



tourism  
INDUSTRY  
ASSOCIATION NEW ZEALAND

**Submission to the  
Transport and Industrial Relations Select Committee  
on the  
Holidays Amendment Bill  
17 September 2010**

## Comment

1. This submission from the Tourism Industry Association New Zealand (TIA) comments on the Holidays Amendment Bill being considered by Parliament's Transport and Industrial Relations Select Committee. On this occasion, TIA is happy for its written submission to be acknowledged by the Committee and it will not need to appear in person.
2. TIA made a detailed and lengthy submission to the Department of Labour led review of the Holidays Act in August 2009. Because the legislation affects every member of the Association, TIA went out with a tailored survey to these members and received a large number of individual responses. Feedback was also sought from other sector organisations within the tourism industry, including Holiday Accommodation Parks Association New Zealand (HAPNZ), the Inbound Tour Operators Council (ITOC), the New Zealand Hotel Council (NZHC), and the Youth Hostels Association of New Zealand (YHA).
3. In its August 2009 submission, TIA said it supported outcomes in the Holidays Act that would:
  - Make it easier for businesses and employees to understand and apply;
  - Reduce compliance costs; and
  - Make it more applicable to a range of employment arrangements.
4. TIA believes the changes proposed in the Bill will largely improve the overall operation and efficiency of the Holidays Act, but there are some changes that are not supported by the Association and these are detailed below. Using the Bill's Explanatory Note as a guideline, TIA's comments on the proposed changes are as follows:

### **Paying out annual holiday entitlement (trading of fourth week's leave for cash)**

#### ***TIA in support***

5. While a small number of employers responding to the TIA survey said they would not want to exchange a fourth week's holiday for cash, most employers favoured the option of employees trading the extra week for cash. The Association's position is that it supports the trading of the fourth week's holiday on the proviso that it is a flexible negotiation between employer and employee to suit a particular circumstance. TIA would not support an employer who forced this situation on to a worker and supports protection in the Act to prevent this from happening.
6. Of those workers who said they would not trade away holidays, the most common reason for this view was the need for a better work-life balance and a feeling that as a tourism business, they should be setting an example by encouraging holiday and leisure time. Conversely, many workers in the tourism industry are employed on a part-time basis. These people said they had no need or desire for a fourth week's holiday, preferring instead to trade the extra week for cash. TIA's view is that while it certainly is better for employees to take a break from their place of work, there can also be cases of genuine hardship where cash is preferred over a holiday. This is particularly so in the lower waged

areas of the hotel industry, for example, housekeeping.

7. As pointed out by some tourism businesses who responded to our survey, there are some issues that can arise for employers by trading an employee's extra week's leave for cash. The most obvious example is an increase in salary or wage costs to the employer as the employee will receive the cash for the extra week's traded leave and will also receive a payment for working, in effect receiving 53 weeks of pay in a calendar year. This in turn leads to extra cost increases for a business, such as KiwiSaver contributions, ACC levies, superannuation, as well as annual leave being accrued at a higher rate.

### **Calculating pay for public holidays, alternative holidays, sick leave and bereavement leave (calculation of relevant daily pay)**

#### ***TIA in support***

8. As it does in most industries and particularly many SMEs, the calculation of relevant daily pay (RDP) also causes difficulty for tourism businesses. While the calculation is generally easier for large companies with computer payroll systems, TIA believes the RDP policy inflates wage costs for many businesses by including overtime, bonuses and other allowances to form the basis of calculating holiday and sick pay.
9. The current method of calculating RDP for non-working days leads employers to a situation where they can end up paying employees more for non-working days compared to working days. This creates an incentive for employees to take a sick day off on public holidays as those days pay more.
10. In the tourism and hospitality sectors, there are often additional components that make up an employee's package, such as board, lodgings and car parking. In its 2009 submission to the review of the Act, the Association said the cash value of these components should be agreed between the employer and employee, but excluded from RDP calculations.
11. The proposal in the Bill to use an averaging formula is a sensible and pragmatic step. While it will not totally remove the complexities associated with the current formula, the averaging approach stands a better chance of working than RDP, especially for SMEs and those businesses without computerised payrolls. TIA also supports the proposal in the Bill for employers and employees to agree to a rate of pay for public holidays, alternative holidays, sick leave, or bereavement leave that is equal to or greater than RDP.

