

Submission

by

Business|NZ

to the

**Foreign Affairs, Defence and Trade
Select Committee**

on the

**Supplementary Order Paper to the
Volunteers Employment Protection
Amendment Bill**

September 2003

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INTRODUCTION

Encompassing five regional business organisations (Employers' & Manufacturers' Association (Northern), Employers' & Manufacturers' Association (Central), Canterbury Employers' Chamber of Commerce, Canterbury Manufacturers' Association, and the Otago-Southland Employers' Association), Business NZ is New Zealand's largest business advocacy body. Together with its 50-member Affiliated Industries Group (AIG) which comprises most of New Zealand's national industry associations, Business NZ is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

In addition to advocacy on behalf of enterprise, Business NZ contributes to Governmental and tripartite working parties and international bodies including the ILO, the International Organisation of Employers and the Business and Industry Advisory Council to the OECD.

Business NZ's key goal is the implementation of policies that would see New Zealand retain a first world national income and regain a place in the top ten of the OECD (a high comparative OECD growth ranking is the most robust indicator of a country's ability to deliver quality health, education, superannuation and other social services).

It is widely acknowledged that consistent, sustainable growth well in excess of 4% per capita per year would be required to achieve this goal in the medium term.

RECOMMENDATIONS

1. Extend the current payment provision to territorials and reservists called up to serve in times of war or emergency in terms of ss39(2) or 40(2) of the Defence Act 1990.
2. Replace the word "may" in clause 14ZX (1) with "shall" and insert after "to whom" the words "Part 2 and "
3. In relation to the term "key position", insert the following definition into clause 5 of the SOP:

"Key position is a position for which a replacement employee cannot readily be found because of the need for a specialised skill, or for specialised knowledge of the work content of a particular job and/or of the organisation where the job is provided."

4. Insert a new paragraph (d) into new section 91A(2) (clause24 of the SOP):

"[x number] of members of which a majority shall be representative of private sector employers and businesses."

DISCUSSION

1. When, towards the end of 2000, the amendment Bill to which this Supplementary Order Paper (SOP) is directed was introduced by a private member in response to a government decision to send members of the territorial forces to serve in East Timor, the then New Zealand Employers' Federation (now, together with the former Manufacturers' Federation, a constituent member of Business New Zealand) found itself unable to support the proposed legislation.
2. The major reason for the approach taken at that time was the cost and difficulty of finding and employing replacement staff. Subsidising the state's role of maintaining viable armed services was not considered the sort of task employers and businesses should be asked to undertake. Imposing a requirement of this kind could only limit their ability to engage in productive activity and generate the growth needed to maintain the armed forces. It might also result in reluctance to employ anyone involved in the Territorial forces.
3. While the Supplementary Order Paper (SOP) goes much further than the amendment Bill in guaranteeing protections for territorials and reservists called out for service in terms of ss39(2) or 40(2) of the Defence Act 1990 in times of war or emergency or who volunteer for Special Service in terms of s50 of that Act, it also provides for the making of regulations granting payment of compensation to employers required to grant leave for any period longer than 28 days to employees in the latter category. Otherwise the SOP follows very much along the lines of the 1987 Parental Leave and Employment Protection Act, except for the proposed setting up of a Territorial Forces Employer Support Council.
4. The Select Committee will understand that the requirement to grant a lengthy period of leave to any employee presents an employer with a particular set of problems that the payment of compensation can not entirely overcome; to that extent the original employer view continues to hold good. This is particularly so as the payment provision at present applies only to volunteers and not to territorials and reservists called up for service.
5. However, Business New Zealand recognises that there will be occasions when members of the Territorial or Reserve forces will be liable to serve - in time of war or emergency - or will wish to volunteer to serve in the national interest. Business New Zealand also accepts that it may be unrealistic for New Zealand to sustain a peace-time army of sufficient size to be able to respond adequately to such emergency callouts as may from time to time occur.

7. Business New Zealand appreciates the SOP's concession to employer concerns in providing for the making, in relation to volunteers, of regulations prescribing compensation at the highest rates of minimum wages payable under the Minimum Wage Act 1983 where an absence exceeds 28 days.
8. Consequently, the proposed legislation would have the support of Business New Zealand if certain changes were to be made.
9. The current payment provision should be extended to territorials and reservists called up to serve and should not apply only to volunteers, while the relevant clause should *require* the implementation of regulations providing for the payment of compensation. (It is noted that the present wording of clause 14ZK states in subclause (1) merely that "Regulations made under section 14ZK *may* (emphasis added) provide for payments, by way of compensation ...").
10. As well, the "key position" provision (clause 14O(1)(a)) should be strengthened to allow employers likely to be severely inconvenienced by the absence of a particular employee with a clear basis for denying leave. Currently, the Courts have so narrowly defined the Parental Leave and Employment Protection Act's corresponding provision as to make the exception in that context almost meaningless.
11. In relation to the term "key position", the following definition is suggested for inclusion in clause 5 of the SOP:

"Key position is a position for which a replacement employee cannot readily be found because of the need for a specialised skill, or for specialised knowledge of the work content of a particular job and/or of the organisation where the job is provided."
12. There must also be concern as to the purpose of setting up a Territorial Employer Support Council since its primary function seems to be to promote service in the Territorial forces rather than to provide support to employers. Assuming, however, that the Council is intended to have an educative function directed both to employers and employees, the SOP must make provision for business representation on any Council established. For a Council of this kind to achieve employer and business support it is essential that the case for business should be stated effectively. All Council members must have an appreciation of the difficulties experienced in particular by smaller employers or employers with specialised staff when valued employees are absent for temporary but quite lengthy periods.
13. Amended as indicated above and with business/employer representation on any Council that established confirmed, Business New Zealand would be in a position to endorse the SOP.

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15 September 2003