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Education and Workforce Select Committee
Parliament Buildings
WELLINGTON

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Kia ora

Tourism Industry Aotearoa Submission on the Fair Pay Agreement Bill

TIA welcomes the opportunity to provide comment on behalf of the wider tourism industry on the Fair Pay Agreement Bill that is currently before the Education and Workforce Select Committee.

TIA's Overall Position

The Fair Pay Agreement Bill represents a major shift in the way labour relations are undertaken in Aotearoa New Zealand.

TIA has consulted within the tourism industry and more widely, and every conversation heightens our concern around the Bill.

This concern is not around the intent of the Bill – we very much support better wages, conditions and productivity across the tourism workforce. Rather, we are very concerned that the Bill would establish a complicated labour relations framework that will serve as a major impediment to the operation of the tourism industry to the detriment to both business operators and their employees.

TIA's overall position:

1. **TIA does not support the passage of the Fair Pay Agreement Bill** on the grounds that it will establish a difficult and costly framework that would be damaging for many tourism businesses, especially small businesses, and for the tourism system as a whole.
2. **TIA will not put itself forward as a negotiating party** on the grounds that TIA is not constitutionally established to legally represent its members, it is not resourced to do so, and nor does it seek such a role. Should the Bill proceed, TIA will assess any role it might play based on the final arrangements that are put in place.
3. **TIA supports and endorses the submission of Business New Zealand** that we consider accurately sets out the wider economy and legal ramifications of the Bill.

The tourism-specific concerns we see in the Bill are:

1. **Diverse Nature of Tourism Sectors and Occupations.** The highly diverse nature of tourism jobs makes defining occupations and sectors very difficult. Tourism is not an industry of vertical occupation or sector silos, but rather it is structured as a horizontal cut across many other such occupations or sectors. As the Bill stands, this would likely lead to a proliferation of FPAs impacting tourism resulting in a very complicated employment relations framework.

2. **Nature of Tourism Businesses.** Tourism businesses are typically small and need to operate with flexibility so they can configure their operations in line with tourism demand. Tourism is a seasonal and even weather-dependent industry and so is subject to short term variables, making this flexibility a key requirement. The loss of flexibility from a less agile employment relations framework would be extremely costly for many businesses.
3. **People in Tourism.** Tourism workers operate in a flexible and dynamic employment environment. Reducing this flexibility by imposing compulsion and rigidity will be detrimental to the tourism employment market and to the individuals working in the industry.
4. **Role of Associations as Negotiators.** The Bill's proposal that industry associations act as the negotiating party is completely foreign to the roles and objectives of the associations that exist in the tourism industry, not to mention their capacity to do so. TIA will not take up the role as a negotiation party in the tourism industry, and our consultation strongly indicates that few if any of the smaller associations could play this role, and certainly not without major capability investment, support mechanisms and transition arrangements.

Should the Bill proceed, the Select Committee must address the very serious issues around this aspect of the legislation and TIA will assess any role it might play based on the solutions that are found.

5. **Tourism would be impacted by FPAs negotiated more widely.** By the very nature of the framework being established, tourism will be subject to many FPAs that are negotiated by parties that do not include tourism. As a healthy, well-functioning, complex and integrated industry, tourism must not be compulsorily subject to key decisions being taken by others.
6. **This is looking complicated, inflexible and expensive.** Developing a complex legalistic framework for industrial relations in New Zealand is not the right way to proceed and the risks of un-intended consequences are very high. Coming into this is the risk and reward equation, and for TIA it is looking increasingly unlikely that the tourism industry will achieve any gains, and the downsides are looking much larger. Unease around this equation is heightened given that it remains unclear quite what is the underlying problem is that needs to be fixed.

Taken together, this analysis clearly indicates that what is being established by the Bill will be highly problematic for the tourism industry, including both its businesses and its employees.

Tourism Industry Aotearoa

TIA is the peak body for the tourism industry in New Zealand. With around 1,200 members, TIA represents a range of tourism-related activities including hospitality, accommodation, adventure and other activities, attractions, retail, airports and airlines, transport, as well as related-tourism services.

TIA established and supports the tourism industry's strategic document, *Tourism 2025 & Beyond – A Sustainable Growth Framework*. This has the Vision of 'Growing a sustainable tourism industry that benefits New Zealanders'.

