Tertiary Institutes Allied Staff Association Te Hononga (TIASA) Inc.

Submission to the Education and Workforce Committee

on the

Employment Relations Amendment Bill 2018

30 March 2018

Introduction: TIASA Te Hononga

TIASA Te Hononga is the major professional staff association and union representing most allied (non-teaching) staff employed across the NZ tertiary education Institute and Polytechnic sector and Whare Wananga. Our membership is located primarily in the ITP part of the tertiary education sector; however, we also represent significant numbers of allied staff in the University sector. We represent a wide and diverse range of occupations performing vital functions at every level. Our members hold a wide range of professional and technical qualifications, from advanced degrees through to vocationally specific certificates and/or recognition. They are drawn from a diverse range of backgrounds and expertise across the private and State sectors, and together embody a depth of institutional, governance, managerial and administrative expertise and experience that is unmatched.

TIASA has been a key, respected, active stakeholder in the sector for almost half a century. We will celebrate our 50th anniversary in 2019. We have operated under many different statutory frameworks, including much widely differing industrial legislation over that period. From the Polytechnic/ITP sector's inception as an initial adjunct to the secondary education sector, through to its evolution into the increasingly sophisticated tertiary education deliverer that it is today, TIASA has been a key player in the many changes throughout that period and a key actor throughout those many changes. We have detailed first-hand knowledge of and expertise in how those changes did, or do, impact on the sector, its constituents and the wider community it serves. Throughout our existence, TIASA has adopted a realistic, co- operative and responsible approach to the many changes within the sector. During periods of change, we make special effort to work constructively with all stakeholders in our sector and have gained a reputation for being progressive, constructive and innovative. We believe our experiences, objectives, and overall approaches to change well qualify us to make useful and informed commentary on the implications and potential impacts of the changes proposed by the Employment Relations Amendment Bill.

TIASA Te Hononga appreciates and welcomes the opportunity to make this submission on the Employment Relations Amendment Bill 2018.

1. **General comment**

1.1 We support the general intent of this Bill, and concur with the submissions made on our behalf by our national body, the NZ Council of Trade Unions, to which we are affiliated. The experience and evidence detailed therein mirrors that of our own membership and reflects our views. We therefore submit in support of the NZCTU and add our voice to their submissions.

1.2 We believe that implementation of the Bill will rectify many injustices and negative impacts for bona fide unions such as TIASA Te Hononga and for our membership. These include, unduly prolonged or difficult collective bargaining; deliberate employer moves in some tertiary education institutions (TEI's) to frustrate or negate our efforts to bargain collectively and achieve fair outcomes for our members; and many harmful human resources management and related management practices based on covert or openly unitarist ideologies and behaviours.

1.3 The changes proposed in this Bill aim to restore key minimum standards and protections for employees, including promotion and strengthening of collective bargaining, union rights in the workplace, greater fairness in the workplace between employers and employees and promotion of productive employment relationships. These aims accord with the overarching Objectives of the Employment Relations Act 2000 (Section 3 – Objects), first promulgated in 2000. The Bill's proposed changes are also consistent with New Zealand's obligations under a range of ILO and other international covenants and conventions to which it is a signatory.

1.4 Previous New Zealand governments made many changes over the period 2008 to 2017, many of which significantly diminished or removed altogether protections mandated by various ILO Conventions and/or the Employment Relations Act. Some of the changes made during this period harshly impacted our members and NZ unions and working people generally. Often such changes overrode the legitimate concerns we and our members held, along with many others, as to their potential adverse effects. Experience has since shown such concerns were well founded.

Scant evidence was provided for many of these worker- adverse changes, yet our members have felt their negative effects at tertiary education institutions right across New Zealand. Many of those changes flew in the face of all reliable evidence as to how productivity and productive working relationships come into existence - not, through simplistic claims that either or both 'ought to' exist, but through actual employment practise in the workplace, as this is driven by employers, being the party with greater power in the employment relationship than has the employee.

