



Meat Industry Association of New Zealand (Inc)

Submission to the Transport and Industrial
Relations Select Committee on

The Employment Relations (Probationary
Employment) Amendment Bill

19 May 2006

Meat Industry Association Submission on the Employment Relations (Probationary Employment) Amendment Bill

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I: About the Meat Industry Association

1. The Meat Industry Association of New Zealand ('MIA') is a voluntary trade association representing New Zealand meat processors, marketers and exporters. It is an Incorporated Society (owned by members) that represents companies supplying 99% of all New Zealand sheepmeat exports and 100% of beef exports. Its member companies are responsible for approximately 21% of New Zealand's total exports by value, equating to approximately \$NZD 5 billion annually. Additionally, our members produce in excess of \$NZD 1 billion of domestically-consumed meat products each year.
2. MIA member companies operate approximately 80 processing plants dispersed throughout the country. The plants slaughter and process approximately 25 million lambs, 3.8 million sheep and 2 million cattle per annum. Ninety percent of this production is processed into value-added products. Approximately 750,000 tonnes or 85% of the production is exported to overseas destinations. Its 19 affiliate companies add to the depth of expertise available from the membership, with representation throughout the meat supply chain, including road and rail transport, shipping lines, ports, packaging firms, specialist product exporters, research and technology.
3. The MIA advocates on behalf of its members and provides advice on economic, trade policy, market access, employment relations, business compliance costs and technical and regulatory issues facing the industry, with a particular focus on:
 - Food safety trends and developments in importing countries
 - Economic and trade aspects of market access to key overseas markets
 - Major public policy proposals that could impact on industry operations
4. The MIA is also the interface between the meat industry and government (i.e., it is the consultative body referred to in various New Zealand statutes, such as the Meat Board Act 2004, Meat Act 1981, Animal Products Act 1999).
5. The Association's mission is to:
 - Provide a forum for consideration of industry-wide commercial, human resource, marketing, and sanitary and zoonosanitary issues; and
 - Provide the means of formulating a collective view on issues of industry wide interest, and of conveying that position to government, departments of state, trade bodies, and other appropriate external agencies and organisations.
6. The Association's goal is to improve profitability in the industry by helping its members achieve marketing and operational excellence.

II: Summary of MIA Position

7. The MIA supports the policy underpinning the Employment Relations (Probationary Employment) Amendment Bill. We agree with the comments in explanatory note to the Bill that existing personal grievance procedures are protracted and expensive, and that this acts as a barrier to employers 'taking a chance' on untested potential employees.
8. We further submit that existing personal grievance procedures – and in particular the rigid technicalities of process – are unsuited to dealing with the complex set of issues associated with a new employment relationship. Issues around team fit, for example, can be quite difficult to

address through existing procedures but are perfectly legitimate concerns in the context of a new employment relationship.

9. The MIA's overall view, therefore, is that the Bill should proceed – although we would support technical modifications to the Bill to limit the scope of the proposed bar on the taking of personal grievances to cover only personal grievances alleging unfair dismissal where an employee was terminated during a probationary period.

III: Issues with the Status Quo

The Nature of Probation under Current Law

10. The Employment Relations Act 2000 ('the ERA') already makes specific provision for probationary periods. Section 67 of the ERA expressly authorises the parties to a prospective employment relationship to agree to a trial or probation period.
11. Section 67 goes on to say, however, that the law of unjustifiable dismissal will apply in its entirety during the trial or probation period. As a result, the existence of a trial or probationary period is just one of many relevant matters to consider when assessing whether an employer's decision to terminate employment is objectively justified (as per the test of justification in section 103A of the ERA).
12. Put another way, the existence of a trial or probationary period of itself neither lessens potential exposure to a personal grievance claim nor reduces the technical demands of 'procedural fairness' in an employment law context. The existence of a probationary period only allows employers to raise the fact of its existence in defense of the reasonableness of an employer's decision to terminate an employment relationship. Employers can then only hope that the employment judiciary's view of what is reasonable aligns with the view of the employer.
13. As a result, probationary periods as currently provided for in the ERA provide no real incentive to take a chance on employees that are either entering the workforce for the first time, or returning to the workforce after an absence. On the contrary, the prospect of legal proceedings (which are costly in both time and dollar terms), and the administrative and management burden of ensuring an employer is in the best possible position to defend itself in such proceedings, encourages employers to make risk-averse employment decisions.

