

## **Aide Memoire: Education Payroll Limited's initial estimate of Holidays Act non-compliance costs**

<b>Date:</b>	29 March 2016	<b>Priority:</b>	High
<b>Security Level:</b>	In Confidence	<b>METIS No:</b>	990696

### **Purpose**

1. This aide memoire presents Education Payroll Limited's (EPL) indicative range of the costs to reimburse school employees for currently known areas of Holidays Act non-compliance since Novopay go live.

### **Background**

2. At the last regular Novopay portfolio meeting, Education Payroll Limited (EPL) undertook to give an indicative range of the costs related to currently known areas of Holidays Act non-compliance since Novopay go live. This estimate (attached to this aide memoire) is based on initial analysis and EPL notes a number of areas as needing further analysis.

### **Summary**

- 3.



s 9(2)(f)(iv) OIA

4. EPL notes that it has done its best to provide an accurate view, and that it may wish to take further advice on the conclusions drawn re the current state of Holidays Act compliance. More detail is provided in the attached letter from EPL.

### **Comment**

5. This cost estimate is indicative only and will require further analysis. The Ministry will work closely with EPL on this. There are also still points of interpretation of the Holidays Act which need to be clarified. This is a complex issue, where detail matters, and it would be easy to under-estimate the final costs, including those relating to remediation.
6. EPL has provided high level legal advice on two of the issues under consideration, and the Ministry is reviewing this.
7. The intention is that a full analysis of Holidays Act compliance is dealt with as part of the comprehensive review across all areas of compliance proposed under the Detailed Business Case. This will allow a more robust analysis of costs.

## Next steps

8. The Ministry and EPL are continuing to work together to get a clear picture of Holidays Act compliance. Next steps are as follows:
  - EPL and the Ministry are seeking to understand and resolve differences of interpretation of the application of the Holidays Act provisions
  - EPL and the Ministry are continuing to progress the detailed analysis of Holidays Act compliance, as part of the Detailed Business Case
  - the Ministry is investigating how provision can be made for funding costs, and EPL is looking to provide a split between primary and secondary schools as part of this work
  - EPL and the Ministry are finalising key messages in case of any enquiries. See appendix 1 for draft key messages and frequently asked questions.
9. The Ministry is scoping how best to assure itself regarding Holidays Act compliance between the time the Holidays Act came into force on 1 April 2004 and Novopay implementation.
10. EPL and the Ministry will update you further as this work progresses.

s 9(2)(g)(i) OIA



Released

8 March 2016

Jerome Sheppard  
Head of Education Infrastructure Services  
Ministry of Education  
PO Box 1666  
Wellington 6140

Dear Jerome

## **HOLIDAYS ACT COMPLIANCE**

You asked us to provide details of our investigations to date into compliance of the payroll service with the Holidays Act. As you will be aware this is a very complex issue which has required significant work to understand and interpret the Act and then to determine if there are any compliance issues across a number of employment contracts.

There has also been ongoing work as part of remediation to deal with issues that intersect with the Holidays Act, including the Leave Project and ongoing work on termination processes.

The intention is that Holidays Act compliance is dealt with as part of the comprehensive review now been undertaken across all area of compliance as part of the Detail Business Case work. Some remediation work that supports Holidays Act compliance is also in the process of being implemented.

The Ministry also needs to consider compliance pre-Novopay as the Holidays Act came into force in 2003. EPL have not investigated at any issues related to this period.

Please note that EPL has done its best to provide an accurate view of the status of compliance of the payroll including external legal advice. However, we may wish to take further advice on the conclusions we have made. We are particularly interested in working with other agencies to ensure consistent interpretation.

The financial impact estimates provided are high level and processes that lead to accurate determination are very complex and would normally take a significant time to calculate with a degree of accuracy. These costs do not include actual cost of remediation, processes and systems required to accurately calculate any under/overpayment and any subsequent disbursement or debt recovery. However, the estimates provided give a view of the order of magnitude of the issues.

## **Summary of Findings**

We have a number of initiatives ongoing that address some areas of non-compliance and the DBC process also includes options to address non-compliance. In summary the following are the major areas that we will need to address or explore further:

We have identified, these are:

**1. Teacher and Primary Principals – General Compliance (Population Impacted 59,000)**

s 9(2)(f)(iv) OIA

[REDACTED] As example, a Teacher will receive approximately 60 annual holidays per annum, excluding weekends. This is in excess of the statutory minimum of 20 days. The method of calculating holiday pay is prescribed within the employment agreements which operate on a school year. The Holidays Act requires holiday pay to be calculated based on the higher of OWE or AWE, considering 52 week earnings preceding the leave bookings. Therefore, overall there is misalignment between the Holidays Act and the agreements covering Teachers and Primary Principals.

**2. Teachers and Primary Principal Sick Leave and Bereavement Leave (Population Impacted 532)**

There is an issue relating to mapping of allowance codes to leave codes that impact the accuracy of sick and bereavement leave payments. Work is already being undertaken to correct this and it will be implemented, subject to Ministry agreement.

s 9(2)(f)(iv) OIA

**3. Secondary Principals Annual Leave (Population Impacted 445)**

Leave entitlements are based on OWE (should be higher of AWE and OWE).

s 9(2)(f)(iv) OIA

**4. Non Teacher – Sick, Bereavement Leave and Public Holiday Payments (Population Impacted 125 over 3 years)**

There is an issue relating to mapping of allowance codes to leave codes that impact the accuracy of sick and bereavement leave payments (same as item 2). Work is already being undertaken to correct this and it will be implemented this year, subject to Ministry agreement. The impact is not material.

**5. 52 Weekers – Annual Leave Payments (Population Impacted 5645 in 2015)**

Annual Leave payments are calculated at OWE (should be higher of AWE and OWE).

s 9(2)(f)(iv) OIA

**6. Non Teacher – Time Sheets (Population Impacted 8700 in 2015)**

At present the holiday pay entitlements are based on 8, 9.2 or 10 % of earnings. In accordance with Act this should be calculated on the basis of days/hours worked. EPL does not have the data to quantify the impact of non-compliance as the data is held at schools.

s 9(2)(f)(iv) OIA

**7. Term Time Only – Annual Leave****a. Annual Leave Bookings during the year (Population Impacted - 100 employees in 2015)**

Currently Annual Leave taken during the year is paid at OWE (should be higher of AWE and OWE). However, Term Time Only employees do not generally book leave during the year. [REDACTED] s 9(2)(f)(iv) OIA

**b. Terminations (Population Impacted - 2300 employees in 2015)**

TTO employees have their leave balance calculated at OWE (should be higher of AWE and OWE). [REDACTED]

s 9(2)(f)(iv) OIA

**8. Annualised Employees (Population Impacted - 6000)**

Holiday pay for these employees are paid each pay period, which is inconsistent with the Act but is defined by the nature of the service [REDACTED]

s 9(2)(f)(iv) OIA

s 9(2)(f)(iv) OIA

We believe that this completes the information requested noting that there is details which supports the summary which has been under discussion between EPL and the Ministry.

Yours sincerely

Stephen Crombie  
Chief Executive

## Education Report: Holidays Act Compliance Review Update

---

### Recommendations

---

#### We recommend that you:

- a) **note** that the Holidays Act Compliance review has identified a number of areas of non-compliance and we are now developing approaches to address problems identified
- b) **note** that we expect to report back to you in December with a detailed report that will provide broad indications of the scope and scale of the issues and High Level Implementation Roadmap
- c) **note** that, given the potential similarities in the issues that may arise across the state sector, our approach will be informed by and incorporate State Services Commission guidance on Holidays Act compliance.



Jerome Sheppard  
Head of Education Infrastructure Service

NOTED / AGREED

Hon Steven Joyce  
Minister Responsible for Novopay

\_\_\_/\_\_\_/\_\_\_

NOTED / AGREED

Hon Hekia Parata  
Minister of Education

\_\_\_/\_\_\_/\_\_\_

## Education Report: Holidays Act Compliance Review Update

---

### Purpose

---

1. The schools Holidays Act Compliance review has identified a number of areas of non-compliance. Prior to providing a more detailed report in December that will include a draft plan for the next phases of the work, we wanted to provide you with an interim update on the work programme.

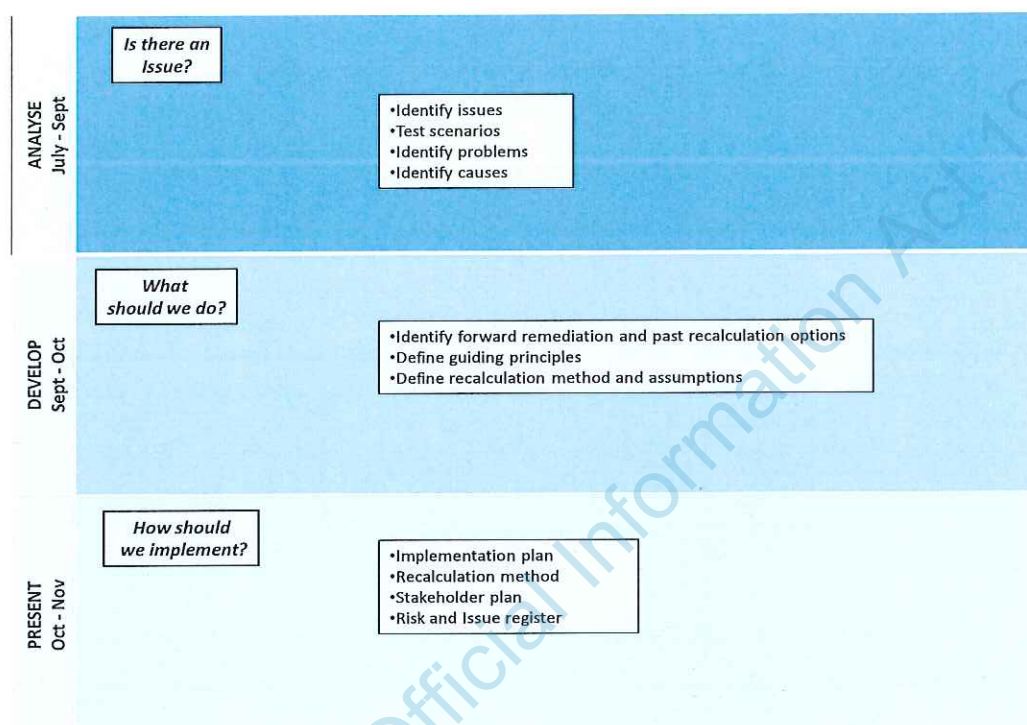
### Background

---

2. Holidays Act compliance is an issue that employers across New Zealand in both private and public sectors are grappling with. The schools payroll is the largest single payroll in New Zealand and involves almost 2,500 employers. Given this, it was important to establish a formal structured approach to the compliance review. Our process will also set precedents for how the wider education sector (schools and ECE) will be expected to approach their payroll reviews.
3. Since July Deloitte has been working with the Ministry and EPL to review Holidays Act compliance of the schools payroll. The project's Terms of Reference cover Holidays Act compliance of both the current Alesco (now Ascender Pay) payroll service and the pre 2012 Datacom payroll service.
4. The objective of the review is to design an Implementation Plan which will allow the Education payroll service to meet the following objectives:
  - Objective 1:** The payroll service provided by EPL is compliant with the Holidays Act 2003 as soon as possible
  - Objective 2:** Payroll policies and processes are in place across the education sector to support ongoing compliance with the Holidays Act 2003 as soon as possible
  - Objective 3:** Policies, processes and systems are rationalised to reduce ongoing costs of compliance and operations
  - Objective 4:** To provide advice on the extent of any appropriate compensation due to state and state-integrated school employees.
5. The objectives will ultimately be achieved by undertaking a series of remediation and resolution activities where:
  - **Remediation** refers to changes to make the payroll compliant in future so that every staff member receives holiday and leave entitlements that are accurate and comply with the requirements of the Holidays Act
  - **Resolution** refers to recalculations and payments to compensate staff who have received non-compliant holiday and leave payments in the past.

## Status of the project

6. The chart below provides a simplified outline of the Holidays Act Compliance Review across 2016.



7. The Analyse stage has focussed on working through payroll scenarios in order to provide a comprehensive picture of compliance and discover whether there is an issue and its extent.
8. Key findings from the Analyse stage are:
- There are a number of areas of non-compliance caused by a broad range of issues impacting on a wide variety of employee groups, both current and past
  - Sources of non-compliance include:
    - Leave payment not calculated in compliance with the Act
    - Leave accumulators required by the Act often not calculated e.g. ongoing recording is required to produce the different leave information required by the Act
    - Non-compliance driven by system configuration, administrative practices, employee agreements and policy
  - There are problems with inconsistent leave recording practices by schools and gaps in record keeping that are likely to require assumptions to be made for recalculation to occur, prior to finalising any resolution arrangements
  - The issues are materially the same for both the Alesco (now Ascender Pay) and Datacom (pre August 2012) payroll services, but may differ in the volume of non-compliance between the two payroll services
  - We believe that the majority of material issues have been discovered and that we now have sufficient information to move onto developing solutions that cover remediation and resolution.

9. A copy of a table summarising problem statements, compliance issues and population affected is attached as Appendix 1.
10. Having confirmed that we have a number of non-compliance problems we are now focussing on developing approaches to address the problems identified. An important part of this stage has been to define a set of Solution Guiding Principles and Key Decisions for Recalculation.
11. The Solution Guiding Principles (see chart below) set baseline directions for all options to be tested against and ultimately for solutions to adhere to.

Compliance	The payroll will comply with the Holidays Act
Transparency	Calculations to address non-compliance will be transparent, repeatable and verifiable to individuals
Engagement	Processes to address non-compliance will be transparent and engage school boards and principals (as employers), employee representatives and third parties
Continuous Improvement	Lessons learned will be captured to inform future payroll management
Treat the Cause	We will address the cause of non-compliance issues rather than fixing the symptoms
Governance and Assurance	We will have effective governance and assurance to ensure that legislation and policy are fully considered in determining payroll service requirements and service compliance

12. The Key Decisions for Recalculation are a set of practical compliance questions for determining recalculation strategies including questions such as: how far back do we have to compensate for non-compliant holiday pay; what is the responsibility to former staff; what happens when the employee has Student Loan, Kiwisaver, union dues and other deductions? Most of these questions are not unique to the schools payroll and we are utilising Crown Law opinions, Labour Inspectorate advice, SSC guidance and precedent experience from other agencies, to ensure that our approach is consistent with generally accepted approaches being taken by state sector agencies.
13. Deloitte is preparing a summary report and a High Level Implementation Roadmap. The summary report will provide more detailed information on compliance issues. The Roadmap will allow us to plan details and resourcing implications for the next stages of the review. This will include the parallel development and refinement of remediation and resolution strategies, leading to detailed designs for implementation. It is important to emphasise the complexity and scale of the recalculation exercise and of the need to get this right first time. Information from the summary report and the Roadmap will be incorporated into the more detailed report that we expect to provide in December.

#### Relationship between Holidays Act Compliance review and the Detailed Business Case

15. It was originally envisaged that Holidays Act compliance would be considered as part of EPL's Detailed Business Case (DBC). It became apparent, however, that the complexity and the level of uncertainty contained in the Holidays Act Compliance review meant that it was better addressed outside of the DBC.

14. It is recognised that there is considerable interdependency between the Holidays Act Compliance review and the DBC and these projects will need to be brought back together for co-ordinated implementation once decisions are made in 2017.
15. Analysis to date suggests that to achieve Holidays Act compliance will require significant changes to the payroll engine. Given this, the combined impact of Holidays Act and DBC system change requirements will need to be carefully considered.

#### Consultation and communication

---

16. There are a range of stakeholders with different perspectives and interests in the Holidays Act Compliance review. We are developing a consultation and communication plan to ensure that key stakeholders are appropriately informed and provide input at the right time.
17. It is important that the schools payroll Holidays Act Compliance review is informed by developments across the state sector. The State Services Commission is leading a process to provide guidance to public sector agencies. The guidance is likely to be available in December and we will want to check that our approach aligns with state sector expectations.
18. The MBIE Labour Inspectorate has responsibility for overseeing compliance with employment related law. We have discussed our proposed approach with the Inspectorate and they have indicated that the approach the Ministry is proposing to undertake to ensure compliance appears sound and comprehensive. Once the Compliance review has been completed the Inspectorate will review the findings including sampling remediation calculations to ensure the results are compliant with the Holidays Act. Labour Inspectorate review will be important to minimise the possibilities of legal challenges.
19. We have undertaken to keep both the unions and education payroll sector leaders apprised of Holidays Act compliance developments. We have met with NZEI and education payroll sector leaders, including the School Trustees Association, in September to update them on progress and find out how they want to engage with the review. Given the stage of the project the focus of this briefing was of necessity about process, rather than findings, however there is increasing interest from union groups in the approach being taken by the Ministry to address non-compliance.

#### Future resourcing implications

---

20. There are three main areas of resourcing that need to be considered in relation to the review. First there is the cost of completing the current review through to implementation and then there are the costs associated with resolution and remediation.
21. Deloitte has been commissioned to take the Compliance review through to the completion of a summary report and a High Level Implementation Plan in November. We are now considering arrangements to complete the next stages and the resourcing required and our December report will provide more detail on the resource requirements to continue the analysis and move through to implementation.
22. Assessing the cost of resolution requires developing a recalculation methodology that compares actual holidays and other leave paid to all staff in the past, with the amount that they would have received in a fully compliant payroll service over the same period. The cost of resolution will be the combined amount of payments required to compensate staff for past non-compliant pay. The cost of remediation will be the

difference between the cost of a fully compliant payroll service and the cost of the current non-compliant payroll services. We will not have firm information on resolution and remediation costs until calculation methodologies are developed and tested in the next stages of the review.

Released under the Official Information Act 1982

## Appendix 1 Problem Statements and Compliance Implications

Employee Groups	Identifier	Employee # <sup>1</sup>
Teachers	(T)	70,000
Relief Teachers	(RT)	10,400
Secondary Principals	(SP)	380
Specialist and Support Staff	(SSS)	25,400
Specialist and Support Staff 52 weeks	(SSS52)	7,700
Specialist and Support Staff Annualised	(SSSA)	7,300
Special Residential	(SR)	250

Problem #	Holidays Act ref	Compliance Requirement	Problem Statement	Population Affected
PS1	Section 8	Two methods to calculate Ordinary Weekly Pay (OWP). Method 2 must be used if it is not possible to calculate OWP using Method 1.	Holiday pay is calculated using OWP Method 1. Method 2 is not used. We have no capacity to calculate Method 2.	Not Known
PS2	Section 21(2)	Requires annual holiday pay to be paid at the higher of OWP and Average Weekly Earnings (AWE).	Holiday pay is not paid at the higher rate of OWP and AWE. We do not have a consistent methodology to compare AWE.	(T) 70,000 (SP) 380 (SSS52) 7,700 (SR) 250
PS3	Section 21(2)	Requires gross earnings to be used as the basis for calculating AWE, average daily pay (ADP) and OWP method 2.	Gross earnings are not used for holiday pay calculation when leave is taken. Only OWP method 1 is used.	(T) 70,000 (SP) 380 (SSS52) 7,700 (SR) 250
PS4	Section 21(2)	Requires annual holiday pay to be paid at the higher of OWP and AWE.	AWE is not considered for holiday pay calculation when leave is taken.	(T) 70,000 (SP) 380 (SSS52) 7,700 (SR) 250
PS5	Section 24(2) Section 25	Requires termination leave entitlements to be paid at the higher of AWE or OWP. Section 25 requires accrued leave to be paid as a percentage of gross earnings.	Teachers and secondary principals' accrued termination leave is always paid at OWP, not at percentage of earnings.	(T) 70,000 (SP) 380
PS6	Section 28	Requires holiday pay to be an identifiable component on employee payslip	When holiday pay is built into the pay rate it is not separately identifiable on the payslip for annualised and special residential employees	(RT) 10,400 (SSSA) 7,300 (SR) 250

<sup>1</sup> Estimate only. Numbers will be reviewed as the project proceeds.

<b>PS7</b>	Section 9A	Allows an employer to use ADP to calculate Bereavement, Alternative Holiday, Public Holiday and Sick Leave (BAPS) if it is not possible to determine Relevant Daily Pay (RDP)	BAPS is only paid at the (RDP). ADP is not considered.	(T) 70,000 (SP) 380 (SSS) 25,400 (SR) 250
<b>PS8</b>	Section 81(2)	Requires leave records to be kept.	There are inconsistent recording practices of days worked and leave taken by employees within the education sector	(T) 70,000 (SP) 380 (SSS) 25,400 (SSS52) 7,700 (SSSA) 7,300 (SR) 250
<b>PS9</b>	Section 8	Requires all allowances that are regularly paid to be included in OWP	All regular allowances are not included in OWP	Not Known
<b>PS10</b>	Section 9	Requires all allowances that are regularly paid to be included in RDP	All regular allowances are not included in RDP	Not Known



# School Sector Payroll Holidays Act Compliance Review Initiate Phase - Summary Paper

6 December 2016

# Contents

1. Executive Summary.....	4
1.1 Purpose .....	4
1.2 Background and Context.....	4
1.3 Holidays Act Compliance within the Schools Sector .....	4
1.4 High-Level Review Approach .....	5
1.5 High-Level Analyse Stage Findings and Conclusions .....	6
1.6 High-Level Develop Stage Solution Summary .....	7
1.7 Recommended Next Steps .....	8
2. Background and Context .....	10
2.1 Holidays Act Compliance in New Zealand.....	10
2.2 The Schools Sector Payroll.....	11
2.2.1 The payroll environment .....	11
2.2.2 Unique characteristics of the schools sector payroll .....	12
2.2.3 Provision of the payroll .....	13
2.3 Holidays Act Compliance within the Schools Sector .....	14
2.4 Holidays Act Compliance Review Report Purpose and Scope .....	15
3. High-Level Review Approach .....	16
3.1 Overview.....	16
3.1.1 Review roles and responsibilities .....	16
3.1.2 Context within the larger programme of work .....	16
3.1.3 Analyse stage .....	18
3.1.4 Develop stage .....	18
4. Analyse .....	19
4.1 Purpose .....	19
4.2 Approach .....	19
4.2.1. Inputs considered to prepare for testing .....	20
4.2.2. Testing conducted .....	22
4.2.3 Findings and Problem Statements .....	23
4.3 Findings.....	24
4.3.1 Leave Type Findings .....	24
4.3.2 Accumulator Findings .....	28
4.3.3 Additional Findings .....	30
4.4 Assumptions and Limitations.....	31
4.5 Conclusions of the Analyse Stage .....	32
5. Develop .....	35
5.1 Purpose .....	35
5.2 Remediation .....	35

5.2.1	Remediation approach	35
5.2.2	Remediation assumptions and limitations	38
5.2.3	Remediation high-level solution summary	39
5.3	Resolution .....	40
5.3.1	Resolution approach	41
5.3.2	Resolution assumptions and limitations	45
5.3.3	Resolution high-level solution summary	46
6.	Recommended Next Steps.....	47
7.	Appendix One: Glossary .....	49

# 1. Executive Summary

## 1.1 Purpose

The purpose of this report is to capture the findings and conclusions of the Initiate phase **of the schools' sector Holidays Act compliance review. This report** outlines the **review's** approach, findings, conclusions, assumptions and limitations. The report then provides a platform to engage with government and sector leaders to determine possible next steps to remediate the schools sector payroll and address resolution of past under and over-payments.

## 1.2 Background and Context

The Holidays Act 2003 (the Act) was introduced to clarify employer obligations and employee holiday entitlements. It also provided an opportunity to leverage information technology advances made since the introduction of the previous Act, introduced in 1981. The Act details requirements for employers to provide employees correct holiday entitlements and to pay them correctly during those holidays.

Compliance with the Holidays Act has become a national issue. A significant number of employers and payroll providers have or are in the process of instigating programmes to check and ensure compliance with the Act. The Labour Inspectorate within the Ministry of Business Innovation and Employment (MBIE) is supporting employers to comply with the Holidays Act through government-industry work streams, audits and investigations, and education and information.

