

Report No.	19-102
Information Only - No Decision Required	

EMPLOYMENT RELATIONS AMENDMENT ACT - BUS DRIVER BREAKS

1. EXECUTIVE SUMMARY

- 1.1. This report discusses the recently enacted **Employment Relations Amendment Act 2018 (ERAA)** and the law change for bus drivers regarding breaks. It also discusses potential implications for Horizons bus contracts.
- 1.2. Central government has changed the legislation around rest and meal breaks and this has implications nation-wide in regard to the breaks that bus drivers are now eligible for. That change took effect on 6 May 2019. As the implications of that change started to become apparent (it was estimated that meeting regulatory requirements could lead to significant disruptions [cancellation] of between 10 and 20% of services nationwide), central government, regional councils bus contractors and unions collaborated to agree a way to transition to the new regime over the next year.
- 1.3. In effect, for the next 12 months operators will seek to minimise the disruption to services and additional costs arising from the change and the New Zealand Transport Agency, councils and operators will enter into cost sharing discussions to ensure costs are fairly borne. In that period as well, the parties will work towards an industry-wide solution to give effect to the new legislation in 2020.
- 1.4. Council officers have engaged with Council's bus contractors to understand their proposed response to the new legislation/rule and the implications of that.

2. RECOMMENDATION

That the Committee recommends that Council:

- a. receives the information contained in Report No. 19-102 .

3. FINANCIAL IMPACT

- 3.1 Nil financial impact as a result of this report. However the report does highlight that as a result of the legislative changes, there may be additional costs for some Horizons public transport contracts. These will be advised when there is more detail available.

4. COMMUNITY ENGAGEMENT

- 4.1 None required.

5.1 THE ACTS PURPOSE

- 5.1 The Employment Relations Amendment Act 2018 was passed into law on 6 December 2018. It introduced a number of employment law changes that aimed to improve fairness in the workplace and deliver decent work conditions and fair wages. The Act restored protections for workers, especially vulnerable workers, and strengthened the role of collective bargaining in the workplace. Many of the changes were familiar to businesses, as they rolled the law back to how it was as recently as 2015.

5.2 The main changes included:

- reinstating set meal and rest breaks
- strengthening collective bargaining and union rights
- restoring protections for vulnerable workers, such as those in the cleaning and catering industries, regardless of the size of their employer
- limiting 90-day trial to businesses with fewer than 20 employees.

4.1. Most changes took effect on Monday 6 May 2019. In regard to the Council’s public transport function, the change of most significance relates to meal and rest breaks for employees of Council’s bus contractors.

6. REST AND MEAL BREAKS

6.1 Rest breaks for drivers is governed by the Land Transport Rule Work Time and Logbooks 2007 (Rule 62001/2007).

6.2 Prior to 6 May 2019, the law required that employees received a reasonable opportunity to take paid rest and unpaid meal breaks that were of an appropriate duration for the employee’s work period, without specifying the number, duration and position of the breaks within the work day.

6.3 In terms of the rule, it required a driver to take a rest break after 5.5 hours of continuous work time and was the basis nationally upon which bus timetables were built and the cost of contracted services calculated.

6.4 From 6 May 2019, the Act requires that employees have set rest and meal breaks. The number and duration of breaks will depend on the hours worked (see below).

Length of employee’s work period	Minimum number of rest and/or meal breaks employees are to be provided.
2.00 - 4.00 hours	1 x 10 minute paid rest break
4.01 - 6.00 hours	1 x 10 minute paid rest break 1 x 30 minute unpaid meal break
6.01 - 10.00 hours	1 x 10 minute paid rest break 1 x 30 minute unpaid meal break 1 x 10 minute paid rest break
10.01 – 12 hours	1 x 10 minute paid rest break 1 x 30 minute unpaid meal break 1 x 10 minute paid rest break 1 x 10 minute paid rest break
12.01 to 14 hours	1 x 10 minute paid rest break First 30 minute unpaid meal break 1 x 10 minute paid rest break 1 x 10 minute paid rest break Second 30 minute unpaid meal break
14.01 to 16 hours	1 x 10 minute paid rest break First 30 minute unpaid meal break 1 x 10 minute paid rest break 1 x 10 minute paid rest break Second 30 minute unpaid meal break 1 x 10 minute paid rest break

