



SUBMISSION

To: Education and Workforce Committee

Submission: Employment Relations (Termination of Employment by Agreement)
Amendment Bill

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About Ia Ara Aotearoa Transporting New Zealand

Ia Ara Aotearoa Transporting New Zealand is a national membership association representing the road freight transport industry. Our members operate urban, rural and inter-regional commercial freight transport services throughout the country.

As the peak body and authoritative voice of the road freight sector, Transporting New Zealand's purpose is creating the environment where trucking operators can drive successful, safe, sustainable businesses. Our strategic priorities are:

- Providing one industry voice for advocacy
- Promoting the road freight transport industry
- Attracting talent and promoting workforce development
- Supporting our members and customers
- Sustainability, safety and responsible emissions reduction

New Zealand's road freight transport industry employs 33,000 people (1.2% of the total workforce) and has a gross annual turnover in the order of \$8.67 billion. This is part of a wider transport sector that employs 108,000 people and contributes 4.8 percent of New Zealand's GDP. Road freight transport accounts for 93% of the total tonnage of freight moved in New Zealand ([MoT National Freight Demands Study 2018](#)).

Ia Ara Aotearoa Transporting New Zealand submission to the Education and Workforce Committee on the Employment Relations (Termination of Employment by Agreement) Amendment Bill

Introduction

- 1 Ia Ara Aotearoa Transporting New Zealand (Transporting New Zealand) welcomes the opportunity to make a submission on the Employment Relations (Termination of Employment by Agreement) Amendment Bill (the **Bill**).
- 2 Transporting New Zealand supports the Bill and its intent. The Bill is particularly relevant to road freight transport businesses and our membership for two primary reasons:
 - 2.1. The small size of the average road freight business means that expensive, drawn-out employment disputes can be seriously disruptive to their operation and commercial viability. The average number of employees per road freight business is 5.4 ([Stats NZ, Deloitte analysis](#)) and over 60% of Transporting New Zealand's road freight company members operate five trucks or fewer.
 - 2.2. Truck driving can be a high-risk occupation, both in terms of safety and the economic value that goods delivery entails. When employees are not performing adequately, it is essential that employers have appropriate tools to manage these risks quickly and decisively.
- 3 Transporting New Zealand is also supportive of the submission by BusinessNZ that has been shared with us.

The trucking workforce

- 4 The road freight sector is largely comprised of small-to-medium enterprises. Small businesses with fewer funds and resources are more sensitive to the legal and administrative burdens imposed by costly dismissal procedures. In such small businesses, one problem employee can impose a disproportionate impact.
- 5 Economic conditions for businesses in the road freight sector are tough. According to a recent survey, only 27% of respondents in the road freight sector said they had sustainable operating margins. Additionally, 66% did not expect their financial situation to improve over the next year ([2025 National Road Freight Survey](#) conducted by Research NZ, commissioned by Transporting New Zealand).
- 6 Road safety is imperative for the freight sector. Drivers are obligated to keep themselves and other road users safe, while delivering freight in a professional and efficient manner. Data from the 2025 National Road Freight Survey establishes that trucking firms are highly concerned about driver wellbeing with 42% of respondents listing it as one of their top three concerns (Research NZ and Transporting New Zealand).

- 7 Failure to adhere to road rules (e.g., speed limits) and logbook requirements constitutes dangerous driving, for which a freight driver's employer could be found liable. Part 6C of the Land Transport Act (1998) stipulates that chain of responsibility offences can incur fines of up to \$25,000.
- 8 With such high stakes in terms of the potential human and monetary costs of driver error, it is crucial that employers in the road freight sector have effective avenues to conclude employment relationships in a mutually satisfactory and efficient manner.

