



Meat Industry Association of New Zealand (Inc)

Submission to the Department of Labour on

Quality Flexible Work: Increasing the  
Availability and Take Up in New Zealand

20 December 2006

**Meat Industry Association Submission on Quality Flexible Work: Increasing the Availability and Take Up in New Zealand**

**Contents**

I: Introduction .....3

II: General Comments .....4

III: Question 1 .....5

IV: Question 2 .....6

V: Question 3 .....6

VI: Question 4 .....7

VII: Question 5 .....8

VIII: Question 6 .....8

IX: Question 7 .....9

X: Contact Details .....10

Appendix 1: List of MIA Members – 1 July 2006 .....11

## **I: Introduction**

1. The Meat Industry Association of New Zealand Incorporated ('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 virtually all of New Zealand sheepmeat exports and all beef exports, producing 17 per cent of our nation's exports by value (30 percent of New Zealand's primary sector export revenue). The New Zealand meat industry earned \$5 billion in export revenue in the year ended May 2006 and \$1.22 billion from domestic meat sales in the year ended March 2006.
2. MIA member companies operate approximately 80 processing plants dispersed throughout the country. The plants slaughter and process approximately 24 million lambs, 4.4 million sheep and 4.2 million cattle and calves each year. Ninety percent of this production is processed into value-added products. Approximately 800,000 tonnes or 85% of the production is exported to overseas destinations. Our affiliate members 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 Association 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 and the 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 zoosanitary 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. A list of Association members is attached as Appendix 1.

## **Background to this Submission**

7. This submission is made by the MIA in response to Department of Labour ('DoL') Discussion Paper *Quality Flexible Work: Increasing the Availability and Take Up in New Zealand* ('the Discussion

Paper'). In developing this submission all members and affiliate members were consulted and asked for input, but MIA members may also make individual submissions reflecting concerns relating to their specific operations.

8. The MIA's submission contains some general comments of the MIA's views around flexible workplaces, followed by a series of responses to the questions asked in the response form included as part of the Discussion Paper.

## **II: General Comments**

9. The MIA's general view is that any approach to improving the availability and take up of flexible work in New Zealand must fully take into account the fact the New Zealand workplaces are all unique. There is no 'one size fits all' that would ensure maximise the availability of flexible work arrangements.
10. The MIA submits that the Discussion Paper does not make a compelling case for government to act to increase the availability of flexible work arrangements in New Zealand. For example, while it notes many of the potential benefits to employers of flexible work practices – such as opening up access to untapped pools of labour – such benefits are already widely understood by employers.
11. We also note that page 9 of the Discussion Paper raises a national survey indicated employees want things such as flexible start/finish times and more say in the setting of rosters in support of a need to increase availability of flexible work arrangements. While we accept that many employees would want this sort of flexibility, the existence of such wishes does not of itself mean that levels of flexibility at present are low. For example, an employee may responding to a survey saying that flexible start and finish times are important may very well actually already have this flexibility - classifying something as important does not mean that you do not have it.
12. Alternatively, an employee may want greater flexibility in situations where an employer has genuinely been as flexible as possible within the operating constraints of a business. In our view this would not represent a need to increase availability of workplace flexibility, but is an inevitable consequence of the fact that there are natural limits on the degree of flexibility that is achievable – particularly in a production chain environment such as that which prevails in the meat industry.
13. The low level of uptake of existing initiatives noted in the Discussion Paper also raises some very legitimate questions as to whether there is a need to increase availability of flexible work arrangements in New Zealand. There are inherent tensions between wanting to maximise recreation time and wanting to maintain a chosen standard of living, and the level of uptake of existing initiatives will to a significant extent be a natural reflection of individual decision-making in light of these tensions.
14. If it is decided that there was a genuine need for government involvement in issues of workplace flexibility, the MIA remains resolutely opposed to a legislative approach. The reasons for the MIA's view were set out in our submissions to the Transport and Industrial Relations Select Committee on the Employment Relations (Flexible Working Hours) Amendment Bill, which we have attached to this document as Appendix 2.