In 2017, TIA launched the *New Zealand Tourism Sustainability Commitment - He kupu taurangi kia toitū ai te tāpoitanga*. The TSC has the Vision of 'Leading the world in sustainable tourism'.

The TSC is implemented through the actions of individual businesses and entities who join the TSC and take on its 12 Commitments. With almost universal voluntary uptake, the TSC is now a standard part of TIA membership.

Of direct relevance to the Fair Pay Agreement Bill is:

Commitment 7: Employer of Choice. We attract, support and develop the workforce we need to flourish and succeed.

This Commitment signifies that the tourism industry must operate at a high standard so that it can attract and retain the people it needs. This forms a part of the wider industry ambition to deliver against the TSC's holistic economic, visitor, community and environment framework, which in turn closely aligns with the Government's Wellness Framework and ultimately to the United Nations' Sustainable Development Goals.

Tourism Workforce

The activities and demand created by international and domestic visitors creates and supports a very important proportion of all employment in Aotearoa New Zealand. In the year to March 2020, the number of people directly and indirectly employed in tourism was 365,793, or 13.2% of the total New Zealand workforce. Of these, 218,580 were directly employed, and 147,213 indirectly.¹

In addition to the sheer quantum of people engaged in tourism, is the nature of the jobs and there is great diversity across many sectors and occupations. For instance, of the 218,580 total of people directly working in tourism, 27,318 worked in accommodation, 62,085 in hospitality, 4,338 in land transport, 10,818 in air transport, 3,080 in a range of travel and tour services, 4,455 in rental and hiring services, 8,344 in arts and recreation services, 32,571 in retail trade, 16,149 in education and training and 31,772 in non—tourism related industries.² In addition, of these people employed in tourism, 26,829 or 12.3% are working proprietors.

As well as being diverse by sector, there is a tremendous diversity of the occupations employed within each of these sectors. For instance, within the hotel accommodation sector there are many occupations needed: front of house staff, chefs, restaurant staff, restaurant managers, wait staff, cleaners, retail, security, various management layers, marketing staff, reservation system staff, property managers, and many more.

The tourism employment environment is large and extremely diverse, and every effort is needed to ensure that this labour market can operate effectively and flexibly so the operator can ensure they have the right people with the right skills when and where they need them. This is a fundamental requirement of the industry.

COVID-19 Impacts

Over the first year of the COVID-19 pandemic, the total number of jobs fell from 365,792 to 237,399, an unprecedented 35% decline. This is mentioned in the context that in the post-COVID recovery, the industry will need to be able to attract many people (e.g. 100,000 plus) back into the industry and it won't be able to do this unless it is a genuinely attractive industry in which to work.

At the current early stage of recovery as the international borders open, the number one concern for most, if not all, operators is around their ability to rebuild their workforces, with this being central to the shared goal of both industry and government to achieve recovery based on a high quality and regenerative tourism industry.

¹ Tourism Satellite Account Year ended March 2020, Stats NZ, December 2020.

² Tourism Satellite Account Year ended March 2020, Stats NZ, December 2020.

Understanding of the Bill

TIA has been involved in the FPA process from the early stages and made an extensive submission to the 2019 discussion paper: 'Designing a Fair Pay Agreements System'. Our assessment on the Bill in relation to our submission is that key areas of concern have not been addressed in the Bill.

The overall objectives of the Bill are good and we in tourism support well-paying jobs with excellent working conditions and with increasing levels of productivity. Our concern with the Bill is that the framework created will not achieve our shared objectives and will make the task of operating considerably more complex and difficult.

Our Process

This submission draws on our deep knowledge of the tourism industry, and we have taken feedback from both our members and also the wider group of tourism sector associations. We are very confident that the views expressed in this submission are reflective of the broad industry sentiment.

Also, we have looked outside our industry for a wider perspective. Business New Zealand has prepared a comprehensive submission with considerable depth and technical expertise. TIA supports this submission for this wide coverage and depth, while we will focus on how we see the Bill in relation to the tourism industry, an industry that we know very well.

Tourism Implications

Based on our intimate understanding of the structure and characteristics of the tourism industry, it certainly appears that the industry would be deeply affected by the FPA approach given its high level of fragmentation across its many sectors and occupations.