**The schools' sector payroll** is the largest single payroll in New Zealand. Each year, approximately 120,000 teaching and specialist and support staff are paid across 2,500 state and state integrated schools. The payroll has a value of \$4.6 billion per annum. This translates to approximately 90,000 employees paid each fortnight.

The **schools' sector** payroll has a high level of complexity. While individual schools are the legal employer of their employees, the Ministry of Education (the Ministry) undertakes part of the employer responsibilities on **schools'** behalf. As part of this the Ministry is responsible for the schools payroll, and in turn outsources the provision of the payroll service to Education Payroll Limited (EPL).

## 1.3 Holidays Act Compliance within the Schools Sector

In early 2016, the Ministry and EPL identified the need for a project to assess the **schools' sector payroll compliance with the Holidays Act**. This resulted in the Ministry and EPL agreeing to initiate a programme in April 2016 to complete a compliance review. Deloitte was selected as an independent third party to lead and facilitate this review in June 2016.

The scope of the **schools' sector Holidays Act compliance** review included both the current Ascender Pay and previous Datacom TM4 payroll systems. The population of employees in scope for the review was all **schools' sector employees paid through the schools' payroll service**. The review specifically excluded reviewing Holidays Act compliance for **Ministry staff or other education sector employees not paid via the schools' sector payroll**.

## 1.4 High-Level Review Approach

The Ministry, EPL and Deloitte all contributed resources to the review project and worked together throughout the initiate phase to complete the review and produce this report.

The Ministry and EPL each provided project governance and schools' sector payroll subject matter expertise. The Ministry also provided education workforce and legal input into the review. Deloitte facilitated the review by providing project management and providing payroll compliance review, remediation and resolution expertise. **Deloitte's** experience from prior Holidays Act compliance reviews within New Zealand also helped guide this phase of work.

The review was completed in two stages, Analyse and Develop:

1. Analyse - The first stage of the review was to analyse **the schools' sector payroll** to determine whether it was compliant with the Holidays Act. This involved testing the schools sector payroll to identify whether there were any compliance issues with key Holidays Act provisions. Two types of testing were completed:
  - a. The first type of testing was configuration testing. This checked how the Ascender Pay and Datacom TM4 payroll systems are configured to calculate each rate type (e.g. ordinary weekly pay, relevant daily pay). Testing then confirmed which rate is used for each leave type (e.g. annual leave, sick leave).
  - b. The second type of testing completed was Scenario testing. This involved **testing of common schools' sector holiday scenarios** to check how leave payments and entitlements were calculated. Random employee sample data was used across the different types of employees in the sector to conduct testing.

The findings of both configuration and scenario testing were then gathered. The outcome of the Analyse phase was confirmation that there were cases of non-compliance and a high level determination of the nature of the non-compliance summarised in eight problem statements.

2. Develop – The second stage of the review was to start the process required to develop high-level solutions to **remediate the schools' sector** payroll and to resolve any historic under and over-payments. This involved identifying the solution components required to resolve Holidays Act compliance problems and determining the key considerations in recalculating historic payroll payments. .

The outcome following the Develop phase will be a high-level roadmap to begin the process to plan for resolution and remediation of these causes of non-compliance.

## 1.5 High-Level Analyse Stage Findings and Conclusions

The Analyse stage found that there are areas where the schools' **sector payroll is** both compliant and non-compliant with the Holidays Act. Findings were consistent across the current Ascender Pay and legacy Datacom TM4 systems. Findings of compliance were noted but not investigated further. Non-compliant findings were grouped into three categories:

1. Leave Type Findings – relating to application of the correct rate type to each leave type
2. Accumulator Findings – relating to calculation of rate types
3. Additional Findings – relating to inconsistent recording of leave and reporting of leave data

The non-compliant findings across these three areas were distilled down to eight problem statements, summarising the key causal factors leading to non-compliance. These eight problem statements are as shown in Table 1 below.

Problem Statement Number	Problem Statement
PS1	Holiday pay is only calculated using Ordinary Weekly Pay (OWP) Method 1. Method 2 is not used.
PS2	OWP is always used for holiday pay calculations when leave is taken, rather than the higher of Ordinary Weekly Pay (OWP) and Average Weekly Earnings (AWE).
PS3	<b>Teachers' and Secondary Principals' accrued termination leave is always paid at OWP, not at percentage of earnings.</b>
PS4	<b>When holiday pay is built into the pay rate, it is not separately identifiable on the employee's payslip for annualised and special residential employees.</b>
PS5	Bereavement, Alternative, Public Holiday and Sick Leave (BAPS) is only paid at Relevant Daily Pay (RDP); Average Daily Pay (ADP) is not considered.
PS6	There are inconsistent recording practices of days worked and leave taken by employees within the education sector.
PS7	Not all regular allowances are included in OWP.
PS8	Not all regular allowances are included in RDP.

Table 1: Problem Statements resulting from Analyse stage

There are a number of limitations and assumptions to these findings and conclusions. These are noted in the report, and more work to address and verify these is included in the recommended next steps.

## 1.6 High-Level Develop Stage Solution Summary

Having identified areas of non-compliance and the underlying problems causing issues, the Develop stage investigated what would be required to develop high-level solutions to **remediate the schools' sector** payroll and to resolve any historic under and over-payments. Remediation investigation focused on determining the requirements to ensure compliance moving forward, whereas resolution investigation focused on addressing historic instances of under and over-payment. The conclusions and high-level solution summary for each of these dimensions is provided in the sections below.

### Remediation

Remediating the schools' sector payroll will be complex. Remediation is much broader than just making configuration updates to the schools' sector payroll system. Rather, a holistic approach is required. This will involve consideration of and remediation activities within four broad streams:

1. **External Dependencies – the schools' sector payroll needs to be remediated** incorporating guidance from the Leave Pay Working Group and any successor groups,, and the compliance process from the Labour Inspectorate.
2. **Payroll Policy** – details included in payroll policy are what informs the business rules that ultimately lead to detailed system requirements. These will need to be updated and clarified as without comprehensive and detailed requirements EPL will not be able to make any required system configuration changes. The Ministry also provides direction and guidance to schools on the operations of Payroll.
3. **Sector Capability** – remediation may require changes in practices within schools. Because schools are individual employers, the practices within each school may be different. To consistently comply with the Act it is likely that effort will be required to assist the sector to lift its capability within schools.
4. **Payroll Service and System** – remediation of the payroll service and system will be a key activity to allow future Holidays Act compliance within the sector. This will likely include both changes within the Ascender Payroll system and processes to provide the payroll service to schools.

### Resolution

Resolution consists of two key components. **The recalculation of each individual's payroll** payments back to a determined date in the past, and the resolution process itself consisting of the assumptions, policies and planning that will go into disbursing potential resolution underpayments or collecting possible overpayments.

The complexity of the schools' sector Holidays Act payroll recalculation and resolution is increased due to historic payroll payment data being held across two different payroll systems. The Datacom TM4 system for payment data prior to August 2012, and the Ascender Pay system for payment data from this date.

Resolution work during the Initiate phase of the project focused on defining:

1. Draft business Requirements – these will be used to drive the high-level requirements for recalculation
2. Draft recalculation Assumptions – these assumptions will be used to develop the initial recalculation model
3. Example Recalculation Formulas – these formulas provide additional detail to help with scoping potential resolution options

## 1.7 Recommended Next Steps

**The schools' sector payroll is both large and complex.** More work is recommended on refining understanding and developing both remediation and resolution solutions during the next stages of the Holidays Act Compliance programme.

Completing this work will be a big programme. It will require a structured approach, robust governance, and extensive stakeholder engagement. Many uncertainties remain and there are many decisions yet to be made. The next steps of the schools' sector Holidays Act compliance programme must also proceed consistently with decisions and direction across the rest of the state sector.

The recommended next steps involves work across four broad areas:

1. Stakeholder engagement: now that initial findings are known, it is appropriate to engage more broadly with stakeholders. It is recommended that key groups be identified as soon as possible. A structured plan to engage with these stakeholders at appropriate stages can then be defined. The more constructively stakeholders can engage and work together, the sooner the schools' sector payroll will be compliant with the Holidays Act, and historic issues of non-compliance can be addressed and resolved.
2. Closing potential gaps in Holidays Act compliance analysis: there are a number of limitations and assumptions contained within this initial review that need to continue to be closed and validated. It is recommended that this analysis continue in parallel to remediation and resolution activities.
3. Remediation: corrective action is required so that the schools' sector payroll is fully compliant with the Holidays Act in the future. A holistic approach is recommended within a structured programme involving coordinated remediation of underlying problems including: payroll policy, sector capability and the payroll service and system.
4. Resolution: along with remediating the schools' sector payroll historic under and over-payments should also be addressed. It is recommended that this resolution activity is undertaken in parallel to remediation. Resolution will require many decisions, both in terms of the best way to recalculate payments and decisions on resolution policy.

It is recommended that the Holidays Act Compliance Review continue as an integrated programme jointly governed and managed by the Ministry and EPL.

## 2. Background and Context

### 2.1 Holidays Act Compliance in New Zealand

The Holidays Act 2003 (the Act) was introduced to clarify employer obligations and employee holiday entitlements under New Zealand law. It also provided an opportunity to address information technology advances that had occurred since the introduction of the previous Act (Holidays Act 1981). The Act details requirements that New Zealand employers must follow to provide employees the correct holiday entitlements and pay them correctly during these holiday periods. **Individual sector entities, such as the Ministry of Business Innovation and Employment continue to provide additional clarifications to interpretation of the Act.**

Over the past several years, numerous New Zealand employers and payroll providers have initiated reviews and projects to check for and ensure compliance with the Holidays Act. The Labour Inspectorate within MBIE is supporting employers to comply with the Holidays Act through government-industry work streams, audits and investigations, and education and information<sup>1</sup>.

Between 1 July 2012 and 30 September 2016, 89 cases had **been categorised as “Payroll Audits”, including 23 pro-active audits** instigated in 2016. The cases have resulted in 55 investigations being completed so far. Of these completed investigations, the Labour Inspectorate has used one or more compliance tools in 41 cases:

- 20 Enforceable Undertakings
- 22 Improvement Notices
- 2 Referrals to the Employment Relations Authority.

There has also been one Record of Settlement and three cases of voluntary compliance. The remaining cases are still under consideration<sup>2</sup>.

Holidays Act compliance is currently a reasonably widespread national issue. It is therefore important to establish whether the schools sector payroll is compliant, and to understand any issues so that they may be appropriately addressed.

---

<sup>1</sup> Source: Employment New Zealand <https://www.employment.govt.nz/resolving-problems/steps-to-resolve/labour-inspectorate/addressing-holidays-act-non-compliance/>

<sup>2</sup> Source: Employment New Zealand <https://www.employment.govt.nz/resolving-problems/steps-to-resolve/labour-inspectorate/addressing-holidays-act-non-compliance/>

## 2.2 The Schools Sector Payroll

### 2.2.1 The payroll environment

The schools sector payroll is the largest single payroll in New Zealand. Each year, approximately 120,000 teaching and specialist and support staff are paid across 2,500 state and state integrated schools. The payroll has a value of \$4.6 billion per annum. This translates to approximately 90,000 employees paid each fortnight.

The payroll is more complex than a traditional employer / employee model. While schools are the legal employer of their employees, in practice, employer responsibilities are only partially devolved to schools. The Ministry of Education (the Ministry) is responsible for the provision of payroll services on behalf of schools.

The Ministry has outsourced the provision of payroll services since 1996, first to Datacom, then in 2012 to Talent2. In 2014 Education Payroll Limited (EPL) was formed and became the contracted schools sector payroll provider. The history of schools sector payroll provision over the past 20 years is shown in Figure 1 below.

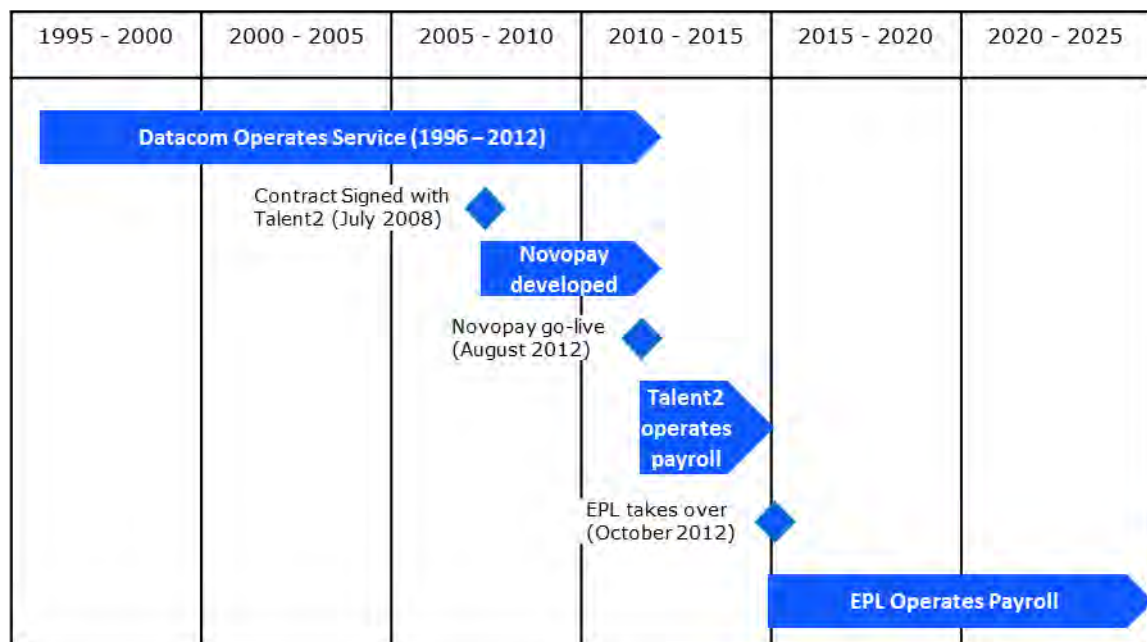


Figure 1: Schools sector payroll provision timeline

In addition to payroll related services, EPL also manages schools sector salary assessments, collects any overpayment debt (both for school and Crown funded salaries), and manages the schools employee entitlement reporting (banking staffing).

EPL, the Ministry and School Boards of Trustees are all integral parties in the delivery of the schools sector payroll. Figure 2 below illustrates the inter-relationships between these three parties.

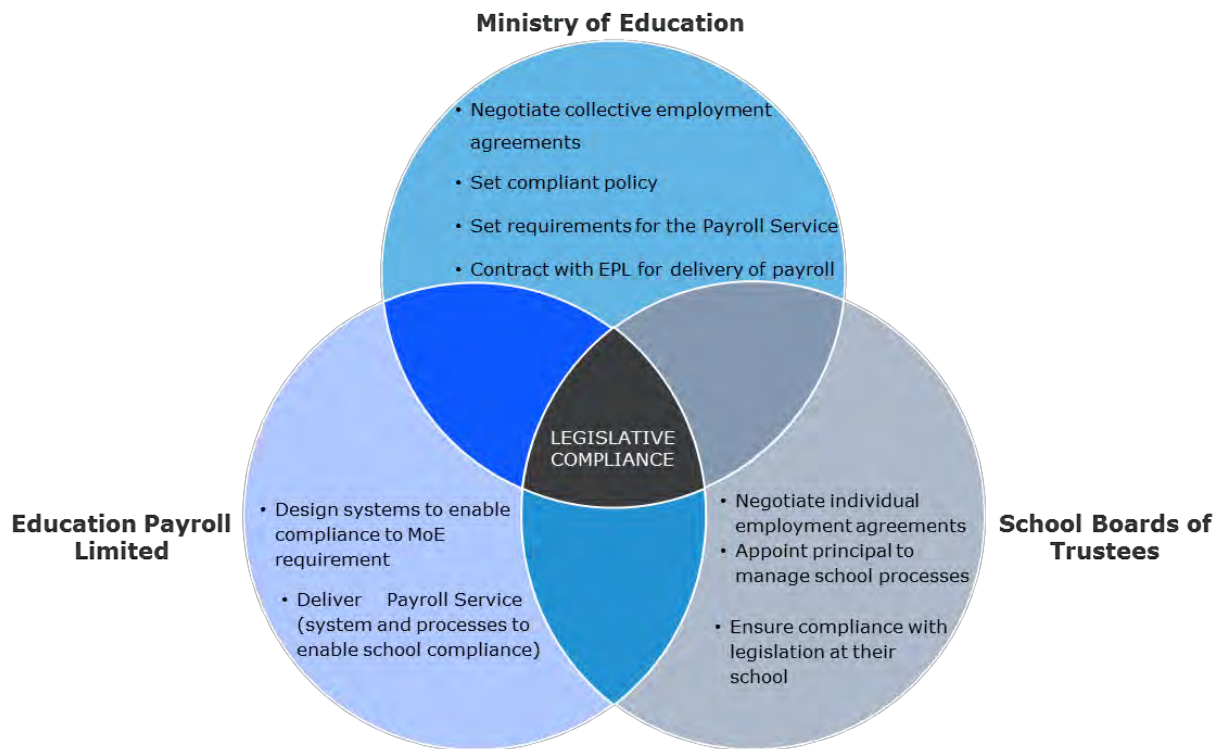


Figure 2: Inter-relationship of three organisations to deliver a legislatively compliant school payroll

Schools must operate within the wider context of Ministry-negotiated employment agreements and Ministry payroll policy and legislation on how holiday pay is calculated. EPL provides compliance processes for this as well as all necessary reconciliation of payments to schools and third parties. This includes management of funding across the various sources – including both Crown and school funding.

### 2.2.2 Unique characteristics of the schools sector payroll

**A number of factors are unique to the schools' payroll and increase payroll complexity:**

- **Single payslip** - to enable employees to work easily between schools (e.g. relievers), employees receive a single payslip (with a single tax code) for their work in the sector. This is regardless of the number of schools they work in during the pay period. To enable a smooth transition of permanent employees between schools service entitlements, (e.g. leave and holiday pay) are calculated at multiple levels – job, employer, and sector wide
- **Payment across school holiday periods** – **teaching employees' employment agreements** provide for covered employees to be paid holiday pay across school holiday periods. This is in excess of the Holidays Act requirement to provide a minimum of 20 days annual leave per year

- **Employment agreements (EAs)** - Employment agreements across the schools sector are complex. EPL is required to ensure that it calculates pay and entitlements correctly against each of the collective employment agreements along with individual employment agreements within the sector. The complexity of schools sector employment agreements and their associated implications for Holidays Act compliance warrant further investigation.
- **Basis of payment** – teachers are paid based on a 365 day calendar year (as opposed to weekdays). The requirement to operate within a school year provides natural peaks of workload driven by the start and close of the school year. For example, the 28<sup>th</sup> of January is the start of the school year, so there will be many staff starting that day and ending on January 27<sup>th</sup>. These processes are labour-intensive for schools at the end and start of each school years during a time when there are many other things requiring **school administrators’ attention**.

### 2.2.3 Provision of the payroll

EPL operates the schools’ payroll for all teaching staff and most support staff. The way in which the payroll operates between schools and EPL is illustrated below in Figure 3 below.

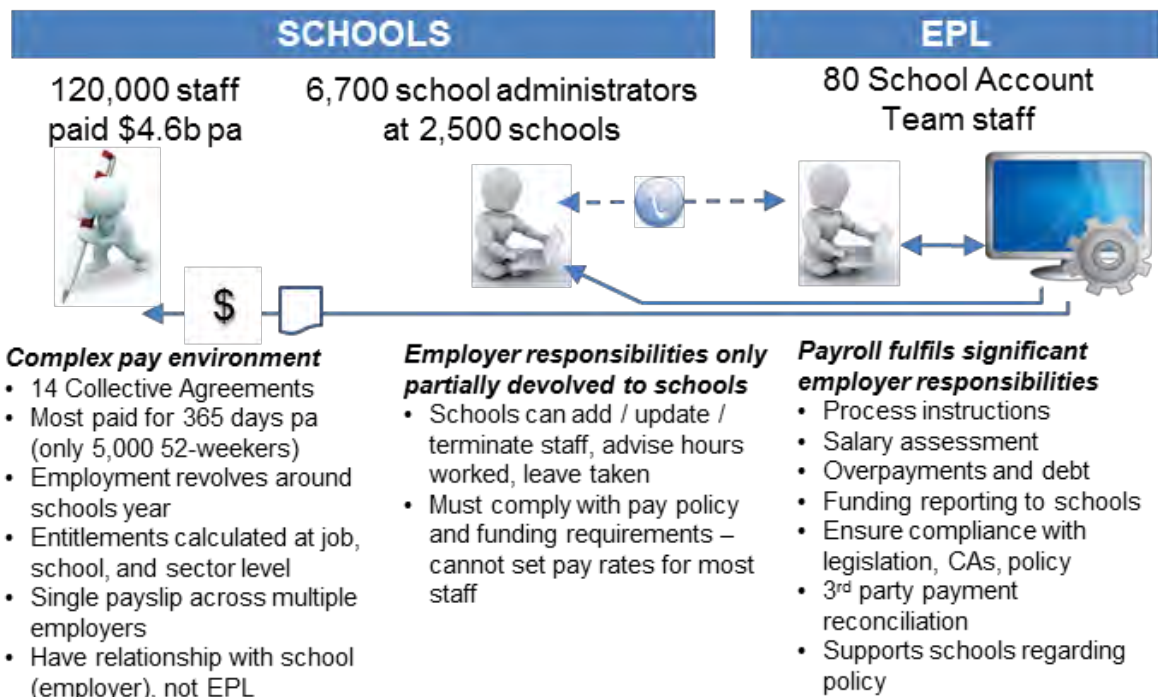


Figure 3: Illustration **showing how the schools’ payroll operates**

Each school has at least one ‘authorised user’ who provides pay instructions to EPL. The authorised user provides pay instructions either through the Novopay Online (NOL) system or by providing manual forms via e-mail. These users are either principals or

payroll administrators and there are approximately 6,700 users in total. EPL provides support to the authorised users. This includes interpretation of EAs and policies, salary assessments and attestations.

## 2.3 Holidays Act Compliance within the Schools Sector

In early 2016, the Ministry and EPL identified that analysis was required to assess the schools sector payroll compliance with the Holidays Act.

During their initial internal review, EPL identified a number of potential compliance issues with the schools sector payroll, including the:

- Compliance of approach to annualisation
- Mapping of allowance codes to leave codes
- Processes related to secondary **principals' annual leave**
- Calculation of annual leave payments (applying the higher of OWE/AWE) in some cases
- Payment of percentages rather than being based on days/hours worked
- Calculation of termination payments
- **Functional design of the schools' payroll service** to the Holidays Act (e.g. teacher payments are defined by a school year that spans 28 Jan to 27 Jan)

In April 2016, the Ministry and EPL agreed to initiate a programme to confirm, quantify and resolve these issues end-to-end. The first phase of the programme was the 'Holidays Act Compliance Review – Initiation Phase'. This initiation phase will result in the development of a high-level plan for the rest of the programme.

In June 2016, EPL (on behalf of the Ministry and EPL) contracted Deloitte as an independent third party to lead and facilitate the 'Holidays Act Compliance Review – Initiation Phase'. Figure 4 shows a timeline of these events.