15. In essence, we submit that submit that the differences in workplace mean that flexible work arrangements need to be driven by employer and employees in a particular workplace and with a common appreciation of the limits for flexibility within the workplace. This requires employers and employees to work together on the issue, whereas a generic legislative process for implementing flexible work would create a partisan approach to flexibility and ultimately lead to acrimonious disputes.
16. If the government determines to act, a vastly better approach would be to provide employers with information on the benefits of flexible work arrangements, and tools for identifying how flexible work arrangements might fit into individual workplaces.
17. While the above (and Appendix 2) sets out the MIA's overall view, below we answer the individual questions posed by the Discussion Paper. Our answers are not intended to detract in any way detract from this overall, and are intended primarily to assist the Department's understanding of the complexity of the issue.

### III: Question 1

*Do you think there is anything needed in your workplace to achieve quality flexible work arrangements and practices? If so, what?*

18. Workplaces within the meat industry tend to operate on a production chain basis. This makes it difficult to negotiate flexibility for individual workers, as each worker undertakes a task as part of a bigger working unit (e.g., a shift). Allowing individuals to leave or start work earlier in such an environment means either that the production line cannot operate to capacity, or that remaining workers must 'take up the slack'. Both of these scenarios have a clear negative impact on productivity – as well as potential health and safety impacts.
19. To achieve quality flexible work in this sort of environment, then, flexibility needs to be treated as a 'shift' issue, rather than an individual one and this happens quite commonly in the industry. For example:
  - many plants have agreed to employee requests to operate shifts over 4x10-hour days, rather than for 5x8-hour days – allowing for three-day weekends every week;
  - where livestock supply and animal welfare issues allow, many plants also offer shifts a degree of control over when they work. This may be in terms of start times (e.g., early starts to allow an early finish), or sometimes it may even be the days of work (e.g., one plant, for example has agreed to employee requests to move the Friday night shift to Sunday night over the Christmas period to allow employees to participate in social activities)

20. While we think that there is a need to approach flexibility from a 'shift' perspective rather than an individual perspective, then, we are also aware that there already is a good deal of flexibility on this basis and we do not consider that there is a 'need' for any specific intervention.

#### **IV: Question 2**

*What do you think will help employees achieve the flexible work arrangements they need?*

21. To a degree, this question is also answered by the response to Question 1. In the production chain environment, the most important process to achieving flexible work arrangements is for employees to make suggestions to employers and to be aware of limitations surrounding stock availability, animal welfare etc.
22. Outside of the production chain environment, it would seem to the MIA that the best help for employees would be help that was targeted at providing them with knowledge of the opportunities for flexibility within their workplace, and with the confidence to take advantage of them. We note that page 10 of the Discussion Paper comments that a third of employees find it hard to discuss work-life issues with management, and that an EEO Trust survey has found that uptake of work:life balance initiatives made available to workers was relatively low.
23. We do not see that the legislative approach to achieving workplace flexibility would effectively deal with this issue. Inserting a process for dealing with requests for flexibility into the Employment Relations Act would seem to face exactly the same issues as the status quo in that it would only have value if employees knew about the process and were confident in using it.
24. We also note that a legitimate interpretation of the low uptake of existing initiatives is that this is an indication that the demand for such arrangements may be overstated. While people may respond in a survey that they may wish for flexible start and finish times, for example, it is the MIA's view that observed behaviour provides a more telling picture of an individual's priorities than an individual's hypothetical response to a survey. Actions tend to speak louder than words.

#### **V: Question 3**

*What do you think will help managers or employers introduce and manage flexible work arrangements?*

25. As noted above, the MIA does not share the view that there is a general problem with availability of flexible work arrangements in New Zealand. However, we do recognise that some employers – particularly smaller employers – may wish to implement flexible work initiatives as good human resource practice, but be unsure how to go about it.

