Submission

On the Employment Relations (Termination of Employment by Agreement) Amendment Bill

21 May 2025

PPTA | PO BOX 2119, WELLINGTON 6140 | P. +64 4 384 9964 | E. ENQUIRIES@PPTA.ORG.NZ
FILE NUMBER: R/A/S

Introduction

[1] PPTA Te Wehengarua is a member-driven union that represents the professional and industrial concerns of secondary teachers, with robust democratic structures to formulate and endorse our policy positions. Our Executive are current classroom teachers elected by the teachers in their regions around the motu. Our ideas on education are based on research and on the lived experience of schools. Our professional and industrial advocacy is an important part of the education ecosystem.

[2] Along with our international education union partners, we also believe in the right to decent work and collective bargaining. We work to promote and protect that right in secondary education in New Zealand and to advance the rights and status of the teachers who deliver that education. Consequently, we are a voluntary organisation with very high membership.

Our analysis

[3] PPTA Te Wehengarua opposes the Employment Relations (Termination of Employment by Agreement) Amendment Bill ("**the Bill**") in its entirety.

[4] If enacted, the Bill would give employers the ability to exert considerable pressure on employees to get them to agree to end an employment relationship without the need for substantive justification or any adherence to a fair process. Under the current legislative set-up, making the kind of offer to terminate employment that the Bill proposes would give an employee cause to raise a personal grievance. We are unconvinced that this status quo is unfair, and that legislative intervention is needed to save employers from long-standing and widely accepted obligations related to procedural fairness and substantive justification.

[5] It is critical to our current understanding of the employment relationship that employers and employees have mutual obligations of trust and confidence that are supported by obligations of good faith.[1] It is difficult for us to see how the Bill supports this relationship as the Bill is predicated on the idea that the employer has a pathway of excusing themselves from these obligations.

[1] See Employment Relations Act 2000, s 3(a).

[6] The Bill deliberately ignores the inherent imbalance of power in employment relationships between the worker and their employer. This makes the Bill incompatible with the stated object of the Employment Relations Act 2000.[2] In practice, a worker who receives an offer to end employment of the kind contemplated in clause 4 of the Bill will feel tremendous pressure to accept this offer- irrespective of whether doing so is objectively in the worker's best interest. Many workers will, quite rightly, be fearful of the prospect of saying "no" to an employer who wants them gone. After all, an employer, due to their position of power, can make life for a worker very uncomfortable if the employee is reluctant to accept an offer to terminate employment. The fact that the Bill makes evidence of pre-termination negotiations inadmissible in any proceedings before the Authority makes it even more likely that some employers will use this loophole to engage in underhanded behaviours in negotiations to terminate employment that would otherwise be grounds for a clear-cut personal grievance.

[7] The assumption that an employee is on equal footing in negotiating the kind of termination envisioned by the Bill also incorrectly assumes that employer and employee have access to the same resources to be able to seek advice on whether a proposal is in their best interest. In fact, the Bill would create perverse incentives for employers to deliberately submit unreasonable, "low-ball" offers to employees- precisely with the strategic goal of disincentivising the employee from seeking advice. After all, any rational worker without access to a union will think twice about spending $200/hour+ in legal fees to evaluate whether an employer's low-ball offer of $1,000 to end employment is reasonable. Since many workers have little or no experience in evaluating whether a monetary offer to end an employment relationship is reasonable, we fear that many will accept offers without seeking advice. It is either naive or patently dishonest to treat workers as if they had access to perfect information and/or the same resources as the employer to act strategically in this situation.

[8] As it stands, the Employment Relations Act 2000 is predicated on the desire to –

- incentivise good faith actions and active and constructive communication in order to prevent problems arising[3],

[2] Section 3.
[3] Section 4.

- resolve problems informally i.e. through mediation when they do arise[4] and
- reinstate employees as the primary remedy even in situations where things have gone wrong in the employment relationship.[5]

[9] So, the Act is predicated on the desire to build, support and protect the employment relationship and the mutual obligations that support this relationship. Enacting the Bill would be incompatible these goals.

[10] We also emphasize that in cases where there is an employment relationship problem, employers and employees already have access to well-established pathways to come to a mutually acceptable agreement to terminate employment. These pathways are well-recognised and they are supported by an existing legal framework- which provides protections both sides.

Recommendations

[11] We recommend that the government does not support the Bill going forward and that it is abandoned.

[12] We also wish to express our support for the submissions by the New Zealand Council of Trade Unions on the Bill.

Nāku noa, nā

Joschka Hoffmann
Advisory Officer
PPTA Te Wehengarua

[4] Section 3(a).
[5] Section 125.