GOVERNMENT SUBMISSION Closing Date 14th April 2026

EMPLOYMENT LEAVE BILL

Submission by: Kristy Elstone, on behalf of
Grow Human Resources Limited (trading as Grow HR)

BACKGROUND

1. Grow Human Resources Limited is a specialist consultancy, based in Hastings, that provides human resources, employment relations, remuneration and benefits expertise for employers. While many of our clients are in the Hawke's Bay region, we work with employers with entities or locations across the breadth New Zealand. The majority of our clients are small to medium enterprises (SMEs) operating without dedicated internal HR or payroll functions. This submission is made primarily from the perspective of those employers, and the practical challenges they face in implementing and sustaining compliance with complex leave legislation.

2. We are broadly supportive of the proposed reforms. There is strong consensus among employers that the current Holidays Act framework is outdated, highly complex, and difficult to administer in practice. These difficulties have been compounded by payroll systems that struggle to calculate entitlements accurately under the current legislative settings.

3. In our experience, most employers are genuinely attempting to comply with existing Holidays Act requirements. However, the level of technical detail required makes consistent compliance challenging. A framework that is simpler, clearer, and easier to implement would benefit both employers and employees.

4. These reforms represent a significant, generational change and we do not underestimate the impact of this on employees and employers. Many people currently in the workforce have never worked under a different leave regime. Clear, timely, balanced and well-targeted communication will therefore be essential. Government communication on these changes should be delivered directly to employers and employees in plain language, and not reliant on third-party interpretation.

ADDITIONAL HOURS / LEAVE COMPENSATION PAYMENT (LCP)

5. Further clarification may be required in relation to the definition of "additional hours" (section 7(1)). The current drafting limits additional hours to those that an employee has the right to refuse. This does not align well with roles where employees receive an availability payment and are not guaranteed additional hours, yet may be required to work those hours when offered. Introducing a strict "right to refuse" criterion risks creating a category of hours that are neither standard nor genuinely optional. Given the downstream impact of this definition, clearer drafting at this stage would reduce uncertainty and minimise the likelihood of unintended non-compliance. Experience with the current Holidays Act suggests that ambiguity in this area can lead to long-term reliance on case law to determine meaning.

6. We are broadly supportive of the proposed LCP. However, we consider that the proposed rate of 12.5% is set too high and, in effect, applies the full value of sick leave to casual or additional hours. By contrast, permanent employees will generally only realise the full

value of sick leave where they utilise their full entitlement over time. Designing the payment in a way that assumes or incentivises full utilisation of sick leave, including in circumstances where use may not be genuinely required, is not aligned with productivity objectives and is not an outcome we support. We therefore recommend that the LCP be reviewed and set at 10%, comprised of 8% holiday pay and a 2% sick leave component.

7. While we can see potential for the LCP to simplify leave administration, one practical risk that we can see is that many employees may treat the LCP as part of their ordinary take-home pay. This may create financial pressure when employees subsequently take annual or sick leave and receive lower payments during those periods. Displaying the LCP separately on payslips will assist with transparency, but may not fully address this issue for employees without additional education and communication.

ANNUAL LEAVE

8. A consequence of the above is that some employees may experience a reduction in income during periods of leave compared with their usual earnings (particularly noting these earnings could be inflated with the LCP). Under the current Act, averaging provisions can result in higher leave payments, and some employees have come to expect this outcome. Under the proposed changes, employees who regularly work additional hours may receive significantly less pay when taking leave based on contracted hours alone.

9. In some circumstances, this may create a genuine barrier to employees taking leave. For example, an employee contracted for 25 hours but regularly working 40 or more hours may find a week of leave paid at 25 hours financially difficult, particularly if they have become reliant upon the receiving the LCP for the additional 15 hours. This does not undermine the rationale for the LCP or the proposed leave calculations, but it does highlight the importance of clear advance communication so employees can budget accordingly.