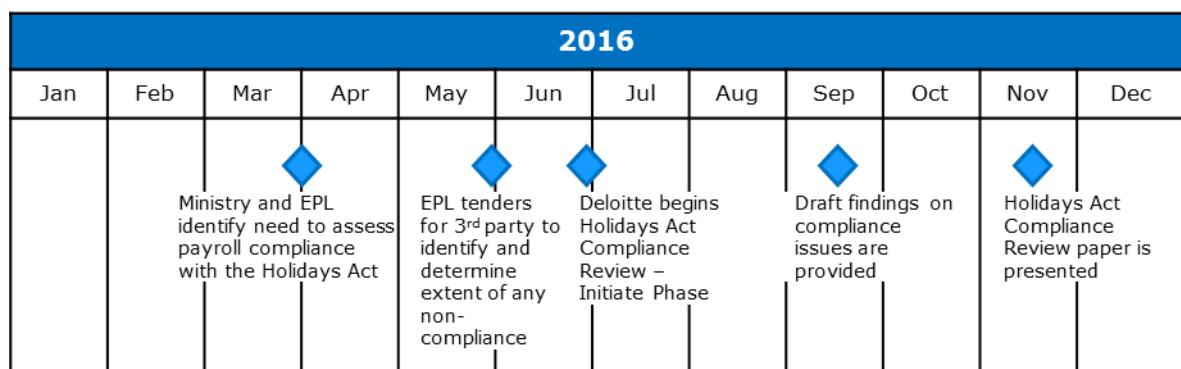


Figure 4: Timeline of approach to reviewing Holidays Act compliance of Schools' Payroll

The Ministry and EPL agreed the following objectives for the overall programme:

- *Objective 1:* The payroll service provided by EPL is to be fully compliant with the Holidays Act 2003
- *Objective 2:* Policies and processes are in place across the education sector to ensure ongoing compliance with the Holidays Act 2003
- *Objective 3:* Employees (and those who were employees in the relevant period) are appropriately compensated for any loss of entitlements and potential recovery of overpayments is considered
- *Objective 4:* Policies, processes and system and service are simplified to reduce risk and ongoing costs of compliance and operations

## 2.4 Holidays Act Compliance Review Report Purpose and Scope

**The purpose of this report is to capture the findings and conclusions of the 'Holidays Act Compliance Review – Initiation Phase' and to recommend next steps.**

The scope of this review included both the current Ascender Pay and historic TM4 (Datacom) payroll systems. The population of employees in scope for this review was all **school employees paid through the schools' payroll service**. This employee population explicitly excluded Ministry employees paid via the **Ministry's** payroll system.

This report outlines the approach taken, findings, conclusions, limitations of the review, and areas for further investigation. The report then provides recommended next steps to remediate the schools sector payroll and resolve past under and over-payments made through the schools sector payroll systems.

## 3. High-Level Review Approach

### 3.1 Overview

#### 3.1.1 Review roles and responsibilities

The Ministry, EPL and Deloitte all contributed resources to the review project and worked together throughout this phase to complete the review and produce this report.

All members of the project team recognised that the review required a co-ordinated approach to manage interdependent review activities. A project management methodology was applied to plan and manage the work and reduce risk. Based on this approach, each party had specific roles and responsibilities, as described below:

Ministry and EPL each provided project governance and schools sector payroll subject matter expertise. The Ministry also provided education workforce and legal input into the review. Project governance was provided through a joint Governance Group consisting of two representatives from the Ministry and one from EPL. Subject matter experts from the Ministry, EPL and Deloitte also supported the Governance Group. Areas of support included project management, stakeholder planning and management, communication and engagement, payroll operations and industrial relations.

Deloitte provided payroll compliance review experience and subject matter expertise in payroll remediation and resolution. Deloitte also facilitated the review by providing **project management**. Deloitte's experience from prior Holidays Act compliance reviews with other New Zealand organisations helped guide this phase of work. This included the review framework used, shown below in Figure 5.

EPL and Ministry payroll SMEs worked closely with Deloitte throughout the review to ensure that appropriate identification and consideration of sector-specific information was included in the review.

#### 3.1.2 Context within the larger programme of work

This review was conducted as the 'Initiate Phase' of a larger Holidays Act compliance programme. The objectives of this phase of work were:

*Objective 1:* Identify whether there are any areas of schools sector payroll non-compliance with the Holidays Act

*Objective 2:* Develop an implementation plan to inform remediation and resolution of any non-compliance

This review was completed in two key stages: '**Analyse**' and '**Develop**'. These stages, along with the core approach and activities conducted within each stage, are shown in Holidays Act compliance review framework shown in Figure 5 below:

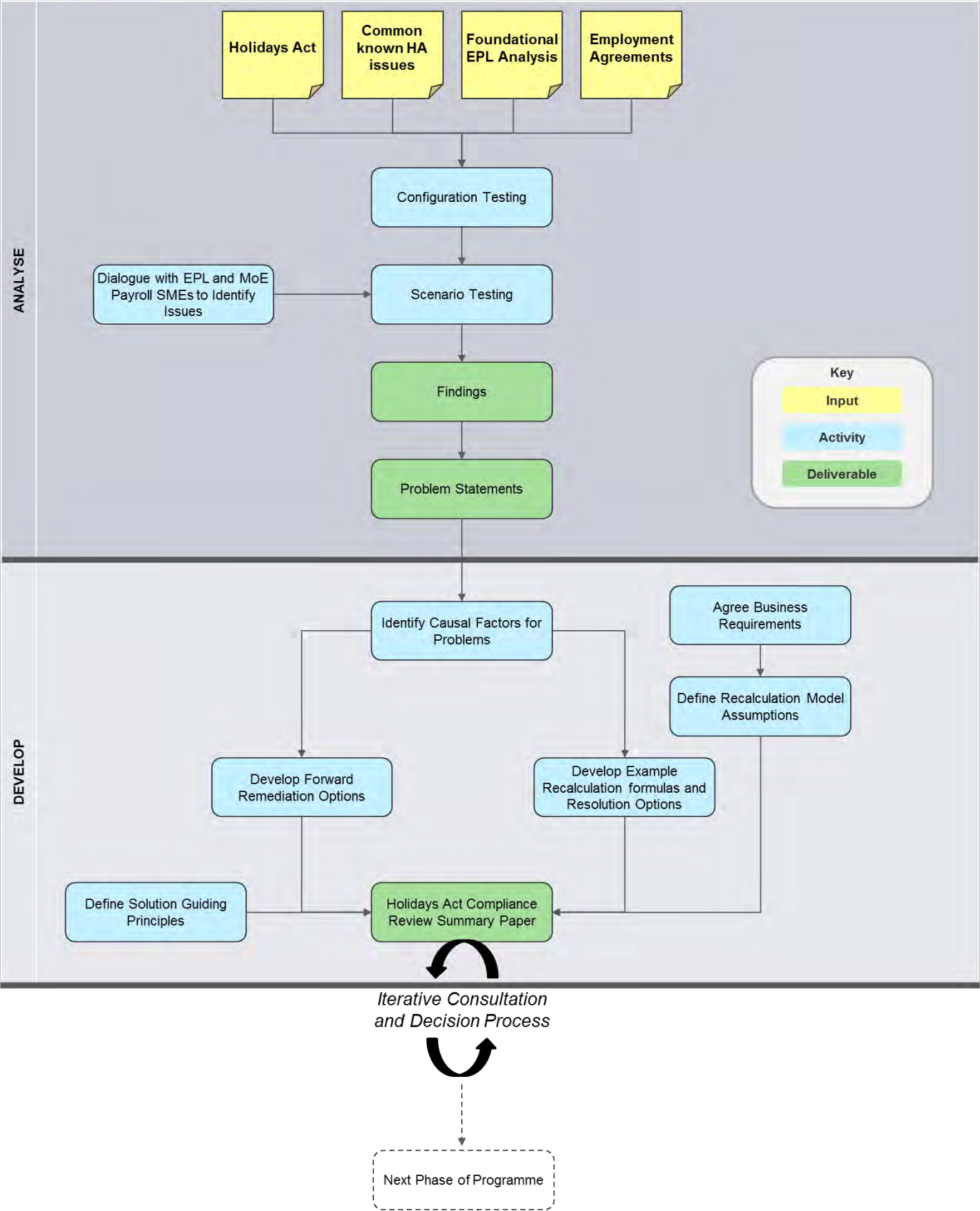


Figure 5: Review framework used for Analyse and Develop stages of the Holidays Act Compliance Review

### 3.1.3 Analyse stage

The purpose of the Analyse stage was to identify if there were any areas of non-compliance with the Holidays Act within the schools sector payroll. The focus of this phase was on testing holiday and payroll scenarios and payments made to different employee groups to check their accuracy against the requirements of the Holidays Act. The project team investigated any issues of non-compliance further to begin to understand any common themes.

The focus of the stage was to test and identify any areas of non-compliance, rather than on sampling to try quantify the size and scale of potential non-compliance issues.

The project team used the findings and conclusions of the Analyse stage to inform development of potential high-level resolution and remediation solutions during the Develop stage.

### 3.1.4 Develop stage

Having identified issues of non-compliance in the Analyse stage, the purpose of the Develop stage was threefold:

1. Determine at a high-level the underlying factors causing non-compliance
2. Determine what possible options exist for remediation of the schools sector payroll going forward
3. Identify what options exist for resolution of any historic under and over-payments

The Develop stage did not include developing detailed payroll service or policy requirements needed to resolve non-compliance issues. It is recommended that this level of detailed planning be completed as one of the next steps **in the programme's next phase** of work.

## 4. Analyse

### 4.1 Purpose

The purpose of the Analyse stage was to complete testing of the schools sector payroll to identify whether there were any areas of potential non-compliance with the Holidays Act.

### 4.2 Approach

The Analyse approach involved three steps:

1. Reviewing a series of inputs to determine what tests should be conducted on which employee groups
2. Conducting the tests
3. Identifying any findings of non-compliance and consolidating them into problem statements

Figure 6 below illustrates the approach to the Analyse stage.

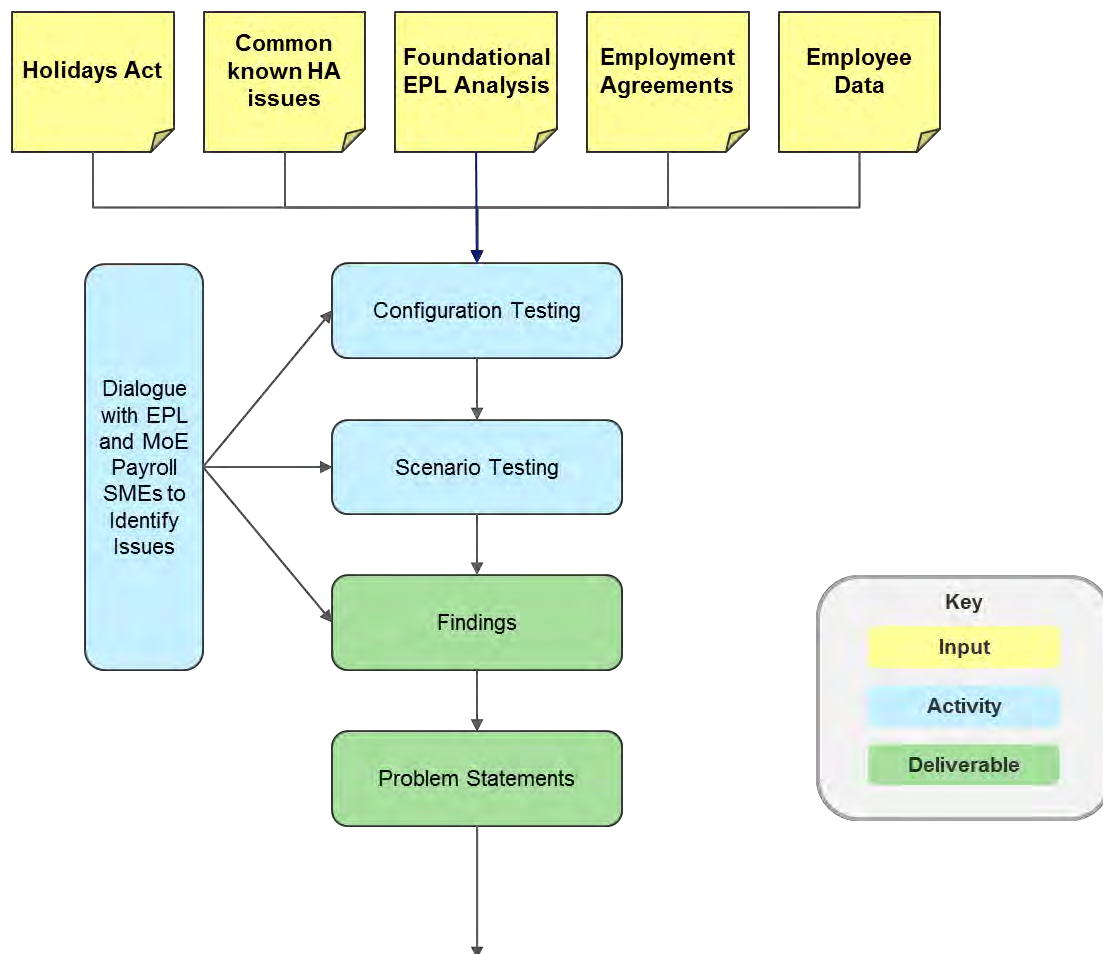


Figure 6: Overview of Analyse stage of Holidays Act Compliance Review approach

Each of the steps within the Analyse stage are described in more detail below.

#### 4.2.1. Inputs considered to prepare for testing

To prepare for testing, the project team considered a number of inputs:

- The Holidays Act 2003
- Commonly known compliance issues with the Act experienced by other New Zealand employers
- The initial foundational payroll compliance analysis previously completed by EPL
- Standard employment agreements
- Anonymised employee data

The project team sourced this information through a number of documents and discussions with the Ministry and EPL subject matter experts. The sections below describe how each input was used.

##### *The Holidays Act 2003*

A Deloitte payroll SME reviewed the Holidays Act to clarify what requirements must be met to achieve compliance. This involved a combination of reviewing areas of the Act where non-compliance is commonly known to occur (for example, the correct calculation of annual leave) and reviewing specific areas of the Act where the Ministry and EPL SMEs believed non-compliance might be occurring e.g. record keeping in schools.

##### *Commonly known Holidays Act compliance issues*

The review used Holidays Act compliance experience from both within the state sector and previous Deloitte reviews to identify areas to specifically test for potential non-compliance. While the schools sector employment environment has a number of unique compliance challenges, many of the scenarios leading to non-compliance are common across many employers.

For example, two areas of the Act that commonly lead to compliance issues are: inclusion of all allowances in the calculation of gross pay, and paying leave at OWP in cases when it should be compared with AWE and the greater of OWP and AWE paid.

##### *Foundational EPL analysis*

Prior to the start of this review, EPL had conducted an initial preliminary analysis of Holidays Act compliance within the schools payroll. This exercise had a narrow scope and was based on a limited subset of information. **EPL's initial analysis showed areas where compliance issues were likely to be found along with areas remaining to be analysed.** The project team reviewed the outputs of this analysis to make sure that testing during the Analyse stage included these aspects. **EPL's initial analysis showed areas where compliance issues were likely to be found along with areas remaining to be analysed.**

### Employment Agreements

The project team reviewed standard schools sector employment agreements to determine leave entitlements. This was necessary because some employment agreements grant leave entitlements in a way that is considerably different from those required by the Act. For example, according to their agreement, teachers get an entitlement in excess of the minimum entitlement required by the Act. Understanding any leave variations between employment agreements and the Act was necessary to interpret the results of system configuration testing and scenario testing.

There are a large number of employment agreements across the sector, including individual employment agreements and collective employment agreements. For the purposes of this review, the project team reviewed the leave entitlements described by the 14 main collective agreements as these provided the best coverage of employee types and entitlements. Each of these collective agreements covers one of the following groups that were created to describe employees who all share similar leave entitlements.

- Teaching staff
- Secondary principals
- Specialist and support staff
- Special residential staff

The findings at the end of the Analyse stage were aligned against these employee groups. Table 2 below shows the employment agreements analysed and the resulting employee groups.

	Employee Groups			
	Teaching	Secondary Principals	Specialist and Support Staff	Special Residential
Included Employment Agreements	<ul style="list-style-type: none"> <li>• Primary Teachers</li> <li>• Primary Principals</li> <li>• Secondary Teachers</li> <li>• Area Teachers</li> <li>• Area Principals</li> <li>• Te Aho o te Kura Pounamu Early Childhood Teachers</li> <li>• Relief Teachers</li> </ul>	<ul style="list-style-type: none"> <li>• Secondary Principals</li> </ul>	<ul style="list-style-type: none"> <li>• Support Staff</li> <li>• Caretakers and Cleaners</li> <li>• Adult and Community Education</li> <li>• Secondary and Area Schools Ground Staff</li> <li>• Te Aho o te Kura Pounamu Specialist and Support Staff</li> <li>• Kaiarahi i te Reo Therapists, ATSSD and Special Education Assistants</li> </ul>	<ul style="list-style-type: none"> <li>• Special Residential</li> </ul>
Population Affected (approx.)	80,400	380	40,400	250

Note: Populations are estimates only based on data provided by MoE. Values are based on current populations, the total population over the 6 years will be a lot greater. Numbers will be reviewed as the project proceeds.

Table 2: Employee groups and included employment agreements

### *Employee Data*

EPL provided the project team with anonymous and randomised employee data samples for the purposes of scenario testing. The data included employee type, leave taken and payment information. This data enabled the team to test system configuration against Holidays Act scenarios. The project team deleted all employee data samples at the completion of analysis, to maintain data security.

The project team maintained an ongoing dialogue with SMEs from both the Ministry and EPL. The SMEs provided expertise on schools sector payroll systems, employee relations, payroll policy and school payroll practices.

#### 4.2.2. Testing conducted

The project team conducted two types of tests during this review; Configuration Testing and Scenario Testing.

1. Configuration Testing: checked how the Ascender Pay and TM4 payroll systems were configured to calculate each rate type, (such as AWE, OWP, Gross Earnings, ADP and RDP) and which rate to use for each leave type (annual leave, sick leave etc.).
2. Scenario Testing: checked how employee groups in different scenarios had leave payments and entitlements calculated.

### *Configuration Testing*

Having gathered and reviewed the inputs to identify likely areas of non-compliance, the project team began configuration testing. This involved testing of all the payment codes within the current Ascender Pay system and the previous Datacom TM4 system. This enabled the project team to review how payroll payment codes were set up in each system and whether they were performing leave calculations correctly.

### *Scenario Testing*

Scenario testing involved testing of all common leave and holiday scenarios that occur across the schools sector against the different employee groups. In order to identify which scenarios to test and which employee groups to include, Deloitte facilitated a workshop with Ministry and EPL SMEs. The SMEs identified several sub-categories under some employee groups that needed to be tested individually due to the different ways that employees within these groups accrue leave. For example, the specialist and support staff group has four sub-categories based on the method of payment. For specialist and support staff, these sub-categories are: 52 weeks, annualised, term time only and timesheet employees.

EPL provided the project team with anonymous and randomised employee data samples for scenario testing. Each employee group tested used a sample of 50 individuals per employment agreement. The project team then tested this sample in the Ascender Pay system against the various leave types provided for in the Act (for example, annual

leave). Each sample group was tested until either a consistent trend for non-compliance was found, or the sample was exhausted. Where the team found instances of leave calculated contrary to the requirements of the Act, they sourced leave history for the same employees from the Datacom TM4 system and tested the scenarios in this system. These results were then compared against manual calculations of what the employee should have been paid according to the requirements in the Act. This resulted in a 'finding' for a given scenario and employee group.

The scope of scenario testing conducted is summarised below in Table 3.

Employee Group	Annual leave – taken/paid	Annual leave – termination	Bereavement leave	Alternative leave	Public Holidays	Sick leave
Teaching	Tested	Tested	Tested	Tested	Tested	Tested
Secondary Principals	Tested	Tested	Tested	Tested	Tested	Tested
Specialist and Support Staff	Tested	Tested	Tested	Tested	Tested	Tested
Specialist and Support Staff – 52 Weeks	Tested	Tested	Tested	Tested	Tested	Tested
Specialist and Support Staff – Annualised	Tested	Tested	Tested	Tested	Tested	Tested
Specialist and Support Staff – Term Time Only	Tested	Tested	Tested	Tested	Tested	Tested
Specialist and Support Staff – Timesheet	Tested	Tested	Tested	Tested	Tested	Tested
Special Residential	Tested	Tested	Tested	Tested	Tested	Tested
Special Residential – Standard	Tested	Tested	Tested	Tested	Tested	Tested
Special Residential – Rostered	Tested	Tested	Tested	Tested	Tested	Tested

Table 3: Scope of testing

#### 4.2.3 Findings and Problem Statements

The review captured any differences between how the Ascender Pay and TM4 systems are configured and what is required by the Act as findings. The review also captured any

differences between what an employee should have been paid and what they were paid during scenario testing as findings.

The project team further tested findings that indicated non-compliance with additional employee data samples and validated them with Ministry and EPL SMEs. The compliance matrix shown in Section 4.3.1 captures findings for scenarios and employee groups tested. In some cases, testing identified compliance with the Act. As the purpose of this review was to identify areas of non-compliance any areas of compliance were noted in the compliance matrix and not investigated further.

The last step in **the project team's** approach was to take the validated findings and distil them into underlying problem statements. Where findings capture the observable results of non-compliance (symptoms), problem statements capture the underlying drivers leading non-compliance to occur (causes).

## 4.3 Findings

The findings of the Analyse stage of the schools sector Holidays Act Compliance Review are summarised in this section.

The focus of this section is on areas where non-compliance with the Holidays Act was found. Findings of non-compliance are summarised and divided into three categories:

1. Leave type findings: Leave type findings relate to whether the correct rate types are applied to calculate each type of leave. For example whether ordinary weekly pay (OWP) and average weekly earnings (AWE) are being correctly applied for annual leave.
2. Accumulator findings: Accumulator findings relate to whether the rate types themselves are being correctly calculated. For example, whether AWE is calculated correctly.
3. Additional Findings: Additional findings were those that did not fall into either leave type or accumulator findings but are additional areas where the schools sector payroll may be non-compliant with the Act.

A key finding of the review was that there is no material difference in the areas of Holidays Act non-compliance between the current Ascender Pay and legacy Datacom TM4 systems.

Findings are summarised in more detail in the sections below.

### 4.3.1 Leave Type Findings

This section summarises leave type findings where non-compliance with the Holidays Act was found during testing.

### *Annual Leave – Taken and Paid*

The Holidays Act section 21(2) requires that when an employee takes annual leave, AWE needs to be compared to OWP and that the higher of the two should be paid.

Analysis found that for all groups tested, OWP is the only rate type used. AWE is not considered. The failure to consider AWE when calculating annual leave taken is non-compliant with the Holidays Act.

### *Annual Leave – On Termination*

The review found that leave payments on termination are non-compliant for teachers and secondary principals for two reasons:

1. Leave taken is always paid at OWP. This affects secondary principals and is non-compliant with section 25 of the Act. Section 25 requires entitled leave not taken on termination to be paid at the higher of AWE or OWP.
2. Accrued leave on termination is paid at OWP. The Act requires accrued leave on termination to **be paid at a percentage of the employee's gross earnings since the last leave anniversary.**

### *Bereavement, Alternative, Public Holiday and Sick Leave (BAPS)*

The Holidays Act section 9A(2) allows employers to use average daily pay (ADP) to calculate leave payments for BAPS leave types when calculating Relevant Daily Pay (RDP) is not possible or practical.

ADP is calculated based on an employee's last 52 weeks' earnings and can be used to calculate leave when it is not possible or practical to calculate RDP, for example in cases of part time employees who work irregular hours.

The review found that for all groups, BAPS leave payments are always paid at RDP and never at ADP. Not using ADP, indicates **that some employees' leave may not be** calculated in the best available way under the Act.

BAPS leave payments need to be reviewed in more depth during the next phase of the Holidays Act Compliance project. While it may be acceptable to use RDP only, there are cases when ADP may be more appropriate.

### *Leave entitlements*

Minimum leave entitlements are stipulated in the Holidays Act as follows:

- Section 16 provides an entitlement of four weeks annual leave after employment lasting one year
- Section 63 provides sick leave and bereavement leave after employment lasting six months
- Section 46 provides employees entitlement to be paid public holidays

- Section 56 provides that employees are entitled to alternative leave if they work on a public holiday

This review found that all employee groups except one are receiving at least their minimum entitlements under the Act. The one exception is rostered special residential employees, whose employment agreement states that annual leave does not apply. Prior to 2003, legislation stipulated minimum levels of holiday entitlement, and there was some flexibility in how employers assessed the rate of holiday pay and paid entitlements. The 2003 Holidays Act changed this to stipulate both the minimum level of entitlement and the method for assessing the rate. A legal opinion is required to determine whether or not this is compliant with section 16 of the Act.