1.5 TIASA Te Hononga welcomes the advent of the more informed, progressive, effective and constructive employment relations legislative framework which this Bill portends. We wholeheartedly support the Bill's aims and underlying intentions, as a more effective means of creating fairer employment relations flexibilities, productivity and improved employment relationships and behaviours at every level, and between all parties. It is this approach that we believe provides the best opportunity for our nation to break out of outmoded and ineffective habits, attitudes and practices, to develop a more successful, balanced and engaging employment relations environment that can lead to improved social and economic outcomes for all parties, whether within the tertiary education sector in which we operate or more widely across the whole New Zealand labour market and employment relations environment.

1.6 We wish to comment on some of the Bill's proposed changes, as set out below. We also wish to appear before the Committee to present our submission and add further supporting evidence. Our submission draws on our decades-long experiences in the New Zealand tertiary education sector and wide consultation with our membership across New Zealand and reflects our members' views. TIASA supports the Bill but we believe some amendments are necessary if the Bill is to achieve its stated aims and purpose.

2. Specific comment

2.1 **Failure to meet the ER Act's Objects**: Despite the overarching Objectives of the Employment Relations Act (2000) as set out in s3:

s3. **S3 Object of this Act: The object of this Act is –**

(a) to build productive employment relationships through the promotion of good faith in all aspects of the employment environment and of the employment relationship -

(i) by recognising that employment relationships must be built not only on the implied obligations of trust and confidence, but also on a legislative requirement for good faith behaviour; and

(ii) by acknowledging and addressing the inherent inequality of power in employment relationships; and

(iii) by promoting collective bargaining; and

(iv) by protecting the integrity of individual choice; and

(v) by promoting mediation as the primary problem-solving mechanism other than for enforcing employment standards; and

(vi) by reducing the need for judicial intervention; and

(ab) to promote the effective enforcement of employment standards, in particular by conferring enforcement powers on Labour Inspectors, the Authority, and the court; and

(b) to promote observance in New Zealand of the principles underlying International Labour Organisation Convention 87 on Freedom of Association, and Convention 98 on the Right to Organise and Bargain Collectively.

- TIASA's experience has frequently been that many TEI's management, at differing levels, try to frustrate these aims and avoid any semblance of collectivity or collective bargaining in favour of individualised arrangements that rarely, if at all, advantage allied staff. Much of this seems ideologically driven, and is quite unitarist.

2.2 TIASA Te Hononga is the largest single representative voice and union for the majority of the tertiary education sector's allied (also known as non-teaching staff; support staff; in the University sector, general staff; and in some TEI's, professional staff). We have a long and proud history of effective, principled employee representation. We currently negotiate 19 collective employment agreements for our membership across the sector, covering the majority of allied staff employed across those institutions, with more under development. Although small our track record of success is second to none, and we have worked hard to develop and maintain a deserved reputation for constructive and balanced employment relationships with the management across our sector.

2.3 Despite this we have encountered, and continue to encounter, many obstacles in seeking to represent our membership, to negotiate, maintain and improve their employment terms and conditions and their daily working lives. Our experience is that there is too often a dearth of genuine good faith behaviours from many human resources, people and culture, organisational development managements, some TEI chief executives and other topmost leaderships, and second and third tier management in many TEI's. Too often, highly unitarist, ideologically driven, human resources management practices prevail in many of the TEI's with whom TIASA deals across New Zealand. Such approaches are inconsistent with and directly contradictory to the stated aims of the ER Act and, to the State Sector Act's good employer obligations[1] which also apply to TEI employers.

2.4 Unlike other parts of the State sector, TEI chief executives are the designated employer and are free to develop their own employment arrangements. Whilst required to consult with the State Services Commission regarding employment agreement bargaining, particularly collective bargaining, TEI employers are not bound to the same extent as is the core public service to observe specific good employment practice codes of conduct and practice. These factors have resulted in a multiplicity of confusing and contradictory human resources management and employment relations practices across the TEI sector. As above, many such are unitarist – some, highly so.

