



Business Central

Submission to the Education and Workforce Parliament Select Committee on the Employment Relations Amendment Bill

March 2018

1. Introduction

Business Central welcomes the opportunity to make a submission on the Employment Relations Amendment Bill.

Business Central is a business membership association, representing 3,400 members and their interests throughout central New Zealand from Taranaki across to Gisborne and down to Nelson. Business Central is one of the four regional organisations comprising New Zealand's peak business advocacy group, BusinessNZ. In Wellington, our organisation operates the Wellington Chamber of Commerce, accredited to the New Zealand Chamber of Commerce network. Our organisation also delivers ExportNZ to Wellington, the Hawke's Bay and the Central region.

Business Central is a recognised leader in employment advice, consultancy and training – regarded as the authority in the fields of employee relations, occupational health and safety, and people management. We provide practical advice and training solutions that reflect the needs and challenges faced by employers every day - our team is focused on common sense approaches to handling real-life situations.

Business Central wholly endorses both BusinessNZ's and the Central Region Chambers of Commerce submissions and comments.

The content of this submission is also supported by the following business organisations, both regional and national entities:

- Central Region Chambers of Commerce
- New Zealand Chambers of Commerce
- Business Central
- Export NZ Wellington, Hawkes Bay and Central
- BusinessNZ

2. Summary

Business Central has been the voice of employers and business in the Central region for over 100 years, advocating policies that reflect the interests of the business community. Business Central advocates the views of our members and obtains that view through regularly surveying members.

Business Central has been closely following policy developments during and following the 2017 election, given the now Coalition-Government campaigned on a range of employment law changes. The Employment Relations Amendment Bill makes the first of these changes, including proposals we believe that:

- Conflicts with the objects of the Act and with international labour standards.
- Requires employers to subsidise the work of unions by providing paid time off for workplace delegates.
- Unnecessarily prolongs collective bargaining and increase prospects of industrial action.
- Disrupts business operations by introducing default conditions that require employees to take breaks at the same time.
- Breaches the privacy of employees who choose not to join a union, and place them at subsequent risk of duress from unions trying to recruit them.
- Constrains employers who wish to offer different conditions of employment to employees who do not wish to join a union.
- Restricts the ability of employers who may wish to “take a chance” on people who would otherwise find difficulty in obtaining employment.
- Creates extra work and compliance costs for employers where the primary beneficiary of the extra work is unions, not enhanced workplace productivity.
- Diminishes the ability of New Zealand businesses and their employees to prosper and grow.

Business Central has some concerns about the impact these changes will have on businesses and on the relationship between employers and employees. We recognise that the bill reflects the views of the Coalition Government and it will proceed in some form, so while we recommend the removal of some clauses we’re also constructively recommending some changes to the bill, to accommodate the change of direction while at the same time limiting negative consequences for the ability of business to prosper and grow for the benefit of all New Zealanders.

Our submission explains why we oppose some of the more impractical proposals and suggests changes to ensure the law is more workable. We want to support, reinforce and enhance good faith relationships in the workplace, rather than treat the employer and employee relationship as one that is oppositional or adversarial.

We oppose the Employment Relations Amendment Bill. We believe it should not proceed.

3. Concerns

Business Central believes that the bill conflicts with the Government's overall objective of a high performing, high wage economy as well as to the legislative objective¹ of productive workplace relationships founded on good faith. We believe that the bill increases complexity and imposes extra processes that will increase compliance costs, slow business responsiveness to economic conditions, and inhibit growth.

Business Central is concerned that the Bill in its present form:

- Conflicts with the objects of the Act and with international labour standards.
- Requires employers to subsidise the work of unions by providing paid time off for workplace delegates.
- Unnecessarily prolongs collective bargaining and increase prospects of industrial action.
- Disrupts business operations by introducing default conditions that require employees to take breaks at the same time.
- Breaches the privacy of employees who choose not to join a union, and place them at subsequent risk of duress from unions trying to recruit them.
- Constrains employers who wish to offer different conditions of employment to employees who do not wish to join a union.
- Restricts the ability of employers who may wish to "take a chance" on people who would otherwise find difficulty in obtaining employment.
- Creates extra work and compliance costs for employers where the primary beneficiary of the extra work is unions, not enhanced workplace productivity.
- Diminishes the ability of New Zealand businesses and their employees to prosper and grow.