26. We suggest that the most useful assistance that could be provided to such employers would be educational material incorporating practical examples/case-studies. Ideally, case studies would be drawn from a range of business and production environment so that employers could draw ideas on how flexible work arrangement could be adapted to fit their unique business environment.
27. The Discussion Paper also suggests that 'flexible work policy' templates could be developed to assist employers that wish to implement flexible work practices, and the MIA would agree with this suggestion.

## **VI: Question 4**

*What do you think are the practical difficulties managers or employers may face when trying to implement quality flexible work arrangements?*

28. One practical issue employers are likely to face when implementing a flexible work arrangement initiative is how to manage competing requests for flexible work. Within any workplace there likely to be limits around the extent to which flexible work practices can be accommodated – e.g., there will ultimately be a point where requests have to be declined simply because there need to be employees in the workplace at certain times.
29. Flexibility, then, will generally be a finite commodity, and employers need to consider systems for rationing it. While operating on a 'first-come, first-served' basis may be a simple approach, it creates the potential for resentment among employees that may later be declined because the workplace has exhausted its capacity for flexibility.
30. A second issue is that any complexity associated with either developing flexible work policies and/or dealing with requests for flexible work will come at an administrative cost and a loss of productivity. The more complex and formalised the system, the greater the strain it would place on managerial resources and the less likely it would be that managers could genuinely appreciate any benefits that accrue from flexible work.
31. A third issue is that employers and managers need to be able to plan for the future of a business, and in doing so need to have a degree of certainty around the inputs that the business needs to function – such as access to raw materials, a secure energy supply, and the availability of staff. Providing flexible work arrangements can place pressure on business planning – for example if an employer is faced with a situation where its number of FTEs is reduced because staff work shorter hours. This pressure is more acute where low levels of unemployment limit options for expanding the employer's staff levels to meet such a shortfall.
32. One might argue that this could be addressed by lifting productivity, which is true. However, it must be recognised that there is no one formula for lifting productivity. While in some cases flexible work

arrangements may contribute to improved productivity, there will equally be many cases where the disruption to work patterns caused by flexible work arrangements would have a negative effect on productivity – effectively compounding existing challenges to raising productivity.

## **VII: Question 5**

*What do you think can make it hard for employees to ask for flexible work arrangements?*

33. The MIA suggests that some employees may simply lack the confidence or self-assertiveness to raise such issues with their employer. These are really 'life skills' that no amount of legislation can address as it would only create new rights that they would still lack the confidence to exercise.
34. In other instances, employees that may want to take advantage of flexible work arrangements but ultimately do not do so because this wish is balanced against other personal priorities. A desire to work less and spend more time with the family may be outweighed by financial goals or pressures, for example.

## **VIII: Question 6**

*Do you think different types of employers, types of work or workplaces, or occupations face particular challenges in providing for quality flexible work? What are these challenges? What is needed to meet these challenges?*

35. We believe it is fairly self-evident that different employers will face different challenges in providing quality flexible work. Workplaces are not homogenous, and the range of opportunities for flexibility available to a '9-to-5' office worker will be different to the opportunities for flexibility available to a bus-driver, a stevedore, a retail worker, or a prison officer.
36. Some of the particular challenges facing the meat industry in providing flexible work arrangements are discussed in our answer to question 1 above. However, we consider that the fact that each workplace is different means that it is unhelpful to catalogue such challenges and seek generic 'one-size-fits-all' responses to them. Providing flexible work (and addressing the challenges to doing so) is an issue that can only be addressed on an individual enterprise basis, having regard to the particular circumstances of the enterprise.

## IX: Question 7

*The discussion paper presents a number of approaches for increasing the availability and take up of quality flexible work. What are your views on these approaches and which approaches would best help employees achieve quality flexible work and meet the needs of businesses?*

37. The MIA's answers to the following are without prejudice to the MIA's general view that the need for any government involvement is overstated.

**(a) Providing employers with more information and resources about managing quality flexible work**

38. As the answers above would suggest, the MIA would see education as a more positive approach than legislation. In our view, flexible work arrangements can only be addressed on an individual enterprise basis and as a result the issue would lend itself to being one where it would be better to develop an employer 'tool kit' rather than attempt to develop a generic 'one-size-fits-all' approach to implementing flexible work practises.