The following sets out TIA's key tourism-specific areas of concern with the Bill. Note that while we submit that the Bill does not proceed, we do identify key areas for the Select Committee to pay particular attention.

1. **Nature of tourism occupations and sectors.** This cuts to heart of the tourism concern – what occupations and what sectors will be covered? Tourism as an industry is comprehensively integrated into the economy and society. As set out earlier, the 365,793 people directly and indirectly working in tourism are very spread across the many sectors that make up the tourism industry and there is a multitude of occupations involved.

What this means in practice is that there is a complicated matrix of sectors and occupations where individual workers in the industry might sit. Complicating this further is that many tourism jobs are multi-skilled meaning that many 'occupations' are covered by one person.

Key point: The highly diverse nature of tourism jobs makes defining occupations and sectors very difficult. Tourism is not an industry of vertical occupation or sector silos, but rather it is structured as a horizontal cut across many other such occupations or sectors. As the Bill stands, this will likely lead to a proliferation of FPAs impacting tourism thereby resulting in a very complicated employment relations framework.

Recommendation: The Select Committee find a way to reflect the practicalities of the tourism industry and avoid the proliferation of small FPAs. We recommend some limits be included or clear guidance provided if fewer FPAs are actually intended by the Bill.

- 2. Nature of tourism businesses.** The majority of tourism businesses are small as evidenced by the 26,598 working proprietors³ directly working in the industry. These businesses cover many sectors and engage people covering many occupations. With the tourism industry being a seasonal industry, tourism businesses typically need to have considerable flexibility in their operations to adjust to changing demand levels. Having flexible and easy to use workforce practices is essential for this. There are numerous tourism businesses that have this 'flexing' down to a fine art. The ski industry, for instance, is well practiced at ensuring it has the right people with the right skills, for where and when they need them. While there might be commonality as a 'ski sector', the roles within vary considerably in terms of occupation and qualification requirements. Any moves, such as a FPA that requires set hours of work, that reduces the ability of tourism businesses to operate with this sort of flexibility will have very serious implications for the industry.

Key point: Tourism businesses are typically small and need to operate in a very flexible way so they can configure their operations in line with tourism demand. Tourism is a seasonal industry by nature and is also subject to shorter term variables such as weather conditions, so this flexibility is a key requirement. The loss of flexibility from a less agile employment relations framework will be extremely costly for many businesses.

Recommendation: The Select Committee ensure the FPA framework does not impose operational rigidities on tourism businesses that reduces their ability to constantly adjust their factors of production, including their workforce needs.

- 3. People in tourism.** The people working in tourism are the industry's greatest asset and are highly valued by tourism businesses.

These people are very diverse with a wide range of motivations. There are entry level jobs, lifestyle or passion jobs, jobs as stepping-stones to entrepreneurship, jobs that involve lots of people contact, jobs that allow people to live and work in far-flung places, jobs that fund further travel, career-building jobs, career-change jobs, jobs that serve to pay the bills, and many more. Central to this is that people work in tourism for their own reasons and requiring them to compulsorily be part of a collective agreement runs counter to this. The concept of collective bargaining is very different to the way most people in tourism are used to working.

Key point: Tourism workers operate in a flexible and dynamic employment environment. Reducing this flexibility by imposing compulsion and rigidity will be detrimental to the tourism employment market and potentially also to the individuals working in the industry who value the wide range of employment attributes that the industry provides, and which will likely not be included within the scope of the FPAs.

Recommendation: The Select Committee recognise the diversity of tourism jobs and the many motivations people have for working in the industry. The Committee ensure it is getting a representative voice from tourism workers given the gravity of the proposed changes.

- 4. Role of Associations as Negotiators.** A very concerning aspect of the Bill is the proposed role of industry or employer associations as the negotiating party for their occupation or sector, with the union as the other negotiating party. We disagree with this thinking, and we speak to this as the peak industry association for the tourism industry. TIA is not constitutionally established to legally represent its

³ Tourism Satellite Account Year ended March 2020, Stats NZ, December 2020.

members, it is not resourced to do so, and it does not seek such a role. As a voluntarily funded membership body we exist to provide thought leadership, communications, advocacy, events, sustainability programmes in the interests of our industry and members, but we do not provide any legal or contracting services to them.

