



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

Date: 13 April 2018

TOURISM INDUSTRY AOTEAROA

Level 4, 79 Boulcott Street, PO Box 1697, Wellington 6140, New Zealand
P +64 4 499 0104 www.tia.org.nz E info@tia.org.nz

Tourism Industry Aotearoa (TIA) welcomes the opportunity to comment on the Employment Relations Amendment Bill. We are appreciative of the given extension on the submission date.


This submission is filed without prejudice to TIA's future position. Our ability to prepare a comprehensive submission responding to the Employment Relations Amendment Bill relied on the provision by the Education and Workforce Select Committee of information relevant to the connection between the proposed Bill and the benefits that would accrue. If any information is provided at a later date, TIA reserve the right to comment further.

EXECUTIVE SUMMARY

1. Good employment law strikes a balance between employers and workers. To be internationally competitive, New Zealand needs a professional, skilled tourism workforce that provides a superior level of service. Both Government and unions need to work in partnership with the tourism industry. We want employers, employees and unions to have a positive work relationship.
2. We are concerned to read in submissions from other organisations that some of the proposed amendments may conflict with the objects of the Employment Relations Act 2000, in particular with international labour standards and/or might breaches of employee privacy.
3. One of the outcomes of the proposed changes will be for unions to have a greater presence and influence in the industry. If this turns out to be the case, then we advocate that unions need to approach this in a way that adds value to tourism businesses. They should not be seen as disruptors to workplace productivity or a negative impact on the tourism visitor offering.
4. Unions need to recognise the benefits that the tourism industry provides for employees and support this environment.
5. Some of the proposed changes will add considerably to existing compliance processes employers must follow. This is a concern to the tourism industry, many who operate on a seasonal basis with lower levels of income and profit during the off-season.
6. We are supportive of the employee's entitlement to, and the employer's duty to provide rest breaks and meal breaks. However, strict stipulation of times does not work for the tourism industry.
7. We are concerned that the proposed 90 day trial restriction will lead to reduced employment opportunities.
8. We are concerned about the impacts of this proposed amendment to restore reinstatement as the primary remedy to unfair dismissal.

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9. It is concerning that Clause 13 does not recognise differences in employer size, profitability, location, ability to pay and/or the need for commercial sensitivity. The requirement to be involved in a multi-employer collective agreement appears impractical and unreasonable.
10. An employee should be free in their decision to join a union, and to negotiate an individual employment agreement different from the Collective.
11. It is time consuming and administratively unproductive for employers to provide new employees an agreement at commencement and then another (amended) agreement 30 days later. It makes sense that employers are able to offer employees the collective and individual agreements at commencement and the employee chooses at that time.
12. There should be a minimum requirement that unions advise employers when they are coming on site.
13. It is unclear how 'reasonable paid time' should be interpreted in Clause 4 and as such, an easy source of conflict between employer and employee.
14. We are opposed to the principle of the employer being required to collate and distribute information between employees and union, on the basis of both administrative costs and breach of employee privacy.

RECOMMENDATIONS

15. For Section 69ZE (Timing of rest breaks and meal breaks) to be amended to acknowledge the priority to maintain both business continuity and health & safety requirements.
16. To provide clarity on the 90-day trial eligibility in regards to whether the 20-employee threshold is FTEs or actual number of people.
17. To provide clarity on how the 90-day trial eligibility would apply to operators who have less than 20 FTEs over the low season, but increase their staff to more than 20 FTEs over the high season.
18. For 90-day trial periods to be available to all organisations with 50 or fewer full-time equivalent employees.
19. To delete Clauses 9-11 (re Bargaining)
20. For Clauses 19 and 20 to be amended, or deleted, so that employees will always have the option to negotiate an individual employment agreement at the commencement of employment rather than wait 30 days.

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21. For Clauses 5-8 to be reworded to reflect that unions should advise employers when they are coming on site.
22. To provide clarity how to interpret 'reasonable paid time' in Clause 4.
23. To delete Clause 39 (Remedy of reinstatement)
24. For Section 63AA (Employer must share new employee information with union unless employee objects) to be deleted.