It is TIASA's considered opinion that such practices and approaches are intended to avoid or emasculate any effective union representation by TIASA and to remove any independent voice for our members and allied staff generally. In our experience there is a stunning absence of in-depth human resources management HPHE (high performance, high engagement) practices across much of our sector. Too often the approach seems to be not '*what can we do for our staff*' but, '*what can we do to our staff*'. Yet there is a great deal of unequivocal evidence why genuinely independent employee voice through legitimate unions such as TIASA is essential for truly productive employment relationships, increased productivity, organisational success, and economic and social legitimacy. [2]

[1] State Sector Act, Part 7A – Personnel Provisions in Relation to Education Service; s77 – General Principles

[2] For example, Bryson, J (2017) *Administering Workplace Relationships: from IR to HR.* In Geare, Rasmussen, Wilson (Eds) 2017. *Transforming Workplace Relationship in NZ 1976-2016.* Victoria University Press: Wellington. Or, Boxall, P & Purcell, J (2016) *Management Power, Employee Voice and Social Legitimacy*. In *Strategy & Human Resource Management*. Palgrave Macmillan: New York. Or, Rudman, 2010. *High-Performance Working - People Management Makes the Difference*. In *Human Resources Management in New Zealand.* Pearson: New Zealand. There are very many other NZ and international examples.

2.5 Although the ER Act requires collective employment bargaining and collective agreements to be supported and encouraged, there is quite widespread use of individualised employment arrangements throughout the sector. Most often the individual contractual arrangements entered into across much of our sector not only have been formed with little if any true bargaining, but derogate from or remove standard TIASA collective agreement provisions. The use of such individual employment agreements (IEA's) throughout the sector, along with increasing use of employees labelled as 'independent contractors' and/or 'fixed term employees' further undermines collective bargaining, TIASA's collective agreements, and employee collectivity itself. These are basic human rights that too often are either ignored by much TEI management or circumvented, we believe, intentionally. Arguably such practices are in breach of ILO Conventions 87 and 98, one of which New Zealand has already ratified, the other of which was written into the ER Act's Objects 18 years ago.

2.6 Closer scrutiny shows many such individualised employment and/or so-called 'contractor' arrangements to in fact be employees on genuine contracts of service. Many such are neither fixed terms nor some other type of precarious, contingent employment. Such devices reduce the valid employment terms, conditions and protections these employees would otherwise receive had they been employed correctly, under the terms of the applicable TIASA collective agreement covering their work, as should have occurred.

2.7 Some of the difficulties we have encountered whilst trying to represent our members include: deliberate efforts by some TEI managements to draw out and/or circumvent collective bargaining; attempts to avoid settling the collective agreement; unlawful passing on of collective agreement terms and conditions to non-members; use of individual employment agreements for new employees who should have been offered the TIASA collective agreement; placement of new and/or redeployed, promoted or reassigned existing employees onto individual employment agreements without the mandatory prior information, independent advice or contacts being provided to them: incorrect widespread usage of fixed term agreements which are not genuinely fixed term; incorrect usage of various other forms of contingent and precarious forms of implement; use of 'contractors' that in fact are employees, to avoid employment legislation obligations; confusing and/or obscure welcome letters and other information which leads new employees, many of whom will never have previously encountered any form of collectivity in their former, atomised and individualized workplaces, and have little if any knowledge or understanding of their rights as employees, to accept inferior individual employment agreements instead of the TIASA collective agreement that should have been applied; open or covert management pressure to leave or resign from the union – TIASA – if that employee wishes to receive a pay increase or other employment benefit; the extreme reluctance of many employees, new or otherwise to 'rock the boat' by insisting to their legitimate rights for fear of not being offered or appointed to the job, or retaining the job if already in it; use of individual employment agreements the employer has drafted with no input from the employee; open or covert pressure of those elected as TIASA representatives against undertaking representative and other necessary TIASA activities as part of their legitimate role, including sometimes, open hostility from their direct line and other managers to such involvements; failure to release elected representatives for key duties required of them in their TIASA role; deliberate exclusion of TIASA's representatives from internal TEI committees and other structures where independent employee representation is necessary and desirable; ignoring of any contrary views and failure to listen or accord any weight to views that do not accord with management's own, often predetermined, view in key matters, an enormous amount of organisational restructuring, reviews and other major change initiatives which do not observe the basic consultation requirements of the Employment Relations Act under section 4.4 - good faith - and related provisions, and other obligations, including those of the applicable TIASA collective agreement for such changes.

