Submission on the Employment Relations Law Reform Bill

By the Meat Industry Association of New Zealand (Inc.)

For The Transport and Industrial Relations Select Committee

27 February 2004

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1 EXECUTIVE SUMMARY

MIA opposes this Bill in its entirety. If enacted it will constitute a further erosion of employers' rights and will not, particularly in relation to the meat industry, achieve its stated purpose. It will eventually reduce productivity, profitability, and investment in New Zealand industry.

The parts most opposed are:

- Making it unlawful to decline settlement of a collective bargaining for any reason
- Mandatory meetings for multi-employer collective agreements
- Mandatory settlement of collective bargaining by the Employment Relations Authority
- Making it more difficult to defend a dismissal.

MIA **recommends** the Bill not proceed.

2. MEAT INDUSTRY ASSOCIATION OF NEW ZEALAND (INC.) ("MIA")

MIA is made up of the following members:

- Meat (sheep, cattle, deer, pig, and goat) processors
- Registered meat exporters under the Animal Products Act 1999
- Affiliated members involved in packaging, cold storage, land (including rail), sea and air transport.

MIA represents meat processors and exporters who export virtually all New Zealand's sheepmeat exports and 98% beef exports. Total export receipts from the meat industry exceeded $5,000,000,000 ($5 billion) in 2002/03. There are approximately 60 export plants and 30 packing houses are situated throughout New Zealand from Moerewa to Invercargill. Processing plants range from single shift, one chain (60 employees) to multi-chain, multi-shift (over 2,000 employees). Company ownership structures vary between co-operatives, privately held companies, and public (listed and unlisted) companies. The total number of industry employees at peak season is in excess of 20,000. Most process workers are seasonal employees although there is a marked difference in season duration between the North and South Islands.

Meat processing and export companies rely heavily on collective agreements as part of their overall business strategy. Consistent and predictable shipments to customers require much advance planning in stock procurement, the processing environment, and transport logistics. Labour supply makes up a significant part of the processing environment and collective agreements for the duration of the agreed term are necessary to give certainty to the export trade.

Meat processing employees are predominantly members of the two larger meat processing unions or of various site unions. The vast majority of collective agreements are site agreements rather than multi-site agreements. There are no multi-employer collective agreements.

In order to prosper, the meat industry relies on enhanced employee productivity and has instituted various mechanisms to achieve a competitive result. Anything which reduces contractual flexibility is seen as eroding the gains that have been made in this area.

Attached as Schedule A is an overview of the meat industry and how it is vulnerable to plant closures by a return to compulsory unionism, national awards, and compulsory arbitration which prevailed under the then industrial relations law. It includes a comparison of the industrially disruptive 1980's with recent times.

3. CONSULTATION PROCESS

In preparing this submission all members and affiliate members were consulted and asked for input. MIA members are likely to make individual submissions reflecting concerns relating to their specific operations.

MIA had no input into the drafting of this Bill. Therefore, the first it became aware of the terms of the Bill was when it was introduced prior to Christmas 2003. The Bill proposes potentially significant changes for New Zealand employers particularly those, like the meat industry, that are large employers and with predominantly unionised employees employed under collective agreements.

MIA wishes to points out that the timing of this Bill is most unfortunate. With its attendant compliance cost, the Bill will only compound other cost increases that the government has recently imposed on the industry, particularly the cost of the statutory holidays under the Holidays Act, a cost which was imposed without notice or consultation.

Under the Holidays Bill there remained scope to agree "ordinary pay" for public holidays. However, when the Select Committee reported the Bill back "ordinary pay" had been abolished and parties were unable to agree a flat rate of pay in advance which did not equate to average gross earnings. This was a substantial change for the meat industry and went against the joint recommendations of the employer/union working group. Overnight this change will double the cost of statutory holidays, money which would otherwise have been available for reinvestment and rewarding employees for production. In one sweeping (and unannounced) measure the Select Committee had abolished a meaningful productivity scheme which has worked in New Zealand since the inception of holiday pay. A direct effect will be downward pressure on wage movements.

4. SUBMISSION

This Bill is engineered to promote collective bargaining, (both dual and multi-party agreements) and to create a bias toward union membership. At the time it was introduced MIA members were clear in advising that they considered the Employment Relations Act had gone far enough in swinging the pendulum of industrial relations law towards the collective rights of the employee. The current message is that enough is enough. These new reforms will tilt the balance too far in favour of collective bargaining away from the specific needs of the employer and employees; in favour of promoting third party politics; and will have the potential to

destroy a large part of enterprise differentiation through compulsory arbitration and multi-party collective agreements and even a possible return to national awards.

This Bill is unprecedented in telling parties how to bargain for an agreement. It is impossible to legislate for agreement on issues but this is what the Bill attempts to force parties to do. MIA opposes the Bill primarily because it curbs productivity and will largely fail in what it sets out to do. It will instead increase confusion, conflict, and litigation. There already exists fair, productive and effective employment relationships in the industry. Job numbers, regional development, and research and development will decrease as a result. This aspect should be at the forefront of the Committee's deliberation when considering the Bill's potential for disruption. Some regional areas face stark choices; either to accept pay levels which are on offer or to accept that an employer may move the business where others are willing to work at that level.