**(b) Providing employees with more information and resources about managing quality flexible work**

39. If there is indeed a problem with the availability of flexible work, we suggest that it would be imprudent to pursue new initiatives without first working to assist employees to take advantage of what already exists. Providing employees with information and resources and existing rights would again be a better approach than legislation.

**(c) Providing legislation with more specific provisions about employees' rights to request flexible work**

40. The MIA is strongly opposed to this option. Legislating a procedure for dealing requests will not address the underlying reason for low levels of uptake of existing flexible work initiatives, for example. The publicity associated with legislation may increase uptake, but it would be the raising of awareness that would be the cause, not the legislation itself.

41. New legislation would in effect be defining a rigid process for meeting duties of good faith that already exist in the Employment Relations Act (i.e., the requirement to genuinely consider, and respond reasonably to, a proposal to vary an employment agreement – for example to provide for more flexibility). A more positive approach would be to assist employers and employees to make better use of existing initiatives, and to tailor flexible work initiatives to meet business needs.

42. New legislation would also overlay additional and unnecessary complexity around flexible work initiative already provided by employers, and would entail mandating a generic approach to deal with an issue of great complexity.
43. We believe it is also important to be realistic about what a legislative approach would signal to many businesses. Rightly or wrongly, many employers resent legislative intervention in the way in which they operate their business. Unless the legislation would fundamentally alter existing rights – which the MIA does not believe it would – there is a very real risk that the resentment legislation would inevitably create among some employers would hinder the increased availability of flexible work among such employers. Rather than being seen as a positive human resources practise, many employers would see flexible work arrangements as a centrally-imposed compliance cost – creating a level of resistance to their implementation.

**(d) Providing employers with formalised guidelines on how to implement and manage flexible work**

44. Our concern with such an approach is that it appears to concentrate on seeking generic solutions to a more complex problem. Although one may seek to make guidelines at a level of generality that would make them relevant to as many workplaces as practicable, it may be that guidelines would have to be at such a level of generality that they may ultimately be of limited use.
45. Another risk associated with such guidelines is that courts, employees or unions may seek to apply them too rigidly to workplace models that the generic guidance is unsuited to accommodate.

**(e) Supporting employers, employees and unions to work in partnership to implement and manage flexible work**

46. Such an approach could have merit, but only if such an approach recognised the diversity of workplaces and did not seek to find generic solutions. We would envision this approach as involving engagement with small groups of identifiable workplaces or employers, rather than a tri-partite national initiative involving the likes of the Council of Trade Unions and Business New Zealand.

**X: Contact Details**

47. To discuss this submission further, please contact:

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## Appendix 1: List of MIA Members – 1 July 2006

Members
Advance Marketing Ltd
AFFCO New Zealand Ltd
Alliance Group Ltd
ANZCO Foods Ltd
ANZCO Green Island Ltd (ANZCO group)
ANZPAC Foods Ltd
APJ Meats 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)
CMP Rakaia
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)
Hygrade Casings Company (wholly owned subsidiary of New Zealand By-Products)
Lamb Packers Feilding Ltd (wholly owned subsidiary of Bernard Matthews NZ Ltd)
Land Meat (NZ) Ltd (AFFCO group)
Lanexco Ltd
Lowe Corporation Ltd
Malvern Meat Processors Ltd (AFFCO Group)
Mathias International (Mathias Meats NZ Ltd)
New Zealand By-Products
Pilot (NZ) Ltd
Primary Producers Co-operative Society Ltd (PPCS)
Progressive Gisborne Ltd (wholly owned subsidiary of Bernard Matthews NZ Ltd)
Progressive 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