2.8 Additionally there is much evidence of wastage of public monies occasioned by ill thought out initiatives that have been embarked on but failed to incorporate any independent employee voice via TIASA, resulting in flawed decisions which had to later be un-done or reversed. The resultant employee stress, worry and costs of all types resulting from such managerial decisions have not only proved costly but also counter-productive, not achieving their stated aims and wasting many resources in the process.

2.9 Mr Chair and honourable Committee Members, this is a very disappointing picture and one which should not exist at all. This sector should be an exemplar of productive, constructive, effective, modern, and truly participative partnerships with ourselves as a key union and stakeholder.. Our membership not only frequently have to effect changes often made without their input or any real say, but also deal with the problems many such changes create, due to this one sided and often quite blinkered approach. This is reminiscent of the now-discredited scientific management approaches of the past, which assumed amongst other errors the workforce had no capacity to contribute in any meaningful way to management decision making, as it lacked the intellectual capability or even the right to so contribute. It is regrettable that in the 21st century too often TEI managerial styles are founded in the total management prerogative approaches of yore, instead of the proven successful participative models of today which embrace strong, independent , successful employee voice via truly representative unions such as TIASA. High performance high engagement employment relations practice will not somehow evolve from such behaviours. We believe this Bill will address many of the current deficiencies, but there still remains much to be done if its aims are to be realised.

2.10 **90 day trials**: TIASA supports the removal of this provision from all employers including SME's with less than 20 employees. We can see no practical reason why small employers should be permitted to retain the ability to use a 90-day trial. There is much anecdotal evidence of employer abuse, often from these same SME's, of this ability. Often SME's appear to be the worst offenders when it comes to deliberate or otherwise ignorance of basic employment legislation and their obligations under it. Many of our members are parents and can vouch for the poor experiences their own children have when entering the workforce from many SME's who appear to either not know or care that their treatment of their young employees breaches many legislated minima. Of necessity most TIASA members have daily direct contact with TEI students, some of whom confide their own negative experiences from many SME employers, and their feeling unable or unwilling for fear of retribution to take any further action to contest this. Such effects are a known outcome of individualising a relationship which is inherently one of unequal power. Other TIASA members have themselves been employed by SME's, and recount their own negative experiences from their SME employers.

TIASA's collective agreements do not provide for 90-day trials. We instead rely on trial or probationary periods that retain all the employee's rights to personal grievances, fair processes etc. Our collective agreements cover approximately 60%-plus of the sector's allied staff workforce. The absence of any 90-day trial provisions from our collective agreements has not inhibited or restricted our employers in any way. There is no problem of which we are aware arising from the use of probationary or trial periods with the fair procedures, natural justice and other protections these mandate. We can see no reason why employers in any segment of the labour market, or in organisations of any size, should be exempted from these.

If there is a difficulty for small to medium employers with less than 20 staff from the removal of the 90-day trial option, it is not in our view due to such an absence, but rather to the poor state of much people management practice by many New Zealand employers, as much independent research has shown this to be inadequate in many respects. The best and most sustainable solution to this is not to allow punitive provisions such as the 90-day trial which can be and sometimes is abused by an exploitative employer, but instead to boost employers' people management knowledge, skills and education, to improve their people management

and employment relations performance. This will feed through into improved organisational performance and outcomes, and over time will improve living standards, economic and social wellbeing and productivity for our nation. These gains have been heralded in the past by many who asserted removal of many basic employee protections from our employment legislation would create such results. Clearly, that has not occurred. It is time for a fresh and more effective approach. TIASA supports the removal of the 90-day trial option for any employer of any size.

2.11 **Information for new employees**: TIASA supports the thrust of the Bill's proposed Clause 18 restoring the 30-day rule so that new employees are employed on the terms and conditions of the applicable collective agreement. However in a minority of TEI's our collective agreements have overlapping coverage with that of another union, where that TEI employer has consented to extend the coverage of the other collective agreement to include allied staff who are already covered by TIASA's collective agreement. Although TIASA is far the major allied staff representative and our collective agreements cover the majority of allied staff in even those TEI's where there may be some overlapping coverage, there are a minority of alternate collective agreements where the employer has consented - with no prior notice or communication with TIASA – to extend the coverage of a different collective agreement with a different union, to include allied staff positions. No valid reason has been given when such unilateral change has occurred.

