

13 MAR 2020

Dear [REDACTED]

On 17 December 2020, you emailed the Ministry of Social Development (the Ministry) requesting, under the Official Information Act 1982 (the Act), information regarding the Ministry's payroll system.

Please note that, in addition to itself, the Ministry provides payroll services to Oranga Tamariki, the Social Investment Agency, and previously to the Canterbury Earthquake Recovery Agency and Child Youth and Family, which were all part of the Ministry. All references and figures in this response are reflective of all employees paid by the Ministry's payroll system, including the agencies above.

For the sake of clarity, I will address each of your requests in turn.

1. *What system do you currently use? (by vendor, e.g. SAP)*
2. *What system did you use for most of the last 6 years (back from late Dec 2019)?*

The Ministry uses CHRIS21 by Frontier Software and has used this system for the period in question.

3. *Do you expect to or are you, changing systems in the next 5 years?*
  - a. *And to what system?*
  - b. *And why?*

The Ministry has not yet confirmed whether it will change systems in the next five years. If a new product is required, an approved procurement process will be used to select this product. The product will be chosen to best align the payroll system to the Ministry's existing Human Resources Information System.

4. *Is your payroll system and its outcomes compliant with the Act as of now?*
  - a. *If not, what is your latest forecast of when it will be?*

Yes, the Ministry is fully compliant according to the breaches documented in the Enforceable Undertaking given to the Ministry by the Ministry of Business, Innovation and Employment (MBIE). The Ministry has one self-identified area to address which was not part of the Enforceable Undertaking. The self-identified area is in relation to variable hours and is being led by the State Services Commission using an All-of-

Government approach. The Ministry anticipates addressing this during the 2020/2021 financial year.

5. *Please release a copy of any review – draft or final – of your payroll performance vis-a-vis Holidays Act, obtained in the last 2 years (back from late Dec 2019)*

The Ministry received and worked to comply with an Enforceable Undertaking from the Labour Inspector (MBIE). A copy of this document is attached. Please note that this document is dated 30 March 2017.

Please also find attached a copy of the letter to MBIE dated 18 January 2019, advising that the Ministry has met the requirements of the Holidays Act Enforceable Undertaking and the email from MBIE, dated 8 March 2019, acknowledging that the Ministry has complied with the Enforceable Undertaking.

Please note that one name is withheld under section 9(2)(a) of the Act in order to protect the privacy of natural persons. The need to protect the privacy of this individual outweighs any public interest in this information.

Staff contact details are also withheld under section 9(2)(k) of the Act in order to reduce the possibility of staff being exposed to phishing and other scams. This is because information released under the Act may end up in the public domain, for example, on websites including the Ministry's own website.

6. *Please provide all minutes of risk and audit committee or equivalent meetings from 2019 that address payroll problems*

The Ministry became compliant with the Holidays Act in May 2018 and remediation payments commenced in October 2018. As a result, the Ministry did not have any Risk and Audit Committee meeting minutes related to payroll problems in 2019.

7. *Please provide all risk assessment matrixes/charts or equivalent (whatever your agency uses to assess and represent risk) around payroll problems and remediation, from the latest, back to the start of 2018*

Please find below an excerpt from an NZ Audit Report noting that the Ministry has met all requirements under the Holidays Act Enforceable Undertaking. This report is for the year ending 30 June 2019 and was received by the Ministry on 10 December 2019. Note that one of the two self-identified breaches has since been addressed.