<b>Affiliate Members</b>
AgResearch-MIRINZ Centre
Aon New Zealand Limited
Axis Intermodal (Ports of Auckland 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
Millers Mechanical NZ Ltd
Oceanic Navigation Ltd
Port of Napier
Port Otago Ltd
Port Taranaki Ltd (previously Westgate Transport Ltd)
ProAnd Ltd (Meatek Ltd)
Rissington Breedline Ltd
Sealed Air (New Zealand), Cryovac Division
Thompson Clarke Shipping Pty Ltd (ANZ Marketing Representative for the Port of Los Angeles)
Vero Marine Insurance



Meat Industry Association of New Zealand (Inc)

Submission to the Transport and Industrial  
Relations Select Committee on

Employment Relations (Flexible Working  
Hours) Amendment Bill

July 2005

**Meat Industry Association Submission on the Employment Relations (Flexible Working Hours) Amendment Bill**

**Contents**

- I: About the Meat Industry Association ..... 3
- II: Meat Processing Operations ..... 3
- III: Summary of MIA Position ..... 4
- IV: Contrast with UK Approach ..... 4
  - 'Right to Apply' vs 'Right to Flexibility' ..... 4
  - Refusal of Requests ..... 5
- V: The Merits of a Legislative Approach ..... 6
  - Is There a Problem Demanding a Legislative Remedy? ..... 7
  - Effectively Promoting Workplace Behaviours ..... 8
  - Obligations in Existing Legislation ..... 8
- VI: Recommendation ..... 9
- VII: Appearance before the Select Committee ..... 9
- VIII: Appendix - MIA Members as at 1 July 2005 ..... 10

## **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.
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: Meat Processing Operations**

7. Meat processing operations are structured on a production line basis centred around slaughter chains. The success of a slaughter chain as an efficient production system relies on the ability of companies to ensure that there is always a worker to fill each position in the slaughter chain at any given time.
8. To ensure a consistent and reliable flow of product to customers, the meat processing plants invest a significant amount of forward planning in stock procurement, the processing environment,

and transport logistics. Due to the way in which this planning is integrated, meat processing companies need to have as high a level of certainty as possible that a chain will produce a certain amount of product over a given period (e.g., over a shift).

9. There is a very high level of union membership among meat process workers. They are predominantly members of the two larger meat processing unions or of various site unions, and tend to be employed on collective agreements based on individual sites rather than multi-site agreements.

### **III: Summary of MIA Position**

10. The MIA agrees that there are potential advantages for businesses in negotiating flexibility around the working hours of employees. This is even more so in a labour market in which unemployment is the second lowest in the OECD and where workforce participation is at record levels. If a business has good staff, it does what it can to keep them.
11. The MIA opposes the Bill in its entirety, however, because we consider it unnecessary and counter-productive. Businesses do not need legislation telling them to do what they are already doing. More importantly, they do not need the additional red tape that would accompany it.
12. Businesses that remain closed to the idea of flexibility where possible feel the effects of that decision in terms of staff retention and productivity. Rather than legislate to compel such businesses to consider flexible working patterns, in our view it would be more effective to educate them on the advantages of flexibility and the positive impacts it could have on their businesses. Such an approach would be better targeted to the issue the Bill seeks to address rather than a blanket legislative approach imposing an additional administrative burden on all employers.

### **IV: Contrast with UK Approach**

13. The Bill is evidently based on existing legislation in the United Kingdom, namely the Employment Rights Act 1996 (as amended by the Employment Act 2002), the Flexible Working (Procedural Requirements) Regulations 2002 and the Flexible Working (Eligibility, Complaints and Remedies) Regulations 2002 (collectively 'the UK Legislation').
14. However, in a number of significant areas the Bill strays from the design of the UK Legislation, with the result being that the Bill would place a significantly greater onus on employers than the UK Legislation does. Two differences between the Bill and the UK Legislation clearly illustrate this point.