Coverage under the ER Act must be negotiated. It makes mockery of that requirement if the time, effort and sacrifices TIASA and our membership make during negotiations to secure and maintain robust collective agreement coverage, for all genuinely allied staff positions howsoever designated by an employer, are able to be circumvented by, for example, an unscrupulous employer setting up or obtaining another collective employment agreement that is only required to cover 2 employees, and then using that to impose inferior terms and conditions on new employees. This would undermine the very spirit and intention of the Act and the Bill's aims, and certainly flies in the face of good faith.

TIASA therefore supports the NZCTU' submissions in respect of this clause but with the proviso that the wording be specific concerning which collective agreement/s the employer is required to provide to new employees, in any situation where there may be overlapping coverage. We respectfully suggest that the clause be amended to make it specifically clear that the collective agreement/s to be provided to new employees where coverage overlaps, be consistent with the current ER Act. This means the collective agreement where the bargaining was initiated first and/or the collective agreement covering the majority of the employer's employees falling within the designated categories of work as contained in the coverage clauses of those collective agreement/s.

2.12 **No pass-ons**. The ER Act deliberately preserves individual choice. If the employee has indeed made their own genuinely independent individual choice to not belong to the union, TIASA has no argument with that, provided that our hard-won terms and conditions are not then unlawfully passed onto the employee who chooses not to belong, in breach of the current legislation and pass on provisions. This does occur and is one of the most frustrating and unfair issues for our membership. When we challenge such pass-ons, which are often done secretively, they are commonly presented to us as 'not discriminating on the basis of union membership' but that is a nonsense. The ER Act clearly permits there to be differences in terms and conditions between the collective agreement and other agreements including individuals. We endeavour to achieve a no pass on provision in all our collective agreements, and it is doubly concerning when an employer simply ignores that. One has to question the real motivation for this.

We support the NZCTU's submission in this regard including that there should be a real penalty for breaches of this key requirement.

2.13 **Consolidation of bargaining – section 50**: TIASA is one of the very few, and may indeed be the only, New Zealand example of employer use of this provision. At one TEI we have been forced by the employer choosing to use this provision to consolidate bargaining for our TIASA collective agreement, into bargaining jointly with another union representing primarily academic staff in that TEI, but to whose extension of coverage to include allied staff the employer has agreed. This has been done with no prior notice or consultation with TIASA and is we believe in bad faith. This experience has been highly disadvantageous for our members. The forced s50 bargaining consolidation has resulted in extremely drawn-out, lengthy, confusing and counterproductive negotiations, and the deterioration of established terms and conditions for many of our members.

This s50 consolidation provision may have seemed attractive to the TEI employer who utilised it, but in fact it has resulted in greatly increased transaction costs and the practical difficulties arising from two disparate groups trying to reconcile the differences in their bargaining strategies, styles, differing terms and conditions between the academic and the allied staff who are employed in very different, albeit complementary roles, whose employment relations needs sometimes will overlap but more often are quite dissimilar.

The outcome of this employer-initiated consolidation is that TIASA members' current terms and conditions have been undermined by inferior, less favourable terms and conditions. These may be acceptable to the other union as a trade-off for gains for its greater numbers of academic members, but at the expense of it minority allied staff membership. That is a matter for that union to resolve if it so chooses. But it is grossly unfair for TIASA's members who have effective representation and better terms and conditions under their TIASA collective agreement to then be forced to accept reduction through the device of employer-imposed consolidation.

TIASA is the specialist, majority allied staff voice across our sector. We are a highly principled union and do not seek to extend our coverage into other occupational areas be these academic or otherwise. We are the best placed union to fairly and accurately represent allied staff interests and voice and have done so for nearly half a century. It is simply wrong for the hard won terms and conditions TIASA has negotiated with our employers over sometimes many decades, for which our members have given up and traded of other terms and conditions, to be able to now be removed through the device of employer consolidation of bargaining, and without any intimation this was even being contemplated.

