

# Holidays (Transfer of Public Holidays) Amendment Bill

1 April 2008

Attorney-General

## LEGAL ADVICE

### CONSISTENCY WITH THE NEW ZEALAND BILL OF RIGHTS ACT 1990: HOLIDAYS (TRANSFER OF PUBLIC HOLIDAYS) AMENDMENT BILL

1. We have assessed whether the Holidays (Transfer of Public Holidays) Amendment Bill ("the Bill") (PCO 13030/8.0) is consistent with the New Zealand Bill of Rights Act 1990 ("Bill of Rights Act"). We understand that the Bill will be considered by the Cabinet Legislation Committee at its meeting on Thursday, 3 April 2008.
2. The Bill responds to the decision of the Supreme Court of New Zealand in *New Zealand Airline Pilots' Association Industrial Union of Workers Incorporated v Air New Zealand Limited* (14 November 2007, SC 91/2006), which found that an employer and employee cannot agree to transfer a public holiday from a day listed in the Holidays Act 2003 ("the Act") to another day.
3. The Bill seeks to amend the Act to ensure that where an employee's shift spans two calendar days, and at least one of those days is a public holiday, an employer and employee can enter into a genuine agreement to transfer the public holiday to a 24-hour period that begins or ends on the public holiday so that it covers one whole shift.
4. The proposed amendment is designed to ensure that employers that operate over 24-hour periods, and the employees who work for them, will have the flexibility to agree to redefine a public holiday to meet their respective needs. Such an agreement must not reduce an employee's statutory right to public holidays.
5. We have concluded that the Bill does not appear to be inconsistent with the rights and freedoms affirmed in the Bill of Rights Act.

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