Tables 4 to 7 on the following pages provide a summary of leave type findings for each employee group. The employee groups being:

1. Teachers and Secondary Principals
2. 52 week and annualised Specialist and Support Staff
3. Term time only and timesheet Specialist and Support Staff
4. Rostered and standard Special Residential Employees

*Leave type findings: Teachers and Secondary Principals*

Group	Pop.		Annual Leave – Taken / Paid	Annual Leave – Termination	Bereavement Leave	Alternative Leave	Public Holidays	Sick Leave	Leave Entitlements
Teachers (Including Relief Teachers)	80,400	Act	Section 21(2)	• Section 24(2) • Section 25(2)	Section 9A(2)	• Section 9A(2) • Section 81(2)	• Section 9A(2) • Section 81(2)	Section 9A(2)	• Section 16 • Section 46 • Section 56 • Section 63
		Finding	Non-compliant	Non-compliant	Compliant Non-compliant	Non-compliant	Non-compliant	Compliant Non-compliant	Compliant
		Problem Statement	PS 2	PS 3	PS 5	PS 5, 6	PS 5, 6	PS 5	N/A
		Explanation of mixed compliance rating	N/A	N/A	Compliant: Use of RDP for employees with regular work hours. Non-compliant: ADP is not used for employees with irregular work hours.	N/A	N/A	Compliant: Use of RDP for employees with regular work hours. Non-compliant: ADP is not used for employees with irregular work hours.	N/A
Secondary Principals	380	Act	Section 21(2)	• Section 24(2) • Section 25(2)	Section 9A(2)	• Section 9A(2) • Section 81(2)	• Section 9A(2) • Section 81(2)	• Section 9A(2) • Section 81(2)	• Section 16 • Section 46 • Section 56 • Section 63
		Finding	Non-compliant	Non-compliant	Compliant Non-compliant	Non-compliant	Non-compliant	Compliant Non-compliant	Compliant
		Problem Statement	PS 2	PS 3	PS 5	PS 5, 6	PS 5, 6	PS 5, 6	N/A
		Explanation of mixed compliance rating	N/A	N/A	Compliant: Use of RDP. Non-Compliant: Inconsistent record keeping.	N/A	N/A	Compliant: Use of RDP. Non-Compliant: Inconsistent record keeping.	N/A

Table 4: Summary of leave type findings for Teachers and Secondary Principals

*Leave type findings: 52 week and annualised Specialist and Support Staff*

Group	Pop.		Annual Leave – Taken / Paid	Annual Leave – Termination	Bereavement Leave	Alternative Leave	Public Holidays	Sick Leave	Leave Entitlements
Specialist and Support Staff (52 Weeks)	7,700	Act	Section 21(2)	• Section 24(2) • Section 25(2)	Section 9A(2)	• Section 9A(2) • Section 81(2)	• Section 9A(2) • Section 81(2)	Section 9A(2)	• Section 16 • Section 46 • Section 56 • Section 63
		Finding	Compliant Non-compliant	Compliant	Compliant Non-compliant	Non-compliant	Non-compliant	Compliant Non-compliant	Compliant
		Problem Statement	PS 2	N/A	PS 5	PS 5, 6	PS 5, 6	PS 5	N/A
		Explanation of mixed compliance rating	Pre-Alesco, a manual AWE / OWP comparison was made, indicating compliance.	N/A	Compliant: Use of RDP for employees with regular work hours. Non-compliant: ADP is not used for employees with irregular work hours.	N/A	N/A	Compliant: Use of RDP for employees with regular work hours. Non-compliant: ADP is not used for employees with irregular work hours.	N/A
Specialist and Support Staff (Annualised)	7,300	Act	Section 21(2) Section 28	• Section 24(2) • Section 25(2)	Section 9A(2)	• Section 9A(2) • Section 81(2)	• Section 9A(2) • Section 81(2)	Section 9A(2)	• Section 16 • Section 46 • Section 56 • Section 63
		Finding	Non-compliant	Compliant	Compliant Non-compliant	Non-compliant	Non-compliant	Compliant Non-compliant	Compliant
		Problem Statement	PS 2, 4	N/A	PS 5	PS 5, 6	PS 5, 6	PS 5	N/A
		Explanation of mixed compliance rating	N/A	N/A	See above.	N/A	N/A	See above.	N/A

Table 5: Summary of leave type findings for 52 week and annualised Specialist and Support Staff

*Leave type findings: Term time only and timesheet Specialist and Support Staff*

Group	Pop.		Annual Leave – Taken / Paid	Annual Leave – Termination	Bereavement Leave	Alternative Leave	Public Holidays	Sick Leave	Leave Entitlements
Specialist and Support Staff (Term Time Only)	22,200	Act	Section 21(2)	• Section 24(2) • Section 25(2)	Section 9A(2)	• Section 9A(2) • Section 81(2)	• Section 9A(2) • Section 81(2)	Section 9A(2)	• Section 16 • Section 46 • Section 56 • Section 63
		Finding	Compliant	Compliant	Compliant Non-compliant	Non-compliant	Non-compliant	Compliant Non-compliant	Compliant
		Problem Statement	N/A	N/A	PS 5	PS 5, 6	PS 5, 6	PS 5	N/A
		Explanation of mixed compliance rating	N/A	N/A	Compliant: Use of RDP for employees with regular work hours. Non-compliant: ADP is not used for employees with irregular work hours.	N/A	N/A	Compliant: Use of RDP for employees with regular work hours. Non-compliant: ADP is not used for employees with irregular work hours.	N/A
Specialist and Support Staff (Timesheet)	4,200	Act	Section 21(2)	• Section 24(2) • Section 25(2)	Section 9A(2)	• Section 9A(2) • Section 81(2)	• Section 9A(2) • Section 81(2)	Section 9A(2)	• Section 16 • Section 46 • Section 56 • Section 63
		Finding	Compliant	Compliant	Compliant Non-compliant	Non-compliant	Non-compliant	Compliant Non-compliant	Compliant
		Problem Statement	N/A	N/A	PS 5	PS 5, 6	PS 5, 6	PS 5	N/A
		Explanation of mixed compliance rating	N/A	N/A	See above.	N/A	N/A	See above.	N/A

Table 6: Summary of leave type findings for term time only and timesheet Specialist and Support Staff

*Leave type findings: Special Residential Employees*

Group	Pop.		Annual Leave – Taken / Paid	Annual Leave – Termination	Bereavement Leave	Alternative Leave	Public Holidays	Sick Leave	Leave Entitlements
Special Residential (Standard)	< 250	Act	Section 21(2)	<ul style="list-style-type: none"> <li>Section 24(2)</li> <li>Section 25(2)</li> </ul>	Section 9A(2)	<ul style="list-style-type: none"> <li>Section 9A(2)</li> <li>Section 81(2)</li> </ul>	<ul style="list-style-type: none"> <li>Section 9A(2)</li> <li>Section 81(2)</li> </ul>	Section 9A(2)	<ul style="list-style-type: none"> <li>Section 16</li> <li>Section 46</li> <li>Section 56</li> <li>Section 63</li> </ul>
		Finding	Compliant	Compliant	Compliant Non-compliant	Non-compliant	Non-compliant	Compliant Non-compliant	Compliant
		Problem Statement	N/A	N/A	PS 5	PS 5, 6	PS 5, 6	PS 5	N/A
		Explanation of mixed compliance rating	N/A	N/A	Compliant: Use of RDP for employees with regular work hours. Non-compliant: ADP is not used for employees with irregular work hours.	N/A	N/A	Compliant: Use of RDP for employees with regular work hours. Non-compliant: ADP is not used for employees with irregular work hours.	N/A
Special Residential (Rostered)	< 250	Act	Section 21(2) Section 28	<ul style="list-style-type: none"> <li>Section 24(2)</li> <li>Section 25(2)</li> </ul>	Section 9A(2)	<ul style="list-style-type: none"> <li>Section 9A(2)</li> <li>Section 81(2)</li> </ul>	<ul style="list-style-type: none"> <li>Section 9A(2)</li> <li>Section 81(2)</li> </ul>	Section 9A(2)	<ul style="list-style-type: none"> <li>Section 16</li> <li>Section 46</li> <li>Section 56</li> <li>Section 63</li> </ul>
		Finding	Non-compliant	Non-compliant	Compliant Non-compliant	Non-compliant	Non-compliant	Compliant Non-compliant	Non-compliant
		Problem Statement	PS 4	PS 4	PS 5	PS 5, 6	PS 5, 6	PS 5	PS 4
		Explanation of mixed compliance rating	N/A	N/A	See above.	N/A	N/A	See above.	N/A

Table 7: Summary of leave type findings for standard and rostered Special Residential employees

## 4.3.2 Accumulator Findings

This section summarises leave accumulator findings where non-compliance with the Holidays Act was found during testing.

*Gross Earnings*

Sections 8(2), 9A(2) and 21(2)(ii) of the Holidays Act require that gross earnings should be calculated for all employees. The calculation of gross earnings is necessary to calculate three of the accumulators required by the Act: AWE, ADP and OWP method 2.

The review found that gross earnings are not being calculated and applied for teaching staff, and are only applied in specific instances for specialist and support staff. The omission to calculate and apply gross earnings therefore contributes to wider non-compliance with the Holidays Act.

*Average Weekly Earnings (AWE)*

When an employee takes annual leave, Section 21 (2) of the Holidays Act requires that AWE be compared to OWP, and that the higher of the two is paid. For entitlement leave payments on termination, section 24(2) also requires the higher of OWP and AWE to be paid.

The review found that AWE is not being considered for holiday pay calculations when leave is taken. AWE is only being considered for termination leave payments for specialist and support staff. This is not compliant with the Holidays Act.

### *Ordinary Weekly Pay (OWP)*

The Holidays Act section 8(1) provides two methods for calculating OWP. OWP method 1 is the default method and is best suited to calculating OWP for employees with regular **work schedules. For situations where an employee's OWP cannot be practically calculated** using method 1 (for example, because their work schedule is sporadic and unpredictable), section 8(2) prescribes a second method that must be used.

The review found that OWP is currently only being calculated using OWP method 1. For many employees, this is the correct and compliant approach to calculating OWP. However, no instances were found of OWP method 2 being used. This is despite situations existing where OWP method 1 could not be practically calculated. This is not compliant with the Act.

A second compliance issue found with OWP is that calculations using method 1 do not include some regular allowances that should be included. This is non-compliant with section 8(1)(b) of the Act that requires that all regular allowances to be included in the calculation of OWP.

### *Relevant Daily Pay (RDP)*

RDP is defined by section 9 of the Holidays Act as the default method for calculating pay for bereavement leave, alternative holidays, public holidays and sick leave. It refers to the pay that an employee would have received, including regular allowances, if they had otherwise worked on the day that leave was taken. To be compliant with the Act RDP must be both calculated and applied correctly.

The review found that while RDP is applied correctly, it is not calculated correctly, because it does not include all regular allowances. This is not compliant with the Act.

### *Average Daily Pay (ADP)*

ADP is a method of calculation useful for employees with unpredictable work schedules. The Holidays Act section 9A(2) allows ADP to be calculated for BAPS leave types when it is not practical to calculate RDP.

The review found that ADP is not calculated or considered in the calculation of leave. This suggests that in cases where BAPS leave types are not being calculated in the most accurate way indicated under the Act, some employees may be disadvantaged.

A summary of accumulator findings for each employee type is provided by Table 8 below:

Compliance Factors		Gross Earnings	Average Weekly Earnings	Ordinary Weekly Pay	Relevant Daily Pay	Average Daily Pay
Accumulator Application	<b>Act</b>	Section 21(2)	Section 21(2)	Section 8	Section 9	Section 9A
	<b>Finding</b>	<b>Non-compliant</b>	<b>Non-compliant</b>	<b>Compliant</b>	<b>Compliant</b>	<b>Non-compliant</b>
	<b>Problem Statement</b>	PS 1, 2, 5	PS 2	<b>N/A</b>	<b>N/A</b>	PS 5
	<b>Explanation of accumulator compliance rating</b>	Gross Earnings is not used for holiday pay calculation when leave is taken.	Average Weekly Earnings is not considered for holiday pay calculation when leave is taken.	<b>N/A</b>	<b>N/A</b>	Average Daily Pay is not considered for the calculation of Bereavement, Alternative, Public Holiday and Sick Leave.
Accumulator Calculation	<b>Act</b>	Section 21(2)	Section 21(2)	<ul style="list-style-type: none"> <li>Section 1</li> <li>Section 8</li> </ul>	Section 9	<b>N/A</b>
	<b>Finding</b>	<b>Non-compliant</b>	<b>Non-compliant</b>	<b>Non-compliant</b>	<b>Non-compliant</b>	<b>N/A</b>
	<b>Problem Statement</b>	PS 1, 2, 5	PS 2	PS 1, 7	PS 8	<b>N/A</b>
	<b>Explanation of accumulator compliance rating</b>	Where Gross Earnings is calculated, not all regular allowances are included.	Where Average Weekly Earnings is applied, its calculation method is correct. However, the Gross Earnings Input used in its calculation is currently incorrectly calculated.	Ordinary Weekly Pay method 1 is always used while method 2 is not calculated.  All regular allowances are not included in Ordinary Weekly Pay.	All regular allowances are not included in Relevant Daily Pay.	As the Average Daily Pay accumulator is not used, no compliance rating has been given for its calculation.

Table 8: Summary of Accumulator Findings applied to all employee types

### 4.3.3 Additional Findings

During the course of the review, a number of additional relevant findings were captured. These are neither leave type or accumulator findings but are additional areas where the schools sector payroll may be non-compliant with the Act.

#### *Record Keeping*

Scenario testing did not find any cases of employees having worked on a public holiday. The project team validated this finding with EPL and Ministry SMEs, who considered it was probable that some employees would at times work on public holidays.

This may indicate ineffective record keeping practices within schools. Section 81(1) of the Act requires records of public holidays worked and leave taken to be kept accurately. If this is not occurring, then this is non-compliant with the Act. EPL SMEs indicated that even when records are kept within schools, all relevant information may not always be provided to EPL.

Similarly, the incidence of secondary school **principals' recorded sick leave was found to** be improbably low. Analysis found significantly lower levels of sick leave taken by secondary principals than would be expected. This may indicate ineffective recording of sick leave within schools, which would be non-compliant with section 81(1) of the Act. EPL and Ministry SMEs reported that these records may be maintained locally at the school level and not shared with EPL. This was not verified with the schools during this phase of work (see Section 4.4 Assumptions and Limitations below).

### *Identification of Annual Leave on Payslips*

Section 28 of the Act requires that annual leave is an identifiable component on an **employee's payslip**. For **special** residential rostered staff and annualised specialist and support staff, annual leave was not separately identifiable on payslips. The payslips of these employees therefore appears to be non-compliant with the Holidays Act.

Deeper analysis showed that the payslips of these two employee groups excluded annual leave components for different reasons. The employment agreements of rostered special residential staff does not grant them annual leave based on the language in their employment agreement, therefore it is not displayed on their payslip. While this appears to be compliant with their employment agreement, it appears to be non-compliant with the requirements of the Act.

Annualised support staff do not have annual leave components displayed on their regular payslip, but pay for annual leave is provided on the novo23nt annualisation form that they receive annually. Further investigation in the next phase of this project will need to determine whether this meets the requirements of the Act or if it also needs to be **provided on the employees' regular payslip**.

## 4.4 Assumptions and Limitations

The approach and findings of this review have a number of assumptions and limitations. Further work will be required in future phases of the Holidays Act Compliance programme to address these. Some key assumptions and limitations of the review are as follows:

### *Further investigation of annualisation calculation compliance is required*

Annualised employees have their holiday pay spread across all but one of their fortnightly pay checks. In the final pay check of the year, a wash up run occurs which identifies any additional hours worked and applies any relevant additional holiday pay to that payment. Further investigation is required in the next phase of work to determine whether all relevant inputs are being correctly captured in this process.

### *Only employees belonging to a single employee group were tested*

Some employees in the schools sector have more than one role, for example as a teacher and also as a member of specialist and support staff. This is relatively rare, and to reduce the complexities of scenario testing during this phase of the project, the project team excluded data for employees with more than one role from the data set. This is not expected to affect the results of the testing, however it remains a limitation of the review.

### *The review was restricted to data from the past six years*

The employee data and configuration information used in the Analyse stage only included data from the last six years. This is because the limitation period for actions, other than personal grievances, provided for in section 142 of the Employment Relations Act 2000 is six years from the date of the cause of the action.

*There are data gaps in the six-year period analysed*

While data used in the Analyse stage was sufficiently comprehensive for the team to carry out configuration and scenario testing, some gaps exist in TM4-era schools sector payroll data and in the initial period following cutover to the Ascender payroll system. An assumption was made that the results of the configuration and scenario testing carried out in periods when data is not available is the same as results for neighbouring periods when data is available.

*The Holidays Act Compliance Review did not directly engage with schools*

The Initiation phase of this project did not involve direct engagement with schools. The project team determined all information on the schools sector from data provided by the Ministry and EPL, including consultation with Ministry and EPL schools sector payroll SMEs. This is a limitation of the review.

*Individual employment agreements were not reviewed*

The project team did not review individual employment agreements. This is because Ministry SMEs advised that individual employment agreements in the schools sector generally mirror the leave components reviewed of the collective employment agreements analysed as part of the review. The findings of Holidays Act non-compliance for employees with individual employment agreements are therefore not expected to be any different than those under collective agreements.

*A legal opinion is required to determine which allowances should be included in the calculation of OWP and RDP*

It is not clear which types of allowances should be included in the calculation of OWP and RDP accumulators. A legal opinion is required to determine which allowances should be included in the calculation of these accumulators.

*Payroll policy outcomes were reviewed, rather than the policies themselves*

This phase of the project did not review payroll policy directly. Instead, the project team reviewed outcomes of payroll policy through configuration and scenario testing, as well as consultation with SMEs from the Ministry and EPL.

## 4.5 Conclusions of the Analyse Stage

The findings of the Analyse stage show that there are areas of Holidays Act non-compliance within the schools sector payroll.

These areas of non-compliance include both the way that leave types and accumulators are calculated and applied, along with potential other factors such as data recording within schools. All employee groups within the schools sector are affected and many of the findings of non-compliance are common across all employee groups. From the analysis undertaken it appears that the areas of non-compliance have been occurring for

some time. This is evidenced by there being no material differences in these areas of non-compliance between the current Ascender Pay and legacy Datacom TM4 systems.

The findings of Holidays Act non-compliance discovered during the Analyse stage of the review can be distilled into eight problem statements. Each problem statement defines a single distinct element contributing to non-compliance with the Act, and collectively the problem statements capture all underlying causes of non-compliance found.

While the problem statements define distinct elements contributing to non-compliance, some statements are interrelated. Where problem statements are interrelated, each statement captures different facets of an overarching compliance issue. For example, five of the problem statements relate to annual leave calculation and payment.

The eight problem statements determined by the project team at the conclusion of the Analyse stage are presented in Table 9. This table presents each problem statement alongside its estimated impacted population, broken down by employee group.

Problem Statement Number	Problem Statement	Population Affected
PS1	Holiday pay is only calculated using Ordinary Weekly Pay (OWP) Method 1. Method 2 is not used.	Not Known
PS2	OWP is always used for holiday pay calculations when leave is taken, rather than the higher of Ordinary Weekly Pay (OWP) and Average Weekly Earnings (AWE).	(T) 70,000 (RT) 10,400 (SP) 380 (SSS52) 7,700 (SR) 250
PS3	<b>Teachers' and Secondary Principals' accrued termination leave is</b> always paid at OWP, not at percentage of earnings.	(T) 70,000 (RT) 10,400 (SP) 380
PS4	When holiday pay is built into the pay rate, it is not separately <b>identifiable on the employee's payslip for annualised and special</b> residential employees.	(SSSA) 7,300 (SR) 250
PS5	Bereavement, Alternative, Public Holiday and Sick Leave (BAPS) is only paid at Relevant Daily Pay (RDP); Average Daily Pay (ADP) is not considered.	(T) 70,000 (RT) 10,400 (SP) 380 (SSS52) 7,700 (SR) 250
PS6	There are inconsistent recording practices of days worked and leave taken by employees within the education sector.	(T) 70,000 (RT) 10,400 (SP) 380 (SSS) 25,400 (SSS52) 7,700 (SSSA) 7,300 (SR) 250
PS7	All regular allowances are not included in OWP.	Not Known
PS8	All regular allowances are not included in RDP.	Not Known

Table 9: Problem statements and affected populations

The schools sector payroll will be compliant with the Holidays Act when all the problem statements above are addressed. Determination of these problem statements was a key milestone in the review as it provided the foundation to **move into the 'Develop'** stage to start development of remediation and resolution solutions.

## 5. Develop

### 5.1 Purpose

The purpose of the Develop stage was to begin to gain a more detailed understanding of the causal factors behind each of the problem statements, and to start to determine potential remediation and resolution solutions.

The Develop stage did not include detailed solution definition such as developing business rules or gathering requirements. It aimed to identify what components a solution would involve and an approximate idea of their scale and complexity.

The Develop stage was made up of two key planning workstreams:

1. Remediation: the remediation workstream was focused on what needs to be done to ensure that the schools sector payroll is compliant with the Holidays Act in the future.
2. Resolution: the resolution workstream was focused on how to resolve instances of Holidays Act non-compliance in the past.

The approach and high-level solution summary of each of these Develop workstreams is provided in the following sections.

### 5.2 Remediation

Remediation is the term used by the schools sector Holidays Act Compliance Review to describe what needs to be done to ensure that the schools sector payroll solution is compliant with the Holidays Act in the future.

#### 5.2.1 Remediation approach

The remediation planning approach involved three steps:

1. Identifying the causal factors behind each of the problem statements
2. Identifying the high-level solution components required to address each of these causal factors
3. Defining an initial series of guiding principles to act as the standard for any future potential solutions

The Ministry will use the guiding principles, causal factors and solution components to drive conversation, consultation, and engagement around the required remediation activities. The three steps in the approach for remediation planning are outlined in red in Figure 7 below.