10. Further clarification is also required in relation to the definition of a fixed allowance (section 121(1)). In particular, the exclusion of allowances "*payable for an expense that the employee does not incur while on leave*" does not appear to align operational practise with the current MBIE technical guidance. In our view, reimbursing allowances such as tool, boot, uniform allowances are not expenses incurred while on leave and should not be payable while on leave. If such items are used while on leave, this would generally be for personal rather than employment-related purposes. It is our view that availability allowances should not be payable during periods of leave as the employee should not be available for work during that period (in the unlikely event that they indeed are required to be available, then it would be valid for it to be paid). By contrast, allowances such as housing allowances or higher duties allowances are more appropriately characterised as fixed and should continue to be paid. We recommend further refinement of this definition to ensure consistency between legislation and guidance, and to reduce uncertainty for employers.

CASHING UP ANNUAL LEAVE

11. We support the continued ability to cash up annual leave, including the proposed 25% threshold. This provides a practical mechanism for managing high leave balances, which can be difficult for both employers and employees.

12. At the same time, we note that some employees rely on cashing up smaller amounts of leave as a short-term financial buffer. These employees may not have four weeks' leave accrued at their anniversary date but may still have more than one week available. Preventing access to cashing up in these situations may cause unintended financial hardship. Allowing employees to cash up the greater of one week or 25% of their balance at their most recent start date anniversary would address this concern.

13. We also note the significantly increased penalties for errors in cashing up leave (s37 and s71). While we agree that inappropriate or non-consensual cashing up should attract sanctions, our experience is that errors often occur where employers are genuinely attempting to accommodate employee requests or where payroll system leave balances are unclear. In such cases, the intent is generally supportive rather than exploitative. The need for increased penalties is unclear and we recommend retaining the current wording in the Holidays Act.

SICK LEAVE

14. We strongly support the move to sick leave entitlements based on hours worked rather than days. The current approach can disadvantage full-time employees, particularly those balancing work with caregiving responsibilities. While part-time employees may accrue sick leave more slowly under the new model, we do not consider this inherently unfair.

15. We also note that the current framework can discourage the creation of part-time roles due to associated leave costs. The proposed changes may therefore have positive broader impacts on workforce participation.

16. That said, employers continue to face challenges in verifying sick leave use. While privacy considerations are important, the current settings can leave employers with limited ability to confirm whether leave is genuinely required. Medical certificates are increasingly easy to obtain without in-person assessment and often provide minimal information leaving employers with little to no options to properly validate their employee's claim of sickness or injury. If improving national productivity is an objective, further consideration could be given to how employers are supported to manage sick leave appropriately.

17. While we support the intent of section 75, we note that some employees will legitimately accrue more than 160 hours of sick leave (carrying forward two weeks' entitlement from a prior year and accruing a further two weeks in the current year). Across our client base, it is common for employees to have ordinary contracted working weeks that exceed 40 hours, such as 42.5 or 45 hours. On that basis, those employees should be able to accrue up to 170 or 180 hours of sick leave, as applicable. Capping accrual at 160 hours would result in these employees receiving a lower minimum entitlement than employees whose ordinary hours do not exceed 40 per week which would be unequitable.

18. We also note that there is a separate sick leave regime for Recognised Seasonal Employer (RSE) workers in New Zealand. We remind the Government that the relevant Immigration Instructions will need to be updated to align with the commencement of the new entitlements. Given the significance of the proposed reforms and the extensive work undertaken to modernise leave entitlements for employees generally, it would be inappropriate for RSE workers to remain subject to different settings.

OTHERWISE WORKING DAY / PUBLIC HOLIDAYS

19. We welcome the inclusion of a clear fallback formula for determining an "otherwise working day" (s12–14). This provides much-needed certainty and will assist both employers and employees in understanding entitlements.

ALTERNATE LEAVE

20. The proposed wording does not provide for an equitable situation between employees "on call" and those called into work. Employees called into work are likely to be disadvantaged by the proposed changes. It is further noted that there is no clear definition of "on call". Case law on this matter is complex and highly case-specific, which will likely create compliance and implementation issues undermining the intended productivity and compliance outcomes of the reforms.

BEREAVEMENT LEAVE

21. We have some concerns about bereavement leave entitlements for employees being from the first day of employment. While we recognise that genuine bereavements can occur regardless of employment status or tenure, the absence of any minimum tenure requirement or clear verification mechanism creates a compliance risk for employers. We recommend the Bill include either a minimum period of continuous employment before bereavement leave is available to employees, or a clear provision allowing employers to request reasonable confirmation of the bereavement.

