

**TEU****TERTIARY EDUCATION UNION**  
**TE HAUTŪ KAHURANGI**

Submission of

**Te Hautū Kahurangi | Tertiary Education Union**

to the

**Ministry of Business, Innovation, and  
Employment**

on the

**Consultation on the Employment Dispute System**

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## **1. INTRODUCTION**

- 1.1. Te Hautū Kahurangi | Tertiary Education Union (TEU) is the largest union and professional association representing 12,000 academic and general/allied staff in the tertiary education sector (in polytechnics, universities, wānanga, private training establishments, and rural education activities programmes).
- 1.2. We welcome the opportunity to respond to the *Consultation on the Employment Dispute System*.

## **2. PREAMBLE**

- 2.1. Our submission draws on our experience across many disputes and many years of engagement with the government-provided dispute resolution system, from early resolution and mediation through to the Employment Relations Authority and the Employment Court.
- 2.2. Overall, our experience is that the fundamentals of the system serve members reasonably well, and the core design, moving from informal to more formal processes as needed, remains sound.
- 2.3. Our comments in this submission are intended to build on that foundation, identifying where resourcing, practice, and specific aspects of the system could be strengthened to better support timely, fair, and accessible resolution of employment disputes through the public system.

## **3. WHAT CAUSES EMPLOYMENT DISPUTES?**

- 3.1. The disputes we see are primarily between individual members, or groups of members, and their employer, though TEU is occasionally a party in its own right, such as in disputes over the interpretation of a collective agreement. Disputes arise through the employment relationship, but the ones that progress through the Mediation Services, Employment Relations Authority and to the Employment Court tend to be centred around organisational change, performance management and disciplinary processes, workload allocation, and bargaining.
- 3.2. A number of recurring issues underlie these disputes. We encounter failures on the part of employers to follow collective agreements, as well as failures by institutions to follow their own documented policies and processes, even where those processes exist and are clearly set out. We also see disputes arise where the outcome of a process – such as a restructuring or performance management process – has already been decided before the process runs its course. This is a

significant cause of distrust and escalation and is made worse by poor practice within institutional human resources functions, including outcomes that are unclear, unjustified, or inconsistent between similar cases. These issues are also exacerbated by a lack of understanding of matters specific to the tertiary sector, such as academic freedom, professional practice standards, academic quality requirements, and the requirements of external regulatory bodies.

- 3.3. More broadly, once trust has broken down between employer and employee, disputes become harder to resolve informally and more likely to escalate. A failure to deal with issues early – through avoidance, under-resourcing, or the absence of a clear way to raise concerns – allows problems to harden into disputes that could otherwise have been resolved sooner. Finally, we see institutional racism as a distinct and serious cause of some disputes, including in how issues are identified and taken seriously, how processes are conducted, and in the disparity of outcomes experienced by Māori and other members.

#### **4. HOW ARE DISPUTES RESOLVED?**

##### *Delays and barriers in the dispute resolution process*

- 4.1. Mediation services themselves openly acknowledge that wait times will be long, which suggests there is a recognition that the system does not have enough staff to meet demand. Once a settlement is reached, however, the actual drafting and signing of the settlement is quick, so the delay sits earlier in the process rather than at the end. We note that timing is a significant factor in issues being resolved early, both in the workplace and through Mediation Services. We also note that a key purpose of Mediation Services is to settle issues without the need for escalation to the Employment Relations Authority, and both the Authority and the Court send cases back to mediation. Mediators are skilled and usually able to navigate complex issues to a resolution, the involvement of experienced union staff also supports better outcomes for members at a lower level.
- 4.2. A significant barrier is the ongoing use of Zoom for mediation, a practice that began during Covid-19 and has now become normalised. Zoom mediations do have a shorter wait time than in-person mediation, but we consistently see worse outcomes from them. Mediation works best when people can be genuinely present and engaged with each other, and this is much harder to achieve online – meeting face-to-face allows a kind of connection that a screen cannot replace. This matters most where the parties are at an impasse, as it is much harder to bring them towards resolution over Zoom than in person. Zoom should only be used where there is a genuine need for it, not as a default.

- 4.3. The shortage of mediators outside the main centres also creates an accessibility problem. Because mediators are not available in many parts of the country, members in those areas are more likely to be offered Zoom mediation rather than in person. TEU has adopted a practice of having a union representative sit in with the member during Zoom mediations to support them. Our sector is well resourced enough to be able to do this, but we do not think it is reasonable to expect this of every union for every member, and many employees (who are not union members) elsewhere would not have this support available to them.

#### *Navigating the dispute resolution process*

- 4.4. Access to the process through MBIE's website portal, and the time it takes once inside the system, are largely resourcing issues rather than problems with the process design itself. Once a case is actually in the system, communication from staff is generally good.
- 4.5. The requirement to log in through RealMe adds an extra step that makes the process harder to access. The form itself is long, unwieldy, and not user friendly, with many fields that appear repetitive. It is also unclear whether the information is being saved as the form is completed, which means users risk having to start again or re-enter the same information if something goes wrong partway through. Files are often too large to send easily, which makes what should be a simple step slow and cumbersome.
- 4.6. We have also noticed a decline in accessibility at a more basic level. It used to be possible to contact an individual office and connect directly with a coordinator to resolve a quick query. This has been replaced with a general 0800 number, which is less direct and removes the ability to reach someone who can help resolve a small issue quickly.