Recommendation	First raised	Status
<p><b>Holidays Act 2003 compliance</b></p> <p>Ensure compliance with the Holidays Act 2003 and prioritise remediation of any historical underpayments.</p>	2018	<p><b>Closed</b></p> <p>The Ministry have met all requirements under the Holiday Act Enforceable Undertaking which has now been closed. The Ministry has two self-identified breaches that will be addressed with remediation payments to current and past employees.</p>

8. *What is the total actual and/or forecast, or both, cost to your agency of addressing or identifying payroll problems arising from the Holidays Act 2003, since widespread problems were identified in 2015/16, broken down by (please specify what is actual or forecast, please include interim or draft forecasts/ budgeted amounts):*
- Total*
  - Legal costs*
  - Payroll IT costs*
  - Costs around dealing with existing contracts and around procurement*
  - Paying back staff costs (arrears)*

Table 1, below, provides a breakdown of costs to identify and address payroll problems arising from the Holidays Act 2003 since 2015/16. All costs shown are actual.

**Table 1: Costs of addressing Holidays Act 2003 payroll problems**

Type of cost	Legal costs	Payroll costs	IT	Contracts and procurement costs	Staff arrears costs	Total
Cost	Nil	\$424,000	Nil	Nil	\$4,785,222	\$5,209,222

9. *In any efforts since 2016, current or expected or being worked towards, to procure a payroll system that is compliant with the Act or any revised legislation, please provide evidence of:*
- The most important mechanism your agency uses/d to assess payroll system-related bids in order to adhere to MBIE procurement rules, in terms of making procurement decisions "based on the best public value, over the whole-of-life of the goods, services or works" (4<sup>th</sup> edition)*
    - Please include what weighting ratio or equivalent that you use to assess bids e.g. "price 70%, incumbent 5%" etc.*

- b. *How you assessed any successful payroll bid, for the track record of that system or supplier where it has been or is being used by other Crown/govt or local govt agencies in NZ*
- c. *Detail any instances in which your agency has, in assessing suppliers' prices, sought clarification from the supplier as per <https://www.procurement.govt.nz/procurement/guide-to-procurement/source-your-suppliers/evaluating-responses/> (please note, RNZ does not expect suppliers to be identified and as such, RNZ believes commercial sensitivity should not be cited as grounds to withhold information.)*
- d. *Have there been any signs of "bid-rigging or collusion amongst suppliers"? If yes, what?*
- e. *Detail any financial guarantees your agency has sought from suppliers in general as part of a tender process (but not identifying particular suppliers)*

The Ministry has not yet confirmed whether a new payroll system is required. If it is required, the Ministry will complete a procurement process that aligns with the Government Procurement Rules. The process will include assessing the payroll modules/ offerings in the common capability services offerings managed by the Government Chief Digital Officer. More information regarding the products available is available here: <https://www.digital.govt.nz/products-and-services/products-and-services-az>.

- 10. *At any time in the last 6 years has your payroll been using the PIPs divisor when calculating leave for employees?*
- 11. *If yes, are you still using the PIPs divisor?*
- 12. *If not, when was the last time you used the PIPs divisor?*
- 13. *If the PIPs divisor has been used, have you tried to ascertain if there have been any breaches or pay errors as a result of using it?*
- 14. *If yes, and if there are, have you undertaken remediation to pay employees for any underpayments caused from using the PIPS divisor?*

The Ministry used the Government Sector calculation known as the "PIPS divisor" until June 2019. The calculation dates back to the time when all government employees were paid by one central payroll system called PIPS and a specific calculation method was applied which differed slightly to private sector organisations.

In June 2019, the Ministry ceased use of the PIPS divisor and adopted the more widely used 'standard' calculation for consistency with other organisations throughout New Zealand.

The Ministry is not aware of any breaches or pay errors resulting from the use of the PIPS divisor.

The principles and purposes of the Official Information Act 1982 under which you made your request are:

- to create greater openness and transparency about the plans, work and activities of the Government,
- to increase the ability of the public to participate in the making and administration of our laws and policies and
- to lead to greater accountability in the conduct of public affairs.

This Ministry fully supports those principles and purposes. The Ministry therefore intends to make the information contained in this letter and any attached documents available to the wider public. The Ministry will do this by publishing this letter and attachments on the Ministry of Social Development's website. Your personal details will be deleted, and the Ministry will not publish any information that would identify you as the person who requested the information.

