

# **Submission**

By The



**Early Childhood  
Council**

to the

**Education Workforce Committee**

on

**Employment Relations Amendment Bill**

**April 2018**

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## **SUBMISSION BY THE EARLY CHILDHOOD COUNCIL**

### **1 INTRODUCTION**

- 1.1 The Early Childhood Council (ECC) would like to present this submission on the Employment Relations Amendment Bill 2018, which is intended to implement the Government's post-election commitments to restore key minimum standards and protections for employees.
- 1.2 The ECC takes a specific interest in those amendments that impact directly on its members, i.e. early childhood education (ECE) centre managers and employers. In particular, the Employment Relations Amendment Bill intends to reinstate the right to prescribed rest and meal breaks, restore reinstatement as the primary remedy in unjustified dismissal cases, where the employee requests it, and limit trial periods to employers with fewer than 20 employees.
- 1.3 The ECC considers some of these proposed amendments to the Employment Relations Bill to be impractical and unreasonable.

### **2 RECOMMENDATIONS**

#### **2.1 The Early Childhood Council recommends that:**

- a) It is more appropriate to specify that employees take their breaks between certain specified times, rather than set specific times
- b) The limit for exempt employers who are allowed to implement a 90 day trial period is raised to 50
- c) The proposal for reinstatement as primary remedy to unfair dismissal is scrapped.

### **3 DISCUSSION**

#### **Rest and Meal Break Provisions**

- 3.1 69ZD(1) of the Employment Relations Amendment Bill, Timing of rest breaks and meal breaks states the work periods and the resulting rest breaks to be taken. It also, and quite rightly, qualifies this by saying "as far as is reasonable and practicable". In the context of ECE it is often difficult to fix specific times for breaks, as staff could be in meetings or on the phone, etc. It would be more practical to set out that employees take their breaks within a certain period.
- 3.2 ECE services are required by the Education (Early Childhood Services) Regulations 2008 to maintain a minimum adult:child ratio at any one time. Childcare centres manage this provision along with the responsibility to ensure their staff take appropriate rest and meal breaks by drawing up and implementing daily staffing rosters featuring staggered breaks. This system works well. The proposed changes as worded would be incredibly disruptive to both staff and the preschool-aged children enrolled in the service, and introduce a significant additional cost to the service where an average of 77% of all expenses in a childcare centre already go toward wages costs.
- 3.3 Home-Based ECE services feature a single educator responsible for up to four preschool-aged children at a time. The proposed change to the rest and meal break provisions cannot realistically be provided for in this sole-charge environment.

#### **90-Day Trial Clause Application**

- 3.4 While we assume officials have undertaken a cost-benefit analysis of the proposed change and therefore established that a small business employing 20 staff or less is an

appropriate cut-off point for the proposed provisions, we argue that in the ECE sector 20 staff is too low and that the minimum staffing level to which the provision applies should be set at 50.

3.5 It is more conducive to enabling small business to employ staff if provisions are made that allows 90 day Trial Periods for businesses with less than 50 staff. The “less than 20 staff” rule will impact on many smaller and medium-sized businesses which depend much on degrees of flexibility. The Bill also does not provide clarity whether it relates to Full-time equivalent staff or all staff including part-time and relievers, which is particularly pertinent to ECE services.

### **Reinstatement Provisions**

3.6 We preface our concerns to this proposed provision by making it clear our members do not condone poor employer practice or the unfair or unreasonable treatment of staff. Having said that, we find a number of concerns with the proposed provision that would increase the expectation that reinstatement of a previous role in situations where unfair dismissal can be established.

3.7 The reasons that may lead to the finding of unfair dismissal may overlook the status of the relationship between the affected staff member and other staff at the childcare centre. Unfair dismissal may come about as a result of poor management practice in the application of the disciplinary procedures required to lead to a dismissal, i.e. while the outcome may be appropriate, the way it was reached may have had fault. We feel that in such situations, the team and business are being penalised by the forced return of a disaffected staff member who may go on to cause irreparable damage to the service’s reputation and service performance and could, potentially, be putting children enrolled in the service at risk.

3.8 If employers are forced to reinstate someone who presumably deserved dismissal but the employer failed to follow proper process then this is a disservice to everyone involved in such a situation. It might have an impact on the employee who was hired to take the place of the reinstated former employee and staff morale could be adversely affected, with people leaving in protest of the reinstatement.

3.9 We believe it is more appropriate that reinstatement remain as one of a number of options available to consider, taking into account the wider circumstances of the employment situation.

## **4 Background**

4.1 The ECC was formed in 1990 from the amalgamation of the Licensed Childcare Centres Federation and the Associated Childcare Council. It became an officially incorporated society in 1991.

4.2 The ECC is the largest representative body of quality, licensed early childhood centres in New Zealand. We have more than 1,200 member centres, 30% of which are community-owned and 70% of which are privately-owned. Our membership employs thousands of teachers, and educates tens of thousands of children. We have Pasifika and Maori members, Christian, Montessori and Steiner, and many with no special affiliation. We believe families have the right to choose from this educational diversity that which they believe is best for their own children.

4.3 Our member centres range from providing quality early childhood education services for six child places to over 150 child places and are spread throughout the country. Membership is voluntary, and open to all licensed independent early childhood centres.

4.4 We offer members up-to-the-minute information, support and advice as well as representing their views with those who influence our sector.