MIA accepts that there may have been a case, over time, for minor amendments to a major piece of legislation such as the Employment relations Act but wholesale change is damaging and unacceptable. With the exception of the sale/contracting out provision (the tenor of which was encapsulated in clause 66 of the original Bill but excluded due to employer concerns) the proposed changes seem to have been largely brought about because of a few Court of Appeal decisions and the lack of a large increase in union membership. These are not compelling reasons for change. By and large, employers, employees and unions have adjusted well to the Employment Relations regime with little fanfare. Further substantial reform increases to risk of major industrial disruption by tilting the balance too far in unions' favour.

There has been no significant industrial action in the meat industry for the last three years. No employees or unions voted for early termination of a collective under s246 of the Act allowing early termination and bargaining for a multi-employer collective. From this it might be concluded that employees are generally satisfied with the current collective structure. Base rates have increased over the years, as have incentive rates for increased production.

Finally, the Bill dilutes the value of employment agreements by telling employers that further things must go into agreements and by significantly changing the established law on dismissals.

If the Bill is enacted as drafted and full advantage is taken of its provisions MIA predicts regional shrinkage in the New Zealand meat industry through decreased productivity and profit, and an increase in industrial disruption.

There follows various submissions on clauses which potentially have most effect on the meat industry.

Section 5 - Broader concept of Good Faith - Wider than Mutual Trust and Confidence

This provision, in conjunction with clause 6, says good faith will be wider than the obligations of mutual trust and confidence.

This particular amendment seems to have arisen from some comments by the full Court of Appeal in Baggulay v Coutts Cars Ltd [2001] ERNZ 660 that, in essence, the good faith provisions of the ERA were not significantly different than those that impliedly existed under the Employment Contracts Act and that, after all, the relationship still rested on agreement.

When the original Bill was proposed MIA argued that good faith did not need to be legislated for because parties inherently knew what it was and relied on it to achieve outcomes in bargaining. Lack of good faith on either side generally meant agreements did not get settled and work did not get done which was in no-one's interest. To a large extent, the original Bill was not overly prescriptive on the meaning of good faith and this meant when mandatory good faith was introduced parties in the industry, by and large, maintained the previous relationship that existed.

Mutual trust and confidence has underpinned employment law in New Zealand for many decades and parties under the Employment Relations Act have continued to be in productive employment relationships without an extended definition being required.

The Reform Bill clearly aims to put some clearer parameters around the concept of good faith but the additional prescription will create confusion around the extent of the change and uncertainty will prevail until there is judicial clarification. Parties themselves know what good faith is and changing that inherent understanding will have a negative impact on the economy.

Section 6 - Extensions to Good Faith

This provision extends the definition of good faith to be wider than mutual trust and confidence (see above) and requires parties to be active and constructive in establishing and maintaining a productive employment relationship in which the parties are among other things responsive, communicative and supportive.

Such an extension of definition is unnecessary because it is axiomatic that mutual trust and confidence imply, among other things, elements such as responsiveness, and communication, and support. However, in terms of support this cannot mean that an employer must be supportive even if it is damaging for them commercially.

In MIA's view it is impossible to mandate for good faith which seems to be more akin to goodwill. To compel productive employment relationships beyond the current threshold of good faith is taking the definition too far because the parties are at opposing ends of a bargain. Parties enter into productive employment agreements because they want to, not because the government has required it.

Introducing all these terms into the duty of good faith ("active", "constructive", "productive employment relationship" "among other things", "responsive" "communicative" and "supportive" will invite dispute and be counter-productive. In the meat industry's collective experience the most productive employment relationships are where the parties focus on the operation needs of the plant and/or company. This requires flexibility on both sides, not reversion to a prescriptive and ineffectual model such as existed until 1990.

Disclosure of Issues

The Bill codifies the Auckland City Council case which is unnecessary as it is already established common law. The Bill goes further though by making it mandatory to advise all potentially affected employees before the change is made. In case of urgent insolvency, redundancy, or other change this would be most difficult for an employer. Further the terms "relevant information" and "opportunity to comment" are potentially wide and would be difficult to consistently comply with all of the time.

The definition of "confidential information" needs to be strengthened to give greater support to employers.

Extending Good Faith to Individual Employment Agreements

MIA supports the notion that the application of good faith principles should have universal application but that the administrative burden created by Clause 23 is excessive. Good faith must take into account the resources available to the employer.

Advising against collective agreement

This provision curbs an employer's ability to advise an employee not to be involved in or to sign a collective agreement.

If an employer does not want to employ staff under a collective agreement then it should be able to communicate that desire to employees. That does not mean the employer may justifiably refuse to engage in bargaining on the subject, only that as a matter of freedom of speech it should be lawful to express that view. To rule otherwise is unfair in a truly democratic society.

Clause 8 - Prohibition on Preference

This provision legitimises a monetary benefit clause for an employee being part of a collective agreement.

MIA's view is that such a provision is acceptable only if the mirror image is also allowed; that an employer may value the benefits of an individual employment agreement. As it is not (because of the anti-discrimination provisions and the favouritism for collective bargaining) MIA opposes this provision .