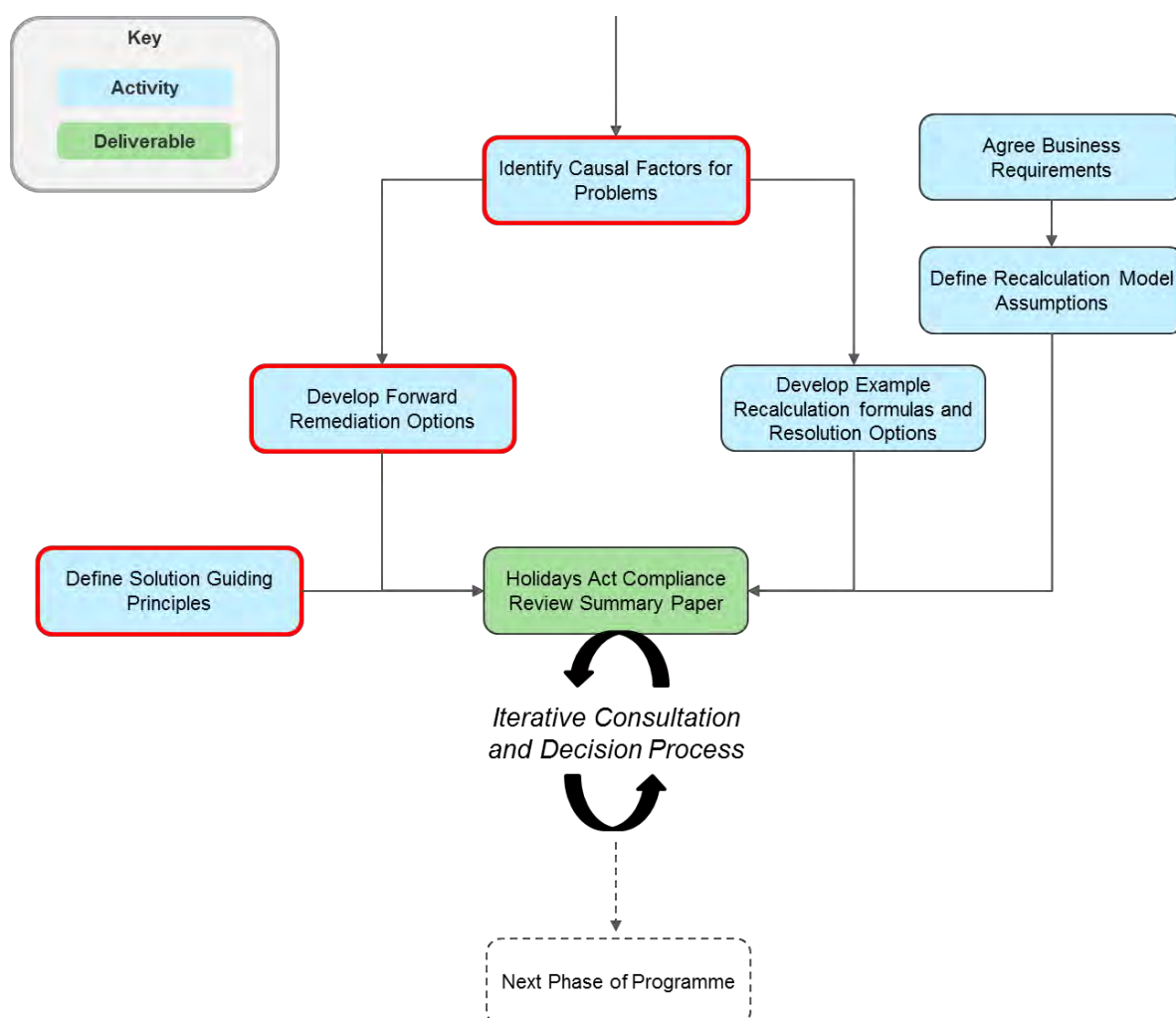


Figure 7: Overview of Develop Stage of Holidays Act Compliance Review approach

While the findings and problem statements that led to non-compliance with the Act may initially appear relatively straight forward, the solutions can often be complex. Often solutions involve multiple stakeholder groups, solution components, and dependencies.

### *Causal Factors*

The project team conducted a workshop and interviews with SMEs from the Ministry and EPL to identify the causal factors behind each of the problem statements. The SMEs explored interim causes for non-compliance for each problem statement and worked back to identify the ultimate cause. This process resulted in a better understanding of **what made the schools' payroll non-compliant** and what it would take to fix it. This helped to differentiate cases where the payroll system and service is configured to calculate an accumulator or a leave type in a specific way, and identified the reason why – for example because of historical education policy or an employment agreement.

### *High-Level Solution Components*

Once the Ministry and EPL identified likely causal factors for the problem statements, the project team began to delineate the high-level solution components. These are

directional agreements made by the project team on the dimensions required to remediate the schools sector payroll so that it is compliant. During workshops the Ministry and EPL SMEs identified solution components resulting in the following four groups:

1. *External Dependencies* – including guidance from Leave Pay Working Group and any successor group, and the compliance process from the Labour Inspectorate
2. *Payroll Policy* – including employment agreements
3. *Sector Capability* – including practices in schools as employers
4. *Service and System* – including the Ascender Payroll system and processes to provide the payroll service to schools

Identifying these solution components will help determine the stakeholders that need to be involved during future phases of the Holidays Act compliance programme and to ensure that all business requirements and dependencies are captured.

### *Guiding principles*

During the Develop stage, the project team drafted a set of guiding principles based on **Deloitte's experience with similar payroll remediation projects**. The project Governance Group tailored and refined the statements into the six principles. These are as shown in Figure 8 below.

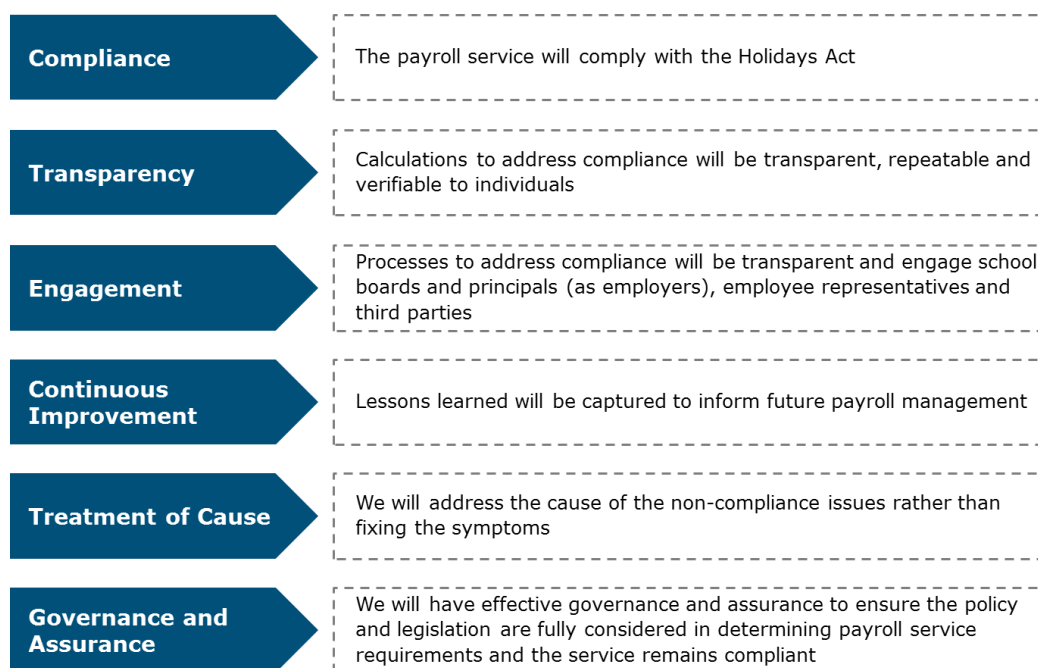


Figure 8: Guiding Principles to direct remediation planning and implementation

Discovery of further information through detailed design could lead to adjustment of these principles as the priorities and challenges become better understood.

### 5.2.2 Remediation assumptions and limitations

The following assumptions and limitations influence the approach for forward remediation:

*Remediation outcomes will need to satisfy the Labour Inspectorate*

The Ministry has initiated engagement with the Labour Inspectorate to provide input and approval for the solution approach. The Labour Inspectorate has indicated that the approach the Ministry is proposing to undertake to ensure compliance with the Holidays Act 2003 appears sound and comprehensive based on the documentation provided and conversations held to date. Once this review has been completed, the Inspectorate will review the findings including sampling remediation calculations to ensure the results are compliant with the Holidays Act. The Labour Inspectorate is likely to deliver their opinion through an enforceable undertaking that will focus on the tasks that need to be carried out to fix the issues. Because of the complexity of the schools sector payroll environment, it is not yet known whether the Labour Inspectorate will need to give the enforceable undertaking to the Ministry or to individual schools as the employers. This could affect **the Holidays Act compliance programme's remediation** timeline.

*Interdependencies may exist between system changes already planned and those identified during detailed planning and design of this programme*

One of the complexities with this programme is that the Ascender Pay payroll system is undergoing continual update and improvement. EPL will continue to implement these updates and improvements while the detailed planning and design phases of this programme are underway. EPL will need to be aware of any interdependencies that could change planned or future system configuration.

*Changes to recording and reporting of time will require a significant change management effort in schools*

One of the most foundational problems relating to Holidays Act compliance appears to relate to accurate record keeping of hours worked and leave taken within schools, and sharing of this information with EPL. Without accurate records, the payroll will not be compliant. A change to the record keeping process requires a change across more than 2,500 different schools and may potentially affect approximately 90,000 individuals. This means that significant time and effort will need to go into planning, communicating and training to achieve this behaviour change.

*Some remediation solutions will need to be put in place before others can be completed*

While the detail planning for the implementation phase has not yet been completed, based on the information known at this time, the solution for recording and reporting time worked and leave taken in schools will need to be put in place first. This is because the solutions

that involve system configuration changes rely on having accurate data in order to calculate leave payment.

### 5.2.3 Remediation high-level solution summary

Remediating the schools sector payroll will be complex. Remediation is much broader than just making some updates to the schools sector payroll system. Rather, a holistic approach is required. This will involve payroll policy, schools sector capability and changes to the payroll service and system. Remediation will also require guidance from the Leave Pay Working Group and any successor groups, and involvement of the Labour Inspectorate.

Remediating the policy, service and sector capability moving forward includes multiple complexities due to the interrelated nature of solutions likely to be required to address the underlying problems leading to non-compliance. Many of the possibly required solutions depend on the prior or parallel implementation of other solutions. This means that it will be difficult or ineffective to implement individual solutions in isolation from one another. For example, improvements to sector capability are required to support almost all technical changes recommended for the payroll service.

An overview of the four main remediation solution components is as follows:

#### *External Dependencies*

External dependencies drive components of the plan such as the Labour Inspectorate enforceable undertaking identified in the assumptions and limitations section above. Because these dependencies are owned by organisations other than the Ministry and EPL it is not clear how long these components may take and what their outcome will be.

#### *Payroll Policy*

The Ministry develops payroll policy, and in the case of employment agreements, it can involve a large number of stakeholders and a complex approval process. The detail included in the payroll policy is what informs the business rules that ultimately lead to detailed system requirements. Without comprehensive and detailed requirements, EPL will not be able to make any required system configuration changes. Payroll policy also provides direction to schools on things such as record keeping. The Ministry does not generally enforce the adoption of any policy change on schools, so behaviour change is likely to be determined by the power of recommendations to schools and any supporting change management activities.

#### *Sector Capability*

Sector capability is one of the most complex components of remediation due to the number of stakeholders involved. Because schools are individual employers, the practices within each school may be different, which means that some schools may be closer to compliant record keeping than others. The next phase of this programme will need to include a current state assessment to determine what needs to change for which school and the resulting change impact.

### *Payroll Service and System*

EPL provides the schools sector payroll service and system. This includes developing detailed technical requirements based on system change requests and business rules defined by the Ministry. EPL also provides the service and change management support resulting from any system changes. Remediation of the payroll service and system will be a key activity to allow future Holidays Act compliance within the sector.

While these four components above have some individual activities, they are interdependent because of the structure of the schools payroll provision. Figure 9 shows approximately how these components work together.

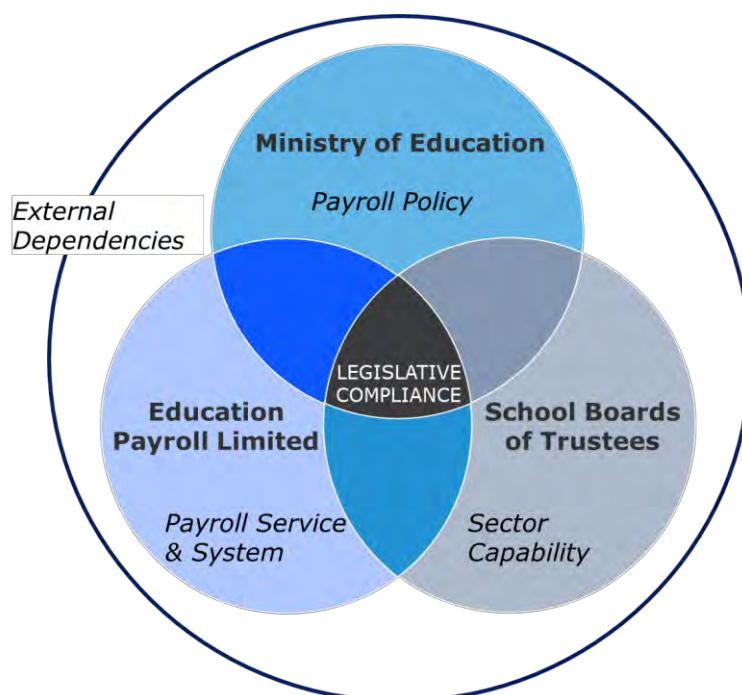


Figure 9: Inter-relationship of solution options and the organisations that drive them

## 5.3 Resolution

Resolution is the term used by the schools sector Holidays Act Compliance Review to describe the solution required to resolve past instances of Holidays Act non-compliance.

**Resolution requires two key components, the recalculation of each individual's payroll payments back to a determined date in the past, and the resolution itself consisting of the assumptions, policies and planning that will go into disbursing potential resolution underpayments or collecting possible overpayments.**

Developing a solution or series of solutions that facilitates future compliance with the **Act is only one part of the challenge. Because the schools' payroll has not been compliant** with the Act in the past, a second consideration is how to resolve any cases of past non-compliance. This is the same challenge faced by employers across different sectors in

New Zealand. It will involve recalculating past employee payments in a compliant manner and comparing these payment figures with what employees actually received. Achieving compliance with the Holidays Act therefore involves two parallel pieces of work – forward remediation of the payroll to make sure payments are correct going forward and backward resolution and recalculation of the payroll to correct any over or underpayments made in the past.

The schools sector Holidays Act payroll resolution is made more complex because past payroll payment data is held in two different systems - TM4, for payment data prior to August 2012, and the Ascender Pay system for payment data from this date. Depending on how far back recalculation needs to occur, it may need to happen in two separate systems with different configurations.

### 5.3.1 Resolution approach

The resolution approach involved three steps:

1. Agreeing business requirements for recalculation
2. Defining recalculation model assumptions
3. Developing example recalculation formulas and resolution options

In the next phase of this project, the Ministry will use the business requirements, recalculation model assumptions and example recalculation formulas to drive conversation, consultation and engagement around what resolution will consist of. Figure 10 shows these four steps in the approach for resolution outlined in red.

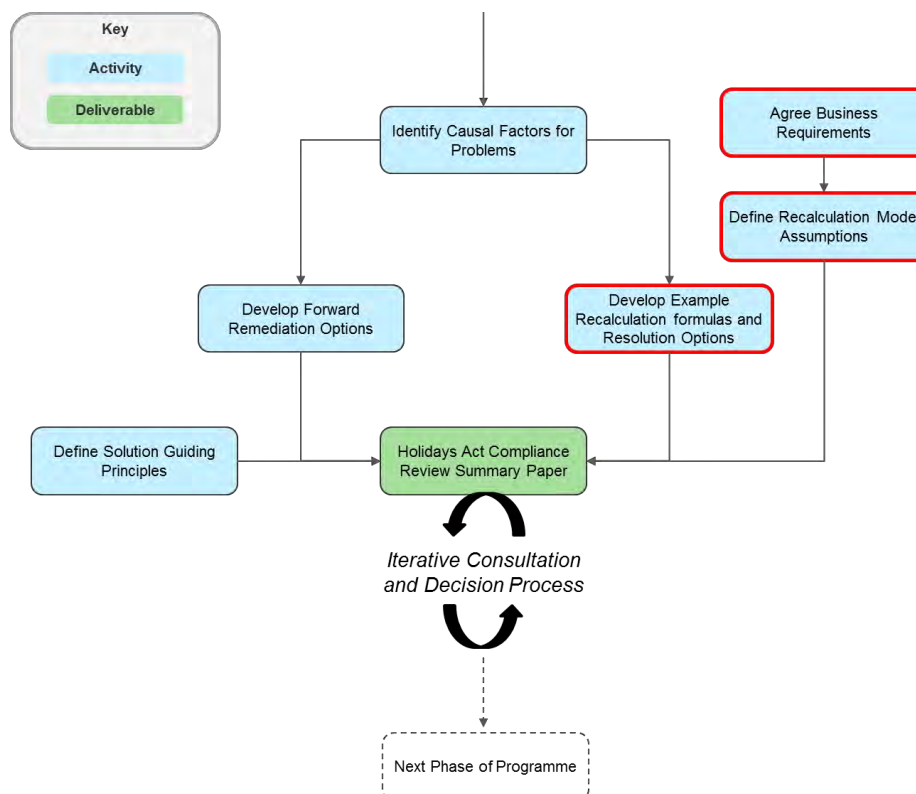


Figure 10: Overview of Develop Stage of Holidays Act Compliance Review approach

Each of these steps is described in more detail below.

### *Agree Business Requirements*

In order to determine whether any under or over-payments are made, recalculations of past pay will need to be modelled in order to determine the amount of over or underpayments, and which employees are impacted. This will require the definition of recalculation business requirements. The project Governance Group determined an initial list of business requirements to help guide recalculations. These requirements fall into five high-level areas:

1. **Completeness** – the recalculation model must include the full universe of Holidays Act calculations and payments for all schools sector employees across the resolution time period. The recalculation model must also be built to model all compliance issues.
2. **Traceability** – there should be full traceability of recalculation outputs back to the recalculation modelling assumptions, employee and pay period.
3. **Flexibility** – the recalculation model should be able to be adjusted to see the effect of different scenarios and treatments on the recalculations, i.e. ability to compare the recalculation output if resolution assumptions were changed.
4. **Presentation of results and analytics** – the recalculation model should have the ability to allow analysis and presentation of results based on defined parameters (i.e. the ability to slice the recalculation results in different ways). For example: employee group, employee level, employment agreement, union membership and leave type to be able answer questions like **'what impact has sick leave had?'**
5. **Auditability** – the recalculation outputs should be repeatable and verifiable. If an independent third party reran the model with the same parameters, they should get the same results.

There are two possible approaches to recalculating the payment amounts. Recalculation could either occur in the systems that currently hold the data (i.e. TM4 and Ascender Pay), or it can occur in an external system or model. Regardless of which approach is used, the tool used to complete the recalculations should have the following seven capabilities:

1. Decision based rules
2. Flexible calculation parameters
3. Ability to identify data anomalies (this can sometimes be difficult with live systems)
4. Single source of recalculation – recalculations should be completed in one system as a single source of truth
5. Recalculations being driven by selected parameters rather than being constrained by systems capabilities

6. Ability to complete retroactive calculations based on both data and configuration changes
7. Ability to manage high volumes of data – potentially of every person who has worked in the schools sector for at least the last six years

While there are pros and cons for using the systems that currently hold the data to recalculate, it is likely that stakeholders will perceive a separate tool as producing more independent and reliable results than modelling that occurs in the current and historic payroll systems. Additionally, if an external system were used, recalculation would not need to be delayed by any remediation changes to the current payroll system.

### *Define Recalculation Model Assumptions*

Recalculation assumptions are the key decisions that the Ministry will need to make in order to allow recalculation of past payments in the next phase. There is also an overall requirement that the approach agreed by the Ministry and EPL be consistent with the approaches taken by other state sector employers to address Holidays Act Compliance. In this regard, advice from the Labour Inspectorate and the Leave Pay Working Group will be critical to bring certainty to a range of key decisions that need to be made to calculate past payments. The following list is an initial set of assumptions developed by the Ministry illustrating their understanding of recalculation model requirements as of the date of this report. The project team anticipates that these assumptions will continue to evolve as additional information is learned.

1. Recalculations will be determined from the date at which an initial enquiry occurred, OR the date the decision was made to start this compliance review, OR the date that findings of the review provided conclusive evidence of compliance problems. This date **is referred to as 'Day Zero'**
2. Arrears payments for underpayment will be provided going back 6 years prior to Day Zero, and for underpayments occurring between Day Zero and completion of remediation
3. The Ministry will plan to make a fair and balanced assessment of absent data
4. The Ministry will plan to compensate current and former employees for arrears of underpaid holiday and other leave pay
5. The review will plan to calculate for potential arrears across holiday pay, bereavement leave, alternative holidays, public holidays and sick leave, and consider the interrelationship between different forms of leave, some of which are outside the Holidays Act
6. The Ministry needs to plan to calculate compensation for arrears if required
7. The Ministry will plan for dealing with reconciliation of PAYE tax, ACC, superannuation and social welfare payments
8. The **review will assess schools' capacity to contribute toward past** underfunding. Additionally, the model for calculation will include the

reconciliation of individual payments to employers (schools) to enable repayment by schools

9. The Ministry will determine an approach to dealing with past overpayments once guidance has been received e.g. from MBIE
10. The Ministry will address deductions such as student loans, Teacher Retirement Saving Scheme, Government Superannuation Fund, Kiwisaver payments and union dues in line with advice from the Labour Inspectorate and the Leave Pay Working Group as well as in line with relevant precedents
11. Resolution of underpayments may be provided in two payments: the first on finalisation of new payroll business rules and design / testing of the recalculation model, and the second on completion of all remediation activities (the second payment will capture any additional underpayments between the date of first payment and the date when final remediation of all schools sector payroll compliance issues is achieved)
12. The Ministry will establish an ongoing ability (potentially surviving the project) to respond to current and former employees' **questions about payments and** provide recalculation statements and resolution
13. An avenue for current and former employees to apply for reconsideration / appeal will be considered as part of the Holidays Act Compliance Review Implementation
14. Current and former employees retain the right to individually contest, making it difficult to strike a standardised and legally binding agreement
15. The Ministry will actively engage with unions and sector leaders throughout the remediation and recalculation process and will schedule engagement to align with different phases of the review

#### *Develop Example Recalculation Formulas*

In order to determine the system and data requirements for the recalculation model, the project team developed a set of example recalculation formulas. These are short formulas or processes for correctly calculating leave type payment rates, for example **teachers' annual leave or sick leave payments. The example formulas developed by Deloitte** were discussed with Ministry and EPL subject matter experts and will need to be further refined and agreed in the next phase of the Holidays Act compliance project.

### 5.3.2 Resolution assumptions and limitations

The following assumptions and limitations influence the approach for historic resolution:

*Time required to engage appropriate stakeholders in resolution planning needs to be determined*

The number of stakeholders involved in resolution is high due to the structure of the sector and the role of individual schools as separate employers. As the project team creates the detailed plan for remediation and resolution, they will need to engage a wide range of stakeholders that may have differing positions on the resolution solution. The plan will need to provide sufficient time for this engagement process to ensure the voices of impacted parties are heard.

*Recalculation will need to occur down to the individual employee level in order to provide an accurate resolution solution*

Recalculation will be more accurate if completed on an employee basis rather than by employee group or scenario. While this will lead to better traceability of results, it will require more time and a significant number of calculations.

*Resolution planning needs to recognise the impact of resolution choices and actions on the wider state sector*

While the scope of this project **is the schools' payroll**, the Ministry and EPL recognise that **as the country's largest payroll, decisions made relating to resolution** for the schools sector could have an impact on the wider state sector.

*External organisations will need to define several unknowns prior to the completion of recalculation and remediation*

During this phase of the programme, several unknowns were uncovered that will impact future phases of work. The project team captured these as follows:

- MBIE is currently working to clarify specific areas involved in calculation including defining a week and determining inputs to gross pay. This is due to go out to consultation next year and will impact any resolution position
- Time to develop policy and gain sign-off by key stakeholder groups

Some of these unknowns will also translate into risks, and will need to be captured in the Holidays Act programme Risk and Issue log.

*Recalculation of payments needs to be accurate*

The accuracy of the recalculation is critically important both for the Ministry, schools (who may be liable for back pay), and for employees and their representatives (e.g. unions) who need to have faith in the recalculated value.

### 5.3.3 Resolution high-level solution summary

In parallel with developing the recalculation approach and completing the recalculation, the project team will need to develop the approach to resolution. Assuming that there will be some level of payments made to current and former schools employees; this will involve significant stakeholder engagement and communications. This is critical both to explain the process followed and how the recalculation figure was determined, but also to provide an avenue for individual resolution inquiries.

While the details of the resolution process have not yet been determined, there is a current assumption that at least two payment runs will need to occur. The first to cover historic over and under-payments made, the second wash-up run to cover additional over and under-payments made between the time the initial payment was made and when remediation is complete and the system is compliant with the Holidays Act. A key benefit of this two-stage payment approach is resolution of the bulk of historic over and under-payments as soon as possible.

## 6. Recommended Next Steps

**The Holidays' Act Compliance Review** - Initiation Phase has concluded that there are areas where the schools sector payroll is non-compliant with the Holidays Act. It has also determined that significant more work is required.

