

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 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. 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

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