#### **'Right to Apply' vs 'Right to Flexibility'**

15. Section 80F of the UK's Employment Rights Act (as amended) states:

**80F**      **Statutory right to request contract variation**  
(1)      *A qualifying employee may apply to his employer for a change in his terms and conditions of employment if –*

- (a) *the change relates to –*
  - (i) *the hours he is required to work,*
  - (ii) *the times when he is required to work,*
  - (iii) *where, as between his home and a place of business of his employer, he is required to work, or*
  - (iv) *such other aspect of his terms and conditions as the Secretary of State may specify by regulations, and*
- (b) *his purpose in applying for the change is to enable him to care for someone who, at the time of the application, is a child in respect of whom he satisfies such conditions as to relationship as the Secretary of State may specify by regulations.*

16. Viewed on its own, the proposed new section 61A in clause 6 of the Bill is basically a simplified version of the above. However, when one looks at the wider context of the Bill there is a very clear difference in intent.
17. Clause 3 of the Bill states that the purpose of the Bill is ‘to grant qualifying employees the right to change their working hours’ (emphasis added). The proposed new section 61B in clause 6 of the Bill requires an ‘employer [to] acknowledge that a qualifying employee has the right to work whenever possible’ (emphasis added).
18. So while on the face of it both the UK Legislation and the Bill talk about a right to apply for flexibility, the context of the Bill would overlay that ‘right to apply’ with an assumption that employees have a fundamental right to flexibility. A ‘right to apply’ and a ‘right to flexibility’ are very different things, and this is one of the key areas in which the Bill differs from the UK Legislation.

### **Refusal of Requests**

19. A second significant point of difference relates to the circumstances under which an employer can refuse an application for flexibility. Again, the Bill and the UK Legislation appear similar at first glance. Section 80G of the UK’s Employment Rights Act says:

**80G      *Employer’s duties in relation to application under section 80F***

- (1) *An employer to whom an application under 80F is made -*
- (a) *shall deal with the application in accordance with regulations made by the Secretary of State, and*
  - (b) *shall only refuse the application because he considers that one or more of the following grounds applies –*
    - (i) *the burden of additional costs*
    - (ii) *the detrimental effect on ability to meet customer demand,*
    - (iii) *inability to re-organise work among existing staff,*
    - (iv) *inability to recruit additional staff,*
    - (v) *detrimental impact on quality,*
    - (vi) *detrimental impact on performance,*
    - (vii) *insufficiency of work during the periods the employee proposed to work*
    - (viii) *planned structural changes, and*

(ix) *such other grounds as the Secretary of State may specify be regulations*

20. The proposed section 61B(2) in clause 6 of the Bill nearly reproduces this word-for-word with three material exceptions. The first is that the proposed section 61B(2) in the Bill would not allow regulations to be made expanding the list of grounds available to an employer for refusing an application for flexibility. Unlike the UK Legislation, this means that the process of dealing with applications for flexibility under the Bill would not be responsive to changes in the business environment.
21. Secondly, the proposed section 61B(2) in the Bill would not recognise 'the burden of additional costs' as a reason to decline a request or flexibility. In our view, this is nonsensical. The impact of additional costs is a valid issue in any business decision, and cannot be disregarded as a factor that genuinely affects whether or not an employer is able to provide flexibility.
22. Thirdly, and most importantly, the proposed section 61B(2) would only allow refusal of an application for flexibility that 'cannot reasonably be accommodated' on one of the listed grounds. In contrast, the UK Legislation allows employers to refuse where the employer 'considers that' one of the listed grounds applies.
23. The significance of this difference lies in the point of view from which a decision would be viewed in the event that it were challenged through the relevant judicial authority. The Bill would ask the Employment Relations Authority to test the employer's refusal against what the notional 'reasonable person' would have thought. In contrast, the UK Legislation asks an employment tribunal to approach the issue from what the particular employer making the decision thought.
24. The net result is that New Zealand employers may consider that they have reasons for genuinely believing a request could not be accommodated, only to find that an Employment Relations Authority member holds a different view on what it is reasonable to expect that employer to do to accommodate the request.
25. To conclude this part of our submission, even if one were to assume that the UK Legislation had been relatively successful (which can be disputed), the impact of the Bill in New Zealand cannot be assumed to mirror the experience in the United Kingdom. This is simply because the burdens imposed on businesses under the Bill would be quite different to those existing under the UK Legislation in key areas. Essentially, New Zealand employers would find themselves under a much greater burden than their counterparts in the United Kingdom.

