

PARLIAMENTARY BRIEFING

NO: 2013-8

27 August 2013

EMPLOYMENT RELATIONS AMENDMENT BILL: REMOVING OBLIGATION OF DUTY TO CONCLUDE

Bill's Removal of Obligation of Duty to Conclude Collective Agreement Negotiations

Removal of Duty Obligation Encourages Adversarial Employment Relations in Health Sector

The Employment Relations Amendment Bill currently with the Transport & Industrial Relations Committee seeks to remove the current obligation in the ERA for employers and unions to conclude negotiations for a collective agreement. This duty is important because it provides protection against those who would otherwise only go through the motions of bargaining in order to avoid it. While it does not determine what the settlement should be, it does require that there be one.

Its removal would allow district health boards or other health sector to take advantage, leading to an increase in adversarial employment relations, at the expense of patients and the effectiveness of the health system.

Since 2004 the Employment Relations Act (ERA) has required that a collective agreement be concluded unless there is genuine reason based on reasonable grounds that it not be. The legislation then spells out the limitations on what constitutes a genuine reason on reasonable grounds. It is unlikely that DHBs would have invoked the opportunity to use this provision, had it been available in our four MECA negotiations since 2004, because of their own preference for collective agreements and the ASMS's relative strength due to our high density membership.

But, with some of the more adversarial attitudes emerging under the relative revival of managerialism coupled with the high variability in capability of human resources managers (linked in part to their high turnover), a change of position is conceivable.

What can be said with confidence, however, is that some of the collective agreements that the ASMS has concluded since 2004 with employers outside the DHB sector were not likely to have been concluded if the proposed amendment had been in effect.

If this provision is removed then only DHBs and other health employers would have any incentive to take advantage of this situation (employees through their unions would have no incentive at all). In the more vulnerable non-DHB sector we could see some employers going through a sort of 'fake bargaining' where they go through the motions but have no intention of, and never intended to, have a collective agreement.

Kind regards

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EXECUTIVE DIRECTOR

The Association of Salaried Medical Specialists (ASMS) represents salaried senior doctors and dentists. The large majority of our members are employed by DHBs. Outside the College of GPs we are the largest organisation representing doctors in New Zealand. Central to our existence is to promote the right of equal access for all New Zealanders to high quality public health services.

The ASMS publishes the ASMS Parliamentary Briefing to provide considered advice to MPs of issues and concerns where we believe we have the experience and expertise.

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