

## Submission on the

### ***Employment Relations Amendment Bill (No.2)***

#### **Introduction**

This submission is made on behalf of the New Zealand Union of Students' Associations (NZUSA). NZUSA is a federation of students' associations with members from Universities, Institutes of Technology and Polytechnics across the country. NZUSA has been representing the collective interests and concerns of tertiary students since 1929, as the peak body for learners and leaders of the student movement in New Zealand. We welcome the opportunity to submit on the *Employment Relations Amendment Bill (No.2)* and would also like to appear before the Transport and Industrial Relations Select Committee to expand further on the points made in this submission.

Our current members are:

- Albany Students' Association (ASA)
- Association of Students @ UCOL (AS@U)
- Auckland University Students' Association (AUSA)
- Lincoln University Students' Association (LUSA)
- Massey University Students' Association (MUSA)
- Massey University Extramural Students' Society (EXMSS)
- Massey At Wellington Students' Association (MAWSA)
- Otago Polytechnic Students' Association (OPSA)
- Otago University Students' Association (OUSA)
- Students Association at Waikato Institute of Technology (SAWIT)
- Victoria University of Wellington Students' Association (VUWSA)
- Weltec Students' Association (WSA)
- Waiariki Institute of Technology Students' Association (WITSA)
- Waikato Students' Union (WSU)

#### **General position *Employment Relations Amendment Bill (No.2)***

NZUSA is opposed to the *Employment Relations Amendment Bill (No.2)*. The Bill undermines trust and fairness in the workplace, and takes away the rights of students and graduates to a fair and decent work environment.

We do not believe that the Bill is necessary, and nor will it deliver on its stated purpose to "provide more flexibility, greater choice and ensure a balance of fairness for both employers and employees in the principle Act, while improving its overall operation and efficiency".

While all workers stand to be negatively affected, there will be a particularly negative impact on the most vulnerable workers in the workforce. Such changes at the expense of workers' rights are unfair and unacceptable. It is also important to recognise the impact such law changes will have on graduates who may be looking for jobs after they finish studies.

#### **Background on student workers and graduates**

NZUSA's submission is contextualised within a tertiary student perspective, and will focus on the negative impacts of the Bill on students and graduates. Due to high tuition fees, limited student allowances (only around a third of students receive an allowance) and high student debt, more and more students are being forced into part-time work during term time. Moreover, large numbers of students have long taken the opportunity during the summer vacation, around 90 days in length, to earn money though engaging in paid work. Many of these seasonal employment opportunities have flowed over into the academic year, enabling students to continue with part-time work during the term. This Bill puts that opportunity at great risk.

Prior to the introduction of user-pays in public tertiary education, it was generally recognised that the summer vacation was an opportunity for students to earn enough money to pay for the small nominal tertiary fees that existed prior to 1990<sup>1</sup>, as well as assisting students to meet some of the costs of living for the year ahead. However, it is worth noting that from 1976 to 1992 a far larger number of students were eligible for a student living allowance compared with the much small number eligible for an allowance today.

The introduction of user-pays tertiary education put an end to students being able to earn the required amount over summer to meet yearly fee levels. The average fee levels are now around a very high \$5,874 per year (many are higher than this) and a large number of students have to accrue large Student Loan Scheme debts to meet study and living costs. Debt as a form of income has sadly become a reality for many New Zealand students. Moreover, as a source of income, paid work during not only summer vacation, but also for significant hours during term time, has become a reality for a large number of New Zealand students.

The 2007 Income and Expenditure Survey<sup>2</sup> proved the proliferation of students being forced into paid work during term time, largely due to the lack of student allowance eligibility and other sources of income for students during the year. 64 percent (this figure was 41 percent in 2001, and 67 percent in 2004) of respondents stated that they had regular work during term time and 36 percent (this figure was 27 percent in 2001, and 35 percent in 2004) stated that they were engaged in casual work during term time. 90 percent reported working at some time throughout the year (this was 87 percent in 2001, and 81 percent in 2004).

The 2007 survey also revealed that 58 percent of students, who were surveyed, worked during the summer break. Other than income from paid work, many who were in paid work during the summer had no other source of financial assistance during that period. Access to support if students are unable to work, such as through the Unemployment Benefit Student Hardship (UBSH) has also been restricted over successive years.

The importance of the researched material above, and the connection to NZUSA's opposition to this Bill, is that all student workers must be guaranteed their full rights as workers.

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<sup>1</sup> The New Zealand Country Background Report to the OECD Review of Tertiary Education (2006) states that until 1990, the fees charged to students in tertiary education in New Zealand were very low. In 1989, the fee for full-time full-year study at a university in New Zealand was less than \$300 – and, for most students, 90% of that cost was met by the government through a fee grant (paid through the student support system).