The only redress available to TIASA is to take legal action utilising those mechanisms enabling this in the current ER Act. However our legal advice is that this avenue would be extremely costly, lengthy and drawn out, and most likely ineffective as the Act does not provide any effective mechanism for addressing such bad faith behaviour. We believe the practical experiences we have had of section 50 in action not only breach good faith, freedom of association and collective bargaining obligations, but also run counter to the stated aims of the proposed amendments in this Bill. Despite many attempts to ascertain the rationale for this employer move to consolidate their collective agreement (CA) bargaining with two quite disparate groups of employees, we have not been given any sensible explanation for why it was deemed desirable nor why it occurred in the secretive manner adopted. If the justification for employer consolidation is claimed to be employer convenience, that is misguided, as the transaction costs for the TEI employer who has used s50 have considerably increased due to the protracted and cumbersome bargaining that has resulted.

If instead unions themselves agree to combine their forces and seek a joint collective agreement, as long as that is done in true good faith and is not misused or abused to somehow undermine either of them or unfairly advantage one group of staff over another – which itself would breach other anti-discriminatory provisions of the current Act – there is sufficient room in the Act without section 50 to achieve that aim.

The purpose of the ER Act is not solely to convenience employers. There are two parties to the employment relationship. Employer actions that ignore employees' existing rights and their legal obligations of good faith behaviours are destructive of good faith and productive employment relationships

The Bill does not contemplate any change to section 50. This may well be because TIASA is the only union that has felt its impact. Whether that be so or not we respectfully submit that section 50 has no place in any modern employment relations legislation, and should be deleted from the Act altogether.

2.14 **Collective bargaining**: TIASA has been involved with collective bargaining that continued on for more than 11 months after the expiry of the previous collective agreement. No valid reason existed for such extensively protracted and unfruitful collective 'bargaining'. We believe there has been a deliberate underlying employer agenda to have our collective bargaining at the end of the 12-month expiry period still unsettled, therefore, cease altogether, so as to remove the collective agreement altogether from those workplaces. It is disturbing to see this mechanism abused to remove any union presence from workplaces where the employer is not only bound by the ER Act's Objects and obligations, but also by State Sector Act good employer provisions. Such behaviour is the antithesis of the minimum conduct required of all state sector employers, including, TEI employers.

TIASA supports the requirements that collective bargaining result in a settlement as set out in the Bill's proposed clause s 9 and 11 requiring the duty to conclude bargaining and proposed new clauses 14 and 15 repealing the current proviso determining bargaining has been concluded.

2.15 TIASA supports the NZCTU's submissions concerning collective bargaining and union rights, including the timeframes for initiating bargaining, the restoration of the 30-day rule, and repeal of partial strike pay deductions and notice requirements for strikes.

2.16 **Union access and rights**: TIASA submitted on previous amendments to the Act which enabled employers to require prior requests for union access. At that time we pointed out that there was no time limit given for any such requests, which would enable any employer so inclined to indefinitely delay approval of any union access requests. While we were somewhat relieved to see that a 3-day limit for the employer to respond to such access requestswas enacted in the subsequent amendment, we do not believe there was or is any valid reason for any employer insisting on such advance notification. The Act as it currently stands permits access to be refused for legitimate reasons and spells out what those reasons are. It does not enable illegitimate access refusal and if it is interpreted in that manner by any employer, this would run counter to the obligations of ILO Convention 98 which NZ has ratified and which is one of the stated Objects of the Act (section 3).

There is no known issue with union access rights and these are supposed to be guaranteed under a range of ILO Conventions including those NZ has ratified. We are aware some openly anti-union employers in other sectors have abused this provision. We object to this and see no justification for allowing it to continue. Such conduct is totally out of step with modern employment relations frameworks and breaches international covenants, freedom of association and basic human rights obligations, and the specific requirements of good faith and the ER Act itself.

We support the Bill's proposed clauses 5 to 8 removing the requirement for advance notification to an employer that the union intends to access the workplace.