Clause 9 - Paid Leave for Individual Meeting with Union

Under this provision there is no limit to the number of discussions that a union official and employee may have, nor the duration of any one meeting, only all discussion time is paid leave. Arguably, it also applies to delegates who already work on site. The provision could easily be abused and the employer has no recourse.

The Committee has implied that the provision is necessary because of a lack of good faith on some employers behalf. MIA questions whether this necessitates the punishment of all employers.

Clause 11 - Forcing Parties to Continue Unproductive Bargaining

This clause compels parties to continue bargaining even if an impasse on major issues is reached and even if both parties do not wish to continue bargaining (for whatever reason), risking a further breakdown in relationship. The parties themselves should be able to decide when enough is enough, not the government.

It is unrealistic and patronising, let alone a waste of resources, to force parties to continue the bargaining process if an impasse is reached. In the collective bargaining process the parties' focus will be on the most important term of employment, most often pay rates. More minor issues are usually deferred or folded into the bargaining for the most important term. When a true impasse or deadlock is reached it will be on the most important term. Compelling parties to continue bargaining for other terms will generally be a waste of time and energy.

The solution where there is a true impasse is for the parties to look to their rights under legislation, or to seek third party assistance ie mediation.

Clause 12 -Collective must be agreed unless genuine reason not to exists

This section means it is a breach of good faith to not conclude a collective agreement if for a non-genuine reason.

This provision partially clashes with s33 of the Principal Act which says the principle of good faith does not require the parties to agree anything.

MIA submits that on one interpretation it is somewhat of a redundancy to make explicit that the process of collective bargaining should result in a collective agreement unless there is genuine reason not to. Parties always have genuine reasons not to settle some of which may not always be what others might find reasonable but it is the employer's business after all.

However, given that the likely interpretation of "genuine" will be looked at from an outsider's point of view then the insertion of this power (consistent with the new Authority powers to impose terms and conditions and to overturn dismissals they find too tough on employees) is a most dangerous step to take. MIA opposes changing this area of commerce because to do so is to over-ride the reason why people engage in the process of employing and being employed - freedom of choice and the ability to walk away from a bargain for any reason.

Further, used in conjunction with the mandatory meeting for a multi-party collective and the new Authority power to fix terms, this provision creates the potential for mandatory awards. The last time awards and compulsory arbitration were prevalent in New Zealand the meat industry suffered the worst industrial disputes in its history.

Clause 14 - Multi-party Collective Agreements

This section mandates (at the risk of breaching good faith principles) the initial meeting for any union or employer even if they do not wish to enter into a multi-party collective agreement.

Pursuant to this clause, which is perhaps the clause which has the potential to most disrupt the meat industry, the following scenario is feasible (failure of any step will result in a breach of good faith and an application to the ERA to facilitate or arbitrate terms):

Notice given by Union for multi-party collective bargaining (s45(5)8A)

↓

Employer must meet (s48A(2))

↓

Employer must use best endeavours to agree a way forward (s32(1)

↓

Employer must agree Multi-Party Collective Agreement unless it has genuine reason not to (s33 (new)

If the reform bill only compelled the parties to meet that might be acceptable but combining that requirement with the provisions already in the Authority and elsewhere in the reform Bill risks a mandated outcome by the Authority. This compulsory association breaches the employers right of freedom of association.

MIA repeats its warning about multi-employer collectives. Enterprise bargaining is one of the things that saved the meat industry from excessive labour costs inherited from the awards of the 70's and 80's. A reversion to multi-employer agreements will dampen innovation, competition, and enterprise.

Clause 15 - Facilitation by Authority

This section empowers the ERA to conduct a facilitation process during the bargaining process even if one party does not wish to engage in that process.

MIA supports mediation during industrial disputes but only as a voluntary process based on the good faith of the parties. It does not support a mandated facilitation function of the Authority which could easily be abused.

MIA submits an Authority member should in no circumstances be permitted to determine terms and conditions when they have previously acted as a facilitator.

The process is to be solely determined by the Authority member (with no apparent consultation with the parties, nor a need to apply natural justice as in personal

grievance investigations. Further, under the current drafting a party who breaches good faith could require the other to undergo facilitation.

There is also a severe restriction on communications during facilitation which is unreasonable.

Authority may make Recommendations

MIA has no issue with the Authority making optional recommendations in private to both parties and in confidence. However, MIA opposes the Authority being able to make recommendations in public about the conduct of a party and recommendations, which if not reasonably considered, could lead to a breach of good faith claim. That would be to excessively elevate the opinion of the Authority and the power that goes with the opinion.

Good Faith with the Authority

This provision implies a party need not deal with the Authority in good faith at times outside of the facilitation process, an implication MIA questions.

Authority Intervention

This provision allows the Authority, on the application of one party, to compulsorily fix terms without right of appeal.

As stated above MIA strongly opposes the possibility of compulsory arbitration in some circumstances. This would be a retrograde step. Even though a serious and sustained breach of good faith is first required the openness of the definition of good faith, and its expansion under this Bill, invites interference.

