



PO Box 10232, The Terrace,
Wellington, 6143
Level 4, Co-operative Bank House
20 Ballance Street, Wellington, 6011
Phone: +64 4 472 3795
Fax: +64 4 471 2861
Web: www.hortnz.co.nz
Email: info@hortnz.co.nz

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SUBMISSION TO THE EDUCATION AND WORKFORCE COMMITTEE ON THE EMPLOYMENT RELATIONS (TRIANGULAR RELATIONSHIPS) AMENDMENT BILL

Submitter: Horticulture New Zealand Incorporated
Submitted by: Mike Chapman, Chief Executive
Contact Details: PO Box 10232, The Terrace, Wellington 6143, New Zealand
T: +64 4 472 3795
E: Mike.Chapman@hortnz.co.nz

HORTICULTURE IN NEW ZEALAND

1. Horticulture New Zealand appreciates the opportunity to make a submission to the Education and Workforce Select Committee on the Employment Relations (Triangular Relationships) Amendment Bill ("Bill").
2. This submission has been provided to the organisations that are affiliated to Horticulture New Zealand. At the Select Committee hearing we will table a list of those organisations who support the following submission and recommend this Bill not proceed.
3. There are 5,000 commercial fruit, vegetable and berry fruit growers in New Zealand who employ over 60,000 workers. Due to the seasonal nature of horticulture our workers are a mixture of permanent and seasonal workers with many seasonal workers progressing to full time positions after a few seasons work and training. The growers in the industry are mostly small to medium sized businesses with a few larger corporates in some sectors. Therefore, changes in employment law can have a dramatic effect on the ability of these businesses to remain profitable and continue to offer job opportunities to New Zealanders. The vast majority of our employers offer training programmes and incentivise New Zealanders into seasonal and permanent work. As such horticulture is a significant employer and a key factor in the maintenance of provincial New Zealand's cultural and social aspects.

The Bill

4. The Bill is designed to prevent exploitation of workers in the situation where the employee of one organisation is working under the direction of another employer. It provides for the second employer's collective agreement to be applicable to the worker and permits that worker to take personal grievances against the secondary employer.
5. Horticulture New Zealand does not condone exploitation of any kind and has programmes to enable full compliance with New Zealand employment law. We submit that the current protections provided by New Zealand law provide workers' protection.
6. In horticulture harvest and pruning are largely done by seasonal workers. In many cases these workers are employed by a contractor who provides services to growers. These seasonal jobs are of relatively short duration and are not permanent work. It is possible for seasonal workers to work for a number of employers to, in effect, create full time work. If this Bill reduces the flexibility for these workers to engage in seasonal work, one of the consequences could well be less seasonal employment. Many of these jobs, and particularly situations where employers have programmes to get people into work, may be put at risk by legislation of this nature and the increasing minimum wage rates.

Triangular relationships

7. The term "Triangular relationships" describes situations where a worker is hired by one employer but works for another. Clause 5 of the Bill means that workers employed by one employer, but working under the control and direction of another business or organisation, would have the right to coverage of a collective agreement covering the work being performed for the client organisation. In other words, labour hire workers effectively would become employees of the employment agencies' clients for the duration of their engagement.
8. Horticulture uses a significant number of seasonal or temporary workers – over 30,000 a year. This is because the nature of seasonal work is short term. Where there are opportunities for full time work those are taken as increased skill levels and reliability are the result. Using labour hire contractors is an efficient and effective way in which to get work done and that also provides more consistent work for the labour hire firms' employees. There is increased productivity and more efficient use of resources.
9. The cost of an -even temporarily- unproductive employee is high, which is a key reason casual, temporary or fixed term employment options exist. An employer who maintains a workforce at peak load levels must bear the cost of underutilised or otherwise non-productive employees when demand is down. The costs of such employees need to be met somehow, usually by being passed on to customers, ratepayers or taxpayers. This is not a sustainable option for businesses operating in today's competitive and globalised world. Nor is it compatible with the Government's stated desire for New Zealand to be a high wage high performing economy.
10. We think that the Bill may force labour hire companies to put up prices significantly, marginalising the value of this service. This may eventually force businesses to manage their own labour hire resulting in decreased employment and reduced cost efficiency.
11. As a result of this Bill the secondary employers, the client of the labour hire firm, may resist entering into collective agreements due to increased obligations imposed by this Bill. The secondary employer may also seek to limit the worker's beneficial provisions in the collective agreement. We believe this will not only be counterproductive to the aims of the Bill but would lessen workers' benefits.

Personal grievances

12. Clause 6 of the Bill permits labour hire workers and subcontracted workers to take personal grievances against secondary employers even though these workers are employed by the client of the labour hire company. We believe that this significantly complicates the contractual conditions and operations between the client and the labour hire company. In effect the labour hire company's workers are the client's workers. This defeats many of the advantages of using a labour hire company as it burdens the client with employment law issues, but also adds potential risks and costs of litigation to any short term labour hire engagements.
13. It could also be confusing for the workers concerned as in effect they are working for two or more employers. With seasonal work the labour company's clients can change from day to day and sometimes within the one day. This could lead to a personal grievance being taken against a large number of employers complicating and delaying resolution. In these circumstances we submit that it is preferable for there to be one employer, the primary employer, who is solely responsible for resolving employment issues.
14. We believe that there may well be other unintended consequences as a result of these provisions. One may be that businesses will directly hire more casual and fixed term employees to cover short term needs, inevitably at a cost both to itself and its own customers and clients. It will not lead to an increase in permanent full time work as the need to maintain flexibility around fluctuating labour needs will become even more important to businesses.

Union Membership

15. To access the protections offered by the Bill labour hire workers will first need to work for a client that has a collective agreement that covers the work they are doing. Then they will need to join the union that is a party to that collective agreement. In the horticulture sector there are very few workers in unions as our employers and workers have in many cases developed a close and trusting relationship that serves them both well. We submit that the changes proposed by the Bill may undermine that relationship and we do not believe that the Bill's provisions will improve the performance of poor employers.
16. Another unintended consequence is that where labour hire workers move between different clients of their employer, different collective agreements may apply with different conditions and different unions. We believe that this could cause confusion and it will create additional administrative work and cost not to mention confusion.

Conclusion

17. The Bill has the effect of making the labour hire company's workers employees of the client who has contracted the labour hire company to supply labour. It is not just for personal grievances but for all conditions of employment covered in the collective agreement. So without being in a contractual relationship with the worker, the client, in effect becomes a secondary employer with all the legal obligations that entails but without any of the normal legal rights of employers. In other words, the client is responsible for the employment law failings of the labour hire company but does not have the ability to redress any wrongs. We submit that this places the client in an impossible position.
18. We therefore submit that this Bill creates far more problems than it solves. It will add costs that must be passed to consumers making, in horticulture's case, healthy food more expensive. The Bill enhances the ability of unions to recruit new members while not adding to the productive capacity of business. It will increase exposure to grievances and litigation from labour hire workers. We submit that the Bill does not

support a highly productive and high wage economy, rather it complicates and adds cost without any tangible gain in worker benefits.

19. Horticulture New Zealand submits for the reasons set out above that this Bill not proceed.
20. Horticulture New Zealand asks to be heard by the Select Committee in support of this submission.



Mike Chapman
Chief Executive
Horticulture New Zealand