Completing this work will be a big programme, requiring a structured approach, robust governance, and extensive stakeholder engagement. Many uncertainties remain and there are many decisions yet to be made. The next steps of the schools sector Holidays Act compliance programme must also proceed consistently with decisions and direction across the rest of the state sector. Input and guidance will be required from the Leave Pay Working Group and any successor groups, MBIE, and the oversight from the Labour Inspectorate.

The recommended next steps involves work across four broad areas:

1. **Stakeholder engagement:** Now that initial analysis has been completed and findings are known, it is appropriate to engage more broadly with stakeholders. It is recommended that key groups be identified as soon as possible. A structured plan to engage with these stakeholders at appropriate stages can then be defined. To progress forward, multiple stakeholders will be interested and have a role. The more constructively stakeholders can engage and work together the sooner the schools sector payroll will be complaint with the Holidays Act, and historic issues of non-compliance can be addressed and resolved.
2. **Closing potential gaps in Holidays Act compliance analysis:** This review has acknowledged that the schools sector payroll is complex and there are a number of limitations and assumptions that need to continue to be closed and validated. Ongoing work will be required to improve understanding of the schools sector Holidays Act compliance issues. It is recommended that this analysis continue in parallel to remediation and resolution activities. As remediation and resolution activities progress they will also identify additional issues and further improve compliance understanding.
3. **Remediation:** Until the schools sector payroll is remediated, it will continue to have areas of non-compliance with the Holidays Act and under and overpayments will continue to perpetuate. The schools sector is not exempt from the Holidays Act, therefore corrective action is required. A holistic approach is recommended within a structured programme involving coordinated remediation of underlying problems including: payroll policy, sector capability and the payroll service and system.
4. **Resolution:** In parallel to remediating the schools sector payroll, to ensure that it is compliant in the future, historic under and over-payments need to be addressed. It is recommended that this activity be undertaken in parallel to

remediation (rather than waiting for remediation to complete). It is likely that remediation will take considerable time to complete. Addressing resolution of historic issues in a timely manner is in the best interests of all parties. Resolution will require many decisions, both in terms of the best way to recalculate payments and decisions on resolution policy.

To manage this work, an integrated programme is recommended to manage all work streams. This should continue to be jointly governed and managed by the Ministry and EPL, under the overall sponsorship of the Ministry.

Ideally the approach and the funding for continuation of the programme needs to be agreed by key stakeholders so that the next stages of the work can commence in early 2017. Figure 11 below, shows at a high-level how the workstreams for forward remediation and resolution and recalculation could progress.

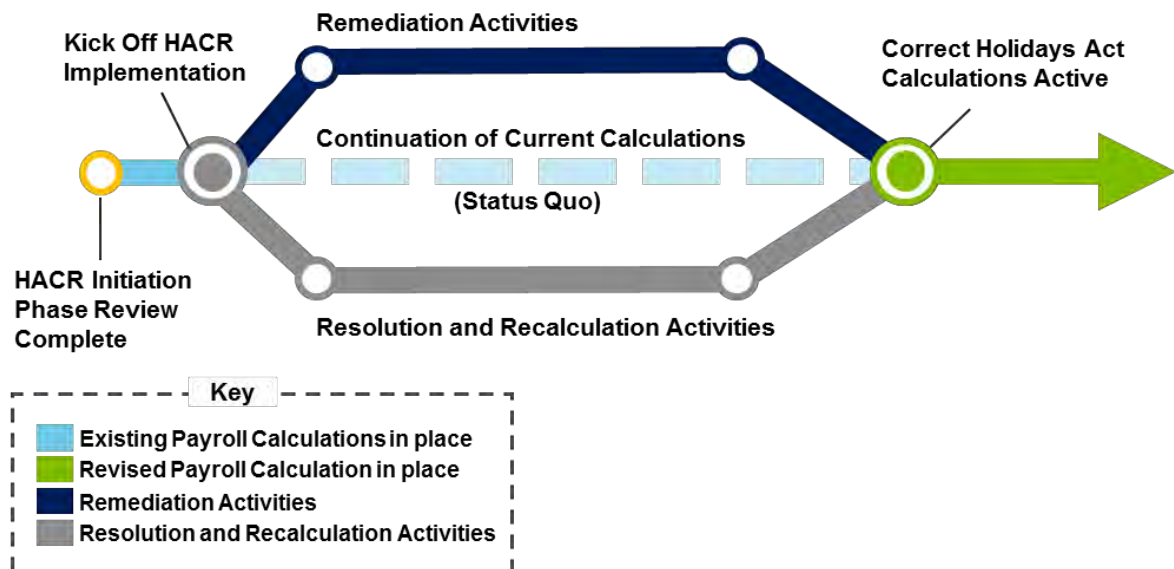


Figure 11: High-level timeline for remediation and resolution

## 7. Appendix One: Glossary

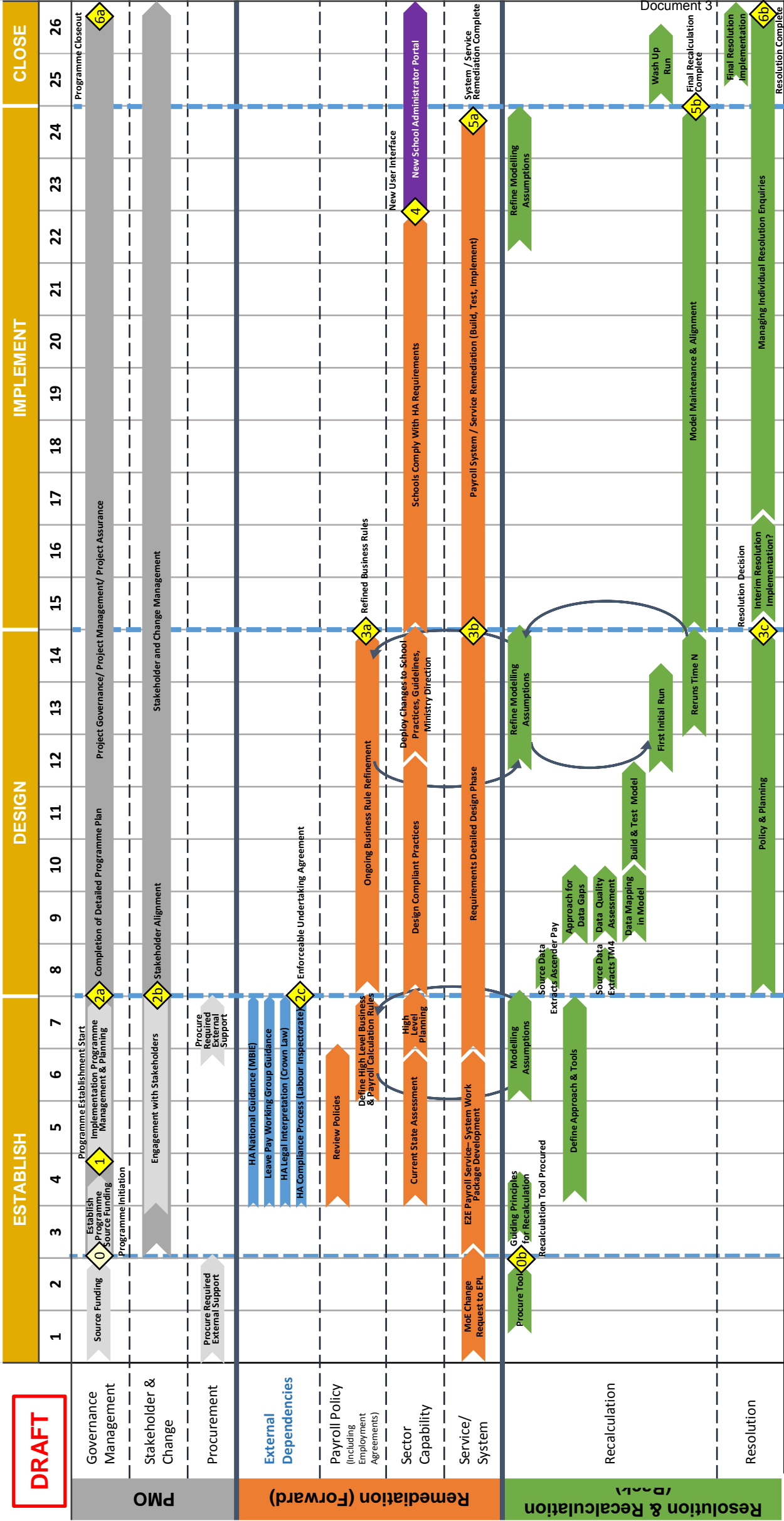
A number of terms have been used throughout the Holidays Act Compliance Review Project. The definitions of these terms as used in the document and throughout the project are as listed below.

Criteria	Definition
4-week OWP formula	4 weeks gross earnings less irregular payments divided by 4.
Accumulator	Payroll system leave calculation determining rate of pay e.g. average weekly earnings.
Annualisation	An employment arrangement allowing employees to have their holiday pay spread across all but one of their fortnightly payments. A final payment at the end of the year factors in any additional holiday pay for additional time worked.
Ascender Pay	EPL's payroll engine used to provide payroll services to the Ministry of Education.
Allowance	Component of an employee's pay in addition to salary for example reflecting extra tasks completed or time worked.
Alternative Holiday	A day off that must be provided if an employee works on a public holiday. For instance, if an employee normally works for 1 hour on Easter Monday, they would be entitled to a full day off with pay at another time.
Annual leave	Employees' yearly entitlement to paid holiday.
Annual leave taken / paid	Annual leave taken by an employee for which payment has been received.
Average daily pay (ADP)	Average daily pay based on the last 52 weeks earnings. This is used when it is not possible or not practicable to <b>determine the employee's relevant daily pay</b> e.g. due to irregular hours worked.
Average weekly earnings (AWE)	This rate is determined by calculating gross earnings over the 12 months prior to the end of the last payroll period before the annual leave is taken, and dividing that figure by 52.

Criteria	Definition
BAPS Leave Types	A term referring to Bereavement Leave, Alternative Holidays, Public Holidays and Sick Leave.
Configuration	A term to describe how a payroll system's software is set up to process information. In this context, configuration means changes to the core technology system.
Cost	All costs for a given solution option, for example, cost to purchase, implement, develop, hire employees, or costs associated with risks e.g. cost of litigation.
Effort	Level of effort required to implement, develop, manually calculate, or mitigate any given solution option.
Employment agreement	Employment agreements contain the terms and conditions of employment for employees.
Governance Group	This project's Governance Group includes senior leaders from the Ministry of Education and EPL who meet regularly to provide direction, plan to meet upcoming challenges and review project outputs.
Gross Earnings	Gross earnings represent all payments that the employer <b>is required to pay the employee under the employee's</b> employment agreement including salary or wages, taxable allowances, holidays, leave and overtime.
Guiding principles	In the review, this term refers to agreed principles that set standards and provide direction in the planning and implementation of remediation activities.
Holiday pay	Payment entitlements received when an employee takes a holiday or is paid out on termination.
Holidays Act Compliance	Determination of whether a given option results in compliance with the Holidays Act. Binary assessment, yes/no determination only.

Criteria	Definition
Interdependencies	Number and level of projects or organisational initiatives whose performance is dependent on a given option. E.g. projects or policies already in development, other problem statements or competition for resources.
Leave pay calculation	Holidays and leave payment rates must be calculated each time an employee goes on leave or holiday as the appropriate payment rate may change even from pay period to pay period. The leave calculation is the series of steps followed that enable this to be achieved.
Leave type	Describes annual holidays, public holidays, sick leave, bereavement leave, parental leave and other types of leave that employees are entitled to based on the Holidays Act and their employment agreement.
Non taxable	All non-taxable payments that the employer is required <b>to pay to the employee under the employee's</b> employment agreement including salary/wages, allowances, holidays, leave and overtime.
Ordinary Hours	Ordinary hours in context of the AWE calculations are the hours that are <b>derived from the employee's work</b> schedule (planned working time). The sum of these hours over one year is used to calculate the hourly rate of AWE as well as the 4-Weeks formula.
Ordinary weekly pay (OWP)	This rate represents everything an employee is normally paid weekly, including regular allowances, regular productivity or incentive-based payments, the cash value of board or lodgings and regular overtime.
Payroll system	The means of calculating the amount owed to employees based on factors such as the time they worked, their hourly wages or salaries, and whether they took vacation or holiday time during the pay period.
Policy	Instructions that provide direction and guidance to the education sector.
Problem statement	A simple and discrete statement that defines a single element contributing to non-compliance with the Holidays Act.
Recalculation formula	Short formula or process for correctly calculating a <b>certain type of leave, for example teachers' annual leave</b> or sick leave payments with regard to what was actually paid to the employee
Recalculation assumptions	A series of decision points based on partial or missing information known as of a point in time to help calculate pay. Assumptions may be updated or changed as additional information becomes available.

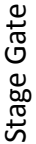
Criteria	Definition
Relevant Daily Pay (RDP)	Method of payment for payment of Public Holidays, Alternative Holidays, Sick Leave and Bereavement Leave. RDP is the amount the employee would otherwise have earned if they had worked on that day, and includes productivity or incentive-based payments, overtime payments and the cash value of board or lodgings.
Remediation	The action of remedying the causes of non-compliance from a forward looking perspective, for example through reconfiguring the payroll system to enable it to correctly calculate and pay holiday pay.
Resolution	The action of resolving historic under and over-payments from past non-compliance from a backward looking perspective.
Scenario testing	Hypothetical situations used test the payroll system and confirm its functionality. For example, A secondary school principal taking bereavement leave.
Schools Sector	In the context of this review, this term refers to the state and state integrated schools and their boards of trustees that employ teachers, principals, specialist and support staff in schools, and special residential staff.
Sector Capability	<b>School Principal/Administrator's own ability</b> - through proper processes and through appropriate communications and training – to deliver a compliant payroll service.
Subject matter expert (SME)	A person who is an authority in a particular area or topic.
System	The technological engine that processes and calculates schools sector pay including requirements and configuration.
Taxable allowances	<b>Components of an employee's pay in addition to salary</b> or wages that are subject to taxation, including some accommodation allowances and meal allowances.
Termination	An employee's departure from the organisation. Termination may be voluntary on the employee's part, or it may be at the hands of the employer. When terminated, employees may be entitled to a payment of their existing leave balances.



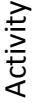
Milestone/Decision Point



Feedback




Stage Gate



Activity

## BRIEFING NOTE: In confidence: Schools payroll

<b>Date:</b>	10 February 2017	<b>Priority:</b>	High
<b>Security Level:</b>	Sensitive	<b>METIS No:</b>	1045529
<b>Approved by:</b>	Kim Shannon Head of Education Infrastructure Service	<b>DDI:</b>	 s 9(2)(a) OIA

### Purpose

1. This paper responds to your initial questions relating to the schools payroll that arose in a briefing with the Ministry earlier this week. It provides information on the programme of work to address non-compliance with the Holidays Act 2003 and the schools payroll sustainability investment Budget 17 bid. It also includes a diagram showing schools payroll service provision arrangements.
2. You have also received a briefing outlining the other Education Infrastructure Service Budget 17 bids.
3. We have continued to provide fortnightly payroll performance reporting since the change in ministerial responsibility for the schools payroll. We would welcome feedback on your preferences for reporting on payroll operations.

### Holidays Act compliance review

4. Compliance with the Holidays Act 2003 is an issue that employers across New Zealand in both private and public sectors are grappling with. The Holidays Act introduced a number of complex prescriptive requirements for assessing holiday pay that have proved difficult for some payroll providers to implement. This has been particularly problematic where employees have fluctuations in the hours they work, or receive additional pay on top of their normal wages, as is common in the education sector.
5. In early 2016, the Ministry and Education Payroll Limited (EPL) identified the need for a structured approach to investigate the nature and extent of non-compliance in the schools payroll. Deloitte was selected to lead and facilitate this review. Deloitte reported in December 2016 identifying significant areas of non-compliance in the schools payroll, and provided a high level 26 month implementation plan to address this.
6. The implementation exercise is complex and time consuming because of:
  - a. the characteristics of the education workforce noted above;
  - b. the need to work with around 2,500 schools, which are effectively individual employers with varying levels of payroll expertise;
  - c. the numbers of employees (both current and former) potentially affected (around 120,000 in some areas of non-compliance);
  - d. the need to be certain that the calculation methodology for assessing resolution payments to affected school employees produces demonstrably accurate results that can be readily explained to affected parties; and
  - e. the need to ensure that the timing for paying resolution and achieving system compliance aligns so that no further non-compliance arises.

7. In order to get a robust estimate of resolution payments to affected school employees, the Ministry will need to make decisions on a set of calculation assumptions that feed into the development of a calculation model. These include, for example, how to calculate potential arrears across holiday pay and other forms of leave, dealing with third party payments and deductions, and managing data unavailability, including the role of schools in this situation.
8. Once all of the factors are known, we will design and test the calculation model. The model will then be used to identify the costs of resolution. These costs will become firmer as we work through the different phases of the work plan. By July 2017 we would expect to have the design of calculation methodologies, processes and systems completed. [REDACTED]  
[REDACTED] s 9(2)(f)(iv) OIA
9. The other cost associated with the Holidays Act compliance review relates to system and process remediation to ensure the payroll service is compliant going forward. [REDACTED]  
[REDACTED] s 9(2)(f)(iv) OIA
10. We are finalising a more detailed briefing on the Holidays Act compliance review and this will be available shortly.

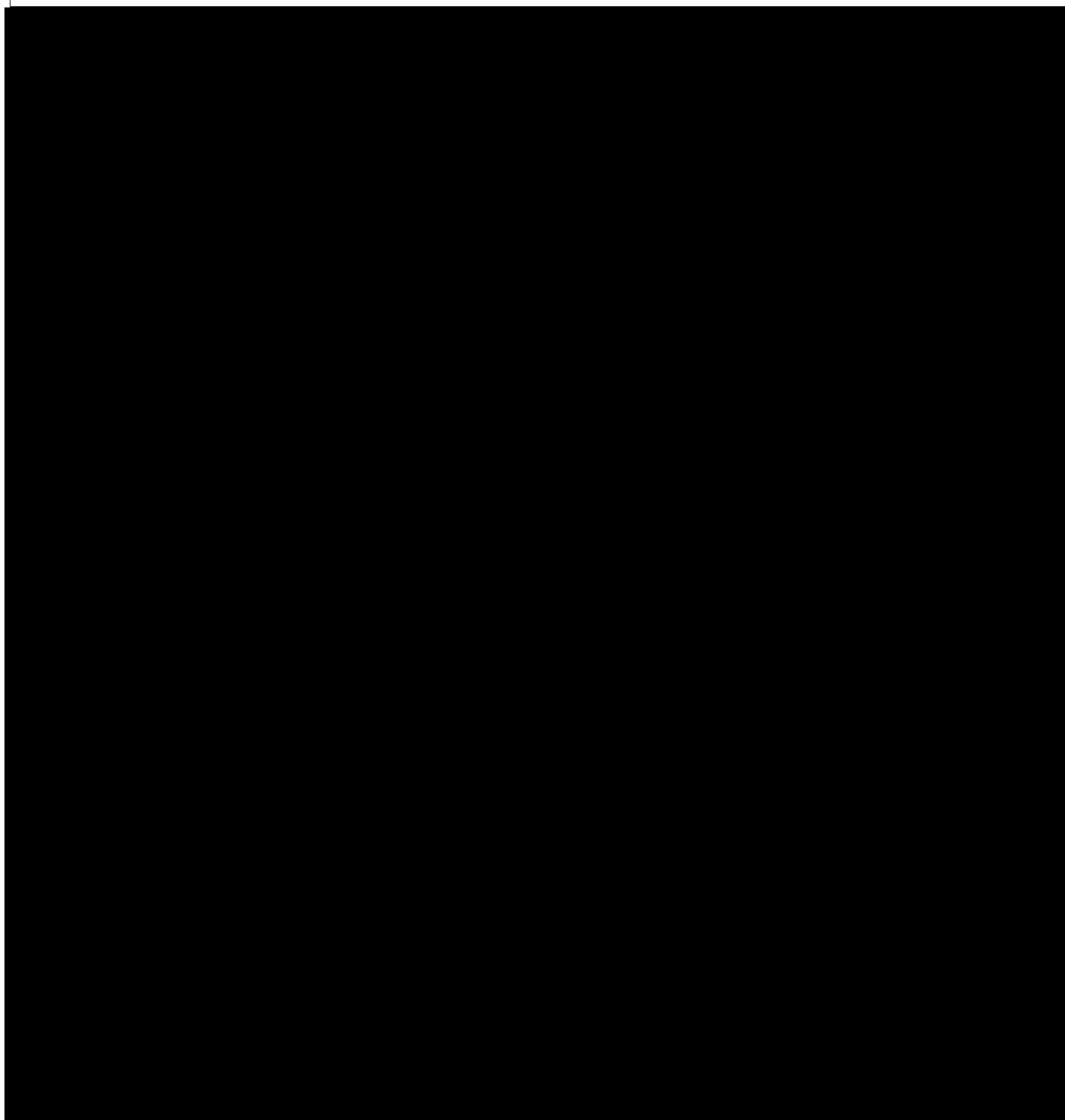
**Schools payroll sustainability investment Budget 17 bid**

11. [REDACTED]  
[REDACTED] OUT OF SCOPE
12. The table below provides a summary of the major categories of funding sought.

s 9(2)(f)(iv) OIA

Holidays Act Work Programme	2016/17	2017/18	2018/19	2019/20	2020/21	4 year total	6 Out years to 2026/27	10 Year Total
Discovery*	0.6	-	-	-	-	0.6	-	0.6
Establish *	2.0							
Design & Implement	-							
<b>Total - Holidays Act Work Programme</b>	<b>2.6</b>	<b>8.7</b>	<b>6.1</b>	<b>-</b>	<b>-</b>	<b>17.4</b>	<b>-</b>	<b>17.4</b>

\* The Ministry is currently investigating funding the Discovery and Establish phases out of existing funds so that the work can continue in early 2017.

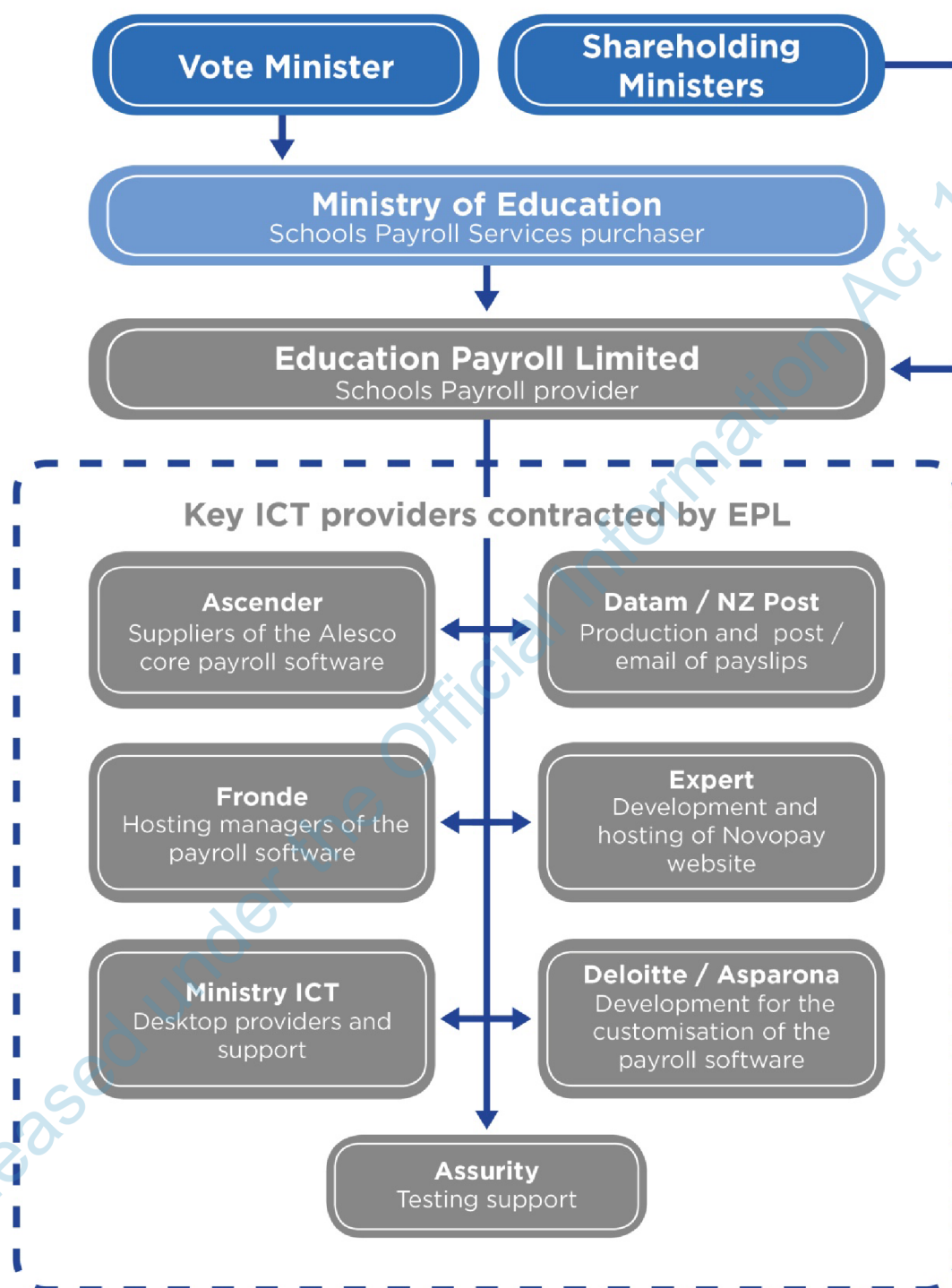


OUT OF SCOPE

### Schools payroll service provision arrangements

13. The schools payroll is provided by Education Payroll Limited (EPL) on behalf of the Ministry. The contract for services (the Services Agreement) is managed by the payroll group within the Education Infrastructure Service. The payroll group works closely with the Ministry's employment relations and resourcing groups to facilitate the payroll function.
14. EPL itself contracts a number of core ICT-related services from other organisations. The diagram below provides a high-level picture of current arrangements.