This is an aspect of the Bill that most concerns MIA members. Because it means that as third party may dictate commercial terms it dilutes the value of bilateral negotiations and of the employment relationship that has been built up over many years. Parties will now be inclined to commence bargaining at more extreme points in case the Authority is called in to arbitrate and adopts a middle ground approach.

Clause 18 - Subsequent Parties

This clause allows other unions/employers to join a collective if certain conditions are met.

MIA opposes this clause because, although framed as a consent issue, union members could strike to achieve the inclusion of a subsequent party clause which is far from a voluntary situation, from an employer's perspective.

As explained above, multi-party collectives are detrimental for any industry with high labour costs which wishes to remain competitive.

Clause 19 - Prohibiting Transfer of Collective terms to Individuals or Collective Terms to Collective

This provision makes it a breach of good faith if the employer automatically passes on terms negotiated collectively to non-union members or to members of another union.

In the meat industry there are always those employees who, for a variety of reasons, do not wish to be employed under a collective agreement or be a member of a union. This provision will push these employees into unions against their will. The potential administrative burden now associated with this provision will be significant and is unjustified.

Clause 23 – Duties of Employers with Individual Employees

This provision compels employers to put changes to individual's agreements in advance to the employee and so give an opportunity for legal advice, before actually commencing the terms. Every employer who fails to take this step is liable to a penalty.

This will create difficulties because often changes are agreed at little or no notice. The employee should able to do this without the employer being penalised.

Clause 26 - Deduction of Union Fees

This provision means an employer must, with the employee's consent, deduct union fees of that employee. The provision may be negatived.

MIA comments that it should not be up to the employer to make enquiries of an employee under an individual employment agreement whether he or she is a member of any union at commencement of employment or later on. That should be for the employee to arrange with the employer.

Clause 30 – Continuity of Employment

This provision means all meat industry employers (both in respect of current and new employees) must negotiate and include extra provisions in every employment agreement to cater for the possible transition to another business or for contracting out some of its business activities.

The provision is another example of the application of Euro-centric principles, largely irrelevant to New Zealand's working ethos and (because of its reliance on exports) its need to be internationally competitive. Employers cannot afford to be told to give away assets as that reduces their competitiveness and therefore their ability to create jobs.

Many companies in the meat industry will be affected in relation to specified employees because of the need for cleaning plant and food services on plant. The need for this clause seems to have arisen from instances of contracting out which is a difficult process for all parties concerned. Again, the behaviour of all employers

should not be modified because of some isolated incidences or because the Europeans have a different view of job ownership.

Whether for specified employees or not this clause will devalue a company's assert base by legislating out business flexibility if it considers a transition (whether by sale or contracting out) is desirable. As a matter of prudent commercial practice it should be up to the owner of the business whether a transition plan should be agreed in advance.

Clause 37 - Dismissals

This Provision will make it more difficult for an employer to defend a dismissal or other action.

The commentary to the Bill notes:

> In particular the judgment of the Court of Appeal in the *Oram* case has been taken by many as suggesting that what is considered justifiable may only be considered from the perspective of what the employer considered to be fair and reasonable, and that in any inquiry by the employment institutions they may not substitute their own judgment for that of the employer.
>
> However, it is precisely the function of the employment institutions to examine whether a dismissal or other action was unjustifiable in the light of all of the facts. This inevitably involves some "substitution of judgement", but one based on an objective assessment of what a fair and reasonable employer would do in the circumstances. Deciding whether an action was justifiable solely on the basis of the subjective judgement of the employer who undertook the action would be neither fair nor reasonable.

The commentary suggests that this provision is intended to resolve uncertainties arising from the Oram case. But there were no uncertainties arising from that Court of Appeal decision which is clear on its terms. What this section really intends to do is to increase the justification threshold for dismissals. No longer will the employers particular work standard or ethic be a relevant factor.

The commentary also implies that an adjudicator's substitution of judgment on the sanction imposed by the employer has always been entertained but that is not apparent from the common law developed over the last 30 years. If a particular employer has very high standards as evidenced by the employment agreement, house rules and other evidence, then the ERA will not second guess the application of that standard. It might think that the result involved a tough but fair decision in all the circumstances, even if as the employer they would have given the grievant a second chance. That will change as the Authority will become the adjudicator and de facto employer all in one and their decision will be based on the particular authority's subjective view.

A dismissal is justified if it was open to a fair and reasonable employer in the circumstance (Northern Distribution Union v BP Oil [1992] 3 ERNZ 483 as endorsed by Goddard CJ in Unkovich v Air New Zealand [1993] ERNZ 548). Within the spectrum of reasonableness there are many different sanctions which an employer might apply, of which dismissal is one. In BP Oil the Court endorsed Judge Castle's dicta in Read v Air New Zealand Ltd [1991] 3 ERNZ 139:

> The breach of trust was serious and of such a nature as to warrant a fair and reasonable employer deciding that she should be dismissed. **That being so, it is not for the Court to substitute its judgment as to what penalty should or should not actually have been imposed.**[emphasis added]

It is not the subjective judgment of the employer which is scrutinised but whether under the employment agreement dismissal is an option open to the employer given the proved misconduct. If it is open the authority will not interfere as it is essentially a matter of prior agreement. The question is one of what the parties have agreed in advance not arbitrary judgment.

