



3 July 2006

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**Submission to the Transport and Industrial Relations Committee on the
Employment Relations (Probationary Employment) Amendment Bill**

The National Council of Women of New Zealand (NCWNZ) is an umbrella organisation representing 38 nationally organised societies. It has 31 branches spread throughout the country attended by representatives of these societies. NZEI did not wish to have its name included in the list of supporting affiliates for this submission. NZEI opposes the Bill. The Council's function is to serve women, the family and the community at local, national and international levels through research, study, discussion and action.

We appreciate the granting of an extension of time to tender this submission to the Bill. In the time we had to canvass our membership we received a number of responses. The majority of our Branches advised that the topic had generated many debates.

NCWNZ has a strongly divided membership over this Bill which will introduce a 90-day probation period for new employees. Those opposed to the Bill included a number of Nationally Organised Societies (NOS) who represent employees, as well as other NOS and individuals. Those who supported the Bill included Branches which have representatives from both employer and employee groups, NOS and Individuals.

The number who supported the Bill did so recognising that employees had some right to protection from employers who could 'use' the Bill. They cite examples of the low paid workers who could be exploited by unscrupulous employers who might deliberately lay them off before the 90 days elapse and employ replacement workers intentionally for a shorter period so that they are not eligible for all the rights that other employees are entitled to by law such as sick leave, bereavement leave, overtime and so on.

Of particular concern is the fact that if an employee is dismissed during the 90 day period they might also have to wait 13 weeks 'stand down' before being granted a benefit if they are unable to find another job.

One member organisation points out that in the private sector, many of their members are employed in sectors such as aged care which are underfunded and where the staff receive low pay and have little negotiating power. This member considers that the Bill will fundamentally change the nature of the relationship between employer and employee to one that is hostile and pressured in the first instance rather than based on good will, fairness, respect and trust.

NCWNZ shares the concerns of another member that the Bill would discourage workers from risking moving to another centre and selling their home and uprooting their families if they have no guarantee that their new job is secure. This could be a major problem for country areas where staff recruitment is already very difficult.





The Bill seeks to encourage more employment of young and inexperienced workers on a trial basis. NCWNZ is concerned that this aspect could be exploited. An example cited was the case of beginning teachers, whose first year is a form of internship for which the employer has major responsibility in giving guidance and support. There have been some schools neglectful of this obligation even with the current Collective Agreement and monitoring by the union and the Education Review Office. Under the proposed Bill they could be in an even worse position, which could result in the young teacher becoming 'unregistrable'. Similar examples could be found in other occupations.

The Bill would also be a disincentive for workers to resign and switch jobs because they would forfeit employment rights for a three month period in their new job. It would not only be the young and low paid workers but employees at any level.

Several of our respondents considered that employers already have the opportunity to include a genuine probationary period in their contracts with new employees or as a casual staff member for the trial period. They can also employ under contract for a fixed term. However if they terminate the agreement and have it contested by the worker, it can be a lengthy and very costly process if their procedure has been inadequate or unfair. It can cause great disruption to a small business, with limited financial reserves, or with insufficient staff to run the business while the principal is engaged in industrial relations negotiations. One member wrote that 'employment procedures should be robust enough to eliminate potential employees whom they would otherwise justifiably get rid of in the proposed three month period'.

There is also the opportunity currently for employers to employ people on a casual basis which some of our members cited as a reason for not supporting the Bill.

However despite the comments above, many of the Branches who responded supported the Bill, as did a number of Nationally Organised Societies. They cited examples where employers could not lay off a dishonest worker and several stated that the Employment Relations Act and subsequent legislation was all for the benefit of the workers and at the expense of the employers. Examples were given of workers whose references and CV were excellent but they proved to be unsuitable on the job, even after further training.

NCWNZ considers that the Bill will encourage employers to take on new staff, especially Maori and Pacific Island who make up a disproportionate percentage of the unemployed. It would give them valuable experience and training which would improve their CVs and possibly make them more employable. From the employers' point of view it would be advantageous to give them the experience and the opportunity to prove themselves good employees without risking costly and protracted personal grievance cases if the employee proves unsuitable.

The fact that the Government's own Small Business Advisory Group described probationary periods as the single most important change that could be made to employment legislation, leading directly to employment and business growth, should be taken into consideration. Considering that small businesses collectively are major employers, this Bill may help them find new employment, where otherwise employers may not be willing to risk taking on more staff if they need training in a new discipline.

