



Cabinet Economic Development Committee

EDC Min (07) 24/6

Minute of Decision

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Review of the Employment Relationship Problem Resolution System

On 24 October 2007, the Cabinet Economic Development Committee:

Background

- 1 **noted** that in April 2007 Cabinet invited the Minister of Labour to report to the Cabinet Economic Development Committee by 31 July 2007 on options to improve the functioning of the employment relationship problem resolution system, as part of the Quality Regulations Review workstream [CAB Min (07) 14/6];
- 2 **noted** that in July 2006 the Cabinet Business Committee directed the Department of Labour to develop options for addressing any problems identified around personal grievances and the role of employment relations consultants in encouraging personal grievance claims [CBC Min (06) 12/6];
- 3 **noted** that in October 2006 the government committed to examining the Small Business Advisory Group's suggestions on options for streamlining grievance procedures and the degrees to which they can deliver the certainty, in terms of process and outcome, that employers are seeking, while not removing rights and protections from employees [CBC Min (06) 17/23];

Response

- 4 **noted** that information is not available to confirm or dismiss the suggestion that "no win, no fee" employment advocates increase the number of personal grievances;
- 5 **noted** that:
 - 5.1 the incidence of employment relationship problems is higher amongst small or medium enterprises (SMEs);
 - 5.2 SME employers appear to find that the employment relationship problem resolution system involves unknown costs and time commitments that tend to lead them to "pay an employee out" instead of accessing processes or mechanisms provided for in the Employment Relations Act 2000;

- 6 **noted** that the paper under EDC (07) 202 identifies the following issues:
- 6.1 overall, the employment relationship problem resolution system is meeting its objectives;
 - 6.1.1 there are improvements that could be made to better support how the system functions;
 - 6.1.2 in making any changes, the government would need to ensure that the integrity of the system as a whole is preserved;
 - 6.2 employment relationship problems appear to impact heavily on SMEs. The main issues faced by SMEs in relation to the employment relationship problem resolution system seem to be:
 - 6.2.1 a lack of information about employment relationship problem resolution;
 - 6.2.2 a lack of awareness of the options available;
 - 6.2.3 the financial and time-commitment uncertainties associated with the formal process;
 - 6.3 employees on low incomes or without the ready funds to engage representation paid for on an hourly basis tend to face a range of barriers (including insufficient information on available options and perceptions of the high cost of representation) to access justice when they want to resolve an employment relationship problem;
- 7 **agreed** that the Small Business Advisory Group's proposed "Employment Facilitation Process" not be pursued, in the light of the work being undertaken that is referred to in paragraphs 8 and 9 below;
- 8 **directed** the Department of Labour to develop a Code of Employment Practice (which could have a specific focus for small businesses) relating to employment relationship problem resolution. Further consultation with such persons and organisations as the Minister thinks appropriate, including relevant employer and employee interests, will be undertaken in this work;

Preferred options

- 9 **directed** the Department of Labour to undertake further work on six options for improving the functioning of the employment relationship problem resolution system, including quantifying any fiscal costs of these options:
- 9.1 increasing educational resources and support for employees, employers and their representatives, including improving Department of Labour guidance for employers and employees on employment relationship problem resolution and termination of employment;

- 9.2 exploring the extent to which the quality of paid representation by employment advocates (excluding practising barristers and solicitors and registered union and employer advocates) could be better assured by either:
 - 9.2.1 requiring that these advocates belong to a relevant membership organisation, union or employers' association; or
 - 9.2.2 promoting to the public the use of those advocates who belong to a relevant membership organisation, union, or employers' association with professional standards and/or a code of ethics;
- 9.3 assessing whether the provisions in the Employment Relations Act for reducing remedies to reflect substantive justification and contributory conduct are effective;
- 9.4 assessing how the provisions relating to a "[mediator] decision by authority of the parties" (section 150 of the Employment Relations Act) could be strengthened to encourage its use in cases where an agreement cannot be reached and to discourage the unreasonable withholding of consent by either party;
- 9.5 increasing the capacity of the Department of Labour to deliver mediation services and improve the capability of its mediators to respond to improve services, as identified in the Department's Mediation Practice Development Project (strengthening mediation practice);
- 9.6 exploring options to reduce the time taken in the investigation and determination of cases in the Employment Relations Authority, including by considering changes to Authority processes;

Report back

- 10 **noted** that the Minister of Labour will report to the Cabinet Economic Development Committee by July 2008 on the results of the Department of Labour's further work referred to in paragraphs 8 and 9;

Potential fiscal implications

- 11 **noted** that the further work associated with the options outlined in paragraphs 9.1, 9.5 and 9.6 may have fiscal implications that would require the development of Budget bids that would be considered in the context of Budget 2009 (and other related bids). These Budget bids would only proceed if the Department of Labour is directed to do that further work, and if the further work undertaken supported seeking additional funding;
- 12 **noted** that the further work associated with the options outlined in paragraph 9.2 may have fiscal implications;
 - 12.1 if the Department is directed to do further work on either of these options, the Minister of Labour will include the quantification of any fiscal costs as part of the proposed July 2008 report referred to in paragraph 10 above;

- 12.2 this may result in the development of a Budget bid that would be considered in the context of Budget 2009 (and other related bids).



Kate Mallalieu
Secretary

Reference: EDC (07) 202

Present:

Hon Dr Michael Cullen (Chair)
Hon Jim Anderton
Hon Trevor Mallard
Hon Ruth Dyson
Hon Lianne Dalziel
Hon Damien O'Connor
Hon Nanaia Mahuta
Hon Judith Tizard

Officials present from:

Department of the Prime Minister and Cabinet
Treasury
Ministry of Economic Development

Copies to:

Cabinet Economic Development Committee
Chief Executive, DPMC
Paul Alexander, DPMC
PAG Subject Advisor, DPMC
Secretary to the Treasury
Chief Executive, Ministry of Social Development
Chief Executive, Ministry of Pacific Island Affairs
State Services Commissioner
Chief Executive, Ministry of Economic Development
Chief Executive, Te Puni Kokiri
Minister of Justice
Secretary for Justice
Secretary of Labour
Chief Executive, Ministry of Women's Affairs
Chief Executive, Ministry of Economic Development (Small Business)
Chief Executive, Ministry of Economic Development (Commerce)
Chief Executive, Ministry of Social Development (Youth Development)
Associate Minister of Pacific Island Affairs