## **V: The Merits of a Legislative Approach**

26. The explanatory note to the Bill states that its intention is to:

*...foster dialogue and better relationships in the workplace; to increase the employment rate for parents of young children by offering them expanded flexible working opportunities, and assist parents to balance work and family life.*
27. We submit that the Bill will not materially assist in achieving these aims, and would actually be counter-productive to at least one of these aims – promoting better relationships in the workplace.

## Is There a Problem Demanding a Legislative Remedy?

28. Legislating to increase employment rates assumes that there is currently a problem in this regard. However, the assumption simply does not stand up to scrutiny.
29. In the March 2005 Household Labour Force Survey, total labour force participation (i.e., percentage of working-age New Zealanders working or actively looking for work) was 67.6%. Although this is down 0.1% on the December 2004 survey, it is still the second highest participation rate on record. Labour force participation for females in March 2005 is the highest ever recorded – at 60.8%.
30. High levels of labour force participation can only mean that going to work is an attractive option. While family finances will obviously play a key role in a decision for a parent of young children to go to work, an important part of the reason that increased labour force participation is possible is that employers are already practising the flexibility the Bill seeks to mandate. With a 3.9% unemployment rate, employers faced with a need for labour, and more particularly with a need for good workers, are doing whatever they can to attract and retain staff.
31. In July 2005, the Organisation for Economic Cooperation and Development ('OECD') released its *Economic Survey of New Zealand* ('the OECD Report'). We note that, although the OECD Report highlighted that women with dependant children under 6 had one of the lowest workforce participation rates in the OECD, this was largely attributed to issues regarding child care arrangements rather than inflexibility among employers. In fact, the OECD Report noted that the mothers of young children in New Zealand are more likely to have part-time work than their counterparts on other OECD countries, which again suggests a high rate of flexibility around working hours already exists.
32. Looking specifically at the meat industry, the production methods used (discussed briefly in paragraphs 7 and 8 above) often do not readily lend themselves to flexibility. Consequently, when prompted for examples of instances of employees that have negotiated flexible hours a number of our Members tended to give examples using staff in non-production areas (e.g., office administration).
33. Even in production areas, however, our Members have looked hard at what they can do to be flexible with shift rosters. A common example is to offer employees the option of working four 10-hour shifts and having a three-day weekend every week. Rosters such as this have proven very popular among employees.
34. Several plants have been actively exploring options for developing new shifts with start and finish times that work in around school hours. Others offer 'flexi-time' working arrangements in areas such as rendering facilities, pelthouses, chillers and other areas where it is not so critical to have 'all hands on deck' all of the time. A few plants have approved job-sharing arrangements where people work full shifts, but one person might work two shifts in a week, with another person picking up the other two or three.
35. The basic point made by our Members is that when employers have reliable staff, they do what they can to keep them. It makes sound business sense to provide flexibility for staff where

possible, irrespective of whether employees are asking for flexibility to care for children or for any other reason.

36. One might argue that employers that are already being flexible have nothing to fear from the Bill. The counter to this is that the Bill adds a further layer of complexity to employment relationships. Even the most flexible of employers will at some stage have to refuse a request, and will then face having to prepare a business case to defend its decision, and be exposed to the direct and indirect costs of having to defend that decision through the Employment Relations Authority.
37. We also note that the OECD Report (refer paragraph 31 above) cautions against restricting the flexibility of the labour market in New Zealand as this could act as a restraint on economic growth. In the wake of the increased labour market regulation introduced through last year's Employment Relations Law Reform Bill, the OECD Report goes so far as to recommend that the government should remain open to corrective actions to increase labour market flexibility if necessary.
38. In our view, this Bill runs contrary to the recommendation in the OECD Report. Although the Bill purports to promote flexibility in terms of when an employee wishes to be available to work, what it would actually do is add rigidity around how a particular aspect of employment relationships in New Zealand must be conducted. We share the concerns of the OECD, and submit that further regulating the labour market in the absence of a clear and compelling reason to do so unnecessarily jeopardises New Zealand's economic growth and introduces another potential barrier to our ability to address New Zealand's comparatively poor labour productivity.

