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New Zealand Public Service Association
Te Pūkenga Here Tikanga Mahi

Submission on Discussion Document entitled “Playing by the Rules”; Strengthening Enforcement of employment standards

Submission to ... Employment Standards Policy Team, Ministry of Business, Innovation and Employment

Introduction

Who we are

The New Zealand Public Service Association *Te Pūkenga Here Tikanga Mahi* (the PSA) is the largest trade union in New Zealand with over 58,000 members. We are a democratic organisation representing members in the public service, and the wider state sector (the district health boards, crown research institutes and other crown entities, state owned enterprises, local government, tertiary education institutions and non-governmental organisations working in the health, social services and community sectors).

In developing this submission we sought the views of

We have several hundred members working at Housing New Zealand Corporation. We have a particular interest in the employment issues our members face.

PSA submission

The PSA submits that:

We welcome this paper and opportunity

We welcome the release of the discussion document “Playing by the Rules”, the resulting dialogue and the opportunity to engage on this important matters raised in the paper. We commend MBIE on the high quality of this comprehensive and well written paper.

The PSA has a direct interest in minimum employment standards

As the PSA, we have a two-fold interest in the enforcement of minimum employment standards:

- many of our members are protected by one or more minimum employment standard and we represent those who believe they have not received their full entitlement
- Some of our members enforce or provide mediation services in respect of minimum employment standards.

We support the introduction of new

We support the introduction of new measure (tools) s that would assist our members who are involved in the enforcement of minimum employment

measures that would assist our members to do their job

standards to be more effective in performing their role and in improving levels of compliance, including where breaches are very serious. We do not support measures that would expend the role of our members unless they are resourced to undertake these additional duties.

Any role expansion for our members will need resourcing

We agree with the following ideas:

- allowing Labour Inspectors to share information with, and access the information of third party agencies, such as Inland Revenue and Immigration New Zealand where such information will assist in an investigation or otherwise improve compliance levels;
- enabling Labour Inspectors to effectively pursue matters relating to the recovery of wages or paid holiday or other arrears
- the introduction of severe measures such as imprisonment for non-payment of judgment debt if this is needed to ensure the debt is recovered in a timely fashion.
- The alignment of mandatory record keeping across employment legislation, including for low salaried and piece workers. In any event, we think that the recent Employment Court decision that established how to determine compliance of salaries with the Minimum Wage Act will necessitate the maintenance of time records for some salaried staff.

Labour inspectors need more support in undertaking their statutory role in respect of MWEPS

Additionally, the PSA would support measures that would enable the labour inspectorate to fulfil its proper role in respect of Minimum Wage Exemption Permits. Such measures could include additional training, prioritisation by the business or the appointment of specialist labour inspectors who were able to prioritize this important work. A diminished focus by MBIE on this statutory function leaves vulnerable employees more at risk of exploitation.

The PSA thinks that monetary penalties for serious non-compliance should be increased and serious breaches criminalized

The PSA supports the introduction of sanctions that genuinely deter serious breaches of minimum employment standards. That is, breaches that are deliberate, persistent, egregious and/or result in the exploitation or harm of employees. The PSA supports all the ideas set out in the paper that would strengthen the sanctions regime. We consider it appropriate that these type of breaches attract higher monetary penalties and can be considered to constitute criminal offending. We consider that such offences could be equated to 'theft or stealing' for the purposes of maximum penalties (imprisonment) and that the maximum monetary penalty should be at the discretion of the Employment Court judge but should be sufficient to deter similar behaviour. It is appropriate to specify a minimum monetary penalty for a serious breach in the order of \$50,000 for an individual and twice that amount for a company.

We support the options listed in the paper that would assist labour inspectors to identify and investigate breaches with the exception of the option in relation to confidentiality of information provided in mediation. We do not think that the benefits of this option would outweigh the potential damage done by undermining one of the basic tenets of mediation. As we understand it, there is nothing in the legislation to prevent a mediator, if sufficiently concerned about non-compliance, from talking with the relevant party and suggesting the matter is not appropriate for mediation and be referred to the Employment Relations Authority (provided the information was admissible)? We would not expect the Authority to refer a

matter to mediation that was inappropriate, that is, if serious breaches of minimum employment entitlements were at issue.

In principle, mediation not appropriate for breaches of minimum employment standards

In principle, the PSA does not think that reaches of minimum employment standards are an appropriate matter for mediation. In practice we appreciate that breaches may be one of many issues in an employment relationship problem and that the breach may only come to light during mediation and that a pragmatic resolution may be preferable to no resolution. In general, however, we would prefer such breaches to be considered by the labour inspectorate and employment institutions.

Determining whether an employment relationship exists

We submit that allegations of non-compliance would be more speedily resolved if labour inspectors had the power to decide whether the status of the relationship between the parties.

Employees and their representatives need low-cost, readily accessible problem resolution options

The integrity of the Employment Relationship Problem Resolution System

We submit that the trend in recent years for more formal and legalistic processes in mediation and in the Employment Relations Authority has restricted access to justice for employees and their representatives who, while having a genuine grievance, do not have the resources or other capacity to engage in a legalistic process.

We submit that access to justice issues must be taken into consideration when changes to practices at various points in the employment relationship problem resolution system are contemplated. And that the original intention of the Employment Relations Act 2000 to provide some low-cost, readily accessible options for resolving employment problems, including for minimum employment standards, are adhered to.

“Good Employer” obligations are also minimum employment standards but these are not well understood or enforced

Good Employer obligations

The State Sector Act and the Crown Entities Act create additional minimum employment standards that apply in the state sector and to Crown Entities. We Submit that these obligations are not well understood by employers and employees in those sectors; that they are not well monitored or enforced. There is scope for improvement in terms of holding applicable employers to account in respect of the requirement to develop equal employment opportunities programmes and for recognition of the aims and aspirations of women and Maori.

The PSA is comfortable that this submission is publicly available; in its entirety or in part.

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