This amendment dilutes the point of having an agreement and most concerns MIA members in the area of substantive fairness. Take, for instance, the situation where an employee faces a serious misconduct allegation and dismissal is a possible sanction under the employment agreement. Assuming a fair process has been undertaken and a finding made that there has been serious misconduct it is the employers prerogative, and his or hers only, whether to dismiss or apply a lesser sanction.

MIA also opposes the limitation on reviewing the way an Authority member conducts a case. Only two such cases have received attention in the three years the Authority has been in existence and both cases dealt with important procedural questions; David - cross examination and Metargem - natural justice. Judicial review is an important check/safeguard on an institutions power. Banning it during a case is denying both employers, employees and unions a fundamental right.

Also, communication by the Authority to one party only, is a possible infringement of natural justice. MIA prefers that the current situation remains in place which is where all parties in a dispute communicate with the authority at the same time.

Clause 89 - Penalty for Serious and Sustained or Undermining Breach of Good Faith

Penalising parties (be they employers or unions) for breaches of good faith will be ineffective. The penalty for breach by a corporation is up to $10,000 per breach, is framed in the alternative, and there are broad grounds for finding that a breach exists so such actions may become commonplace and be an unreasonable burden on employers. It is also likely that applications for penalties will be used as bargaining leverage.

5. RECOMMENDATION

MIA recommends the Bill not proceed.

MIA MEMBERS AS AT 1 January 2004

Affco New Zealand Ltd
Alliance Group Ltd
ANZCO Foods Ltd
Auckland Meat Processors Ltd
Ballande New Zealand Ltd
Bernard Matthews NZ Ltd
Blue Sky Meats (NZ) Ltd
Brookland (NZ) Ltd
CMP Canterbury Ltd
Columbia Exports Ltd
Crown Marketing Ltd
Dairy Meats NZ Ltd
Davmet New Zealand Ltd
Fern Ridge Ltd
Frasertown Meat Company Ltd
Garrett International Meats Ltd
Greenlea Premier Meats Ltd
Harrier Exports Ltd
Heartland Prime Meat NZ Ltd
Lowe Corporation Ltd
PPCS Ltd
Progressive Mats Ltd
Richmond Ltd
Riverlands Ltd
Tara Exports Ltd
Taylor Preston Ltd
TeKuiti Meat Processors Ltd
Towers Thompson (New Zealand) Ltd
Universal Beef Packers Ltd
Wallace Corporation Ltd

AFFILIATE MEMBERS
AgResearch-MIRINZ Centre
Australia-New Zealand Direct Line (ANZDL)
Carter Holt Harvey, Packaging
Centreport
Columbus Line New Zealand Limited
Contship Containerlines
Glovers Food Processors Ltd
Hamburg Sud NZ Ltd
Hapag Lloyd (NZ)Ltd
Lanexo Ltd
Maersk New Zealand Ltd
New Zealand Natural Casing Association Inc
Oceanic Navigation Ltd
P&O NedLloyd Ltd
Port of Napier
Port Otago
ProAnd Ltd
Westgate Transport Ltd
Rissington Breedline Ltd
Trans Rail Limited

Schedule A

The New Zealand Meat Industry

In its submission on the original Employment Relations Bill MIA said:

> Where different Governments continually change employment related law (eg ACC, ECA), possibly every three years, there is no solid platform on which industry is able to plan for the long term future. If anything has emerged from recent reforms during MMP it is that those reforms are subject to the whim of an incoming coalition government, whether or not the reforms are good for the New Zealand economy. The predicted increase in regulation and compliance costs, and increased rigidity in labour supply will put downward pressure on investment and employment levels and is also partly inconsistent with the Governments avowed desire to shift New Zealand into a knowledge based economy.

The other comments made in that submission remain as relevant some three years on:

Meat processors/exporters require the following to coincide in order to be profitable:

- Realistic free market prices and a continuous supply of livestock
- Flexible work practices, reasonable labour costs, a responsive workforce
- Competitive support network ie packaging and transport
- Absolute focus on customer requirements and achieving sustained, favourable, export receipts
- More investment in technology and research and development
- Realistic and competitive exchange rate

In terms of most of these factors, they are dependent to a large degree on externalised and uncontrollable elements such as weather conditions or global trends. Labour costs and associated workplace flexibility are the only major cost that may be partially controlled by an employer.

The meat industry in New Zealand is intensely competitive because it relies on a finite raw material and benign climatic conditions. After plant, labour costs are the largest cost input. If labour costs rise these cannot be automatically claimed from consumers who will shop elsewhere.

Meat export companies, like all others involved in the primary sector, are dependent on biological processes for their raw inputs. If there is disruption in labour supply those biological processes do not stop and in short time a backlog is created, export contracts are cancelled, and product may perish. If there is significant industrial disruption animal welfare issues inevitably arise. The humane transport and slaughter of livestock is an essential element in the animal welfare equation regulated by legislation and indeed, animal slaughter is essential to New Zealand's farming base as without it pastures would soon be exhausted. Animals are susceptible to stress when taken from their normal environment and shipping programmes depend on timely processing and transport links.