2.17 **Reasonable paid time off for union delegates to represent members and conduct union business**. TIASA is a small albeit highly effective union, heavily reliant on our branches in every TEI . Our Branch representatives – delegates - consist of elected allied staff – employees who have also chosen to voluntarily take on the key, unpaid, role of representing their union, TIASA, and fellow allied staff members. In a small number of collective agreements TIASA has managed to negotiate some paid time allowance for some of our Branch representatives. But even with these provisions, which are vital for the work of the union and also benefit the employer, our Branch representatives may have considerable difficulty gaining management permission for time to perform their necessary TIASA role and duties.

With or without such CA time for TIASA business provisions, a great deal of TIASA representation is carried out in our Branch representatives' own time and/or unpaid, outside of working hours. Their management often expect any time taken during working hours for bona fide TIASA duties to be 'made up', so that our Branch representatives are expected to somehow complete all the work tasks assigned to them whilst also performing their role as elected TIASA representatives in the workplace. This is well-nigh impossible for many. Allied staff roles have been continually downsized, reduced, and declared 'redundant'. The work tasks have not reduced; often they have increased, but they have simply been loaded onto those allied staff still remaining. The result is that very many allied staff are overloaded, with many added tasks pushed onto them as a result of making the job holder 'redundant' yet those tasks still needing to be done by a much reduced workforce. This is both unfair and not in line with modern good employment relations practice. It is well recognised that a genuinely independent employee voice, and trained representation by competent union delegates at the workplace, is an effective way to build trust, address and resolve conflicts before these escalate, and create effective working employee-union-management relationships.

TIASA's Branch representatives (delegates) often experience much pressure from their management that discourages them from being able to carry out their roles. This is highly undesirable and very unfair. Even our national president does not have any official time allocation for TIASA duties yet she carries out key work on behalf of the union and like many TIASA delegates and branch representatives, many extra hours each week are spent in her own time to do so. Approval to attend to TIASA business is too often a grace and favour arrangement, whereby our representatives and delegates have to plead for any such release and are often given the clear message by their management that it is highly undesirable for them to hold or carry out any such roles. This in turn inhibits their ability to attend necessary training to enable them to more competently carry out their duties. Yet TEI managers are under no such restrictions and considerable time appears to be spent by many seeking advice from employer organisations, lawyers, meetings to organise employment relations strategies, and so on.

Wherever possible our Branch and other representation in union activities is notified to TEI management well in advance. But in such a dynamic area there will naturally be situations where that is simply not possible - for example where a TIASA Branch representative is requested to attend an urgent meeting , or other event, such as a potential disciplinary meeting alongside the member, as their support person, at very little notice. Since virtually all TEI's already have provision for an employee to have a support person of their choosing present in such case, we cannot see why this should somehow preclude the role of a TIASA delegate doing so in the same situation, or in other instances where it is highly desirable that there be a union voice and presence. We believe there should as of right be TIASA representation on the TEI's internal committees developing policies and practices that will affect and impact on allied staff – e.g., health and safety events on or off site; employment relations related events, education and other such situations, and so on.

TIASA has examples where the absence of such input and presence has resulted in a TEI developing and implementing policies - not just for allied staff but for all staff - that are either illegal and/or unworkable. A recent example is the widespread misapplication in many TEI's of the requirements of the Vulnerable Children's Protection Act. This has seen many TEI's unilaterally develop policies that breach Privacy Act obligations and also do not meet the principal Act's requirements, due to significant and widespread misinterpretation of what is, and is not, required of the employer and their staff under the Vulnerable Children's Act. Another current example is the development and implementation of new policies and practices under the HSW Act 2015, which - despite requiring genuine and active, independent, elected employee participation, still sees some TEI's continuing with 'participation' practices that do not meet the HSW Act's requirements. The result has been inadequate, or absent, health and safety programmes, procedures and implementation.