### **Transferring observance of a whole public holiday to another working day**

#### ***TIA not in support***

12. TIA believes that transferring public holidays as listed in the Act could be cumbersome. It runs counter to one of the main objectives of simplifying the legislation and instead creates extra compliance issues for businesses.
13. The tourism industry acknowledges the increasing diversity of the New Zealand populace which is evident amongst employees in the tourism industry. However, with a minimum of four weeks annual leave provided to all employees, there are ample opportunities for

people to take leave if they wish to observe their own days of national, religious or cultural significance. The hotel industry, for example, employs a large number of multi-cultural staff and transferring publicly listed holidays to other days, when staff are required to work shifts, could be administratively complex.

## **Other matters**

### **Employers may request proof of sickness or injury within 3 consecutive calendar days without having reasonable grounds to suspect that sick leave is not genuine**

#### ***TIA not in support***

14. If the purpose of changes to the Holidays Act has been to simplify the law and minimise costs, then TIA believes a requirement for employees to provide a medical certificate for an absence of less than three days is unnecessary. In the tourism industry, most employers are fair and reasonable in their relationships with workers while most employees are honest and up front with their employers. All that this type of law does is create extra costs for employers, who will be faced with paying medical bills, as well as creating a lack of trust which can be destabilising and unhealthy in the workplace. The Association does endorse the current requirement for employees to provide a medical certificate for an absence due to sickness that exceeds three consecutive days.

### **Increasing maximum penalties for non-compliance**

#### ***TIA not in support***

15. While TIA believes that deliberate breaches of the Act warrant harsh penalties, it is concerned that in some cases, unintentional breaches of the law may occur. Given the complexities that still remain in the Act, a small to medium sized enterprise could find itself in a position of being fined between \$10,000 and \$20,000 for an accidental breach of the law. In the tourism sector, amounts of this nature could easily put people out of business.

## **Conclusion**

16. In summary, TIA's position with respect to the main changes proposed in the Holidays Amendment Bill is as follows: :
- a. Paying out annual holiday entitlement (trading of fourth week's leave for cash) – support.
  - b. Calculating pay for public holidays, alternative holidays, sick leave and bereavement leave (calculation of relevant daily pay) – support.
  - c. Transferring observance of a whole public holiday to another working day – not in support.
  - d. Employers may request proof of sickness or injury within 3 consecutive calendar days without having reasonable grounds to suspect that sick leave is not genuine – not in support.

e. Increasing maximum penalties for non-compliance – not in support.

17. Finally, this submission is endorsed and supported by the New Zealand Hotel Council, a full member of TIA.

Simon Wallace  
Policy and Research Manager  
Tourism Industry Association New Zealand  
17 September 2010