Overall the Bill does not demonstrably advance the ability of New Zealand businesses and their employees to prosper and grow. We believe it should not proceed.

4. Recommendations

Business Central recognises that the Bill reflects the views of the Government and will proceed in some form. We wish to constructively support the changes that accommodate such a change of direction while at the same time limiting negative consequences for the ability of business to prosper and grow for the benefit of all New Zealanders.

We support the recommendations that reinforce and enhance good faith relationships in the workplace between the employer and employee, rather than treat the employer and employee relationship as one that is oppositional and adversarial.

It therefore recommended to the Select Committee:

- **Support constructive and workable relationships between the employer and union delegate, and their joint ability to come to an agreement together that**

¹ Section 3 of the Employment Relations Act 2000

ensures businesses continuity by amending clause 4 (proposed s18A(2)(b)) and adding “(iii) what arrangements are being, or have been, made to ensure the normal work of the delegate is not unreasonably disrupted while the delegate is undertaking the activities.”

- **Support constructive and workable relationships between the employer and union delegate, ensure the businesses continuity, and uphold health and safety requirements, by preserving present requirements that union workplace visits are agreed to between both parties by deleting** clauses 5 – 8.
- **Support the underlying principles and objectives of the current Act and uphold international Labour law standards by ensuring that union bargaining and conciliation be negotiated and concluded voluntarily, free from compulsion and is not coerced by deleting** clauses 9, 10 and 11.
- **Ensure that the same rules apply to both the employer and union regarding the initiation of collective bargaining by deleting** clause 12 or, in the alternative, clarify the aim of enabling early initiation by unions, even if this is in the explanatory notes. This would provide the necessary guidance to courts called upon to resolve disputes over the application of this clause.
- **Support the workable status quo by not forcing and compelling employers to bargain multi-employer collective agreements at the requirement of a union, but to instead employers allow consider the request and where appropriate to opt in or out, given the commercial and confidential protections and practicalities that may arise by deleting** clause 13 and 14.
- **Support the rights of an employee to enjoy the BORA principle that allows freedom of association, rather than being required to join a union for the first 30 days of their employment, protect the privacy of the employee by not compelling the employer to provide their details to the union, and further that where an employee does not join a union that they are not penalized perversely for this decision or limited by not allowing the negotiation of terms that are inconsistent with the collective agreement by deleting** clauses 18- 20 or, in the alternative, delete proposed section 63AA from Clause 18 **to ensure the employees is protected from coercion and duress in relation to becoming or not becoming a member of a union.**
- **Support the workable status quo by allowing employers to respond proportionally to strike action, rather than respond with an ‘all or nothing’ pay deduction, so that pay is reduced in proportion to the estimated value of lost productivity by deleting** clause 22.
- **Support the workable status quo, so when an employee believes there been discrimination based on their union membership that the allegation must be proven before guilt is implied, following the principles of natural justice, by deleting** clause 26 and 27.

- **Support the workable status quo which allows for an employer and employee to agree to a 90-day trial period giving both parties the confidence to employ and accept employment by deleting** clause 29 or, in the alternative, increase the threshold to 50 full time equivalent employees **which is the internationally recognised SME definition.**
- **When there is a transfer of a business with vulnerable workers, support the workable status quo and the current exemptions which limit the adverse impacts on the economics of a transfer of business while weighting this against the need to ensure employee rights are also respected by deleting** clause 32.
- **Support constructive and workable relationships between the employer and employee, and ensure the businesses continuity to negotiate break arrangements that suit each party by deleting** clause 35 or, in the alternative, provide in proposed section 69ZE that “where reasonable and practicable” in subsections (3) to (7) includes consideration of the need to maintain business continuity.

5. Conclusion

Business Central has some concerns about the impact these changes will have on businesses and on the relationship between employers and employees. We recognise that the bill reflects the views of the Coalition Government and it will proceed in some form, so while we recommend the removal of some clauses we're also constructively recommending some changes to the bill, to accommodate the change of direction while at the same time limiting negative consequences for the ability of business to prosper and grow for the benefit of all New Zealanders.

We hope that the select committee considers these suggested changes to ensure the law is more workable. We want to support, reinforce and enhance good faith relationships in the workplace, rather than treat the employer and employee relationship as one that is oppositional or adversarial.

We oppose the Employment Relations Amendment Bill. We believe it should not proceed.

For any further queries please contact:

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