



tourism
INDUSTRY
ASSOCIATION NEW ZEALAND

**Submission to the Transport and Industrial
Relations Select Committee**

on the

**Employment Relations (Breaks and Infant
Feeding) Amendment Bill**

19 May 2008

Introduction

1. This submission is from the Tourism Industry Association New Zealand (TIA), located in Wellington. If you wish to contact us regarding this submission, in the first instance, please telephone Simon Wallace, Policy Manager on 04 494 1842 or 0272 489 375 or e-mail him at simon.wallace@tianza.org.nz
2. In accordance with the conditions of lodging a submission to a Parliamentary Select Committee, TIA has no objection to the contents of the submission being made a matter of public record. We also wish to have the opportunity of appearing in person before the Committee when oral hearings are held.
3. TIA has consulted with its Members to seek their views on this Bill. We also have talked to stakeholders in other industries to understand their position on this Bill.
4. The Association recommends that this paper be read alongside one you may have received from the Hospitality Association of New Zealand (HANZ) and possibly other tourism and/or hospitality based trade associations and businesses.

Background

About the Tourism Industry Association

5. TIA is the umbrella organisation and peak body that represents and advocates for the interests of the tourism industry in New Zealand. The businesses we represent generate more than 85% of New Zealand's tourism-related revenue. Tourism is an \$18.6 billion industry (\$8.3b from international and \$10.3b from domestic tourism) with international tourist expenditure accounting for 19.2% of New Zealand's total export earnings¹.
6. The tourism sector directly and indirectly, employs one in ten New Zealanders in a diverse range of businesses – the majority of which are small and medium sized enterprises with less than five people. Not only is tourism important because of its size, representing 8.9% of New Zealand's GDP, it is:
 - Highly employment intensive;
 - Regionally disparate; and
 - Very diverse - ranging from large stock exchange listed companies to small cottage businesses.

¹ "Key Tourism Statistics – July 2007", Ministry of Tourism website

7. The above businesses cover a range of tourism-related activities – hospitality, transport, adventure and other activities such as cultural tours, attractions and retail as well as related tourism services. In many cases, regional tourism businesses have developed around regional assets divested by other industries and have revitalised those assets and the communities that depend on them.

Comment

8. TIA supports flexible approaches to workplace management such as those dealt with in this Bill. The objective of this amendment is to create minimum standards for a modern workforce, so Association supports policies concerning the choices of employees, particularly with regard to work-life balance and caring for family. It makes common sense that employers accommodate workers' needs to care for infants and to be able to take breaks, as doing so creates a safe, happy and productive workplace.
9. In determining what is reasonable and practical with respect to rest breaks and infant feeding, employers should be able to take into account their operational environment and resources. This is particularly so in the tourism industry where the nature of every workplace is different.
10. The views of TIA with regard to rest and meal breaks and infant feeding are as follows:

Rest and Meal Breaks

11. With some exceptions, in the tourism industry, most rest breaks are paid and meal breaks are unpaid and are either provided for in an employment agreement or are simply taken as a matter of custom and practice. In New Zealand, as in most of the OECD, rest and meal breaks are an important part of an employee's day and their provision is supported by all good employers. New Zealand has never legislated for meal breaks and there is not a compelling reason why it should now.
12. It is important to note that other legislation already addresses criteria for rest and meal breaks. In particular, the Health and Safety in Employment (HSE) Act requires employers to provide facilities for breaks and refreshments. These regulations stop short of specifying the form and frequency of breaks leaving these to enterprises and businesses themselves to determine in a way that is best for them and their workers.
13. TIA believes that the regulations in the HSE Act (and other relevant Acts) are more sensible and practical than the mandatory rest and meal breaks being proposed in the Employment Relations (Breaks and Infant Feeding) Amendment Bill. Imposing changes of this nature are likely to have negative consequences for businesses, particularly in a service based industry such as tourism where flexible work practices are sometimes a necessity.

14. While the proposal in the Bill to provide for rest breaks every four hours or less, between four and six hours and between six and eight hours is fair and reasonable, it is impractical and in many cases, unsafe. For example, it would not be practical for a ski, mountain or rafting guide, a horse trekking instructor or a jet boat driver to have legislated break times as to do so would compromise safety. Similarly, a bus or coach driver's working day is determined by a tour company's itinerary or schedule. In reality, these employees do get breaks at reasonable periods and their employers work within legislative guidelines, such as the HSE Act.
15. Such examples given above are merely the tip of the iceberg and the proposals in this Bill with regard to rest and meal breaks fail to acknowledge either the diverse nature of the businesses in the tourism industry or the fact that most employers are good employers who actually recognise that providing down time for their workers improves morale and long term productivity.
16. The introduction of prescriptive rest and meal breaks as proposed in this Bill also raises a number of questions, such as:
 - can employees combine rest breaks and meal breaks?
 - can an employee place a meal/rest break at the end of their day so they can finish work early? and
 - what happens to employees who finish work five minutes early and arrives back at work five minutes late while taking their meal or rest break?

Costs

17. Whether intentional or not, the Bill as currently drafted imposes extra costs on employers, not just directly because of the requirement for paid rest breaks, but also in terms of lost productivity. As mentioned in paragraph 6 above, the tourism industry is made up predominantly of small to medium sized enterprises (SMEs) and this legislation will impose extra cost burdens on these businesses especially at a time when many are faced with increasing fuel and food costs and competitive pressures.

Recommendation

18. On the rest and meal breaks component of this legislation, TIA believes the proposal should not proceed. It is the view of the Association that existing legislation already provides for sufficient and rest and meal breaks and further regulation is not only unnecessary, but will also cause confusion.

Infant Feeding

19. The Bill's explanatory note is long in its explanations on reasons why breastfeeding is important for the health of an infant, but short on reasons why this should translate in the Bill, into what in practical terms, is little more than recognition that breastfeeding is important.
20. There is also an assumption made that only mothers who breastfeed their infants require physical access to them for feeding. This is because the Bill in its current form supports employers providing breaks and facilities for breastfeeding mothers and not for mothers who feed their children by expressed milk or formula. The Bill's explanatory note therefore favours breastfeeding mothers and is in itself a form of discrimination.
21. Nevertheless, TIA's indicative position with regard to infant feeding is one that says

“where it is practical and reasonable, employers should provide facilities and breaks for mothers to either breast feed or bottle feed their infants”.

Penalty provision

22. The penalty provisions proposed are high and in the case of the many SMEs in the tourism industry, a penalty of this nature for what could be a minor indiscretion may put an operator out of business. If an employer declines request for infant feeding breaks or infant feeding facilities on the grounds that it is not reasonable or practical in the circumstances to do so, then it will be necessary for an employee to prove that their request was reasonable and practicable before penalties can be considered. This could open up a whole “pandora's box” of employment issues.

Recommendation

23. On infant feeding in the workplace, TIA feels that it has not fully canvassed the views of its membership on this particular aspect of the Bill and believes more time is needed before it make a definitive statement.

Conclusion

24. To recap, TIA supports the adoption of minimum employment standards that include appropriate provision for rest and meal breaks and infant feeding. It is the view of the Association that the current regulations are more than adequate around rest and meal breaks and there is no need for the introduction of prescriptive legislation when the majority of employers are “doing the right thing”. With respect to infant feeding in the workplace, TIA thinks breaks and facilities should be provided where reasonable and practicable in the workplace, but the Association feels it would like more time to canvass the views of its Members before reaching a definitive position.