Within tourism there are many sectors that have their own specific associations. To illustrate this, TIA convenes a group of the tourism associations and there are around 28 of these. These associations work closely with their members, and most are one person operations with very limited capacity to do more than they are already doing. Again, there are serious questions around whether they would be constitutionally or operationally able to perform the role as a negotiating party.

Key point: The Bill's proposal that industry associations act as the negotiating party is completely foreign to roles and objectives of the associations that exist in the tourism industry, and these associations lack the capacity to fulfil this proposed role. We do not see TIA or any of the smaller associations being able to play this role, and certainly not without major capability investment, support mechanisms and transition arrangements. In the Bill's current form, TIA will not put itself forward as a negotiating party. Should the Bill proceed, the Select Committee must address the very serious issues around this aspect of the legislation and TIA will assess any role it might play based on the solutions that are found.

Recommendation: The Select Committee addresses the major structural issue with the design of the FPA and its reliance of sector associations as negotiating parties.

- 5. Tourism would be impacted by FPAs negotiated more widely.** As a relatively small part of many other occupations or sectors, tourism businesses would be subject to conditions established by the many FPAs negotiated and agreed by others and will be legally bound to whatever was agreed. This appears to be totally contrary to principles around businesses having control of the resources that they use. The compulsion factor is being cited by all the submissions that we have seen, including Business New Zealand's, and we add our voice to the point that an industry such as tourism needs to be fully engaged with the key decisions that directly relate to it.

On the employee side of this matter, it is equally concerning that there will be many tourism workers that will be compulsorily subject to FPAs to which they have played no part in developing or setting.

Key point: By the very nature of the framework being established, tourism will be subject to many FPAs that are negotiated by parties that do not include tourism. As a healthy, well-functioning, complex and integrated industry, tourism must not be compulsorily subject to key decisions being taken by others.

Recommendation: The Select Committee must find a way to limit the development of compulsory FPAs that impact a sector or occupations where the businesses or workers have played no meaningful part in its development.

- 6. This is looking complicated, inflexible and expensive.** There are many processes and structures set out in the Bill. The workability looks very problematic and especially so for a fragmented tourism industry dominated by SMEs. There appears to be many areas where case law will be required to settle the law, and this brings real concerns both for delay as the legal cases proceed and, in the cost of

undertaking such legal work. In tourism, there are only a small handful of businesses that would be able to operate in this way. Most tourism businesses already struggle for bandwidth and resources to take on all the functions required of them, and this will be a further and major impost on them.

Key point: Developing a complex legalistic framework for industrial relations in New Zealand is not the right way to proceed and the risks of unintended consequences appear to be very high. Coming into this is the risk and reward equation, and it is looking increasingly uncertain for the tourism industry that there will be gains, while the downsides are very clear. Considering this equation is important give that it remains unclear around what is the underlying problem that needs to be fixed.

Recommendation: The Select Committee must recognise the operational complexity, risks and costs of the system being established and must ensure these processes and costs are fair, affordable and transparent for all involved.

Further Input

TIA is very keen to be part of ongoing processes to lift wages, work conditions and productivity of the tourism workforce. As such, we wish to engage in any way as this legislation is advanced so that it can best deliver towards our shared objectives.

If you have any queries about our feedback, please contact Bruce Bassett on 021 609 674 or bruce.bassett@tia.org.nz.

We wish to appear before the Select Committee to talk to this submission.

Ngā mihi,



Rebecca Ingram
Chief Executive

Co-Signatories

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|------------------|---|
| Donna Brook | Bed and Breakfast Association |
| Miles Davidson | Ski Area Association New Zealand (letter of support attached) |
| Greg Hamilton | Travel Agents Association New Zealand |
| Wilhelm Lehmborg | Pro Guides New Zealand |
| Kevin Ward | NZ Airports |
| Fergus Brown | Holiday Parks Association of New Zealand |
| James Dalglish | Rental Vehicle Association |
| Debbie Summers | New Zealand Cruise Association |

Supporting parties that have made their own submissions

| | |
|--------------|-----------------------------------|
| James Doolan | Hotel Council Aotearoa |
| Lisa Hopkins | Business Events Industry Aotearoa |
| Lynda Keene | Tourism Export Council |