerns of employers with the current holidays legislation, it is disappointing that the proposed Holidays Bill does not achieve bigger reductions in complexity.

c Impact of increased entitlements

- 3.34 The Holidays Bill introduces a number of new leave-related entitlements for workers and/or additional costs for employers. These include:

- new provisions relating to the observance of public holidays falling on a weekend, which will create a double liability for employers in seven-days-a-week operations;
- liability to pay time-and-a-half for the time worked on a public holiday, if this is found not to be already incorporated in the employment agreement;
- additional special leave to cover bereavement; and
- a ten-fold increase in penalties for non-compliance.

- 3.35 The Holidays (Four Weeks Annual Leave) Amendment Bill would add to this by providing an additional week's leave to workers. According to Business New Zealand, if both holiday bills are passed, holiday entitlements in New Zealand would be at the upper end of OECD countries, even though our position in terms of per-capita income would place us 20th.⁹ The proposal to require time-and-a-half to be paid to salaried employees would make New Zealand one of the few western countries to have such a policy in place.¹⁰

- 3.36 These more generous entitlements will lead to additional direct costs on employers. According to Business New Zealand, the proposed extension of annual leave entitlement to four weeks alone could cost more than \$900 million per year (0.7 percent of gross domestic product). This could lead to reduced employment, firm closures and reduced opening hours for firms – especially those in low-margin sectors such as retail, the tourism sector, the residential care sector and farming. For example, the introduction of penal rates for work on public holidays means that it could cost the equivalent of 20 hours of ordinary pay to employ a person for eight hours. This could raise costs to such a degree that a number of tourist and retail operators would choose to remain closed on those days, thereby reducing employment and limiting the convenience that consumers currently enjoy.

⁹ Knowles, Anne (2003) 'Popularity comes with a \$1b price tag', *New Zealand Herald*, 8 April.

¹⁰ Donoghue, Tim (2003) 'Holidays Act: Labour's secret agenda?', *The Independent*, 5 March.

- 3.37 The proposed changes are likely to lead to higher administration and compliance costs for employers. On their own, the new mandates contained in the Holidays Bill can be expected to have an adverse impact on the regulatory and compliance burden of firms. These costs would increase sharply if the statutory annual leave entitlement is raised to four weeks as proposed in the accompanying Holidays (Four Weeks Annual Leave) Amendment Bill.
- 3.38 The effects of the Holidays Act changes will not be confined to the private sector. Indeed, seven-days-a-week operations such as prisons, police, hospitals and fire services could be significantly affected. This will raise costs for government-provided services and require either reduced services or increased taxes. As noted in a recent *Dominion Post* article, the Auckland District Health Board and the Capital and Coast District Health Board have estimated the increased costs due to the payment of penal rates at \$1.25 million and \$400,000 respectively.¹¹ The indirect effects of these changes will have an impact on both business and the wider community.
- 3.39 Additional compliance and direct costs would come on top of cost increases associated with a series of labour market and other changes that the government has introduced in recent years, including:
- the re-nationalisation of ACC;
 - the increased regulation of the labour market through the introduction of the Employment Relations Act;
 - successive increases in minimum wages, especially for people under 21 years of age; and
 - changes to the Health and Safety in Employment Act.
- 3.40 The government has signalled the potential introduction of pay equity. While the current proposal is that pay equity, if introduced, would apply only to the state sector, it would still have a significant impact on private sector firms who will need to compete for staff with public sector organisations in a distorted labour market. There is also a risk of a tightening of labour market regulations surrounding the sale or transfer of a business.
- 3.41 Collectively, these changes, along with other anti-growth policies, have adversely affected the operating environment for business in New Zealand. According to Business New Zealand, an average New Zealand company faced additional costs of over \$26,000 over the three calendar years 2000-2002.¹²
- 3.42 The proposed holidays legislation and the measures listed in paragraphs 3.39 and 3.40 represent a move toward a 'European' model of labour market regulation. This is occurring at the very time that the weaknesses in that

¹¹ Betts, Marianne and NZPA (2003) 'Holidays bill may hit cash-strapped health boards hard', *Dominion Post*, 26 May, p 8.

¹² Business New Zealand (2002) *The Great NZ 7-Day Service Co Ltd*, 25 February, www.businessnz.org.nz.

model are becoming more obvious in countries such as Germany and commentators are recommending wholesale changes to the system.¹³

- 3.43 According to a 2001 study, New Zealand is already at a competitive disadvantage when it comes to labour market institutions such as social welfare and industrial relations arrangements. The study showed that New Zealand was poorly placed in international comparisons of strictness of eligibility criteria for unemployment insurance and suspension of unemployment insurance payments, and only moderately well placed in the late 1990s in terms of strictness of employment protection for regular employment.¹⁴ Recent and proposed labour market reforms will make the overall package of labour market institutions in New Zealand even less favourable.