In terms of additional investment and growth in the meat industry, companies who are in a position to expand require certainty in the law, low compliance costs, and flexibility of the workforce in adapting to new shifts or new product lines. If these

elements are substituted with unreasonable union empowerment, decisions to expand and create additional jobs are delayed or not made at all.

Another significant regional issue is that meat processors are often the largest employer in provincial areas of New Zealand. When plant operations cease because of industrial unrest or plant closures whole communities suffer substantially.

While moving away from the commodity businesses New Zealand exports face direct competition from international supply. To illustrate, New Zealand's sheepmeat export is 1% of the world's cross border trade, however sheepmeat constitutes 4% of world meat protein consumption. Returns are significantly higher than other meat protein prices but New Zealand needs to be internationally competitive to preserve livestock volumes, jobs, and company profits.

For reasons of efficiency and consumer demand the last decade has seen a dramatic move away from Monday to Friday, multi-chain, single shift operations toward multi-shift, seven day a week operations. This has forced a change in processing operations resulting in a re-deployment of labour from traditional departments (through increased efficiencies) to further processing areas (to add value). Concurrently, there has been a proliferation in shift work and more flexible hours of work to balance plant throughputs with market requirements. The increase in plant utilisation has meant better returns for farmer suppliers and increased responsiveness in terms of meeting consumer demand. Incentive allowances have allowed employees to be rewarded for increased productivity.

In the main this transformation has occurred by employers and their local union representatives, who are also employees, working through changes to employment agreements to accommodate the operational changes. The parties have recognised the need for flexibility in adapting to ever-changing market requirements, thus the processes was not about "why", rather "what is the best way". The underlying reason for the transformation is that the primary relationship is between the employer and the employee with the union complementing that relationship where necessary.

It is important that reforms to labour relations legislation do not erode ongoing flexibility as meat processors continue to adapt to changes in the market place. The need for flexibility is enhanced when external factors, such as climatic extremes or exchange rate fluctuations, require meat processors and exporters to think on their feet.

One of the most significant changes when compared with industrial relations before 1990 is the shift to enterprise based bargaining where terms and conditions specific to a work site, and that site's production lines, were agreed between the employer and employees concerned. Meat companies require a continuation of this option of enterprise bargaining to accommodate ever increasing lines of product. The Employment Relations Act has not materially diminished that approach because employees and unions realise that is a more effective way to bargain and ensure the survival of a company. A further difference is that unions are more directly accountable to members than previously and structures are more democratic.

The current industrial law enables an extended supply chain to operate in a reasonably fluid manner. Behind any one consignment of goods there are entrenched interrelationships between meat companies (and their employees) and parties such as farmers, transport providers (road, rail, sea and air), meat inspection services (core government and SOE), packaging companies, and distributors. If any one link is affected by industrial action the other invariably suffers. By way of example, the 2000/01 veterinarian strike action threatened the entire meat industry production by the withdrawal of certification services.

Another change in recent years is the introduction of risk management principles and self regulation at plant level. The fact labour relations is being taken further out of employers' control is not consistent with this Government sponsored change in food hygiene management.

Union Landscape

The meat processing environment is largely collectivised with employees being covered by a variety of unions in such areas as meat processing, related trades, distribution, engineering and clerical staff. The extent of collectivisation differs at each plant from total coverage at some to minimal coverage at others. Some plants have established their own unions.

In addition, the industry is reliant on government and SOE employees who are largely unionised. To ensure continuity of production and adequate returns on capital companies must have functional relationships with unions and rely on those parties adopting reasonable negotiation stances in relation to the cost of labour and terms of employment. On the whole, this has been the case throughout the last decade. Labour payments in the industry are attractive enough so that, in general, most companies do not have difficulty recruiting employees.

Most collectives are between a union and the plant while there a re a few multi-site collectives but still between one union and one employer. There are no multi-employer collectives. To date there has been no indication from relevant unions that multi-employer agreements are desired by their members.

Industrial Landscape

Recently there has been relative calm in the area of meat industry industrial relations. Plants have diversified, become significantly more productive and, with increased flexibility, responded seamlessly to the demands of the international customer. In general, good relations with unions and reasonable negotiating stances were an essential element in maintaining continuous supply. At the end of the day, however, the primary employment relationship is between the employees and the employer.

The threat of significant unrest in meat processing and resulting domino effect for all associated industries is very real under the Bill. The industry suffered massive disruption in the 1970's and 80's due to breakdowns in collective bargaining processes. An example of the inflexible bargaining approach was that Fortex had to pay 52 weeks wages in return for the introduction of slaughter shift work.

Below is a snapshot of the industrial relations environment and lost work from the mid-eighties (source: excerpts from the MIA Annual Reports in the 1980's).