INTRODUCTION

25. Tourism Industry Aotearoa (TIA) is the peak body for the tourism industry in New Zealand. With over 1,500 members, TIA represents a range of tourism-related activities including hospitality, accommodation, adventure and other activities, attractions and retail, airports and airlines, as well as related tourism services.
26. The primary role of TIA is to be the voice of the tourism industry. This includes working for members on advocacy, policy, communication, events, membership and business capability. The team is based in Wellington and is led by Chief Executive, Chris Roberts.
27. Any enquiries relating to this paper should in the first instance be referred to Nienke van Dijken, TIA Policy Analyst at nienke.vandijken@tia.org.nz or by phone on 04 494 1842.

STAKEHOLDER CONSULTATION

28. In preparing this submission, TIA has engaged with its members across various tourism sectors including accommodation, transport and attractions. We have also engaged with other employer-representative organisations such as Business NZ, and considered the regulatory impact assessment produced by MBIE.


COMMENT

Tourism 2025

29. Tourism 2025 (www.tourism2025.org.nz), an industry-led, government supported economic growth framework was launched in New Zealand in 2014 and has set an aspirational goal of reaching \$41 billion in annual tourism revenues by 2025. The industry's focus is on growing value faster than volume.
30. The Tourism 2025 growth framework is based around five key themes which are Insight, Connectivity, Productivity, Visitor Experience and Target for Value. This growth framework has been reviewed ([Tourism 2025-two years on](#)) in 2016. While the five themes of the framework remain unchanged, the emphasis in some focus

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areas has shifted. Sustainability is one of the themes being given greater emphasis now. There is a desire and expectation that long term sustainability, from an economic, environmental, cultural, and social aspect, is becoming a core value against which all decisions are being tested.

31. This year, TIA will be working on a Tourism 2025 reset that will include:

- Integrating sustainable tourism, in particular the [Tourism Sustainability Commitment](#);
- Articulating a longer-term view of tourism in coordination with Central Government;
- Identifying new priority actions to be addressed over the next 1-3 years.

Our understanding of the issue

32. We understand that this Amendment Bill aims to restore key minimum standards and protections for employees, and to implement a suite of changes to promote and strengthen collective bargaining and union rights in the workplace. The changes are intended to introduce greater fairness in the workplace between employees and employers, in order to promote productive employment relationships.

General

33. TIA agrees with Hon Iain Lees-Galloway that '*Good employment law strikes a balance between employers and workers*'.¹

34. To be internationally competitive, New Zealand needs a professional, skilled tourism workforce that provides a superior level of service.

35. One of the outcomes of the proposed changes will be for unions to have a greater presence and influence in the industry. If this turns out to be the case, then we advocate that unions need to approach this in a way that also adds value to tourism businesses. For example, unions could be advocates for training and upskilling, and/or maintaining health & safety practices. They should not be seen as disruptors to workplace productivity or a negative impact on the tourism visitor offering.

36. Additionally, unions need to recognise the benefits that the tourism industry provides for employees and support this environment. For example, employees can quickly progress their careers, moving into team leader, supervisory and management positions in a relatively quick timeframe compared to some other industries. Opportunities abound and it is important that unions recognise this in any negotiations so as not to reduce opportunities or hold careers back.

¹Beehive.govt.nz, *Legislation for fairer workplaces announced*, 25 Jan 2018, as sourced from <https://www.beehive.govt.nz/release/legislation-fairer-workplaces-announced>

37. Unions should not all be about negotiating pay increases and unnecessarily increasing administration requirements or compliance costs for employers.

Conflicts with the objects of the Act, international labour standards and employee privacy

38. In the submission by BusinessNZ, feedback is provided in regards to proposed amendments that conflict with the objects of the Act, with international labour standards and/or that might breach employee privacy.

39. This is concerning to us and we strongly recommend the Government revisits the proposals to make sure these conflicts are resolved before the Bill is passed by Parliament.

40. We also agree with BusinessNZ that some of the proposed changes will add considerably to existing compliance processes employers must follow. This is a concern to the tourism industry, many who operate on a seasonal basis with very low levels of income and profit during the off-season. Many operators are working within tight margins and any increase in compliance costs, without efficiency or productivity gains, will be hard to bear.

Right for employees

Restoration of statutory rest and meal breaks

41. We understand that the amendments to Part 6D (rest breaks and meal breaks) of the Bill aims to restore the statutory prescription for an employee's entitlement to, and the employer's duty to provide rest breaks and meal breaks; and that it aims to restore the statutory prescription for when the rest breaks must be taken in the absence of agreement between the employee and employer on timing of breaks.