If you wish to discuss this response with us, please feel free to contact [OIA\\_Requests@msd.govt.nz](mailto:OIA_Requests@msd.govt.nz).

If you are not satisfied with this response regarding the Ministry's payroll system, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or 0800 802 602.

Yours sincerely



Stephen Crombie  
**Deputy Chief Executive, People and Capability**



## Enforceable Undertaking

### Under section 223B of the Employment Relations Act 2000

#### 1. Introduction

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- 1.1. This undertaking is offered to Alan Reid, a Labour Inspector, for acceptance under s223B of the *Employment Relations Act 2000* by the Ministry of Social Development ("the employer").
- 1.2. During the course of the audit undertaken by the Labour Inspector, a very small sample of the employee base was selected.
- 1.3. Given the scope of the *Employment Relations Act* and the *Holidays Act 2003*, there is a possibility that the employees selected may not be indicative of the entire workforce. It is probable that due to the small sample size of employees reviewed, the payroll issues identified do not cover all issues in the end-to-end payroll system and with all employees.

#### 2. Breaches

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- 2.1. The employer acknowledges the following breaches of employment standards legislation have been performed by the employer.

##### Holidays Act 2003 ('the Act')

- 2.1.1 **Section 9 Meaning of relevant daily pay**
  - Incorrect calculation of Relevant Daily Pay (RDP).
- 2.1.2 **Section 9A Average daily pay**
  - Incorrect calculation of Average Daily Pay (ADP).
- 2.1.3 **Section 21 Calculation of annual holiday pay**
  - Average Weekly Earnings (AWE) versus Ordinary Weekly Pay (OWP) calculation not used.
- 2.1.4 **Section 24 Calculation of annual holiday pay if employment ends and entitlement to holidays has arisen**
  - Average Weekly Earnings (AWE) versus Ordinary Weekly Pay (OWP) calculation not used.
- 2.1.5 **Section 28A Employee may request portion of annual holiday be paid out**
  - Average Weekly Earnings (AWE) versus Ordinary Weekly Pay (OWP) calculation not used.
- 2.1.6 **Section 49 Payment if employee does not work on public holiday**
  - Incorrect calculation of Relevant Daily Pay (RDP) as stipulated by s9.
  - Incorrect calculation of Average Daily Pay (ADP) as stipulated by s9A.
- 2.1.7 **Section 50 Employer must pay employee at least time and a half for working on public holiday**
  - Incorrect calculation of Relevant Daily Pay (RDP) as stipulated by s9 or Average Daily Pay (ADP) as stipulated by s9A for the payment of the time one (T1.0) component.

2.1.8 **Section 60 Payment for alternative holiday**

- Incorrect calculation of Relevant Daily Pay (RDP) as stipulated by s9.
- Incorrect calculation of Average Daily Pay (ADP) as stipulated by s9A.

2.1.9 **Section 71 Payment for sick leave and bereavement leave**

- Incorrect calculation of Relevant Daily Pay (RDP) as stipulated by s9.
- Incorrect calculation of Average Daily Pay (ADP) as stipulated by s9A.

**Employment Relations Act 2000**

2.1.10 **Section 54 form and content of collective agreement**

- Collective agreement contains provisions contrary to law.

**3. Actions to Rectify Breaches**

3.1. The employer will rectify the breaches listed in 2.1 of this undertaking and take the actions listed below, being ones that the Labour Inspector determines are appropriate having regard to the nature of those breaches.

**For the purposes of this review and calculation of any potential arrears, the employer is required to review records for all current and past employees from 14 April 2010.**

**It is important to note that all of these entitlements must be calculated sequentially by date as each entitlement affects the gross earnings of the next one calculated.**

3.1.1 Review the wages and time records and holiday and leave records for all current employees and past employees and identify periods of:

- Public Holidays
- Sick Leave
- Alternative Holidays
- Bereavement Leave
- Notional Public Holidays.

