

CABINET ECONOMIC GROWTH AND INFRASTRUCTURE COMMITTEE

THE EMPLOYMENT RELATIONS POLICY WORK PROGRAMME

Purpose

- 1 I want to take this opportunity to outline for you my employment relations policy work programme. This paper is for your information only.
- 2 This paper should be read in conjunction with my other paper being considered today; "Launch of a Discussion Paper on Personal Grievances".

Discussion

The Employment Relations Policy Work Programme

My priorities

- 3 My priorities on assuming office as Minister of Labour were to progress policy changes signalled in the National Party's 2008 election manifesto, namely:
 - a implementing Trial Periods
 - b reviewing the Holidays Act 2003
 - c requiring employer consent (which may not be unreasonably withheld) before a union representative may access a workplace ("union access")
 - d opening collective bargaining to non-union groups ("collective bargaining"), and
 - e changing some aspects of the way the Employment Relations Authority and Employment Court work ("employment institutions").

(The 2008 employment relations Manifesto statements are appended to this paper.)

- 4 The changes I am seeking to achieve through my priorities and wider work programme aim to either increase choice and flexibility for employers and employees; ensure the balance of fairness in the legislation is appropriate for both groups; reduce compliance costs and unnecessary regulation, including where these might be unduly affecting workplace productivity; or improve the operation or efficiency of the legislation.

My approach

- 5 The recent history of employment relations legislation has been one of wholesale change. We came to office with an explicit agenda of making discrete changes within the existing framework. Our view was that the employment relations framework is generally working well, and that there was neither the need nor the appetite for another round of major change. A high proportion of employment law sets minimum standards that do not affect many employers as these agree terms and conditions of employment with their employees that are above the prescribed minima. This view was reiterated by the Prime Minister during the Job Summit.

- 6 Some change is desirable within the framework in some areas to achieve the objectives outlined in paragraph 4 above. These objectives broadly aim to improve the balance of interests in the legislation. They aim to ensure employers have the discretion to make (and quickly give effect to) decisions about their business and workplace arrangements that are properly theirs to make and so allow them to focus on growing the business.
- 7 In addition to these considerations, I also felt that signalling stability in the (already relatively flexible) system to be important at a time when employers and employees were facing a high degree of uncertainty because of the recession and global financial crises. "Generally working well" and "stability" do not mean no change. A year later, I still consider that my general approach is the appropriate one, but, following discussions with stakeholders, feedback from employers and employees, and advice from officials, I have somewhat revised my assessment as to where the most useful gains might be made in terms of my objectives (paragraph 12 refers).

The work programme: update

- 8 Trial periods have been implemented, and appear to be working well overall. Employers tell me that the ability to test someone's fit in the job without fear of a personal grievance if it doesn't work out has given them confidence to hire where they otherwise might not have done so. Monitoring by the Department of Labour suggests that there are few concerns being raised (with the Department) about trial periods.
- 9 I have reviewed the report of the *Review of the Holidays Act Ministerial Advisory Group*, and have instructed the Department of Labour as to my preferences for reform. Employers consistently report that, of the range of employment regulation, the Holidays Act presents them with the most problems. I will shortly be seeking your approval of changes I will be seeking in respect of this Act.
- 10 I am considering advice I have received from officials about union access, collective bargaining, and the employment institutions. Officials advise me that the changes signalled in 2008 with respect to both union access and collective bargaining are not straightforward. The benefits, while symbolically significant, are likely to be marginal in practice and are unlikely to be outweighed by the costs (including unintended ones¹). Moreover, in both cases, the desired change to a large degree, already occurs in practice and is not prevented by the legislation. For these reasons I am continuing to consider whether these steps would clearly deliver the improvements I am looking for, and am focusing on other priorities.
- 11 An important part of my consideration of advice on the employment institutions is to ensure that any change to the current arrangements does not add costs or complexity to the existing system. I have instructed officials as to how I wish to progress this work stream.

1 For example, compliance costs for businesses may increase as a result of a proliferation in bargaining in firms by non-unionised groups.