<sup>2</sup> NZUSA's most recent Income and Expenditure Survey was contracted out to TNS Research and conducted in late 2007. The report was published in early 2008. 3,793 students were surveyed in 19 New Zealand public tertiary education institutions.

The summer vacation period lasts around 90 days. However, as stated earlier, if the legislation were extended it would mean that student workers, as well as those employed in part-time work or casual work during term time, would be incredibly vulnerable to losing jobs without reason, but even more alarmingly, the loss of all personal grievance rights in the first 90 days of their employment. This lays the ground for further workplace exploitation, the increased proliferation of low and minimum wage rates and inadequate workplace conditions. The Bill would also increase the likelihood of 'recurrent probationary periods' and increase the numbers of student workers in insecure and precarious employment.

It is also important to point out that a significant number of students are employed on a casual basis, as evidenced above, under the Employment Relations Act. These workers have less protection under the present Act than those employed on a part-time or full-time basis given that they can be offered work only when, or if, it is available. This Bill effectively disenfranchises these workers further by removing their right to appeal unfair dismissal or other unfair practices under section 103 of the Employment Relations Act (2000).

Graduates who finish their studies are also vulnerable in new jobs. The Bill would increase uncertainty for job seekers because they may have to wait three months before knowing for certain whether they will be retained in their new roles. It is important to recognise that some graduates may move locations to seek new jobs, and this puts major financial pressure on them and those around them. Graduates who are unfairly dismissed for no reason would be put at major financial disadvantage with no rights to appeal their dismissal.

### **Clause 12 – Extension of the 90 day probationary period**

The extension of the 90 day probationary period to all workers in a new job, removing important protection against unfair dismissal is wrong, unnecessary and unfair. All workers deserve to be treated fairly, justly and in the same manner. There is no reasonable justification for treating new workers differently to all others.

We believe that student workers will be hit hard by this Bill. We are aware of examples of young student workers being dismissed within days of their 90 day anniversary of employment, and without reason. This creates financial pressure and stress on workers already juggling busy lives, and could place their participation in tertiary education in jeopardy. Most students rely on the income from part time work to support them in their studies, and in a time of high unemployment this Bill will add to an already difficult labour market for student workers. The impact on a students' education cannot be underestimated in these circumstances.

This Bill is quite unnecessary. The current law already allows for fair probationary periods, providing employers with genuine employee issues an avenue to address such issues in a fair and transparent manner. Workers can be hired on a trial period, enabling both worker and employer to determine the suitability of the employment arrangement, and offering the employer an 'out' with inappropriate staff. This current provision includes a fair dismissal process, with communication and information a key feature of the process. This has significant benefits for both workers and employers.

On the contrary, the proposed legislation takes away this requirement and will give employers the power to dismiss an employee without giving a reason. This is completely unfair and follows no good faith or fair or just process and is quite undemocratic. There is no emphasis on improvement or productive employer-employee relationships, and could unnecessarily create an environment of distrust and stress. While most employers are very good, there are

unfortunately some that abuse their position of power and treat their workers (particularly young or vulnerable workers) very unfairly.

### **Impact on graduates**

NZUSA is also concerned that the proposed Bill will severely erode the rights of recent tertiary graduates who are embarking on post-study employment. There is a high chance that a graduate will have accumulated a large amount of student debt (either from the Student Loan Scheme, or credit cards, debts to family and friends, bank loans, or overdrafts).

A 90 day probationary period that has the potential for new workers, who have recently graduated with a tertiary qualification, to be either dismissed for no reason, or provided with no right of legal recourse due to issues in their workplace, is totally unjust. Such an amendment to the current legislation would also provide a significant amount of unnecessary stress for new or returning workers.

### **Employment opportunities not enhanced**

Proponents of this Bill have stated that the introduction, and now extension, of a 90 day probation period would mean that those who have not had previous work experience, or who are planning to re-enter the workforce, would find it easier to gain employment. They also state that the changes would enhance workplace productivity and New Zealand's levels of economic growth. However, these arguments were promulgated during the early 1990s relative to the introduction of the Employment Contracts Act (1991), but sadly led to major erosions of workplace and collective rights and New Zealand experienced a 7-9 percent level of unemployment for large parts of the 1990s.

There is little evidence that this Bill would enhance employment opportunities. The Department of Labour states in its paper 'Trial Employment Periods: An Evaluation of the First Year of Operation' that "The international literature suggests that exemptions to employment protection legislation, such as the trial period legislation, increase both hiring and firing but have an unclear overall impact on unemployment."

It is also worth noting that high rates of unemployment exist in Italy, Greece and Germany, however the introduction of more employer-centred and flexible labour laws, including probationary periods, have not led to reductions in unemployment levels in these countries. New Zealand unemployment rates were decreasing for many years, sitting at very low levels. Unfortunately, in the past couple of years, the unemployment rates have dramatically increased again, despite the introduction of the current limited 90-day provisions. No further draconian 90 day probationary legislation is required in New Zealand to push unemployment levels down further.