#### *Concerns with the dispute resolution process*

- 4.7. A recurring concern is employers using mediation as a track towards a settlement while leaving genuine engagement until the last possible moment, sometimes reaching agreement only the day before, or on the day of, mediation itself. While this still results in a resolution, it does not help the system work through demand efficiently, and it wastes the time and preparation of the mediator, which could otherwise have been used on other cases. This is arguably poor employer HR practice, reflects a failure to resolve issues at the lowest possible level, and raises good faith concerns.

- 4.8. We also see employers turning up to mediation with a prepared statement and no genuine intention to engage in the process, or sending a representative who does not actually have the authority to settle. In some cases the employer's real focus is on securing an exit for the employee, rather than resolving the underlying personal grievance or issue that gave rise to the dispute. We have also seen employers broaden a dispute during the process itself, introducing novel reasons or issues in order to justify not resolving it.
- 4.9. Confidentiality, while intended to support open resolution, can also work against members. The cloak of confidentiality around mediation can create an unsafe space for a member, particularly where there is a significant power imbalance between the parties. Employers at times raise spurious claims that are not supported by evidence, yet significantly affect the course of the mediation. These good faith issues require careful management by mediators.
- 4.10. Finally, we are concerned that the use of lawyers in the process tends to make it more legalistic and adversarial, working against the less formal, accessible resolution the system is meant to provide.

## **5. HOW IS THE SYSTEM WORKING?**

### *Concerns with private providers*

- 5.1. We have significant concerns about the use of private providers in the dispute resolution process. Where employers have used private investigators, we have found that these investigations have sometimes taken a long time, and we have questioned the quality of the investigation itself.
- 5.2. Some institutions in our sector have their own in-house mediation services, but our preference is to use the public system. Private mediators may be incentivised by the party paying for their services, either to reach a particular outcome, to close a case quickly, or, in some cases, to draw a process out. This creates a risk that the mediator's incentives are not aligned with a genuinely fair process. We also note that some mediators who work in the public system also contract privately, which raises a related concern.
- 5.3. More generally, members going through a privately arranged mediation process, where the mediator is paid for by the employer, often lack trust in that process, simply because of who is paying for it. This is a significant barrier to a member engaging genuinely and confidently, regardless of how the mediator actually conducts themselves.

- 5.4. We also note that smaller centres may not have a high number of full-time mediation staff, which contributes to the pressure that pushes some parties towards private options in the first place.
- 5.5. We consider that privatisation also removes an important quality control function from a vital public service. We have seen this occur with the issues Fairway has had as a dispute resolution service. Once a division of ACC, Fairway was sold and privatised in 2017. Ever since there has been a range of concerns with Fairways independence and quality raised.
- 5.6. Beyond the role of resolving disputes, Mediation Services also serves a regulatory role. Even where private mediations result in an outcome that can be settled, the settlement needs to be signed by a Mediation Services mediator in order for it to be binding. This is an important role, and it raises the question in regards to whether private mediation services are reducing demand on the public services, or if they are adding a different burden to them. We are supportive of better resourcing of MBIE's Mediation Services.

*What is working well; what can be improved*

- 5.7. There are many aspects of the current system that work well and should be kept. Mediation can be genuinely effective at re-establishing working relationships between the parties, not just resolving the immediate issue in dispute. Good mediators are able to probe the rationale of both parties and test it properly, rather than simply facilitating a compromise, and this quality of mediation should be preserved and encouraged.
- 5.8. There is room for improvement in the expertise mediators bring to a case. Mediators should have access to specialised knowledge relevant to the dispute, so that sector-specific issues can be properly understood rather than treated generically. This includes strengthening Tiriti-based approaches to mediation, and improving mediators' knowledge of tikanga Māori and Pasifika cultural contexts, so that mediation can be genuinely responsive to the parties involved rather than applying a single standard approach to everyone.
- 5.9. We also think it is worth examining whether the threshold for accessing facilitated bargaining is currently set too high. Facilitated bargaining can produce good outcomes and a threshold that is too high may be preventing parties from accessing a process that could resolve disputes more effectively than the alternatives.

## **6. RECOMMENDATIONS**

- 6.1. Looking ahead, our key recommendation is better funding and resourcing for the dispute resolution system. As noted earlier in this submission, wait times are already long and mediation staff are stretched. Adequate resourcing would also support earlier intervention, which is important for preserving employment relationships rather than allowing issues to harden into formal disputes.
- 6.2. We would like to see mediation promoted and used during restructuring and other organisational change processes, built into the process itself rather than only being available once a dispute has already escalated. Given how often disputes arise from these processes, addressing issues through mediation while the process is still underway could prevent many disputes from occurring in the first place.
- 6.3. More broadly, we consider that strengthening collective bargaining would reduce the number of disputes that arise. Stronger collective agreements provide clearer, more certain terms for both parties, which in turn reduces the scope for the kinds of disagreements and ambiguities that give rise to disputes.