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- 6.5 The interpretation of the above that was initially suggested to some Councils by their contractors was that it could give rise to buses that were in operation stopping somewhere on the route for ten minutes while a driver took their ten minute rest break (that is, passengers on the bus in-transit would have to wait for ten minutes while the break was taken).
- 6.6 Means to provide a more seamless service that complied with the legislation would see contractors rostering extra buses and drivers to provide cover (at greater cost), or reducing trips.
- 6.7 While another option could be to simply add in ten minutes to the start or end of a driver's duty, once they hit 5.5 hours of continuous work time (which includes the ten-minute paid break) they must take a 30 minute break (they can't continuously work for 5 hours and 40 minutes). The problem arises where driver shifts are currently at or close to that 5.5 hour maximum.

7. A NATIONAL RESPONSE

- 7.1 On 10 April 2019 a meeting was held with Ministers Twyford and Lees-Galloway, bus contractors, unions and regional councils to discuss the implementation of the new legislation.
- 7.2 That meeting has been described by the regional council sector lead (Greg Campbell, Chief Executive of Greater Wellington Regional Council) as being characterised by:
- broad agreement across all parties on the complexities and impossibility of effecting changes by 6 May 2019 (it was estimated that meeting regulatory requirements could lead to significant disruptions [cancellation] of between 10 and 20% of services nationwide); and
 - a preference to all work constructively on a way forward.
- 7.3 Following that meeting significant work has been undertaken by the parties to collectively agree a 12 month transitional way forward. That has been captured in a Memorandum of Understanding (MoU), supported by a transitional Land Transport Rule.

8. THE MOU

- 8.1 As noted above, to enable a smoother transition of the new legislation, central government, all regional councils, bus operators and unions have developed an agreed an MoU to implement an industry-wide solution. The MoU provides for the following undertakings:
- central government – a new Land Transport Rule will taking effect before 6 May 2019;
 - operators - before 6 May operators must use their best endeavours to employ maximum flexibility in how rest and meal breaks are applied; and
 - Regional Councils will allow maximum flexibility in the timetabling of bus services.
- 8.2 The MoU stipulates the following funding principles:
- central government, local government and passengers share the cost of providing PT services;
 - councils and the New Zealand Transport Agency (NZTA) will seek assurances that disruption to services and additional costs have been minimised by operators;
 - NZTA, councils and operators will enter into cost sharing discussions to ensure costs are fairly borne and those costs have been minimised and quantified with certainty.

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8.3 The MoU will enable the parties over the next 12 months to develop a long term solution that will take effect in 2020.

9. THE LAND TRANSPORT RULE

9.1 As central government undertook to do in the MoU, it has now approved a new rule that applied apply from 6 May 2019 for 12 months instead of the new legislation. The new rule is very similar to the new legislation around the scheduling of driver rest breaks, except it provides more flexibility to operators to schedule driver rest breaks.

10. HORIZONS RESPONSE AND IMPACT

10.1 On 5th March Horizons received notice of the impending legislative changes being enacted on 6th May. After checking with the sector this was the first that many councils had heard of this. Staff moved quickly to understand the implications of these changes.

10.2 In summary staff:

- Immediately begun engagement with its bus contractors to understand their proposed response and the implications of that (a work in progress); and
- agreed to be a party to the MoU discussed above to ensure a united approach from Regional Councils across the country.

10.3 Staff can confirm there has been no service disruption to any of its contracted services as a result of the rule change. All timetables have been able to be delivered with operators having worked through the implications with their drivers to reach agreement on when breaks will be taken. For the Palmerston North contact there may be additional costs to be paid to drivers and staff are currently working through the implications of this as intended by the MoU. If there are any additional cost implications, staff will consider options and likely bring those back to the PTC and Council in the future. Nonetheless the committee will be updated about what happens under the MOU, in terms of the planning for the 2020 implementation.

11. SIGNIFICANCE

11.1 This is not a significant decision according to the Council's Policy on Significance and Engagement.

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MANAGER TRANSPORT SERVICES

ANNEXES

There are no attachments for this report.