FAMILY VIOLENCE LEAVE

22. We strongly acknowledge the seriousness of family violence and the importance of protecting affected employees. Our concern relates to the cost imposition on employers for a risk that arises entirely outside of the employment relationship and over which employers have no control. Family violence is a significant social harm, and we recommend the Government consider a funded support mechanism to ensure the cost does not fall solely on employers, particularly small businesses with limited capacity to absorb unplanned leave costs.

23. We acknowledge and support the importance and rationale of limiting disclosure of this type of leave in wage, time and payroll records. From an operational perspective, payroll systems will need to manage these requirements carefully to ensure balances can be tracked without inappropriate disclosure. Support and guidance for payroll providers in this area would be valuable.

NOTIONAL ROSTERS

24. We see this being very difficult to encapsulate in wording that provides certainty to both employers and employees. We see this ultimately being subject to case law to get clear definitions. We recommend the Government undertake targeted consultation with employers operating complex rostering arrangements, such as those in horticulture, transport, and healthcare, before finalising this provision. In our experience, these are the sectors where notional roster disputes are most likely to arise, and their input would materially improve the drafting.

IMPLEMENTATION COSTS

25. Across our client base there is a consistent view that the financial and operational costs associated with implementing the proposed reforms will be borne by employers, particularly during the transition period. These costs will include staff time and training to understand and implement new payroll systems or significant modifications to existing systems, the development and delivery of clear employee communications, and the need to obtain professional advice to ensure employment agreements and transitional arrangements remain compliant.

26. These implementation requirements arise in a context where many employers, particularly small and medium enterprises, are already managing sustained compliance and regulatory cost pressures. While there is broad support for the policy objectives underpinning the reforms, there is concern that the cost of implementation will be difficult for many smaller employers to absorb. In our view, the scale and complexity of the proposed changes make employer support a critical enabler of successful implementation. Consideration should therefore be given to practical mechanisms to assist businesses through the transition period, such as targeted tax relief or other forms of financial or operational support for small and medium enterprises. Without such measures, there is a risk that implementation costs will constrain business capacity.

TRANSITIONAL ARRANGEMENTS

27. We are generally supportive of the proposed transitional approach, including the conversion of existing balances to the new framework rather than operating dual systems. While this will require significant effort from employers, it is likely to be the more workable option overall.

28. We do, however, seek clarification on clause 5, which appears to require employers to comply with both existing employment agreements and the new Act for a transitional period. This may be operationally unworkable. We recommend clarification that the new Act applies from the first pay period following commencement, while preserving existing entitlement levels.

29. We also note that clause 10(3) uses the term "must" in relation to granting leave, which appears inconsistent with the subsequent reference to not unreasonably withholding consent. Replacing "must" with "may" would better reflect the intended balance.

GENERAL

30. We support the proposal that leave be paid in the period in which it falls due, as this aligns with modern payroll and banking practices.

31. We question the continued need for the presumption of continuous employment where an employee is dismissed and re-employed within one month (s.150). In practice, this can create unnecessary complexity, particularly where leave has already been paid out on termination. In our experience we have not come across a situation where this has been taken advantage of by an employer, and given these new entitlements are from day one of employment, we do not see the value of this clause going forward.

32. We recommend that the commencement date be aligned with common payroll cycles. Given the significant scale of the change, a start date at the beginning of a month and

ideally on a Monday would reduce administrative complexity for the greatest number of employers. Avoiding peak leave periods such as December and January would also assist. An October or early November commencement, or alternatively February or March, would be more practical than a mid-month or Christmas / New Year start date. Our recommendation is Monday 2nd October 2028, as the Sunday 1st October will likely have minimal impact for many employees.

33. This is a significant milestone in New Zealand employment law, and we thank the Select Committee for the opportunity to provide our views on the proposed Bill, informed by our practical expertise supporting small and medium employers. We appreciate the chance to contribute to the development of these reforms and will continue to follow the Bill with close interest as it progresses.