NCWNZ has always lobbied for the rights of women, young people and their families. This includes those in low paid jobs that are vulnerable. We are concerned that this Bill does need some adjustments to ensure that they are not exploited under the proposed legislation. We would like to see probationary contracts drawn up, to be followed by a permanent contract under the ERA at the end of the probation. We feel that there should be some notice given if a worker is to be laid



off during the three month probation and reasons given in writing. The worker must be safeguarded to ensure that pay entitlements are honoured in the event of being laid off, and that the skills mastered during the three months or shorter period, be set out in a reference which can be taken to a subsequent job. One branch also suggested that there should be a dispute settlement process so that the worker is not unfairly disadvantaged, without going to the extent of the ERA. Workers whose employment is terminated should not be subject to a stand down period for the unemployment benefit.

NCWNZ also emphasises that the probationary period should include the usual rights to statutory holiday pay, bereavement leave, sick leave, overtime, and minimum wage levels. We would also support paid parental leave entitlements accruing so that if the employment is confirmed at the end of the three month probationary period, that these three months be included in the minimum six month qualifying period for PPL. We have to acknowledge that not all our respondents agreed with this particular provision.

NCWNZ is pleased to have been granted an opportunity to comment on this legislation.

Christine Low
National President

Elizabeth Cruickshank
Convener, Employment Standing Committee



7 September 2006

Oral Submission to the Transport and Industrial Relations Committee on the Employment Relations (Probationary Employment) Amendment Bill

Good morning, my name is Jean Fuller and I would like to introduce my colleague Anne McNickle. We are both members of the Parliamentary Watch Committee of the National Council of Women of New Zealand.

Our organisation is supported by members from every part of society so it is not surprising that we have no single answer to the issues raised by this suggested legislation. When this Bill was placed before our members it was well debated and we received 39 responses which covered the spectrum from strong disagreement to strong support. These diverse views have been spelled out in the submission you have before you.

There was a general recognition that a problem existed where a prospective employee was required to have experience but for various reasons could not get the job that would provide that experience. There was no agreement on whether this Bill could solve this problem.

Members were concerned that employees looking for first jobs were very vulnerable people and unlikely to be skilled in negotiation or aware of rights, but other members had had unfortunate experiences with bad work attitudes and a casual approach to responsibility which left them reluctant to hire someone with a poor or non-existent work history. This often came down to whether the employer was a large organisation with a well-equipped Human Resources section or a sole employer with few staff.

There was a vigorous discussion over whether the Employment Relations Act already had sufficient options to permit satisfactory probationary periods and again our members were strongly divided.

There were, however, some suggestions as to how the Bill might be improved. These ideas were not universally supported but came from a middle group who acknowledged that there was a problem and looked for ways of changing the Bill so that both employer and employee would benefit.

1. Many members felt that there should be a formal, probationary contract, spelling out the rights and responsibilities of both parties, and that an employer should give the reasons for termination in writing. There was concern that probationary employment should not become too informal and that one of the purposes for this type of employment should be to assist the employee to improve skills, relationships and attitudes. One response suggested that the employer should provide a regularly documented record of the employee's progress.
2. It was recognised that *either* party might choose to discontinue the employment and therefore there should be a period of notice to allow both to make appropriate arrangements.
3. In the event of a termination employers should be encouraged to provide a reference stating what skills had been learned.



4. There was general concern that the stand-down period for benefits would need to be adjusted if this Bill were passed.

5. A point of some debate was the application of the various employment benefits such as sick leave, holiday pay and entitlement for paid parental leave. Although members viewed this differently, all were agreed that these issues needed to be clarified. The most common suggestion was that a “start” date should be clearly noted in the initial contract. Members also felt that a probationary employee was not a second class employee and should therefore not be deprived of normal benefits during this time.

6. Although the object of the Bill is to eliminate costly employment disputes our members recognised that there would be occasions when legitimate problems arose and there was considerable support for a streamlined tribunal that would handle this type of employment only. Recourse to the Human Rights Act was felt to be somewhat restrictive and not always appropriate.

It seemed clear from the responses we received that a substantial number of our members agreed that there was a problem, but there was great anxiety,

- that low-paid work would become casualised to the point where short-term hires would have no rights,
- that employees would be “at-the-mercy” of unscrupulous employers,
- that mentoring and training would suffer,
- and for women in particular there was the issue of sexual harassment.

It would seem that the problems for the employer and the potential employee may be more complex than the provisions of this Bill suggest.