The Impact on Productivity

14. New Zealand's low unemployment rate complicates the situation as a not insignificant proportion of the existing pool of unemployed are those that, for whatever reason, may traditionally have been overlooked in times of higher unemployment. A comment often made by our members is that the current labour environment leaves them with little option but to employ people that would not have been seriously considered for employment five years ago.
15. In some cases, this has meant that opportunities are given to people who go on to prove themselves and become valuable and respected employees. Equally, however, in many cases these employees can turn out to be either unable or unwilling to embrace the opportunity. In a production chain environment (such as the meat industry), such employees become a 'weak link' and a liability in terms of the productivity of the chain as a whole.

16. While an employer works through a structured process for managing the performance of such employees, this impact on productivity adds a further layer of cost as a consequence of taking a chance on the wrong individual.

IV: Benefits of the Proposed Amendment

Creation of Employment Opportunities

17. As noted above, the stringency of the law around unjustified dismissal has the effect of making employers cautious in their hiring decisions. As a consequence, untested potential employees are marginalised because the costs of getting a hiring decision wrong overshadow the potential benefits of 'taking a chance' and hiring someone that just needed to be given an opportunity to get involved in the workforce.
18. This effect is clearly demonstrated when one looks at the respective unemployment rates of youths against that of the general population. In the December 2005 Household Labour Force Survey, youth (15-19 year-old) unemployment is listed as being 11.7%, against an overall unemployment rate of 3.6%. This would suggest that youths are an under-utilised resource – which is in part due to the complexity of terminating employment and the resulting reluctance of employers to take on an untested employee.
19. By easing the burden of rectifying mistakes made when hiring untested staff, meaningful probationary periods would improve the employment prospects of perceived 'risk' groups such as youths entering the workforce for the first time.
20. In a similar way, a meaningful probationary period would allow employers to give ex-employees another chance. For example, a youth may secure a first job with a meat processing company but ultimately be terminated for poor attendance. Given that meat processing companies tend to be one of the major employers within their local community, this has the potential to seriously limit the employment prospects of that individual.
21. Several years later that individual may have matured and may ask the meat processing company for a second chance. The existence of a meaningful probationary period would encourage the company to offer that second chance despite the history between the parties.

The Distinction between New and Existing Employees

22. In addition to providing an incentive to employers to give untested workers an opportunity, an initial probationary period would also recognise that the issues surrounding a new employment relationship can be quite different than those faced in an established employment relationship.
23. As a general rule, issues that arise with regard to an established relationship will tend to present as relatively discrete problems that lend themselves to potential resolution through a process of engagement between the employer and employee. For example, an employee may suffer a slump in work performance which can be remedied by the employer being clear about its expectations and assisting the employee to meet those expectations.
24. A new employee, however, is a different prospect as each new employee will bring a range of idiosyncrasies (including varying work ethics, work practices, communication methods etc.) to their new workplace. Some of these will be positive, but as the new employee is to some extent an

unknown quantity it is not uncommon for several of these to combine and create a range of problems in the employment relationship.

25. To illustrate, a new employee may not perform to expectations, but may also be unable to successfully integrate into the work environment and become part of a team. The fundamental root of these two problems may be that the new employee (particularly if he/she is entering or re-entering the workforce) has secured a job that they are ultimately unsuited for. In addition to an objective performance management problem, the employer and employee find themselves attempting to work through intangible issues that stem from the individual characteristics of the employee.
26. We would not suggest that employers should seek to terminate employment in such situations without making efforts to address the situation and provide the employee with an opportunity to improve. New Zealand workplaces would be sparsely populated if employers were unable to make reasonable accommodation for individual diversity. Similarly, we would not wish to see employers adopting poor recruitment practises in the belief that a probation period will provide a back-stop.
27. However, we do submit that employment law should recognise the potential for new employment relationships to generate a range of concurrent issues, many of which are intangible and do not lend themselves to resolution through the traditional performance management processes. In our view, introducing meaningful probationary periods in which the rules around termination are less complicated recognises a real, practical distinction between new and existing employees and the nature of the issues they respectively raise.