3.1.2 Calculate the correct RDP for all of these periods, or if RDP is not appropriate, calculate ADP for these periods. When ADP is used, it must be calculated using the formula set down in s9A of the Act:

*The employee's average daily pay must be calculated in accordance with the following formula:*

$$\frac{a}{b}$$

*where—*

***a***

*is the employee's gross earnings for the 52 calendar weeks before the end of the pay period immediately before the calculation is made*

***b***

*is the number of whole or part days during which the employee earned those gross earnings, including any day on which the employee was on a paid holiday or paid leave; but excluding any other day on which the employee did not actually work.*

- 3.1.3 Review the wages and time records and holiday and leave records for all current employees and past employees and identify periods of annual holidays.
- 3.1.4 Calculate the correct annual holiday pay for these employees. This **must** be calculated using the formula set down in s21(2)(b):
- at a rate that is based on the greater of—*
- (i) *the employee's ordinary weekly pay as at the beginning of the annual holiday; or*
- (ii) *the employee's average weekly earnings for the 12 months immediately before the end of the last pay period before the annual holiday.*
- OWP **must** meet the criteria set down in s8, and when a calculation is done it **must** be using the formula set down in the same section.
- 3.1.5 Calculate the correct termination pay of all employees that have ended their employment since 14 April 2010 ensuring that:
- the correct annual holiday pay has been calculated
  - the notional public holidays have been added (if any)
  - the correct alternative holiday payments (if any) have been calculated
  - the correct gross earnings figure has been applied.
- 3.1.6 The employer will operate in a "good faith" manner advising their employees (or representatives) of the matter and involving them during the process as they identify the issues, remediate arrears and rectify their systems.
- 3.2 The employer will provide the following evidence that it has remedied the breaches listed by the Labour Inspector in 2.1.
- 3.2.1 List of the organisation's current employees and the arrears outstanding to them.
- 3.2.2 List of the organisation's employees who have ended their employment since 14 April 2010 and the arrears outstanding to them.
- 3.2.3 An actual calculation of each of the specific leave entitlements; namely
- Public Holidays
  - Sick Leave
  - Alternative Holidays
  - Bereavement Leave
  - Notional Public Holidays
  - Annual holiday Pay
  - Termination Pay.
- 3.2.4 Holiday and leave records of affected employees showing that their leave entitlements have been correctly allocated.
- 3.2.5 Sample of wages and time record showing that the payroll system now complies with the Act.
- 3.2.6 Sample of holiday and leave record that shows that the payroll system now complies with the Act.



- 3.3 On or before 30 June 2017, the employer will provide to the Labour Inspector a detailed remedial plan for all identified arrears to affected current and past employees, since 14 April 2010, in respect of the breaches in 2.1 and any subsequent breaches identified by the employer in the course of this process.
- 3.4 On or before 14 December 2017 (the 'completion date'), the employer will provide to the Labour Inspector evidence that it has fully remediated affected current and past employees in respect of the breaches in 2.1 and any subsequent breaches identified by the employer in the course of this process.
- 3.5 The Inspector may agree to a process of renegotiating the completion date specified in 3.4 should the employer provide significant and reasonable grounds for failure to meet that date.

#### 4. Acknowledgements

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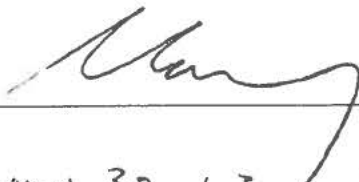
The employer acknowledges the following.

