



**SUBMISSION**

to the

Employment Relations (Rest Breaks and Meal Breaks)  
Amendment Bill

December 2009

**The PPTA is the union representing around 18,000 teachers in state secondary, area, manual training and intermediate schools, as well as tutors in community education institutions and principals in secondary and area schools. PPTA represents the professional and industrial interests of its members, including those working in alternative education centres and activity centres. More than 95% of eligible teachers choose to belong to the union.**

**The Association welcomes the opportunity to comment on the proposed amendment to the Employment Relations Act and looks forward to further consultation and engagement.**

## **1. Background**

1.1. Prior to the introduction of the current legislation on meal and rest breaks, the provision of such breaks for our members was largely dependent upon the good will of employers. Practice was variable. The lack of time available for rest and meal breaks was a frequent concern for many members. In a worst case example, all of the staff in a north island school were required by the employer to be on duty at every break. Six of those teachers were diabetics who were having problems managing their health without adequate meal breaks and other employees were under significant stress from the regime.

1.2. When the current legislation was introduced it became obvious that there were three ways in which it would impact on secondary schools:

- There would be a group of schools for whom the requirement to provide two ten minute rest breaks and a 30 minute lunch break free from duties required no change in organisation or operation because these conditions were already met or exceeded.
- The majority would be another group of schools, probably larger, that would need to make adjustments, usually small ones, to their staff duty rosters or the timing of periods to meet the requirement. The Association provided advice and examples of ways in which schools could meet the statutory requirements without extending the school day or making major changes to the school timetable and the necessary changes were effected with a minimum of fuss.

- There would be a smaller number of schools where the employer might resist any changes to the operation or timetabling of the school as a matter of principle (interfering with employer prerogative) or because they saw it as a matter of administrative inconvenience to alter the status quo at that time of the year. Most of these situations have been able to be resolved by dialogue and using the above advice and examples. Having the legislative backdrop proved useful in an incentive to encourage engagement in a few more difficult situations.

1.3. Thus, in the time since the introduction of the breaks legislation we have found that there is significant flexibility in the provisions and that the requirement to provide minimum breaks for teachers has significantly improved the working conditions for many, without creating other than transitional problems (if any) for the vast majority of secondary schools.

## **2. Observations on the intention to change the legislation**

2.1. The Employment Relations Act recognises that there is a significant structural power imbalance between employers and employees which makes the latter vulnerable to bad employer practice.

2.2. The flexibility in the existing legislation allows for employers and employees to agree the timing of breaks and a range of organisationally effective solutions have been able to be reached, including the sequencing of breaks into two or three continuous rest/meal periods. The formula provided in the legislation is not applied (to the best of our knowledge) in any school. But, it provides guidance on the distribution of breaks and an encouragement for both employers and employees to find mutually preferred options while, at the same time, creating a fall-back position to protect workers where such outcomes are not achievable.

2.3. The Association understands that the proposal to amend the legislation arises from a very specific set of circumstances – the air traffic sector. The generalised changes proposed to deal with that situation have the effect of removing the entitlement to rest and meal breaks for all workers and significantly undermines the protections provided by the legislation as it is currently written. A more reasonable approach would be to identify

specific circumstances which the legislation might create genuine difficulties (such as sole operator situations) and provide additional clause to provide for those cases.

- 2.4. As it is presented, the Bill suggests that the Government is using the pretext of difficulties in a single area of the work force to undermine and reduce the minimum entitlements of all workers in New Zealand.
- 2.5. In the general policy statement the Government argues that the amendments are about providing flexibility for both employers and employees when, in effect they will increase the powers of the former while stripping existing minimum industrial rights from the latter.

### **3. Specific concerns**

- 3.1. 69ZD as it currently stands establishes a minimum break and meal time without restricting agreement to longer periods if required. This minimum entitlement is removed by the proposed amendment and leaves the employer with considerable power to provide shorter breaks at their discretion and to make idiosyncratic assessments of the personal needs of their employees and what is appropriate for the duration of work they personally will not be undertaking.
- 3.2. The proposed 69ZD (2) further undermines any minimum entitlement employees currently have by allowing the employer to determine that there will be further restrictions. The ability of any employer to require the employee to continue to perform some or all of their duties during the break means that there will be permission for employers to ensure that there are no breaks for many employees throughout the public and private sector. The terms 'reasonable and necessary' will tend to be interpreted by employers as the right to determine themselves what is reasonable and necessary from their perspective. The range of interpretation will be as wide as the range of practices employers seek to operate. This is unacceptable.
- 3.3. For example, in the initial phase of introducing the current rest and meals break provision, some employers wanted to have teachers continuing to count as breaks time when they were not in face-to-face classroom delivery, but still engaged in other types of work or supervisory duties.

Those teachers would have been denied rest and meal breaks under that interpretation.

- 3.4. The existing clause 69ZE establishes as a guideline the normal expectation that the breaks occur at reasonable points through the employee's working day but allows for variation from this by agreement. In schools, where the employer has engaged with staff in good faith, such agreement has been reached and mutually suitable times have been established.
- 3.5. The proposed 69ZE removes all protections for workers on the placement of breaks and makes it effectively an employer prerogative. In the secondary school sector we have had examples of employers wanting to know why staff can't take their breaks at the end of the day when students have gone. This proposed clause would enable such employers to disagree with any rest and meal break times suggested by employees and require that the breaks be of a period they deem appropriate and be held at the end of a 7 or 8 hour working period. This is unacceptable on health and safety grounds alone.
- 3.6. The existing clause 69ZF imposes penalty for employers who choose to ignore the law. However, proposed clause 69ZEA (1) (a) negates this penalty if there is agreement to provide compensation. However, the pressure that employers can bring to bear on employees to agree to inadequate or largely symbolic compensation is considerable. Further, 69ZEA (b) removes completely any penalty if the employer decides that it is unreasonable to provide the breaks. Further, 69ZEA (2) does not identify the compensation which is appropriate, leaving that entirely as an employer discretion. And 69ZEA (3) is potentially meaningless for employees since there is no minimum entitlement to time for any break. An employer can determine that appropriate breaks constitute 5 minutes, not deliver them and then undertake to provide 5 minutes in lieu but at a time of their choosing. This could be never or, possibly, an accumulation that can be of one day time in lieu to be taken at the end of the working year.

#### 4. **Summary and conclusion**

- 4.1. The Association believes that the proposed changes to the rest and meal breaks provisions of the ERA will effectively strip employees of any minimum entitlements to rest and meal breaks and would make it very difficult for any effective or meaningful compensation to be achieved.
- 4.2. We can foresee difficulties in a sector which is reasonably well organised and with overarching responsibilities under the State Sector Act. In those sectors of the economy which are less well organised or less regulated, vulnerable employees will become more so if these amendments are enacted.
- 4.3. As noted, the impression given by these amendments is that the Government is keen to use a very rare set of circumstances to justify stripping all workers of minimum entitlements to rest and meal breaks, and for making these largely matters for employer prerogative.
- 4.4. Accordingly, the Association opposes the changes to the legislation. Instead we suggest that those extremely rare or even singular instances of sole-operator situations in industries where breaks may genuinely put members of the public at risk be responded to by the addition of clauses which ensure that those situations are recognised and resolved fairly and with due regard for the health and safety of both the public and the sole-operator workers.