### **Effectively Promoting Workplace Behaviours**

39. As for the Bill's intention to promote better dialogue and better workplace relations, we submit that forcing employers to be flexible when they do not see the benefit in flexibility is more likely to create resentment among those employers than promote better workplace relations. Legislation may change behaviour through coercion, but legislation on its own is a fairly blunt instrument that is not particularly well-suited as means of changing people's attitudes – which is ultimately what needs to happen if dialogue and workplace relations are to be improved.
40. In our view, education is a far more positive means of changing attitudes. While often a means of coercion may be necessary to support education, we submit that in this instance legislative coercion is unnecessary. Employers that do not adapt employment practices to meet modern labour market issues already face negative consequences as a result. These include difficulties with staff retention and recruitment, as well as flow-on effects in terms of productivity etc.
41. In essence, the existing incentive for employers to be flexible outweighs the coercive value of the Bill. Promoting the benefits of flexibility to employers (i.e., a voluntary initiative) would be a more effective means of achieving the objects of the Bill than legislating. What is more, a voluntary initiative would not impose any further administrative burden on employers that have already embraced the concept of workplace flexibility.

### **Obligations in Existing Legislation**

42. As a final point on the merits of legislating in this instance, we note that the Employment Relations Act 2000 ('the Act') already includes obligations on employers that can have much the same effect

as the Bill. Section 4 of the Act requires the parties to an employment relationship to conduct themselves in good faith, and in particular subsection 4(1A)(c) requires:

*...the parties to an employment relationship to be active and constructive in establishing and maintaining a productive employment relationship in which the parties are, among other things, responsive and communicative*

43. Subsection 4(4)(ba) of the Act expressly provides that this obligation applies to “bargaining for an individual employment agreement or for a variation of an individual employment agreement”. Subsection 4(4)(a) provides the same in respect of variations to a collective agreement.
44. What this means is that an employer is already obliged to be responsive and communicative should an employee seek to vary his or her employment conditions by seeking alternative working hours. We submit that it is unnecessary to take this further and prescribe the way in which an employer must communicate and respond, which in essence is what the Bill seeks to do.

## **VI: Recommendation**

45. The MIA recommends that the Bill does not proceed, for the reasons given above.

## **VII: Appearance before the Select Committee**

46. The MIA wishes to be heard before the Select Committee to present this submission.
47. For any queries relating to this submission, please contact Dave Harrison on 04 495 8371 or email [dave.harrison@mia.co.nz](mailto:dave.harrison@mia.co.nz)

Meat Industry Association of New Zealand (Inc)

## VIII: Appendix - MIA Members as at 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  
Brookland (NZ) Ltd  
Canterbury Meat Packers Ltd (ANZCO group)  
Columbia Exports Ltd  
Crown Marketing Ltd (ANZCO group)  
Dairy Meats NZ Ltd (AFFCO group)  
Davmet New Zealand Ltd  
Fern Ridge Ltd  
Frasertown Meat Company Ltd  
Garra International Ltd  
Garrett International Meats 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  
Riverlands Ltd (ANZCO group)  
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  
Hamburg-Sud New Zealand Ltd  
Hapag Lloyd (New Zealand) Ltd  
Maersk New Zealand Ltd  
Meridian Solutions Ltd  
New Zealand Natural Casing Association Inc  
Oceanic Navigation Ltd  
P&O NedLloyd Ltd  
Port of Napier  
Port Otago Ltd  
ProAnd Ltd (Meatek Ltd)  
Rissington Breedline Ltd  
Thompson Clarke Shipping Pty Ltd (ANZ Marketing Representative for the Port of Los Angeles)  
Toll NZ Consolidated Ltd  
Vero Marine Insurance  
Westgate Transport Ltd