- 4.1 That this undertaking is given willingly by the employer and they have been given the opportunity to discuss and negotiate with the Labour Inspector about how the breaches can be rectified; and that the agreement reached with the Labour Inspector is reflected in the wording of the actions listed in 3.1.
- 4.2 That the Labour Inspector has provided information about the full effect of not complying with this undertaking and that in the event this undertaking is not fully met the following enforcement actions can occur.
  - A compliance order sought at the Employment Relations Authority under s137 of the *Employment Relations Act*, along with interest on any money owed, and a penalty under s135 of the *Employment Relations Act* not exceeding \$10,000 in the case of an individual and not exceeding \$20,000 in the case of a company or other corporation.
  - In the case of the undertaking relating to a monetary figure payable, seek enforcement under sections 223C and 141 of the *Employment Relations Act* as if an order which can be enforced in the District Court.
  - Should a compliance order from the Employment Relations Authority fail to be complied with, Action can sought at the Employment Court who can order: interest on money owed; a fine not exceeding \$40,000; sequestration of property; and imprisonment for up to 3 months.
- 4.3 That this Enforceable Undertaking does not affect a Labour Inspector's power to investigate future conduct of the employer, or to take any Action or to exercise any power under the *Employment Relations Act* and any other legislation listed at s223(1)(a) of the *Employment Relations Act*.
- 4.4 That the information held by the Ministry pertaining to your organisation may be subject to release under the *Official Information Act 1982*.

- 4.5 That this Enforceable Undertaking does not prevent an affected employee or their representative from taking their own action if the Labour Inspector has chosen not to enforce or seek remedies to the extent that the legislation allows them to do so.

Signed by (or on behalf of) the employer

Printed Name: Alan Cassidy

Signature: 

Dated (Day/Month/Year) 30 / 3 / 2017

Accepted by the Labour Inspector pursuant to s223B *Employment Relations Act 2000*

Signed by the Labour Inspector

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Dated (Day/Month/Year) \_\_\_\_\_ / \_\_\_\_\_ / 20\_\_\_\_\_



18 January 2019

IN CONFIDENCE

Alan Reid  
Labour Inspectorate  
Ministry of Business, Innovation & Employment  
PO Box 1303  
Hamilton 3240

Tena koe,

### **MSD Holidays Act Enforceable Undertaking**

MSD are pleased to advise we have reached a position on our Holidays Act 2003 compliance and remediation activity where we would like to seek approval to close out the Enforceable Undertaking (EU). It is our belief we have met the requirements under this document and seek an early close out (current EU document runs through to end April 2019). Remaining activities are being conducted as "business as usual". This covers payrolls for MSD, Oranga Tamariki, SIA and CERA.

Summary information of status to support this request follows:

- a) Compliance status
- b) Payment status on current employees
- c) Payment status on past employees
  - i. Total past employees to pay (volume and value)
  - ii. Notification letters sent (volume, value and date sent)
  - iii. Letter has been returned as "Return to Sender" (volume and value)
  - iv. Declined payment (volume and value)
  - v. Paid to date (volume and value)
  - vi. Balance to pay (volume and value).

The following pages provide tables and information corresponding to the items in the list above.

The provision of funding will always be available for a past employee to draw down their entitlement (it is not time bound) and the process we have in place to track payments will be a "business as usual" process for as long as it is needed (also not time bound).

Please advise if there is any additional information you require to be able to close out the Enforceable Undertaking – directing any queries to Rommy Musch. If not, we look forward to advisement on the ability to sign of the Enforceable Undertaking as completed.

Yours sincerely

Penny Rounthwaite  
General Manager Human Resources

**(a) Compliance status**

Compliance to the Holidays Act 2003, according to the Enforceable Undertaking, was reached in the MSD payroll system in May 2018. At this point we then proceeded to determine the remediation calculations and payments due to all employees – current and past.

**(b) Payment status on current employees:**

All current employees were paid their remediation payments on 31 October 2018. No further action required.

Values	Volumes
\$2,852,157.41	8,032

**(c) Payment status on past employees:**

**i. Total past employees due a payment**

Values	Volumes
\$1,717,151.59	6,976

**ii. Notification letters sent**

Target was to send letters to ALL past employees. These were sent by hard copy letters through the post using the last known address or email address where available.

There remain **15 people whom we have been unable to contact** (0.2% of volume) as no contact information is available on the system (postal, email or phone).