Challenges with existing regime

- 9 The current employment dispute resolution framework in New Zealand is marked by costly delays, substantial legal costs, and the risk of unsatisfactory outcomes for employers and employees alike. This inefficiency is particularly acute in high-risk industries such as transport, where safety-sensitive roles require timely and decisive resolution of serious misconduct.
- 10 Under the current regime, parties are waiting as long as 7-10 weeks to undertake mediation as required by the Employment Relations Authority (the **Authority**), compounded by further wait times if cases proceed to the Authority.
 - 10.1. As at May 2024, only 28 mediators were employed by MBIE, a number far outpaced by demand, contributing further to delays in dealing with employment disputes ([Simpson Grierson, 2024](#)).
- 11 Drawn-out termination processes requiring mediation and proceedings through the Authority can be financially and reputationally damaging for both parties, with the same outcome - financial settlement - at the end. According to MBIE's latest report, 67% of employment disputes brought to MBIE are resolved by settlement in mediation ([MBIE, 2024](#)).
- 12 Under the current system employees can be reinstated for an interim period as cases progress through the Authority. This could happen in cases where risky behaviours, such as dangerous driving, have been alleged. For example, Transporting New Zealand has received concerning reports from its members of the difficulties they face in dismissing drivers for serious misconduct following positive drug tests.
- 13 Litigation costs have been steadily rising. As of July 2024, fees relating to proceedings in the Employment Court increased by 10%.

Success in the United Kingdom

- 14 A similar amendment enabling protected conversations has been enacted in the UK's Employment Rights Act (1996) since 2013. This amendment ensures that confidential pre-termination negotiations are inadmissible in proceedings related to complaints of unfair dismissal.

- 15 Cases such as [Gallagher v McKinnon's Auto and Tyres \(2024\)](#) exemplify that such pre-termination negotiations must be conducted in good faith, and employees reserve the right to dispute what they perceive to be improper behaviour. In the UK's legislation, harassment, putting undue pressure on a party, and discrimination, among other examples can all constitute improper behaviour.
- 16 There has been relatively small amount of litigation in this area since the amendment was enacted, suggesting it is operating uncontroversially as a practical tool for employers and employees, with very few related claims coming to employment tribunals ([Linklaters](#)).

How this Bill addresses issues

- 17 Transporting New Zealand understands that the Bill would enable protected negotiations between operators/employers and their employees so they might come to a mutually beneficial agreement to end an employment contract. These discussions could occur without an existing problem within the employment relationship, and the fact of such a discussion taking place could not, in itself, be grounds for a personal grievance claim.
- 18 This proposed framework would provide greater flexibility for employers when ending employment arrangements. In the road freight sector, such flexibility is particularly important to help companies maintain high safety standards on New Zealand's roads.
- 19 Such arrangements reflect the reality that most unjustified dismissal claims are already settled financially. Employees can negotiate terms and retain the full amounts of monetary remedies without having to pay fees associated with taking claims to the Authority or with securing private mediation/representation.
- 20 Enactment of this Bill would complement other proposed reforms such as the salary threshold for personal grievance claims.

Support for safeguards in the Bill

- 21 Transporting New Zealand does not condone irresponsible employers and non-compliance with employment law. Transporting New Zealand works with MBIE and legal providers to promote good practice guidance in relation to employment law in advisories, webinars, and conference programmes.
- 22 Transporting New Zealand is reassured that the Bill provides helpful safeguards against bad faith practice by employers, including:
- 22.1. Employees must be advised that they should seek independent advice on the proposed agreement before signing.
 - 22.2. A reasonable opportunity to obtain independent advice must be provided.

- 22.3. The Authority being permitted to admit evidence in relation to pre-termination negotiations if satisfied that the communication was made for a dishonest purpose or to enable an offence.
- 23 The Bill would also not prevent evidence being inadmissible in claims to the Human Rights Review Tribunal in relation to breaches of the Human Rights Act 1993, Privacy Act 2020, Health and Disability Health and Disability Commissioner Act 1994.
- 24 Transporting New Zealand is supportive of BusinessNZ's submission on this Bill, and we reiterate our agreement with their five recommendations for the Bill to proceed:
- *a requirement that employees be informed of their right to seek independent legal or representative advice;*
 - *a minimum five-working-day cooling-off period to ensure informed consent;*
 - *an explicit prohibition of coercion, duress, or misrepresentation in the negotiation of termination agreements;*
 - *a clarification that confidentiality provisions may not be used to suppress or conceal unlawful conduct, including harassment or discrimination; and*
 - *a requirement that all such processes remain subject to the overriding duty of good faith under the Employment Relations Act 2000.*

Opportunity to consider Bill alongside Income Threshold for Unjustified Dismissal

- 25 While Transporting New Zealand is supportive of the Bill, we recommend that the legislation be considered alongside the Government's commitment to introducing an income threshold for unjustified dismissal.
- 26 Both amendments affect employees' ability to pursue personal grievances and raise similar considerations around business efficiency and the efficacy of the Employment Relations Authority in resolving employment disputes. Considering these issues together could result in a more coherent employment relations scheme.

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