42. TIA is supportive of the employee's entitlement to, and the employer's duty to provide, rest breaks and meal breaks.

43. Our concern is in regards to the requirement to have agreed times for rest breaks and meal breaks, and in the absence of these being agreed, the amendments set out when these breaks occur and compensatory measures if agreement cannot be reached. While the reference to 'reasonable and practicable' may provide some flexibility, there are concerns in how this will be interpreted.

44. Many tourism operations require some flexibility in the daily arrangement of breaks due to the nature of their activities and the need to 'expect the unexpected' where visitors are involved.

45. For example, maritime operators when at sea need staff to be flexible when taking breaks. While the crew may commence shift at the same time, breaks cannot all be taken at the same time. The same applies in hospitality, particularly at large events/functions. A minimum level of staff is required to be on duty at all times, both

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from a visitor service and health and safety perspective. The industry practice is that staff rotate breaks to ensure others can remain on duty. It is unclear if this can be clearly stated as an option under the proposed Bill.

46. Sole charge is another characteristic of the industry e.g. staff on graveyard shift in an accommodation business. The sole charge duty manager of e.g. a hotel needs to be available for his/her full shift to meet health and safety requirements, answer the phone, look after the guests in the event of a fire or another emergency, and/or meet liquor licensing requirements. Although the duty manager will be able to take a break, he/she still needs to be on-call. It is unclear if this situation can be effectively addressed under the proposed Bill.
47. We acknowledge that under the proposals if an employer and employee have agreed the times for breaks, then the breaks are to be taken at those times. In a service industry such as tourism, it is not always possible to take the break at the agreed time. For operators to continue to offer outstanding visitor experiences and manage health and safety effectively, there is a strong need for flexibility around the timing of meal breaks.

Requested changes:


48. Strict stipulation of break times does not work for the tourism industry. Flexibility is needed to be able to continue offering an outstanding and safe visitor experience. We would like to see this section 69ZE in the Bill amended to acknowledge the priority to maintain both business continuity and health & safety requirements.

Restriction of 90 day trial periods to SME

49. We understand that Section 67A of the Bill aims to restrict 90 day trial periods to employers with less than 20 employees.
50. It is unclear whether the threshold is 20 FTEs or the actual number of employees.
51. Additionally, it is unclear how this amendment would apply to the common situation in the tourism industry where operators have less than 20 employees over the low season, but increase their staff to more than 20 employees over the high season. Staff numbers fluctuate significantly for many tourism businesses during the year.
52. We are concerned that an impact of this proposal is reduced employment opportunities. Operators are often in the situation where there may be some doubt about the suitability of a job seeker, particularly if these people are coming off social welfare benefits, or from overseas with no local work history. The Government is very keen for employers to take on beneficiaries and the industry wants to support the employment of New Zealanders. However, operators may be less likely to do this if the 90 day safety net goes.

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53. It is very likely that tourism operators will adopt a more conservative approach to hiring staff without this 90 day trial period. In our opinion, the 90 day trial period is beneficial to both employers and job seekers. Job seekers who would otherwise find difficulty in being recruited get a better chance to compete for existing jobs if 90 day trial periods would be available to all organisations, regardless of size.

54. A benefit of having a 90 day trial period available is that it allows an employee to leave the business quickly when they are not the right fit. Without trial periods, the employer and employee will have to go through a disciplinary process. This process has the ability to taint the work history of the employee.

Requested changes:

55. Clarification is required on whether the 20-employee threshold is FTEs or actual number of people.

56. We need clarification on how this rule would apply to operators who have less than 20 FTEs over the low season, but increase their staff to more than 20 FTEs over the high season. We recommend that the rule takes effect when staff numbers are at their lowest, i.e. if the operator employs less than 20 FTEs in the winter and more than 20 in the summer then they are eligible to use the 90-day trial period for all employees.

57. In order to ensure employment opportunities do not decrease for New Zealanders we recommend for 90 day trial periods to be available to all organisations with 50 or fewer full-time equivalent employees, and as such we recommend for this Section 67A to be changed to open up the 90 day trial period to employers with 50 or fewer full-time equivalent employees.

Reinstatement will be restored as the primary remedy to unfair dismissal

58. We understand that Clauses 38 and 39 of the Bill aim to restore reinstatement as the primary remedy in unjustified dismissal cases, where the employee requests it and where reinstatement is practicable and reasonable.