New priority: personal grievances

- 12 With respect to changes to the Employment Relations Act 2000, I am now giving a higher priority to a review of the personal grievance system ("personal grievances") than I am to work on union access or collective bargaining. This work was publicly signalled by the Prime Minister late last year. Work on personal grievances is closely related to work on the employment institutions, although the two work streams are separate. As you are aware, there has been much public, media and stakeholder interest in, and commentary on, personal grievances in recent years and this debate is very much 'live'. Questions have been raised as to the fairness, cost, credibility and effectiveness of the present arrangements. My review of the system aligns in all respects with my broad objectives described above (paragraph 5), particularly in terms of the balance of fairness.

Other work

- 13 Table 1 below sets out work that has either been completed, is underway, or is planned in respect of the objectives described in para 4 above. For example, the need to increase flexibility and choice for employers and employees, and reducing compliance costs lie behind the changes I am seeking to rest and meal break provisions in the Employment Relations Act 2000. A Bill to give effect to these changes is presently being considered by the House. In 2010 I will be consulting on possible changes to increase choice and flexibility in the Parental Leave and Employment Protection Act 1987, with a view to seeking legislative changes in 2011. A body of work is in train to ensure that the Employment Relations Act 2000 works well for all employees and employers (for example, work targeting casual employees / employers of casual workers, and young employees / employers of children and young people; "improving the operation of the Act").
- 14 As Minister of Labour, I have a statutory obligation to undertake reviews of two specific aspects of the Employment Relations Act 2000. The first such review is of "Continuity of Employment" provisions ("Part 6A"). While I am required to undertake this review, I have also heard different views about these provisions, and am keen to explore the matter further. My preference is that any legislative changes arising out of this review (along with any other potential changes to the Employment Relations Act 2000) are enacted by 2011.
- 15 The second statutory review is of flexible working arrangements ("Part 6AA"), due to take place later in 2010.
- 16 I have a standing statutory obligation each year to review minimum wages. You noted my recommendations for 2010 on this last matter prior to my recent announcement of a small increase in minimum wage rates.
- 17 Table 1 also lists several pieces of work that have been completed (for example, the Code of Infant Feeding, a consideration of Easter Trading, and amendments to the Remuneration Authority Act 1997).
- 18 My officials actively provide employment relations advice and information, and collaborate with other agencies across public and state sector. As such, a proportion of my work programme is dedicated to responding to requests for an employment relations contribution. Recent examples include issues in relation to collective bargaining matters (such as, in the corrections portfolio) and proposals to change aspects of employment law (such as, in the health and Local Government areas).

Legislative programme

- 19 I intend to introduce a Holidays Amendment Bill 2010 which, if enacted, would give effect to the changes I wish to progress arising out of the review of the Holidays Act. In particular, introducing the ability for employees to request that they trade in one week of annual leave.
- 20 I also intend to introduce an Employment Relations Amendment Bill into the House in the middle of this year. This Bill, if enacted, will give effect to any changes I may be recommending to you in relation to Part 6A, personal grievances and those affecting employment institutions, and any others. I will seek policy decisions on all these matters (as a package) in May, with possible introduction of the Bill into the House in August 2010. I will request a four-month report back from Select Committee, and hope to have the changes enacted by the end of the year. Statutory requirements around Part 6AA meant that this review is on a different timeframe, and I am likely to seek any further changes to the Act as a result of that review in 2011.

Table 1: The Employment Relations Work Programme

	<i>Completed</i>	<i>Underway</i>	Planned
Increasing choice and flexibility	Trial Periods	Collective Bargaining Rest and Meal breaks Holidays Act Review	<i>Paid Parental Leave</i>
Balance of fairness	Trial Periods Review of Easter Trading	Union Access Personal Grievances	
Reducing Compliance Costs and Unnecessary Regulation	Easter Trading	Holidays Act Review	
Improving the Operation of the Legislation	Code of Practice on Infant Feeding Remuneration Authority Amendment Act 2009	Employment Institutions Personal Grievances Strengthening mediation services	
Statutory Reviews	Minimum Wage 2008 Minimum Wage 2009	Continuity of Employment (Part 6A of the Employment Relations Act 2000)	Flexible Working Arrangements (Part 6AA of the Employment Relations Act 2000) Minimum Wage Review 2010

Consultation

- 21 This paper describes my work programme and is for your information only. Consultation on individual work streams has either already occurred with my colleagues, relevant government agencies and stakeholders including Business New Zealand and the New Zealand Council of Trade Unions in line with our manifesto commitment, or is planned in the future. Each significant element will be the subject of Cabinet decisions, for example, the imminent launch of discussion papers around elements of the Employment Relations Act 2000 and the Government response to the Holidays Act review (planned for the end of March).
- 22 The Department of Prime Minister and Cabinet and the Treasury have been informed of this paper.