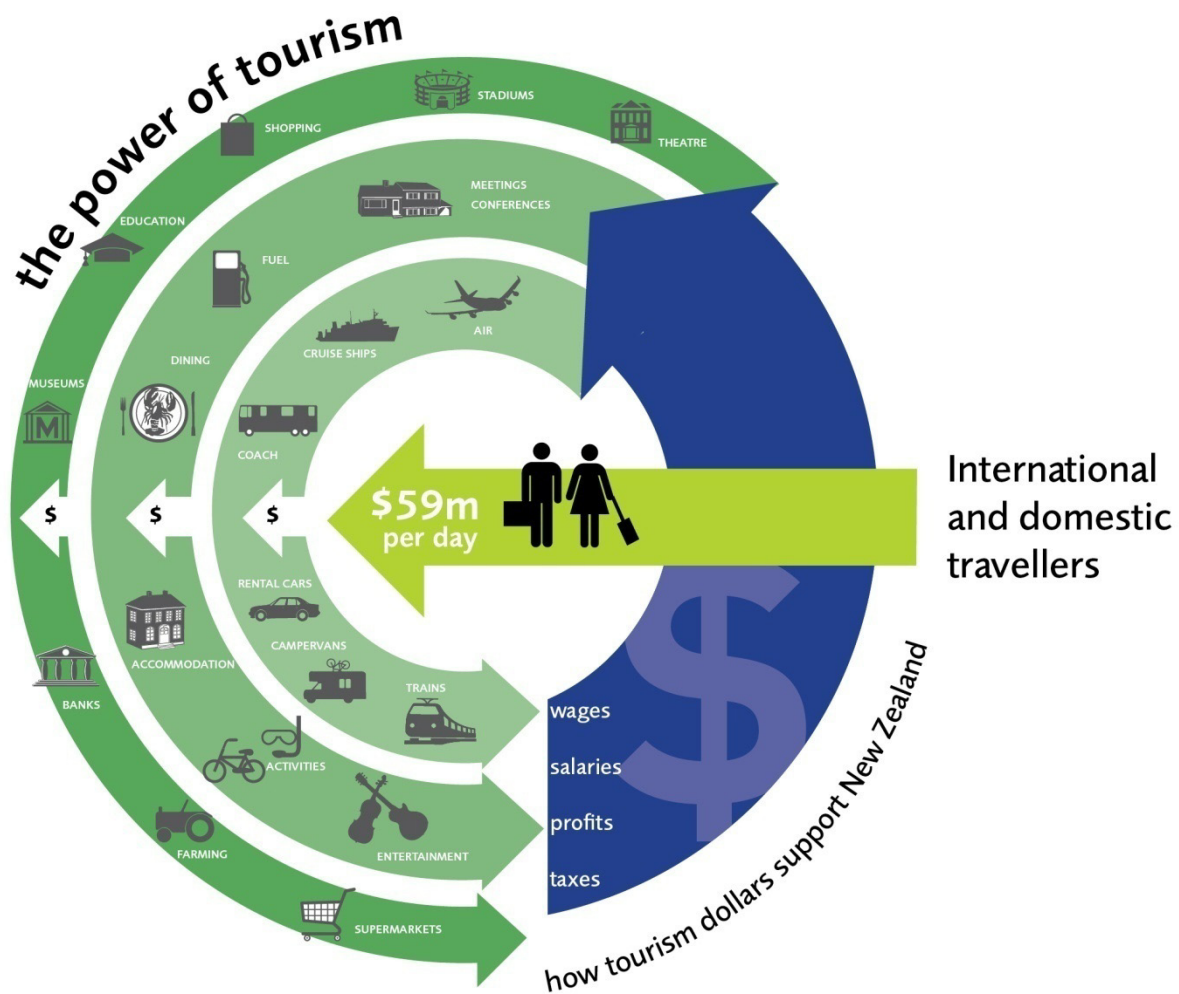
## **Background**

### **A bed-rock of New Zealand's economy**

18. Tourism is a major contributor to the New Zealand economy that will always be here – and won't easily go offshore. Tourism takes the lead in promoting New Zealand to the world. Thanks to our 100% pure positioning, New Zealand is recognised as one of the most beautiful, unspoiled and scenic places on earth. 100% Pure signifies pride in our country, pride in our people and culture, and pride in the unique environment and experiences that New Zealand offers.
19. The brand positioning built by a vibrant tourism industry has become an important source of national confidence and identity and a front window for "Brand New Zealand". Indeed, the clean, green, pure offer that is synonymous with New Zealand tourism has been widely adopted and used to promote New Zealand exports in a range of other industries as well.
20. If New Zealand Inc. is to continue to prosper, to attract investment and to raise its position in OECD rankings, then it is vital the tourism industry, and the positive image it projects, remain strong.

### **Delivering Value**

21. Below is a snapshot of the economic value provided by tourism to the New Zealand economy.
  - Tourism contributes more than 9.1% of gross domestic product (GDP) for New Zealand as well as directly and indirectly employing one in ten New Zealanders.
  - Tourism in New Zealand is a \$59 million per day industry. The New Zealand tourism industry delivers \$25 million in foreign exchange to the New Zealand economy each day of the year. Domestic tourism contributes another \$34 million in economic activity every day.
  - Tourism expenditure reached \$21.7 billion for the year ended March 2009. International visitor expenditure accounted for \$9.3 billion or 16.4% of New Zealand's foreign exchange earnings, with tourism second only to agriculture as the country's largest export industry.
  - Importantly, and despite more challenging times in the past two years, tourism remains one of New Zealand's largest foreign exchange earners and its contribution is felt at national, regional and local levels.



## About TIA

22. TIA has been the lead association that represents the interests of about 1,700 tourism businesses in New Zealand. The Association was first established in 1955 and the businesses TIA represent cover a range of tourism-related activities – hospitality, transport, accommodation, adventure and activities, attractions and retail as well as related tourism services.

23. The primary role of TIA is to be the voice of the tourism industry. This includes working for members on advocacy, policy, communication, events and membership and business services. The TIA team is based in Wellington and led by Chief Executive, Tim Cossar.

# Main Industry Associations in the Tourism Sector