59. We are concerned about the impacts of this proposed amendment. In most dismissal cases, the employee is unlikely to be interested in working for the operator again, and trust on both sides has been breached. If an employer-employee relationship deteriorates to the point of dismissal, then it will be very hard for all parties involved to continue working together.

Requested changes:

60. We recommend for Clause 39 to be removed as the proposed amendment is an unnecessary change and onerous to both employee and employer.

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Collective bargaining and union rights

Restoration of the duty to conclude bargaining

61. We understand that Clause 9-11 of the Bill aim to require parties bargaining for a collective agreement to conclude the agreement unless there are genuine and reasonable grounds not to do so.
62. According to BusinessNZ, this proposal is in conflict with the objects of the Act and is a direct breach of international labour standards, as it effectively makes settlement of a collective agreement mandatory.
63. As noted, we are concerned by this and we strongly recommend for the Government to revise the amendment to make sure this situation is resolved.

Requested changes:

64. We recommend for Clauses 9-11 to be deleted.

Removal of the MECA opt out

65. We understand that Clause 13 of the Bill aims to remove the MECA opt out where employers can refuse to bargain for a multi-employer collective agreement.
66. There is a high level of concern amongst operators should there be a mandatory requirement to be part of collective bargaining. Like many business sectors, tourism is characterised by a large number of small businesses spread throughout the country. The requirement to be involved in a multi-employer collective agreement would appear impractical and unreasonable.
67. It is concerning that the proposed amendment does not recognise differences in employer size, location, profitability, ability to pay and/or the need for commercial sensitivity.

Requested changes:

68. We recommend for Clause 13 and 14 to be deleted.

Restoration of the 30 day rule

69. We understand that Clause 18-20 of the Bill aim to restore the 30-day rule where for the first 30 days a new employee must be employed under terms consistent with any collective agreement in place.
70. We understand that *'No term or condition of employment may be expressed to alter automatically after the 30-day period in a way that makes it inconsistent with the collective agreement'* and that *'After the 30-day period expires, the employee and the*

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employer may by mutual agreement, vary the individual employment agreement as they think fit.'

71. In our opinion, an employee should be free in their decision to a) join a union, and b) enter into an individual employment agreement different from the Collective.
72. Additionally, it is time consuming and administratively unproductive for employers to provide new employees an agreement at commencement and then another (amended) agreement 30 days later. It makes sense that employers are able to offer employees the collective and individual agreements at commencement and the employee chooses at that time.

Recommended changes:


73. We recommend for clause 19 and 20 to be amended, or deleted, so that employees will always have the option to negotiate an individual employment agreement at the commencement of employment rather than wait 30 days.

Restoration of union access without prior employer consent

74. We understand that Clauses 5-8 of the Bill aims to restore union access without prior employer consent. Union access will still be subject to requirements to access at reasonable times and places having regard to business continuity and Health & Safety.
75. In our opinion, there should be a minimum requirement that unions advise employers when they are coming on site.
76. There are several reasons for this. First of all, from a Health & Safety perspective and a security perspective, it is important for employers to know who is on site, where and at what time.
77. From a business continuity perspective - the tourism industry is irrevocably linked to its ability to offer an outstanding visitor experience. It is often not practicable for union representatives to turn up unannounced. Tourism activities often occur away the office-base e.g. adventure activities, transport. Employees may be unavailable due to being with visitors and cannot be interrupted. This will not be productive to union delegate's time.
78. We are also of the opinion that from a courtesy point of view, it would be necessary for union delegates to provide prior notification of their visit. We want employers, employees and unions to have a positive work relationship. Showing up unannounced and expecting to have access to staff and sites has a reasonably high risk of turning into a confrontational situation between the parties involved. This would not contribute to a positive work relationship between these parties.

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79. It is important to note that tourism operators we engaged with during this process with union membership currently have a good work relationship with the involved unions. For example, there are tourism operators that have a specific union space allocated and have regular forums on site.

Recommended changes:

80. We are supportive of unions having access to workplaces. However, for it to contribute to a positive work relationship union delegates should be required to advise their visit prior.

81. As a minimum, unions should advise employers when they are coming on site. We would like to see Clauses 5-8 reworded to reflect the expressed concerns.