4.0 Conclusions and recommendations

- 4.1 The objectives of the Holidays Bill are laudable. The Holidays Act is a source of concern and frustration to many employers. The act is complex and significantly out of step with the needs of a modern and diverse labour market.
- 4.2 However, we oppose the changes outlined in the Holidays Bill. In the end, the proposed changes will reduce complexity only a little, if at all. While the Holidays Bill may achieve some reduction in complexity through central 'fixing' of holiday arrangements, it also introduces new complexities (eg penal rates for salaried employees). Any gains in reduced complexity would come only at a high cost to employers in the form of more generous leave entitlements.
- 4.3 In our view, the Holidays Act and its underlying principles are fundamentally flawed. The Act needs a fundamental reform starting from first principles. The Holidays Bill does not propose such a reform. Rather, it proposes mere tinkering. As a consequence, the key flaws in the Holidays Act are not addressed and any changes are unlikely to be durable. As employment law expert Phillipa Muir argued recently:

I think it's disappointing there hasn't been a complete overhaul of the legislation in the way we've been asking...[I]t's

¹³ See, for example, Sennholz, Hans F (2003) 'The German puzzle', *The Independent*, 2 April; Berthold, Norbert and Rainer Fehn (2003) *Unemployment in Germany: Reasons and Remedies*, Center for Economic Studies and Ifo Institute for Economic Research, Working Paper No 871, Munich; and 'Here are the ideas. Now for action?', *The Economist*, 29 June 2002, p 53.

¹⁴ Eichhorst, W et al (2001) *Benchmarking Deutschland: Arbeitsmarkt und Beschäftigung*, Bericht der Arbeitsgruppe Benchmarking und der Bertelsmann Stiftung, Berlin, cited in Berthold, Norbert and Rainer Fehn (2003) *Unemployment in Germany: Reasons and Remedies*, Center for Economic Studies and Ifo Institute for Economic Research, Working Paper No 871, Munich, pp 23-36.

a dinosaur really. It really needs to be thrown out and started again.¹⁵

- 4.4 The government has made an ambitious commitment to restore New Zealand to the top half of the OECD income rankings. The issue of economic growth is also top of mind for many New Zealanders. A 2001 UMR survey carried out for Business New Zealand, the Knowledge Wave Trust and the Science and Innovation Advisory Council showed that, of those surveyed:
- only 21 percent felt that the economy was performing well enough to deliver enough high quality jobs and quality health, education and other social services; and
 - 83 percent felt that growing the economy was the best way to deliver more quality jobs, better health care, education and other social services.¹⁶
- 4.5 More recently, a survey by the *New Zealand Herald* revealed that over 90 percent of chief executives believe New Zealand lacks a growth strategy to sustain business success.¹⁷ These proposed changes will do nothing to alleviate such concerns. The economy grew at a rate of 3.6 percent in the 10 years to 2002, largely due to earlier reforms and recent favourable conditions. However, the most recent Treasury forecasts suggest a slowdown in this rate, with annual growth averaging only 2.5 percent over the next decade – well below the rate required to lift our relative income ranking.
- 4.6 One of the key tests of any government policy proposal should therefore be whether or not it makes a cost-effective contribution to increasing New Zealand's long-run rate of economic growth. The Holidays Bill and the Holidays (Four Weeks Annual Leave) Amendment Bill clearly fail this test. Indeed, they are likely to have the opposite effect. This is particularly true given that they come on top of a series of recent anti-growth policy changes that will make it more difficult for businesses to innovate and grow. The increased costs – both direct and indirect – arising from the proposed changes are likely to lead to a worsening in the business climate in New Zealand. They will increase compliance costs and add further rigidities to the labour market, thus limiting labour market adjustment and reducing New Zealand's attractiveness as an investment destination. This is the last thing that New Zealand needs.
- 4.7 For the reasons outlined above, **we recommend that the Holidays Bill and the Holidays (Four Weeks Annual Leave) Amendment Bill be withdrawn and that a fundamental review of the Holidays Act and its underlying principles be undertaken.**
- 4.8 In our view, **the most appropriate reform would be to repeal the Holidays Act.** As noted above, the grounds for prescriptive regulation of holidays is

¹⁵ Donoghue, Tim (2003) *op cit.*

¹⁶ UMR (2001) *Knowledge Wave: Top-Line Summary*, www.businessnz.org.nz.

¹⁷ O'Sullivan, Fran (2002) 'Leaders look for growth strategy', *New Zealand Herald*, 29 November.

weak. Such a move would not represent a step into the 'unknown'. The world's richest and most productive economy, the United States, has no statutory provisions at all governing annual leave or the terms of employment relating to public holidays. In addition, New Zealand workers and firms have been operating under a deregulated labour market since the early 1990s. Full deregulation is therefore a reasonable and feasible option.

- 4.9 **If the government is to have any role at all with regard to holidays, it should be limited to stating what the entitlements are and then allowing individual employees and employers to negotiate whatever exchanges they like.** There should be no constraints (eg prescribed minimum rates of pay) on the terms of those exchanges. This would leave employers and employees free to negotiate employment contracts reflecting their own preferences for work, pay and leisure. Observance of holidays such as Christmas and New Year, which are still widely recognised, would be a matter for people to decide for themselves.
- 4.10 **If unrestricted opting-out of centrally mandated holiday arrangements is not favoured, any restrictions on such opting out should be kept to a minimum.**