We also wish to draw the Select Committee's attention to the 'National Conversation about Work' report released by the Human Rights Commission in July. It states that the HRC Equal Opportunities Commissioner, Judy McGregor, believes the 90 day policy could hurt the chances of graduates getting into long term, sustainable employment where they could utilise their skills. She notes that the extension of the 90-day probationary period to all employers would not make employers more likely to take a chance on young people and would instead make employers less likely to invest in their young workers.

Dr. McGregor said in a statement, "I think it means that there's less obligation on employers to actually invest in people during that 90 days and I think that will be a tragedy for young

people.” She believes that the probationary period policy may also encourage lazy employers with regard to recruitment, which could limit the opportunities of young people.

There is also concern that with no job security in the first 90 days of a new job, people will be less likely or motivated to move into new employment at a more efficient rate than previously, out of fear of a lack of stability or job security. This may continue to restrict opportunities for young people to get into work, and also their chances to move up into a career.

It also presents issues for economic productivity and employers’ ability to attract new workers. No-one benefits in a static, stagnant labour market, as poor performing employees will be less inclined to move on, employers will have less opportunity to attract new workers, and prospective workers will have less job opportunities open to them.

While there may be more ‘movement’ in hiring and firing of workers, it isn’t clear that more employment has been generated, and there is no guarantee that just because one employee has been let go, another will be hired. Employment decisions are usually (and are best) made on performance and relevant skills, knowledge and experience. The personal characteristics of a potential employee aren’t relevant, so to use such personal features as a defence for this Bill is tenuous and not credible.

The opportunities for discrimination emerging and possible dismissal against workers due to their religious beliefs, political beliefs, cultural diversity, union membership and involvement, or sexual orientation would also increase following the removal of access to dispute resolution in the first 90 days for all workers.

Further, it is a severe erosion of workplace rights that workers and unions would be unable to attend the Department of Labour’s Mediation Service about any employment issue, nor raise a personal grievance or use any other dispute settlement process.

Lastly, but incredibly significant, is that section 25 of the New Zealand Bill of Rights Act (1990) provides all New Zealand citizens with the right of legal appeal in the case of injustice. Under “Right to Justice”, the Bill of Rights (1990) states, “every person has the right to the observance of the principles of natural justice by any tribunal or other public authority which has the power to make a determination in respect of that person’s rights, obligations, or interests protected or recognised by law.” However this Bill seeks to remove an employee’s right to justice for a period of 90 days during which time those people who have suffered discrimination in the form of unfair dismissal or other forms of personal grievance or discrimination listed under the current provisions of the Employment Relations Act (2000) will have no or little right of legal redress.

### **Clause 6 – Union access**

We are concerned at the unnecessary changes proposed in clause 6. Student workers and graduate employees, if they choose to join a trade union, should not have their access rights to a union infringed unnecessarily and unfairly.

Workers have a right to access their union. The International Labour Organisation, of which New Zealand is a member, states that employers should not be permitted to interfere in that process.

There is no problem with the existing law. The Department of Labour consultation paper ‘Policy options on union access to workplaces’ (May 2009) found there is no evidence that

employers are largely concerned or dissatisfied with current arrangements. There does not appear to be widespread evidence of union representatives exercising their current rights to enter workplaces in an inappropriate way, resulting in disruption for business operations or adversely impacting on the employment relationship between employer and union members.

We would be concerned that employers may not be expected to provide a reason or justification for withholding access to a workplace. Personal opinion or prejudice should not get in the way of employment rights and a fair and good faith work environment.

In some cases, employers may have withheld wages or demonstrated some other breach of contract. Without access to the workplace, unions would be unable to address these issues or support their members in addressing the issues themselves. This system encourages and supports poor process and bad faith work environments, and does not foster communication or fairness. Instead, it supports exploitation without recompense, and this is quite unacceptable.

### **Conclusion**

This Bill, if passed, would remove fundamental rights for workers, including many students who are working in holiday, casual, and part-time work. It would allow an employer to let a worker go for no reason in their first 90 days at work. It would remove their rights as a new employee to appeal for unjustified dismissal and other provisions that currently exist within the Employment Relations Act. As a result, the rights of many student workers and graduates would be severely eroded.

It is estimated that over 700,000 workers a year could lose their legal rights if the Bill passes. The fact that many of the workers negatively affected by the 90 day probation would be students and recent graduates, and also the parents, families and friends of students, leaves NZUSA with little option but to oppose the passing of this Bill.

We respectfully recommend that the Select Committee reject the *Employment Relations Amendment Bill (No 2)*.

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