## Schools Payroll Service Provision



## Shareholding Ministers

Schools Payroll Services purchaser

Schools Payroll provider

## Key ICT providers contracted by EPL

## Suppliers of the Alesco core payroll software

Production and post /  
email of payslips

Hosting managers of the payroll software

Development and hosting of Novopay website

## Desktop providers and support

Development for the customisation of the payroll software

## Testing support

## Education Report: Holidays Act Compliance Review Update

### Executive Summary

1. The schools payroll, at \$4.6 billion a year, is the largest single payroll in New Zealand and pays 120,000 employees annually. Responsibilities are spread across the Ministry, Education Payroll Limited (EPL) and 2,500 school Board of Trustee employers.
2. Holidays Act (HA) compliance is an issue that employers across New Zealand in both private and public sectors have been grappling with over recent years.
3. In early 2016, the Ministry and EPL identified the need for a structured review to investigate the nature and extent of any non-compliance with the HA provisions in the schools payroll and commissioned Deloitte to complete the Holidays Act Compliance review (HACR).
4. In December 2016, Deloitte delivered a report which identified significant areas of non-compliance with the HA provisions such as:
  - i. **Leave type findings:** relating to whether the correct rate types are applied to calculate each type of leave. For example, whether ordinary weekly pay (OWP) and average weekly earnings (AWE) are being correctly applied for annual leave.
  - ii. **Accumulator findings:** relating to whether the rate types themselves are being correctly calculated. For example, whether AWE is correctly calculated.
  - iii. **Additional findings:** those that did not fall into either leave type or accumulator findings, but are additional areas where the schools payroll may be non-compliant with the Act. Examples include non-compliance driven by system configuration, administrative practices, employee agreements and policy, and inconsistent leave recording practices by schools and gaps in their record keeping.
5. Deloitte also prepared an implementation work programme to:
  - i. Implement system and process remediation changes to ensure that the payroll is compliant in future.
  - ii. Calculate and deliver resolution to affected staff to address past non-compliance.
6. Because of the complexity and scale of the exercise, and the necessity to produce accurate and verifiable results, we expect the implementation to require the full 26 months forecast for the programme of work.
7. [REDACTED] s 9(2)(f)(iv) OIA
8. [REDACTED] s 9(2)(f)(iv) OIA
9. Simultaneous implementation of Holidays Act compliance and the Schools Payroll Sustainability programme (subject to Budget approval) will involve significant change across the education payroll sector. We are developing coordinated governance, risk management and stakeholder engagement arrangements to ensure smooth implementation and optimal use of resources.

10. Comprehensive communication and stakeholder engagement planning is essential for the success of the programme. It is important that employees, employee representatives, education payroll sector leaders and schools understand and support the methodology for calculating resolution and the measures to ensure that the payroll service is compliant going forward. We need to engage external stakeholders in the near future on the findings and the proposed work programme.
11. We will provide you with regular updates on the progress of the HACR implementation work programme including:
  - a. governance and risk management arrangements
  - b. communication and stakeholder engagement activities
  - c. recalculation model assumptions and the process to assess resolution costs
  - d. system and process remediation changes to ensure forward compliance
  - e. arrangements to manage HACR implementation within the Schools Payroll Sustainability programme implementation (subject to Budget approval).
12. The scale, complexity and profile of the schools payroll HACR, and the need to engage a number of stakeholder groups, may result in interest about the level of compliance in other education and state sector payrolls. The State Services Commission will be providing high level updates on Holidays Act compliance progress across state payrolls to the Committee of Ministers of State Sector Employment Relations (CMSSER) on a regular basis this year. We will keep you informed of any SSC Holidays Act updates that go to CMSSER.

## Recommendations

---

We recommend that you:

- a. **note** that in December we received a report from Deloitte which identified significant areas of non-compliance with the Holidays Act (HA) provisions and that we are now considering a 26 month implementation plan to address non-compliance issues.
- b. **note** that we will provide you with regular updates on the progress of the HACR implementation work programme including:
  - i. governance and risk management arrangements
  - ii. communication and stakeholder engagement activities
  - iii. recalculation model assumptions and the process to assess resolution costs
  - iv. system and process remediation changes to ensure forward compliance
  - v. arrangements to manage HACR implementation within the Schools Payroll Sustainability programme implementation (subject to Budget approval)
- c. **note** that the State Services Commission will be providing high level updates on Holidays Act compliance progress across state payrolls to the Committee of Ministers on State Sector Employment Relations (CMSSER) on a regular basis this year.
- d. **note** that we need to engage external stakeholders in the near future on the findings and the proposed work programme.

Kim Shannon  
**Head of Education Infrastructure Service**

NOTED

Hon Nikki Kaye  
**Associate Minister of Education**

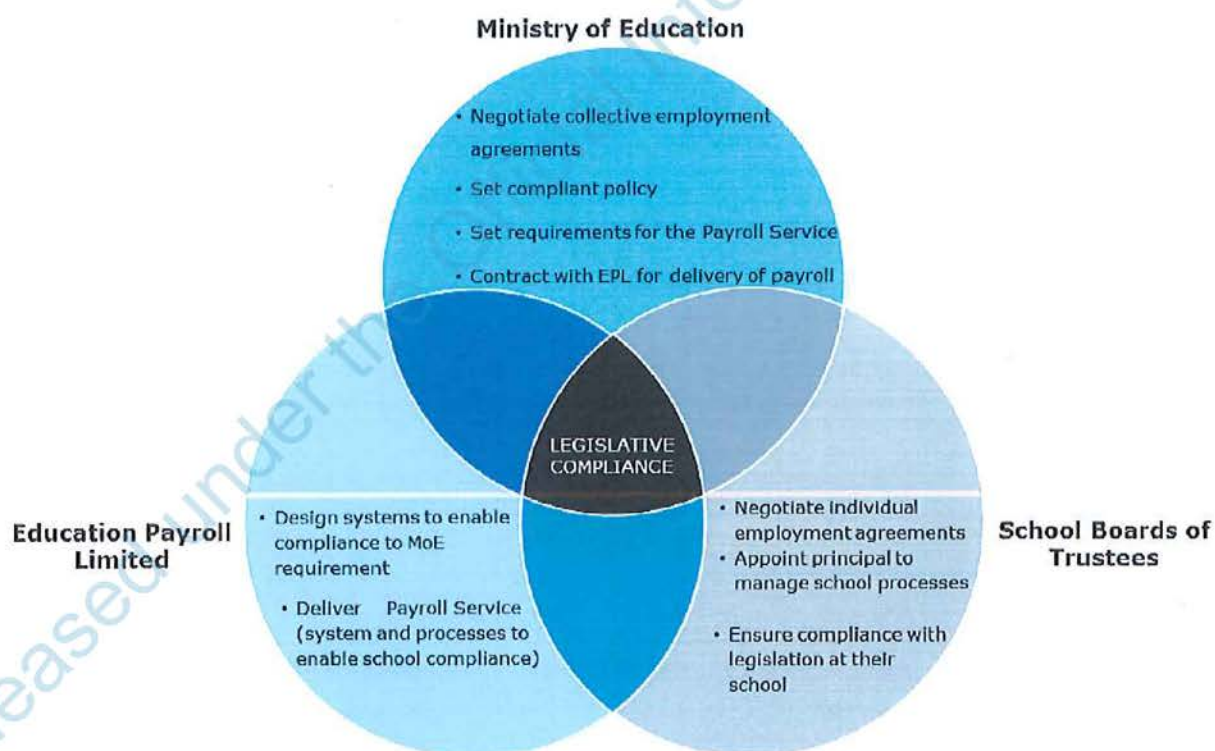
\_\_\_/\_\_\_/\_\_\_

## Purpose

1. On 25 November 2016 we provided the Minister of Education and the then Minister Responsible for Novopay with a preliminary update on the Deloitte review of Holidays Act compliance within the schools payroll [METIS 1037128 refers]. We committed to provide a further update following receipt of a final report from Deloitte in December.
2. This report:
  - a. discusses the non-compliance findings that the Deloitte review has identified in the schools payroll
  - b. outlines the next steps required to:
    - i. provide resolution for staff who have received non-compliant payments in the past
    - ii. implement remediation changes to systems and processes to ensure the payroll is compliant going forward.

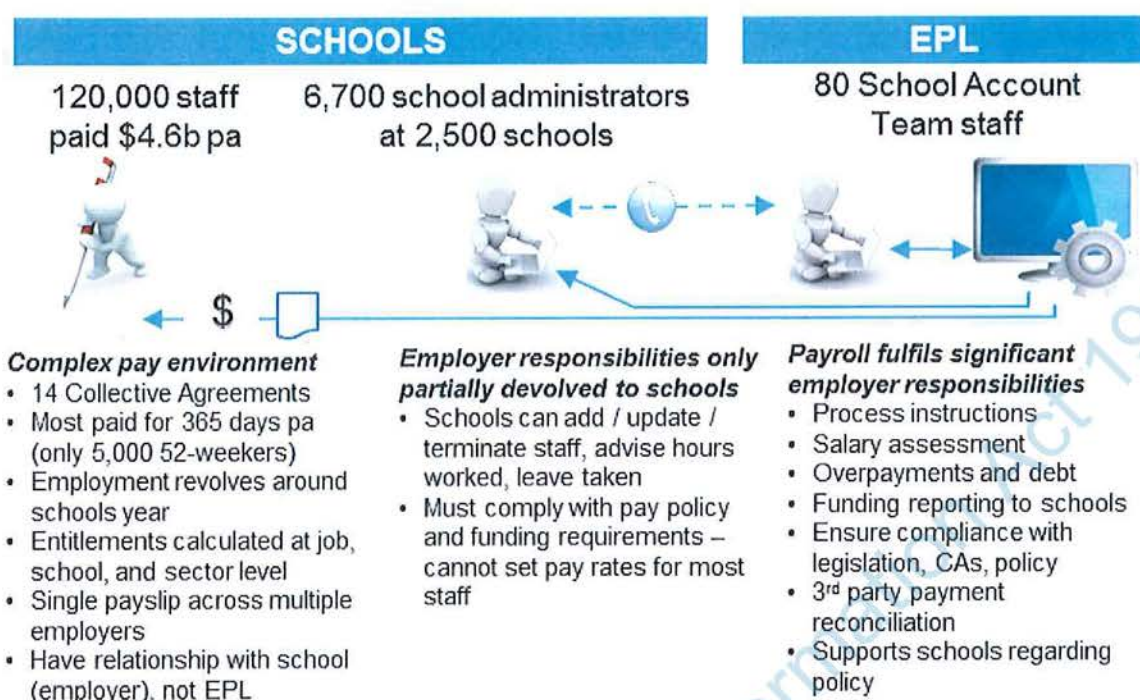
## Background

3. The schools payroll, at \$4.6 billion a year, is the largest single payroll in New Zealand and involves 120,000 employees annually. Responsibilities are complex and spread across three primary entities, namely the Ministry, EPL and almost 2,500 School Boards of Trustee employers, as indicated in the chart below<sup>1</sup>.



<sup>1</sup> Source Deloitte School Sector Payroll Holidays Act Compliance Review Initiate phase – Summary Paper - 6 December 2016

4. More detail on the role of schools and EPL in payroll delivery is provided in the diagram below<sup>2</sup>.



5. Section 89 of the Education Act requires the Secretary for Education to ensure that a payroll service is established and maintained. As such, responsibility for ensuring that the schools payroll is compliant with the Holidays Act rests with the Secretary<sup>3</sup>.
6. HA compliance is an issue that employers across New Zealand in both private and public sectors have been grappling with over recent years. The Holidays Act 2003 introduced a number of complex prescriptive requirements for assessing holiday pay that have proved difficult for payroll providers to practically implement. The greatest risk appears to be where employees have fluctuations in the hours they work, or receive additional pay on top of their normal wages, as is common in the schools sector. A timeline outlining developments since the passing of the Holidays Act is attached as Appendix 1.
7. In recent years the Labour Inspectorate, the agency charged with ensuring compliance with the Act, has taken an active stance in engaging employers to ensure compliance. In September 2016 the Inspectorate reported completing 55 audits and having issued 20 enforcement undertakings, 22 improvement notices and 2 referrals to the Employment Relations Authority. The Inspectorate currently has identified 34 employers for audit. It is also operating a watching brief on a number of other employers who are undertaking self-directed HACR exercises. The schools payroll is within the watching brief.
8. In March 2016, in response to information on HA compliance provided by the State Services Commission and the Labour Inspectorate to all state sector employers, the Ministry and EPL identified the need for a structured approach to investigate the nature and extent of any non-compliance with the HA in the schools payroll. This resulted in the Ministry and EPL initiating a

<sup>2</sup> Source Deloitte School Sector Payroll Holidays Act Compliance Review Initiate phase – Summary Paper - 6 December 2016.

<sup>3</sup> School sector employers including Boards of Trustees and Early Childhood associations also have a responsibility to ensure staff receive pay which complies with legal requirements.

review of HA compliance within the schools payroll<sup>4</sup>. In June 2016 Deloitte was selected to lead and facilitate this review.

### Identifying non-compliance issues

---

9. Deloitte completed the HACR in December and provided a summary findings report and a high level implementation roadmap. A copy of the Executive Summary of the *School Sector Payroll Holidays Act Compliance Review Initiate Phase – Summary Paper* is attached as Appendix 2. We can provide a copy of the full report if you require it.
10. The summary report confirms that we have significant non-compliance issues that impact on potentially 120,000 school staff, both current and past. Findings of non-compliance are summarised and divided into three categories:
  - a. **Leave type findings:** relating to whether the correct rate types are applied to calculate each type of leave. For example, whether ordinary weekly pay (OWP) and average weekly earnings (AWE) are being correctly applied for annual leave.
  - b. **Accumulator findings:** relating to whether the rate types themselves are being correctly calculated. For example, whether AWE is correctly calculated.
  - c. **Additional findings:** findings that did not fall into either leave type or accumulator findings, but are additional areas where the schools payroll may be non-compliant with the Act. Examples include non-compliance driven by system configuration, administrative practices, employee agreements and policy, and inconsistent leave recording practices by schools and gaps in their record keeping.
11. Issues with HA assessments will also potentially affect calculations of bereavement leave, alternative holidays, public holidays and sick leave and will have flow on effects in the calculation of maternity leave, redundancy, social security benefits and deductions, for example superannuation and student loans.
12. The issues are materially the same for Datacom (pre-August 2012), Talent2 (2012 – 2014) and EPL (2014 to present) payroll service delivery.
13. A table identifying likely school employee populations affected by HA non-compliance is attached as Appendix 3.
14. Completion of the HACR has provided the foundation to start the development of remediation and resolution solutions, where:

**Remediation** refers to changes to make the payroll compliant in future, so that every staff member receives holiday and leave entitlements that are accurate and comply with the requirements of the HA. To achieve this we will need to agree business requirements and policy interpretation, payroll system changes and process redesign, school leave recording systems and practice, and build school capability

**Resolution** refers to recalculations and payments to compensate staff who have received non-compliant holiday and leave payments in the past. To achieve this we will need to design, build and test the recalculation model to determine the total amount of past non-compliant payment and the impact on individual employees (either under or over payment) and make payments to present and past employees.

---

<sup>4</sup> There are a number of other payrolls within the broad education sector including the Ministry payroll, NZQA, ECE, kindergarten, tertiary and private providers. This report addresses schools payroll compliance issues alone.

## Implementing compliance

15. Deloitte has prepared a high level implementation plan for the design and implementation of a payroll service compliant with the HA. A copy of the plan is attached as Appendix 4.
16. The aim was to design an implementation plan which will allow the Ministry to meet the following objectives:
- The payroll service provided by EPL is compliant with the Holidays Act 2003 as soon as possible
  - Payroll policies and processes are in place across the education sector to support ongoing compliance with the Holidays Act 2003 as soon as possible
  - Polices, processes and systems are rationalised to reduce ongoing costs of compliance and operations
  - To provide advice on the extent of any appropriate compensation due to state and state integrated school employees.
17. The plan provides for the parallel development of remediation and resolution activities. It identifies two consecutive phases over a period of 26 months before implementation is complete.

<b>Compliance review - analysis phase</b> (completed Dec 2016)	<b>Implementation - establishment phase</b> (start early 2017)	<b>Implementation - design, test and deliver phase</b> (start when establishment complete)
6 months	6 months	20 months
<ul style="list-style-type: none"> <li>Identified significant non-compliance</li> <li>Provided high level implementation plan</li> </ul>	<ul style="list-style-type: none"> <li>Set up governance arrangements</li> <li>Set up communications and stakeholder engagement</li> <li>Assess sector capability and recruit expertise</li> <li>Define policy and calculation assumptions to address past non-compliance</li> </ul>	<ul style="list-style-type: none"> <li>Design, build and test resolution calculation and remediation solutions</li> <li>Calculate individual resolution to address past non-compliance</li> <li>Calculate the total cost to address and pay resolution</li> <li>Develop sector capability to ensure payroll is compliant in future</li> </ul>

18. Under the Employment Relations Act employees can seek recovery of unpaid holiday pay. The Labour Inspectorate may also take proceedings on behalf of an employee to recover unpaid holiday and leave pay. For this reason the HACR needs to be able to produce transparent results that can be explained to individuals and their representatives.

19. The implementation exercise will be complex and time consuming because of the:
- a. Characteristics of the education workforce
  - b. Need to work with around 2,500 schools, which are effectively individual employers with varying levels of payroll expertise
  - c. Numbers of employees (both current and former) potentially affected (around 120,000 in some areas of non-compliance)
  - d. Need to be certain that the calculation methodology for assessing resolution payments to affected school employees produces demonstrably accurate results that can be readily explained to affected parties
  - e. Need to ensure that the timing for paying resolution and achieving system compliance aligns so that no further non-compliance arises.
20. Because of the complexity and scale, we need to thoroughly test the recalculation model to be certain it produces accurate results. This phase will require the Ministry to make decisions on a set of fundamental recalculation model assumptions. A list of these assumptions identified in the Deloitte report is attached as Appendix 5. Further analysis of millions of pay transactions is also required to weigh up the benefits, costs and risks associated with various resolution delivery options.
21. The plan envisages a potential two-step resolution implementation with an interim back payment, followed by a final back payment. This contingency will allow adjustments to be made if any refinements of modelling assumptions are required, or if there is any unforeseen delay in the timing of future system compliance that may require additional resolution. Further analysis and advice will be prepared on this and alternative resolution options.

#### Labour Inspectorate role

---

22. The Labour Inspectorate has responsibility for overseeing compliance with employment-related law. We discussed our proposed approach with the Inspectorate and they have indicated that the approach the Ministry is proposing to undertake to ensure compliance appears sound and comprehensive. We will continue to liaise with the Inspectorate at regular intervals to ensure that our approach aligns with their expectations for compliance with the HA. They are expecting a briefing shortly on the review findings and proposed implementation plan.

#### State sector alignment

---

23. HA compliance issues are being faced by a number of state sector employers and we have been working with a Leave Pay Working Group of state sector employers. We want to ensure that our approach is consistent with generally accepted approaches being taken by state sector agencies and that we do not create precedents or surprises for other departments. While we are confident that the high level implementation plan provides a sound basis to proceed to implementation, there are still a number of common questions where we consider there is scope for an agreed state sector position. We will continue to work with central agencies to keep them informed of our progress and to determine whether any fine tuning of our plan may be required to ensure consistent approaches.

## Establishing governance arrangements

24. A priority is the development of integrated governance, risk management and stakeholder engagement arrangements to oversee the establishment stages of both the work programme to implement HA compliance and the EPL Schools Payroll Sustainability business case implementation (subject to Budget approval).

OUT OF SCOPE

25. Our earlier reports on HA compliance [METIS 1037128] [REDACTED]

OUT OF SCOPE

[REDACTED] noted that HA compliance changes to payroll delivery systems are likely to coincide with the delivery of improvements associated with implementing the EPL Schools Payroll Sustainability programme. For this reason it will be important that the two developments are closely aligned.

## Financial implications

26. As noted in the 25 November report [METIS 1037128], there are two main areas of resourcing that need to be considered in relation to the review:

- a. Remediation cost of completing the review and implementing changes to ensure systems and processes are compliant going forward
- b. Resolution cost to meet past non-compliant payments.

*Remediation Cost of completing the review and implementing changes to ensure payment systems and processes are compliant going forward*

27.

[REDACTED]

s 9(2)(f)(iv) OIA

28.

[REDACTED]

s 9(2)(f)(iv) OIA

29. A breakdown of the cost of each phase across the three years is as follows:

Holidays Act Work Programme	2016/17 (\$000)	2017/18 (\$000)	2018/19 (\$000)	Total (\$000)
Discovery	600	-	-	600
Establish	2,000	[REDACTED]		[REDACTED]
Design and Implement	-			
<b>Total</b>	<b>2,600</b>	<b>8,700</b>	<b>6,100</b>	<b>17,400</b>

s 9(2)(f)(iv) OIA

s 9(2)(f)(iv) OIA

30. A forecast breakdown of the funding for each phase of the work is as follows:

	<b>Discovery (completed) (\$000)</b>	<b>Establish (\$000)</b>	<b>Design and Implement (\$000)</b>	<b>Total (\$000)</b>
Compliance review – determine extent of non- compliance	600	-	-	600
[REDACTED]	-	[REDACTED]	[REDACTED]	[REDACTED]
	-			
	-			
	-			
	-			
	-			
<b>Total</b>	<b>600</b>	<b>2,300</b>	<b>14,500</b>	<b>17,400</b>

s 9(2)(f)(iv) OIA

s 9(2)(f)(iv) OIA

s 9(2)(f)(iv) OIA

31. Deloitte has estimated a team of around [REDACTED]

The skills required include:

s 9(2)(f)(iv) OIA

Specialist Resource	Non-payroll Subject Matter Expert resources including legal, employment relations, communications and engagement, etc.
Subject Matter Expert Resource	Payroll Subject Matter Expert resources, including sector capability
EPL payroll	EPL payroll delivery expertise
Programme/Project Resource	Resource involved in management of the programme and projects including change management, project/programme managers, and administration

32. Agreement on the funding is an essential first step in the 26 month plan to implement a compliant system. Any delay will extend the timeframe to achieve compliance. We have however, begun preparations, with programme governance and stakeholder engagement planning priorities.