1983/84:

- National wage freeze in place.
- Meat Workers Union (MWU) requested the MIA join them in approaches to Government to set up a 'Conciliation Council' for the meat industry. The MIA refused the MWU request and a series of 1-day rolling stoppages occurred during May. The MIA was successful in invoking S119 of the Commerce Act and the Arbitration Court ordered a resumption of work.
- The Industrial Law Reform Bill providing for voluntary union membership was passed and resulted in a number of stoppages as union members refused to work alongside non-union members. Overall disruption was less than expected.
- Plant stoppages arose from companies cost reduction exercises (stoppages occurred at Horotiu Lamb Cut Room, Whakatu Beef House, Longburn Freezers & Ocean Beach.
- Mechanical pelting machines were successfully introduced into a number of plants.
- A number of demarcation disputes occurred between various trade groups.

1984/85

- Wage freeze lifted in December 1984. The Meat Workers Award was referred to the Arbitration Court and finally settled on 9 January 1985 with an agreement for a 5.2% increase in rates for a 9-month term (the 'going rate' was 7 % for 10 months). Clerks, Tradesmen and Shift Engineers award negotiations were protracted and resulted in strikes.
- Shift work was introduced in a number of further processing plants.
- Discussions between employers and MWU on Redundancy and/or New Technology Agreements.
- Severe disruption to plants was caused by a series of overtime bans and stop-work meetings in early March by meat inspectors, over negotiations of salary increase and shift work provisions. Employers reluctantly settled at 10.4% for a 9-month term (way above the going rate).
- Southland Frozen Meats Mataura and Makarewa plants and the Westfield plant in Auckland encountered stoppages over contract re-negotiations relating to changing work practices and the adoption of new technology.
- Crown Meats NZ Ltd was unable to operate its Feilding plant due to contract negotiation failure (despite the involvement of an industrial conciliator and the Arbitration Court).

1985/86

- New system of flexibility in wage bargaining commenced in September 1985. The Meatworkers Award negotiations commenced on 16 September and were finalised 7-months later on 18 April 1986. In the interim, a **6-week national strike** (8-weeks in the Auckland region) had occurred – the longest strike in

the last 30-years with huge costs to companies, employees, farmers and the wider economy.

- Government had called on employers to fix wages dependent on an industry's ability to pay. The meat industry settlement was approximately 9% while other sectors settled at between 15-30%.
- The Auckland region workers were covered by a separate union to the MWU which made settlement more difficult. Despite striking for a further 2 weeks, the Auckland union settled on the same terms as the National Award.
- Tradesmen, Clerical and Engineers groups all settled after an acrimonious process that involved the Arbitration Court and the intervention of the Minister of Labour.
- Settlement at 12.5% with Meat Inspectors was a bitter pill for companies in the wake of protracted negotiations, high meat inspector absenteeism & related inefficiencies causing problems at plant level. Companies were deeply dissatisfied with MAF and State Services management of the meat inspectors contracts.

1986/87

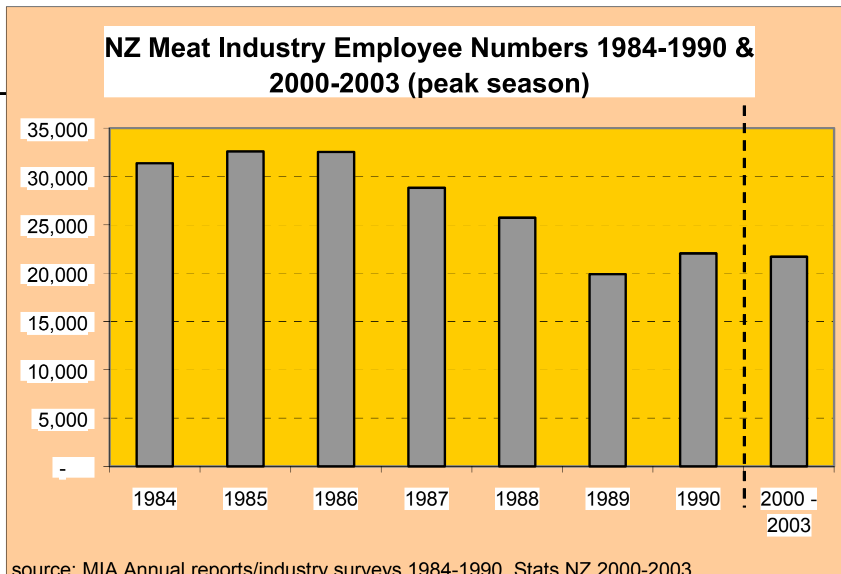
- Meat workers settled on a $17.85/week increase (approx. 4.5%) while Tradesmen, Clerks and Engineers settled at 6.9%.
- The Labour Relations Bill was introduced and passed (effective 1 August 1987). The MIA held a seminar for 120 industrial and plant managers in June 87. The Act brought to an end the whole structure of wage fixing as it had been known in the meat industry.
- AFFCO announces closure of its Shortland plant in Auckland.
- Hawkes Bay Farmers Meat Company Ltd announces closure of the Whakatu plant.
- Crown Meat's Feilding plant did not operate for the 3rd season in a row due to a failure to reach agreement on productivity rates.
- Waitaki's Longburn plant did not operate due to a failure to reach agreement on pay and manning level.
- Advanced Meat Ltd Gisborne plant closed.