Financial implications

- 23 This paper has no financial implications.

Human rights

- 24 This paper has no human rights implications.

Legislative implications

- 25 This paper has no legislative implications.

Regulatory impact statement

- 26 This paper has no regulatory impacts.

Publicity

- 27 Different communications have occurred with respect to the various work streams mentioned in this paper, depending on their stage of completion.
- 28 On 21 October 2009, the Prime Minister announced that a review of personal grievances was to take place (speech to the Biennial Conference of the New Zealand Council of Trade Unions). I intend to make a further announcement when I release a discussion paper on personal grievances shortly (if you agree). A discussion paper on Part 6A has very recently been released, and a further discussion paper on Part 6AA is being prepared for release towards the end of this year.

Recommendations

I recommend that the Cabinet Economic Growth and Infrastructure Committee:

- 1 **Note** that the changes I am seeking to achieve through my priorities and wider work programme aim to either:
 - 1.1 increase choice and flexibility for employers and employees, and/or
 - 1.2 ensure the balance of fairness in the legislation is appropriate for both groups and/or,
 - 1.3 reduce compliance costs and unnecessary regulation, including where these might be unduly affecting workplace productivity, and/or
 - 1.4 improve the operation or efficiency of the legislation.

- 2 **Note** that, on assuming the role of Minister of labour in 2008, my priorities were to progress changes signalled in the National Party 2008 election manifesto; namely:
 - 2.1 implementing Trial Periods
 - 2.2 reviewing the Holidays Act 2003
 - 2.3 requiring employer consent (which may not be unreasonably withheld) before a union representative may access a workplace ("union access")
 - 2.4 opening collective bargaining to non-union groups ("collective bargaining"), and
 - 2.5 a range of changes to the employment relationship problem resolution system ("employment institutions")
- 3 **Note** that, of the priorities listed in the noting recommendation above, items 2.1, 2.2 and 2.6 have been completed and that I am considering advice on items 2.3, and 2.4, and have instructed officials as to how I wish to progress item 2.5.
- 4 **Note** that I am giving a higher priority to a review of the personal grievance system than I am to work on union access or collective bargaining.
- 5 **Note** that I intend to introduce an Employment Relations Amendment Bill into the House in the middle of this year and that this Bill, if enacted, will give effect to all the changes I will be recommending to Cabinet (including those arising out of reviews of Part 6A, personal grievances, those affecting employment institutions, and any others).

Hon Kate Wilkinson
Minister of Labour

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APPENDIX 1: NATIONAL PARTY MANIFESTO 2008 STATEMENTS

Ninety-day trial period

- 1 Introduce a 90-day trial period for new employees by agreement between the employer and the employee for businesses with fewer than twenty staff.

Union access

- 2 Continue to allow union access to workplaces with the employers consent.

Social partnership

- 3 Continue to support the social partnership with Business New Zealand and the New Zealand Council of Trade Unions.

Collective bargaining

- 4 Restore workers' rights to enter into collective agreements without having to belong to a union.
- 5 Retain the mediation service but ensure it is properly resourced with properly qualified mediators

Employment institutions

- 6 Require the employment Relations Authority to act judicially in accordance with the principles of natural justice including the right to be heard and the right to be cross examined before an impartial referee
- 7 Allow injunctions and important questions of law to be heard in the first instance in the Employment court
- 8 Allow a right of appeal to the Court of appeal.

Annual leave

- 9 Keep four weeks' annual leave but allow employees to request trade of the fourth week for cash. This can only be at the employees' request and can't be raised in negotiations for an agreement.

Holidays Act Working group

- 10 Appoint a working party to review the Holidays Act, especially the issue of relevant daily pay.