V: Drawbacks of the Proposed Amendment

Scope for Abuse

28. Introducing meaningful probationary periods would undoubtedly be greeted with some concern that some employers may seek to exploit any relaxation of the rules around termination of employees.
29. While we acknowledge in theory the potential for abuse, we submit that the likelihood of such abuse actually occurring is very small. New Zealand's shortage of labour is well-documented, and the natural consequence of this shortage has been an increase in the value of good employees. In short, competent employees will be retained.
30. Unscrupulous employers that may seek to turn-over staff to avoid unjustified dismissal laws will be taking their chances in a tight labour market, as well as foregoing the productivity gains to be had from a well-trained and positively-engaged workforce operating within a healthy workplace culture.
31. In our view, the value of meaningful probationary periods in which genuine employers enjoy protection against unjustifiable dismissal claims as a means of improving the employment prospects of perceived risk groups far outweighs the potential for abuse.

The Scope of the Bill

32. For the reasons given above, the MIA fully supports suspending the operation of 'unjustifiable dismissal' claims in the first three months on a new employment relationship. In our view,

however, the Bill takes the idea further than is strictly necessary to achieve its stated aims in seeking to bar the taking of a personal grievance on any grounds.

33. We submit that the proposed new section 69AD should be replaced with a clause that provides simply that, where an employee is terminated during a period of probationary employment to which Part 6AA applies, an employee may not bring a personal grievance action under section 103(1)(a) of the ERA.

VI: Recommendation

34. The MIA recommends that the Bill proceed, subject to an amendment to limit the scope of the proposed bar on the taking a personal grievance to cover only personal grievances alleging an unjustified dismissal of an employee that was terminated during a probationary period.

VII: Appearance before the Select Committee

35. The MIA does not wish to be heard before the Select Committee to present this submission.

VIII: Contact Details

36. For any queries relating to this submission, please contact Dave Harrison on 04 495 8371 or email dave.harrison@mia.co.nz

Meat Industry Association of New Zealand (Inc)

IX: Appendix 1 - MIA Members as at 1 July 2005

List of MIA Members and Affiliate Members (year commencing 1 July 2005)

Members
Advance Marketing Ltd
AFFCO New Zealand Ltd
Alliance Group Ltd
ANZCO Foods Ltd
ANZCO Green Island Ltd (ANZCO group)
ANZPAC Foods Ltd
Auckland Meat Processors Ltd
Ballande New Zealand Ltd
Bernard Matthews New Zealand Ltd
Blue Sky Meats (NZ) Ltd
<i>Brookland (NZ) Ltd (in receivership)</i>
Canterbury Meat Packers Ltd (ANZCO group)
Columbia Exports Ltd
Crown Marketing Ltd (ANZCO group)
Crusader Meats New Zealand Ltd
Dairy Meats NZ Ltd (AFFCO group)
Davmet New Zealand Ltd
Fern Ridge Ltd
Frasertown Meat Company Ltd
Garra International Ltd
Glovers Foods Ltd
Greenlea Premier Meats Ltd
Harrier Exports Ltd
Horizon Meats New Zealand Ltd (wholly owned subsidiary of Blue Sky Meats (NZ) Ltd)
Lamb Packers Feilding Ltd (wholly owned subsidiary of Bernard Matthews NZ Ltd)
Land Meat (NZ) Ltd (AFFCO group)
Lanexco Ltd
Lowe Corporation Ltd
Mathias International (Mathias Meats NZ Ltd)
Pilot (NZ) Ltd
Primary Producers Co-operative Society Ltd (PPCS)
Progressive Gisborne Ltd (wholly owned subsidiary of Bernard Matthews NZ Ltd)
Progressive Meats Ltd
Rakaia River Meats Ltd
Riverlands Ltd (ANZCO group)
South Pacific Meats Ltd
Tara Exports Ltd
Taylor Preston Ltd
Te Kuiti Meat Processors Ltd
Towers Thompson (New Zealand) Ltd
Universal Beef Packers Ltd (UBP)
Wallace Corporation Ltd

Affiliate Members
AgResearch-MIRINZ Centre
Aon New Zealand Limited
Australia-New Zealand Direct Line (ANZDL)/Contship Containerlines (Divisions of CP Ships UK Ltd)
Carter Holt Harvey, Packaging
CentrePort Wellington
Energy for Industry (ex Meridian Solutions)
Hamburg-Sud New Zealand Ltd
Hapag Lloyd (New Zealand) Ltd
Maersk New Zealand Ltd
New Zealand Natural Casing Association Inc
Oceanic Navigation Ltd
Port of Napier
Port Otago Ltd
Port Taranaki Ltd (previously Westgate Transport Ltd)
ProAnd Ltd (Meatek Ltd)
Rissington Breedline Ltd
Thompson Clarke Shipping Pty Ltd (ANZ Marketing Representative for the Port of Los Angeles)
Vero Marine Insurance