Values	Volumes
\$1,713,974.85 (99.8%)	6,961 (99.8%)

**iii. Letter returned undelivered, or Return to Sender**

There are cases where we have had letters returned to us. This is expected as our records date back to when people left MSD, which could be as long as eight years ago. These people have been tagged in the system.

We have responded to well over one thousand email enquiries from people contacting us to enquire whether they are due a payment. We notify them immediately on their eligibility (yes or no). For those that are, we send them their information electronically using their preferred contact method. Several of these are people whom have had their original letter "Returned to Sender".

Values	Volumes
\$151,348.20 (9%)	773 (11%)

**iv. Declined payment**

In some cases individuals have advised they do not wish to receive their payment. This could be for many reasons. If this is the case, their preference has been tagged in the system including their reason for declining the payment.

Values	Volumes
\$566.39 (0.03%)	21 (0.3%)

**v. Paid to date**

This number increases daily as we receive the required information from individuals to be able to make a payment.

To qualify for payment, we have to receive a copy of proof of id, updated personal contact information, confirmation of bank account details, preference for Kiwsaver contribution, IRD number and tax code (forms are provided).

Once all information is received, we advise the individual of the amount owing, and payment date. Payments are made on a fortnightly basis through our payroll system.

Values	Volumes
<b>\$791,615.39</b> (46%)	<b>2,344</b> (34%)

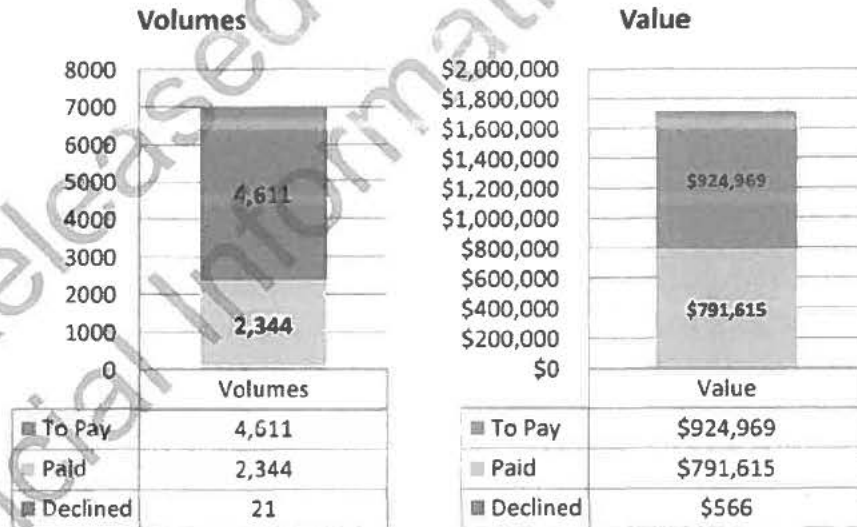
**vi. Balance to pay**

This number decreases daily as we receive the required information from individuals to make payments.

Note the numbers in the table below excludes the individuals who have declined their payment.

Values	Volumes
<b>\$924,969.81</b> (56%)	<b>4,611</b> (67%)

**Graphical representation of progress to date:**





Fri 8/03/2019 1:46 PM

Alan Reid

RE: Remediation payments split by leave type [UNCLASSIFIED]

To: s 9(2)(a)

You replied to this message on 11/03/2019 8:24 AM.

Good afternoon s 9(2)(a)

Thank you for clarifying the numbers in your email of below.

I am now satisfied that MSD has now complied with the requirements of the Enforceable Undertaking dated 30 March 2017.

I have now closed this file.

I thank you and your team for your cooperation in this matter.

Regards

**Alan Reid**  
LABOUR INSPECTOR

Labour Inspectorate, Employment Services  
Ministry of Business, Innovation & Employment

s 9(2)(k)  
PO Box 1303, Hamilton 3240 | New Zealand

Released under the  
Official Information Act 1982