Too often many HR policies are developed without any input from TIASA's onsite representatives, despite mandatory legislative requirements for these and, ignoring all reputable evidence on the gains and benefits of best practice HRM/HPHE which supports genuine employee participation through their union. Indeed such involvement by someone more knowledgeable as a trained and competent onsite Branch representative can only benefit management. Often it can help ensure fair processes, and avoid later costly employment relations disputes and personal grievances. There have been a number of these in our sector, some of which despite TIASA's best efforts to resolve constructively without resorting to formal proceedings, have nonetheless had to proceed to mediation or the Employment Relations Authority for resolution. Many such have proved a textbook example of what not to do if one is the employer.

Such cases are costly in more ways than one for employee and employer alike. Most of them ought not to have occurred at all, and could have been avoided or prevented by involvement much earlier of trained and effective TIASA Branch representatives, who may well have been able to assist resolve the issue/s prior to their escalating to such an advanced degree. The requirements for participation in other activities, such as health and safety initiatives, also adds to the need for such a provision. The tertiary education sector is the major provider of employment relations and health and safety training for the wider NZ workforce and ought itself to model good practice to its students, as well as demonstrating this towards and for its own employees.

TIASA supports the Bill's provisions for proper release of union delegates to conduct bona fide, legitimate union business, including proper participative, representative, and educational arrangements and provisions. The culture change needed amongst our employers to fully implement the Bill's provisions once enacted will only occur through such participation. Leaving this up to our employers to voluntarily decide on, has meant many have instead opted to avoid this wherever possible.

TIASA supports the NZCTU's submissions in this regard. We do not believe there can be adverse impacts for any employer from these clauses if enacted. The proposed clauses also permit legitimate exceptions to made for valid reason such as work pressures, health or safety concerns, etc.

2.18 **Inclusion of pay rates in collective agreements**. It is anomalous that this is mandatory for individual employment agreements but is not compulsory for collective employment agreements. TIASA currently has collective employment agreements with two TEI's where for no apparent good reason, both employers have refused to include the actual pay rates and scales in the settled TIASA CA's. Instead those employers have told TIASA the actual pay rates are contained in some sort of separate document, presumably, on an individual basis. A copy of this/these document/s has/have never been provided to or made available to us. We

have no confidence that the pay rates we would expect to apply to similar positions elsewhere, are not being intentionally undermined, and allied staff members being underpaid, by the employer's refusal to specify the actual pay rates and scales in the TIASA CA. This refusal has created concerns for those TEI's employees, where people in identical or very similar positions may be paid quite differently.

The lack of transparency also may lead to bias, unfairness and inconsistencies which may also be quite discriminatory. Over 70% of TIASA's membership is female and we know there are already inequitable pay practices impacting many. Addressing pay inequity for our membership without the actual pay rates in their collective agreement will be highly problematic. Discriminatory bias in pay rates is likely to continue for many of our members due to this very poor and unjustifiable employer practice.

There is no valid reason why pay rates ought not to be included in a collective employment agreement and none has been advanced by the two TEI employers that have insisted on their non-inclusion in the TIASA CA. Once again addressing this issue through the available mechanisms in the ER Act is problematic, costly and likely to lead to prolonged legalistic argument, none of which is wise use of the Institute's public or other funding or management time nor of TIASA's scarce resources.

TIASA supports the inclusion of all pay rates as set out in the NZCTU's submissions, in the union's collective agreements.

Conclusions

Mr Chair and honourable Committee Members, we appreciate and thank you for the opportunity to submit on the proposed Employment Relations Amendment Bill. Time constraints prevent us commenting on many other aspects of this Bill. However we believe the Bill if enacted as we submit will significantly impact on working people to their benefit and assist to reduce the inequalities that currently exist.

We further believe that such enactment will enhance and further develop genuinely participative, constructive employment relationships of all types. It will lead to needed behavioural and cultural changes within our TEI's and in turn lead out into and influence wider society, assisting to develop better economic, social and other desirable outcomes to the benefit of employers and employees alike. These changes represent a positive move towards a fairer future for all stakeholders and we welcome them as a true advance in meeting the diverse needs of the turbulent 21st century environment we are now in.

TIASA seeks leave to appear before the Committee, to speak to, and provide first hand evidence from the workers we represent on the matters contained in this Submission. We hope that this request will be granted.

Sincerely

Shelley J Weir
National President

Peter L Joseph
Chief Executive