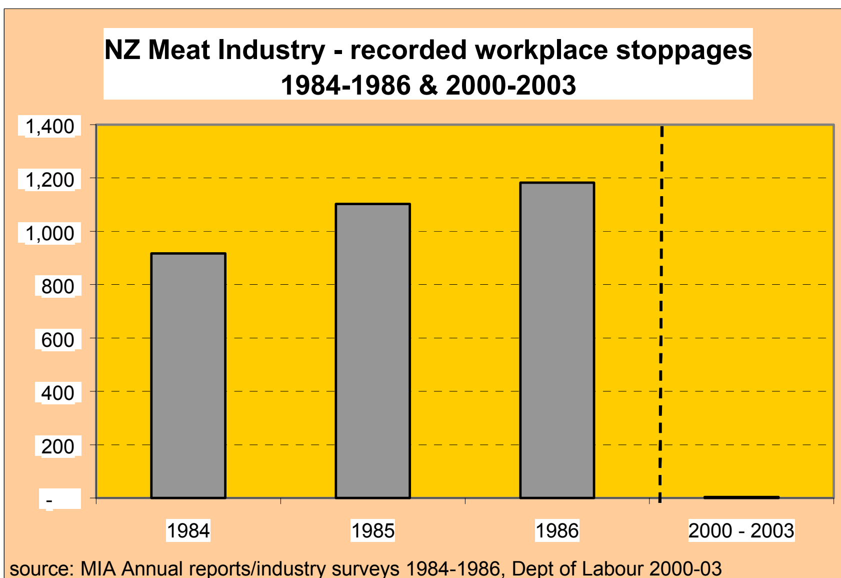
The following data, tables, and charts illustrate the stark comparison between the 1980's and the current environment in terms of industrial disruption.

Meat Industry Employment Facts & Figures

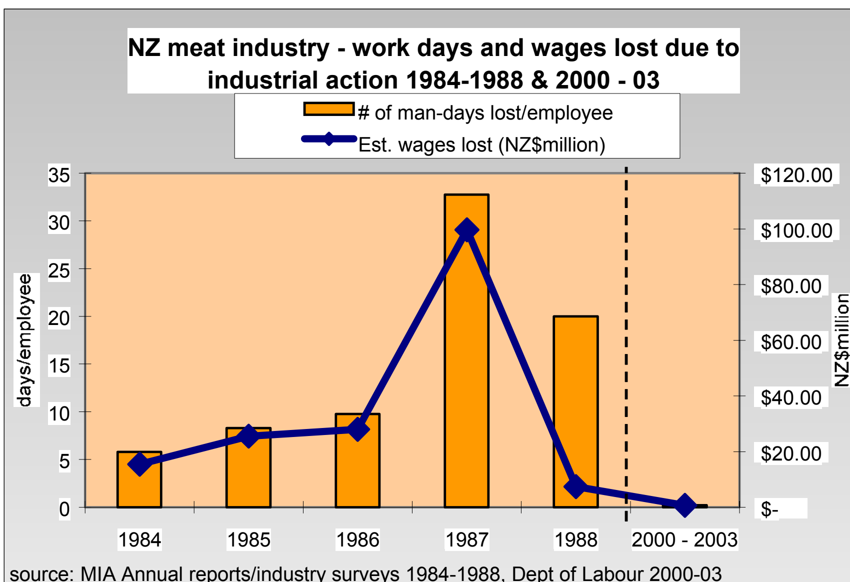
sources: MIA Annual reports (from annual industry surveys)

		1984	1985	1986	1987	1988	1989	1990	2000 - 2003
Operators	# of meat processing plants	43	43	43	44	46	48	51	48
	# of Companies	19	20	20	20	21	22	20	18
Employees (peak season)	Salaried staff	3,070	3,082	3,132	2,800	2,417	2,102	1,782	
	Clerical workers	1,190	1,152	1,036	744	728	571	479	
	Shift Engineers	170	164	190	146	134	107	95	
	Tradesmen	1,850	1,840	1,728	1,499	1,449	928	1,123	
	Freezing workers	24,820	26,060	26,221	23,339	20,753	15,946	18,227	
	Others	245	302	210	306	251	209	336	
	Total	31,345	32,600	32,517	28,834	25,732	19,863	22,042	21,695
Industry Annual Wage Bill (NZ$million)		$ 550.0	$ 630.0	na	$ 694.0	na	na	na	
Industrial stoppages	Total stoppages recorded	917	1103	1,183	na	na	na	na	3
	# of workers involved	28,169	29,057	29,243	28,868	3,218	na	na	596
	# of man-hours lost	1,470,400	2,170,560	2,566,088	8,508,949	579,226	na	na	40,920
	# of man-days lost/employee	5.8	8.3	9.75	32.75	20.0	na	na	0.21
	Est. wages lost (NZ$million)	$ 15.43	$ 25.50	$ 28.04	$ 99.65	$ 7.37	na	na	$ 0.69
	Throughput lost (lamb equivalents) million	3.8	5.386	6.736	16.918	1.547	na	na	





Workplace stoppages data for 1987-88 was not recorded. Stoppages in the period 2000-2003 amounted to 3.



In the period 2000-2003 the # of days lost/employee (0.21) and wages lost ($0.69m) were insufficient to register on the chart, relative to the situation in the 1980's