33. Because of the coincidence with the implementation of systems and process changes related to the HA and the EPL Schools Payroll Sustainability programme, funding for HA related system and process changes will be sought as a component of the Schools Payroll Sustainability Investment package. Subject to Budget approval, the costs of remediation will be part of an integrated work programme covering the two work areas.

34. [REDACTED]

s 9(2)(f)(iv) OIA

#### *Communication and stakeholder engagement*

35. We have begun work on the development of a detailed communication and stakeholder engagement plan that will identify the engagement needs of the range of stakeholders to ensure that they are informed and engaged at the right time through the work programme. Given that HACR and Schools Payroll Sustainability implementation will proceed in parallel, an integrated communications and stakeholder plan will be required to ensure that key groups are informed at the appropriate time and that there is not confusion with multiple approaches being made to the same groups.

#### *Schools engagement*

36. Addressing non-compliance issues will require significant changes in payroll practices for schools. Until we received the Deloitte report in December, which identified inconsistent leave recording practices, it was difficult to start active involvement of schools in the review.

37. As we move into the implementation phases it will be important that Boards of Trustees, as the legal employers of school staff, understand and support the compliance implementation process. The remediation stream will also involve school administrator representatives to test and provide feedback to ensure that proposed changes to systems are user friendly and deliver a compliant payroll.

*Employee representatives*

38. Because individual employees will have a right to legally challenge results, the methodology needs to be able to produce transparent results that can be explained to individuals and their representatives. It will be important that they understand and accept the integrity of the recalculation methodology. Employee representatives will have an important role in communicating and supporting the process to current and past employees.
39. We have undertaken to keep the unions apprised of HA compliance developments. During 2016 we provided updates on the process that we were taking to determine the extent of HA payroll compliance. We have not discussed the review findings, however there is a strong expectation that we will do so shortly.

*Education sector engagement*

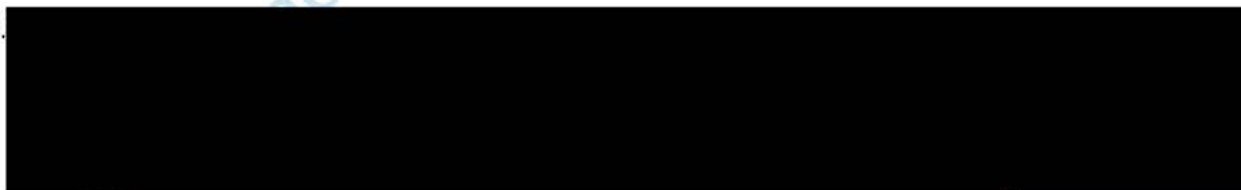
40. While this paper focuses only on the schools payroll HACR, HA compliance is an issue with wider education sector impacts. The education sector has a number of payrolls including the Ministry payroll, NZQA, ECE, kindergarten, tertiary and private education providers, and the Education Council. Media communication and stakeholder engagement regarding the schools payroll HACR may result in interest about the level of compliance of the other sector payrolls. We will consider how best to work with other education sector payrolls as the HACR programme evolves.

*Labour Inspectorate and state sector*

41. As noted above, we want to ensure that our approach is consistent with legal requirements and generally accepted approaches being taken by state sector agencies. We have had regular contact with the Labour Inspectorate and the state sector Leave Pay Working Group. We will continue to need regular contact with these groups to ensure that our approach addresses the legal requirements and aligns with general expectations for state sector agencies.
42. The scale, complexity and profile of the schools payroll HACR, and the need to engage a number of stakeholder groups, may result in interest about the level of compliance in other state sector payrolls. We will brief State Services representatives on our progress. The State Services Commission will be providing high level updates on Holidays Act compliance progress across state payrolls to the Committee of Ministers on State Sector Employment Relations (CMSSER) on a regular basis this year.

*Related issues*

43.



OUT OF SCOPE

## Appendix 1 High level timeline of Holidays Act developments

Year	HA developments <sup>6</sup>
<b>2003</b>	<p>Holidays Act 2003 replaced 1981 Act. The Act came into force in 2004.</p> <p>Act clarified employer obligations and employee holiday leave entitlements and also specified assessment process requirements.</p> <p>Prior to this there was some flexibility in the process for establishing holiday pay entitlements because teacher holiday pay entitlements generally exceeded the Holidays Act 1981 entitlements.</p> <p>Datacom responsible for schools payroll delivery.</p>
<b>2008</b>	<p>Contract signed for Talent2 to replace Datacom delivery of the schools payroll.</p> <p>2008 to 2012 Talent2 develops Novopay.</p>
<b>2012</b>	<p>Talent2 takes responsibility for schools payroll delivery.</p>
<b>2012 - 14</b>	<p>Problems with payroll delivery after Novopay 'go live'.</p> <p>Growing evidence that employers are encountering problems with complex Holidays Act (HA) requirements.</p> <p>The Labour Inspectorate commences a programme of payroll audits targeting large at risk employers.</p> <p>Talent2 has limited ability to determine HA compliance when core delivery is under pressure.</p> <p>Review of NZ Police payroll by Labour Inspectorate reveals significant Holidays Act compliance (HAC) problems.</p> <p>Education Payroll Ltd (EPL) Crown company established. Takes over payroll delivery.</p>
<b>2015</b>	<p><b>April 2015</b></p> <p>Guidance prepared by the State Services Commission and the Labour Inspectorate for Public Service agencies and Crown entities to ensure awareness of HA compliance requirements.</p>
	<p><b>December 2015</b></p> <p>NZ Police begins HAC resolution payments.</p>
<b>2016</b>	<p><b>February 2016</b></p> <p>Labour Inspectorate sends out Pre-Audit Information Request in respect of HA requirements – their assessment finds significant issues.</p> <p><b>7 March 2016</b></p> <p>MBIE announces a review of its own payroll. Notes problems with leave calculations that may affect many employees.</p> <p><b>8 March 2016</b></p> <p>NZ Police HAC resolution payments receive media coverage.</p> <p>Minister of Finance warns that HA problems could be widespread affecting both public and private sector employers. Asks all public sector CEs to check their payroll</p>

<sup>6</sup> Sources : State Services Commission and Labour Inspectorate materials, NZ Police website information, news articles and media releases

	<p>systems.</p> <p>The State Services Commission asks agencies to identify payroll providers and sets up cross agency working group. Agencies asked to provide progress update on potential non compliance issues. State Services Commission and Crown Law consolidate legal advice relating to HAC.</p> <p><b>29 March 2016</b></p> <p>EPL Aide Memoire [METIS 990696] presents an indicative range of costs related to currently 'known' areas of HA non-compliance since Novopay 'go live'.</p> <p>The Ministry and EPL agree a structured review is required to determine whether there is a problem with the schools payroll.</p> <p><b>30 March 2016</b></p> <p>Minister for Economic Development announces that thousands of teachers may be out of pocket due to Holidays Act non-compliance.</p> <p><b>April 2016</b></p> <p>Minister for Workplace Relations announces that the Government will not be changing the laws around Holiday pay.</p> <p>Minister for Economic Development confirms that the Labour Inspectorate is responsible for ensuring compliance.</p> <p><b>May 2016</b></p> <p>State Services Commission and Labour Inspectorate promote connected approach to HAC and set up Leave Pay Working group.</p> <p><b>June 2016</b></p> <p>Deloitte contracted to undertake a review of the schools payroll compliance with the Holidays Act.</p> <p><b>9 December 2016</b></p> <p>Deloitte produces a summary report identifying significant non-compliance issues in the schools payroll.</p>
--	---

## Appendix 2 Deloitte Holidays Act Compliance review - Executive Summary

### 1.1 Purpose

The purpose of this report is to capture the findings and conclusions of the Initiate phase of the schools' sector Holidays Act compliance review. This report outlines the review's approach, findings, conclusions, assumptions and limitations. The report then provides a platform to engage with government and sector leaders to determine possible next steps to remediate the schools sector payroll and address resolution of past under and over-payments.

### 1.2 Background and Context

The Holidays Act 2003 (the Act) was introduced to clarify employer obligations and employee holiday entitlements. It also provided an opportunity to leverage information technology advances made since the introduction of the previous Act, introduced in 1981. The Act details requirements for employers to provide employees correct holiday entitlements and to pay them correctly during those holidays.

Compliance with the Holidays Act has become a national issue. A significant number of employers and payroll providers have or are in the process of instigating programmes to check and ensure compliance with the Act. The Labour Inspectorate within the Ministry of Business Innovation and Employment (MBIE) is supporting employers to comply with the Holidays Act through government-industry work streams, audits and investigations, and education and information.

The schools' sector payroll is the largest single payroll in New Zealand. Each year, approximately 120,000 teaching and specialist and support staff are paid across 2,500 state and state integrated schools. The payroll has a value of \$4.6 billion per annum. This translates to approximately 90,000 employees paid each fortnight.

The schools' sector payroll has a high level of complexity. While individual schools are the legal employer of their employees, the Ministry of Education (the Ministry) undertakes part of the employer responsibilities on schools' behalf. As part of this the Ministry is responsible for the schools payroll, and in turn outsources the provision of the payroll service to Education Payroll Limited (EPL).

### 1.3 Holidays Act Compliance within the Schools Sector

In early 2016, the Ministry and EPL identified the need for a project to assess the schools' sector payroll compliance with the Holidays Act. This resulted in the Ministry and EPL agreeing to initiate a programme in April 2016 to complete a compliance review. Deloitte was selected as an independent third party to lead and facilitate this review in June 2016.

The scope of the schools' sector Holidays Act compliance review included both the current Ascender Pay and previous Datacom TM4 payroll systems. The population of employees in scope for the review was all schools' sector employees paid through the schools' payroll

service. The review specifically excluded reviewing Holidays Act compliance for Ministry staff or other education sector employees not paid via the schools' sector payroll.

## 1.4 High-Level Review Approach

The Ministry, EPL and Deloitte all contributed resources to the review project and worked together throughout the initiate phase to complete the review and produce this report.

The Ministry and EPL each provided project governance and schools' sector payroll subject matter expertise. The Ministry also provided education workforce and legal input into the review. Deloitte facilitated the review by providing project management and providing payroll compliance review, remediation and resolution expertise. Deloitte's experience from prior Holidays Act compliance reviews within New Zealand also helped guide this phase of work.

The review was completed in two stages, Analyse and Develop:

**Analyse** - The first stage of the review was to analyse the schools' sector payroll to determine whether it was compliant with the Holidays Act. This involved testing the schools sector payroll to identify whether there were any compliance issues with key Holidays Act provisions. Two types of testing were completed:

The first type of testing was configuration testing. This checked how the Ascender Pay and Datacom TM4 payroll systems are configured to calculate each rate type (e.g. ordinary weekly pay, relevant daily pay). Testing then confirmed which rate is used for each leave type (e.g. annual leave, sick leave).

The second type of testing completed was Scenario testing. This involved testing of common schools' sector holiday scenarios to check how leave payments and entitlements were calculated. Random employee sample data was used across the different types of employees in the sector to conduct testing.

The findings of both configuration and scenario testing were then gathered. The outcome of the Analyse phase was confirmation that there were cases of non-compliance and a high level determination of the nature of the non-compliance summarised in eight problem statements.

**Develop** – The second stage of the review was to start the process required to develop high-level solutions to remediate the schools' sector payroll and to resolve any historic under and over-payments. This involved identifying the solution components required to resolve Holidays Act compliance problems and determining the key considerations in recalculating historic payroll payments. The outcome following the Develop phase will be a high-level roadmap to begin the process to plan for resolution and remediation of these causes of non-compliance.

## 1.5 High-Level Analyse Stage Findings and Conclusions

The Analyse stage found that there are areas where the schools' sector payroll is both compliant and non-compliant with the Holidays Act. Findings were consistent across the current Ascender Pay and legacy Datacom TM4 systems. Findings of compliance were noted but not investigated further. Non-compliant findings were grouped into three categories:

- i. **Leave Type Findings** – relating to application of the correct rate type to each leave type
- ii. **Accumulator Findings** – relating to calculation of rate types
- iii. **Additional Findings** – relating to inconsistent recording of leave and reporting of leave data

The non-compliant findings across these three areas were distilled down to eight problem statements, summarising the key causal factors leading to non-compliance. These eight problem statements are as shown in Table 1 below.

Problem Statement Number	Problem Statement
PS1	Holiday pay is only calculated using Ordinary Weekly Pay (OWP) Method 1. Method 2 is not used.
PS2	OWP is always used for holiday pay calculations when leave is taken, rather than the higher of Ordinary Weekly Pay (OWP) and Average Weekly Earnings (AWE).
PS3	Teachers' and Secondary Principals' accrued termination leave is always paid at OWP, not at percentage of earnings.
PS4	When holiday pay is built into the pay rate, it is not separately identifiable on the employee's payslip for annualised and special residential employees.
PS5	Bereavement, Alternative, Public Holiday and Sick Leave (BAPS) is only paid at Relevant Daily Pay (RDP); Average Daily Pay (ADP) is not considered.
PS6	There are inconsistent recording practices of days worked and leave taken by employees within the education sector.
PS7	Not all regular allowances are included in OWP.
PS8	Not all regular allowances are included in RDP.

**Table 1: Problem Statements resulting from Analyse stage**

There are a number of limitations and assumptions to these findings and conclusions. These are noted in the report, and more work to address and verify these is included in the recommended next steps

## **1.6 High-Level Develop Stage Solution Summary**

Having identified areas of non-compliance and the underlying problems causing issues, the Develop stage investigated what would be required to develop high-level solutions to remediate the schools' sector payroll and to resolve any historic under and over-payments. Remediation investigation focused on determining the requirements to ensure compliance moving forward, whereas resolution investigation focused on addressing historic instances of under and over-payment. The conclusions and high-level solution summary for each of these dimensions is provided in the sections below.

## **Remediation**

Remediating the schools' sector payroll will be complex. Remediation is much broader than just making configuration updates to the schools' sector payroll system. Rather, a holistic approach is required. This will involve consideration of and remediation activities within four broad streams:

**External Dependencies** – the schools' sector payroll needs to be remediated incorporating guidance from the Leave Pay Working Group and any successor groups, and the compliance process from the Labour Inspectorate.

**Payroll Policy** – details included in payroll policy are what informs the business rules that ultimately lead to detailed system requirements. These will need to be updated and clarified as without comprehensive and detailed requirements EPL will not be able to make any required system configuration changes. The Ministry also provides direction and guidance to schools on the operations of Payroll.

**Sector Capability** – remediation may require changes in practices within schools. Because schools are individual employers, the practices within each school may be different. To consistently comply with the Act it is likely that effort will be required to assist the sector to lift its capability within schools.

**Payroll Service and System** – remediation of the payroll service and system will be a key activity to allow future Holidays Act compliance within the sector. This will likely include both changes within the Ascender Payroll system and processes to provide the payroll service to schools.

## **Resolution**

Resolution consists of two key components. The recalculation of each individual's payroll payments back to a determined date in the past, and the resolution process itself consisting of the assumptions, policies and planning that will go into disbursing potential resolution underpayments or collecting possible overpayments.

The complexity of the schools' sector Holidays Act payroll recalculation and resolution is increased due to historic payroll payment data being held across two different payroll systems. The Datacom TM4 system for payment data prior to August 2012, and the Ascender Pay system for payment data from this date.

Resolution work during the Initiate phase of the project focused on defining:

**Draft business Requirements** – these will be used to drive the high-level requirements for recalculation

**Draft recalculation Assumptions** – these assumptions will be used to develop the initial recalculation model

**Example Recalculation Formulas** – these formulas provide additional detail to help with scoping potential resolution options

## 1.7 Recommended Next Steps

The schools' sector payroll is both large and complex. More work is recommended on refining understanding and developing both remediation and resolution solutions during the next stages of the Holidays Act Compliance programme.

Completing this work will be a big programme. It will require a structured approach, robust governance, and extensive stakeholder engagement. Many uncertainties remain and there are many decisions yet to be made. The next steps of the schools' sector Holidays Act compliance programme must also proceed consistently with decisions and direction across the rest of the state sector.

The recommended next steps involves work across four broad areas:

**Stakeholder engagement:** now that initial findings are known, it is appropriate to engage more broadly with stakeholders. It is recommended that key groups be identified as soon as possible. A structured plan to engage with these stakeholders at appropriate stages can then be defined. The more constructively stakeholders can engage and work together, the sooner the schools' sector payroll will be compliant with the Holidays Act, and historic issues of non-compliance can be addressed and resolved.

**Closing potential gaps in Holidays Act compliance analysis:** there are a number of limitations and assumptions contained within this initial review that need to continue to be closed and validated. It is recommended that this analysis continue in parallel to remediation and resolution activities.

**Remediation:** corrective action is required so that the schools' sector payroll is fully compliant with the Holidays Act in the future. A holistic approach is recommended within a structured programme involving coordinated remediation of underlying problems including: payroll policy, sector capability and the payroll service and system.

**Resolution:** along with remediating the schools' sector payroll historic under and over-payments should also be addressed. It is recommended that this resolution activity is undertaken in parallel to remediation. Resolution will require many decisions, both in terms of the best way to recalculate payments and decisions on resolution policy.

It is recommended that the Holidays Act Compliance Review continue as an integrated programme jointly governed and managed by the Ministry and EPL.

### Appendix 3 Populations affected by HA non-compliance

Employee Groups	Identifier	Employee # <sup>7</sup>
Teachers	(T)	70,000
Relief Teachers	(RT)	10,400
Secondary Principals	(SP)	380
Specialist and Support Staff	(SSS)	25,400
Specialist and Support Staff 52 weeks	(SSS52)	7,700
Specialist and Support Staff Annualised	(SSSA)	7,300
Special Residential	(SR)	250

Problem	Problem Statement	Population Affected
PS1	Holiday pay is calculated using OWP Method 1. Method 2 is not used. We have no capacity to calculate Method 2.	To be confirmed
PS2	Holiday pay is not paid at the higher rate of OWP and AWE. We do not have a consistent methodology to compare AWE.	(T) 70,000 (RT) 10,400 (SP) 380 (SSS52) 7,700 (SR) 250
PS3	Teachers and secondary principals' accrued termination leave is always paid at OWP, not at percentage of earnings.	(T) 70,000 (RT) 10,400 (SP) 380
PS4	When holiday pay is built into the pay rate it is not separately identifiable on the payslip for annualised and special residential employees	(RT) 10,400 (SSSA) 7,300 (SR) 250
PS5	BAPS is only paid at the (RDP). ADP is not considered.	(T) 70,000 (RT) 10,400 (SP) 380 (SSS52) 7,700 (SR) 250
PS6	There are inconsistent recording practices of days worked and leave taken by employees within the education sector	(T) 70,000 (RT) 10,400 (SP) 380 (SSS) 25,400 (SSS52) 7,700 (SSSA) 7,300

<sup>7</sup> Estimate only. Numbers will be reviewed as the project proceeds.

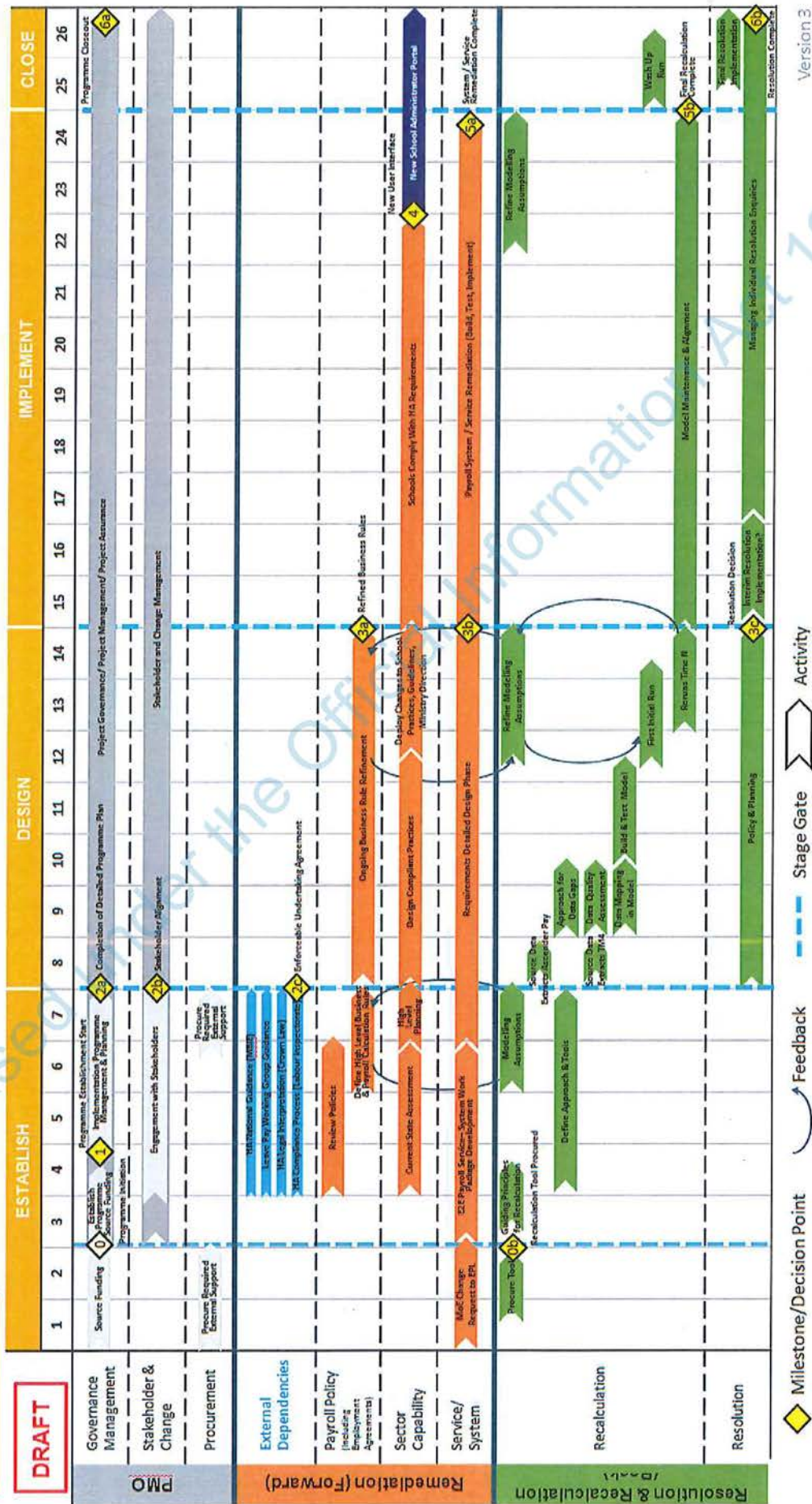
		(SR) 250
<b>PS7</b>	All regular allowances are not included in OWP	To be confirmed
<b>PS8</b>	All regular allowances are not included in RDP	To be confirmed

Released under the Official Information Act 1982

## Appendix 4 Holidays Act Implementation Plan

**CONFIDENTIAL**

## Draft High Level Implementation Plan For Schools' Payroll Holiday Act Compliance



## Appendix 5 Recalculation Model Assumptions

The Deloitte report identified a list of recalculation assumptions that will need to be made by the Ministry including:

- a. Determining "Day Zero" – start date for the HACR?
- b. Arrears payments period prior to "Day Zero"?
- c. What to do where data is absent?
- d. What to do in relation to former employees?
- e. How to calculate potential arrears across holiday pay and other forms of leave?
- f. How to deal with tax, ACC, superannuation and social welfare payments?
- g. How to address deductions such as student loans, retirement savings, KiwiSaver?
- h. How to assess schools' capacity to contribute towards arrears?
- i. How schools should be involved in delivering arrears?
- j. How to respond to questions from current and past employees?
- k. Will review and appeal procedures be required for staff to challenge findings?
- l. How to engage the Labour Inspectorate to review and confirm the integrity of the calculation approach?