A requirement to include pay rates in collective agreements

82. We understand that Clause 16 of the Bill aims to introduce the requirement to include pay rates in collective agreements.

83. We understand that over 96% of collective agreements already contain pay rates.

84. We have not had any feedback from our members on this specific proposal and as such, we do not have any concern.

A requirement for employers to provide reasonable paid time for union delegates

85. We understand that Clause 4 of the Bill aims to introduce a requirement for employers to provide reasonable paid time for union delegates to represent other workers (e.g. in collective bargaining).

86. It is unclear to us how 'reasonable paid time' should be interpreted and as such, an easy source of conflict between employer and employee. There is likely to be a significant difference between how the employer and the employee interpret 'reasonable paid time'.

87. We remain neutral on our view of payment for employees who undertake certain union activities as there are likely to be diverse views on this from our members. However, should it proceed we are of the opinion that there needs to be a clear description of how to interpret 'reasonable paid time'.

88. As BusinessNZ indicates in their submission 'Potential for conflict could be reduced if the employer is aware that a delegate's absence from their normal work was not going to cause disruption'. One of the suggestions from BusinessNZ is to '*amend the clause by adding 'what arrangements are being, or have been, made to ensure the*

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normal work of the delegate is not unreasonably disrupted while the delegate is undertaking the activities’.

Recommended changes:

89. Clarity is needed around how to interpret ‘reasonable paid time’. A good way to do this would be to follow BusinessNZ’s suggestion and to amend the clause by adding *‘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’.*

A requirement for employers (who are party to a collective agreement) to pass on information about unions in the workplace to prospective employees

90. We understand that employers who are party to a collective agreement will be required to pass on information about unions to prospective employees (who enter into an individual employment agreement) along with a form for the employee to indicate whether they want to be a member.

91. The proposed changes require an employer to give details of new employees, incl. prospective employees, to the relevant union, and to require new employees to complete forms containing their details, for transmission to the union by the employer.

92. We understand that the employee can object to having their details shared with a union by completing an opt-out form.

93. We also understand that the employer must provide the union with the names of the employees who have not returned this form, and with the names of employees who prefer not to provide information on the requested form.

94. As noted, we want employers, employees and unions to have a positive work relationship. However, we are opposed to the principle of the employer being required to collate and distribute information between employees and union, on the basis of both administrative costs and breach of employee privacy.

95. The industry characteristics of both seasonality and regular staff turnover means employers are often recruiting. Larger employers will have good HR systems in place, but many of the SMEs are unlikely to have the same sophistication of HR systems. Additional administrative processes of advising unions of prospective and new staff, opt-out processes and other requirements leave this amendment open to non-compliance. This is particularly concerning when the Bill proposes that every employer who fails to comply is liable to a penalty imposed by the Authority.

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Recommended changes:

96. We do not support sharing employee information with unions due to the administrative requirements and concerns about breaching employee privacy. We strongly recommend for Section 63AA to be deleted.

97. If the Government is adamant in including this section in the Bill we propose to have employees sign a form to opt in to having their details shared with unions, than having to sign a form to opt out, and for employers not having to share information about employees who prefer not to provide information on the requested form.

Follow up process

98. TIA wishes to participate further in any follow-up process, including any formal meetings, to ensure that the potential impacts on tourism are adequately represented.

BACKGROUND

99. Tourism for New Zealand is big business as the country's largest export sector. It is a major contributor to the New Zealand economy that will always be here and won't easily go offshore. Tourism takes the lead in promoting New Zealand to the world. The brand positioning built by a vibrant tourism industry has become an important source of national confidence and identity and a front window for "Brand New Zealand". Indeed, the clean and pure offer that is synonymous with New Zealand tourism has been widely adopted and used to promote New Zealand exports in a range of other industries as well.

100. The tourism industry delivers the following value to New Zealand's economy:

- Tourism in New Zealand is a \$99 million per day and \$36 billion a year industry. Tourism delivers around \$40 million in foreign exchange to the New Zealand economy each day of the year. Domestic tourism contributes another \$59 million in economic activity every day.
- The tourism industry directly and indirectly supports 14.5% of the total number of people employed in New Zealand. That means 399,150 people are working in the visitor economy.
- Tourism is New Zealand's biggest export industry, earning \$14.5 billion or 20.7% of New Zealand's foreign exchange earnings (year ended March 2017).

End.

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