




**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
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**LABOUR,
SCIENCE AND
ENTERPRISE**



Assessment of application to add security officers to Schedule 1A of the Employment Relations Act 2000

May 2020

1. Summary

The Minister for Workplace Relations and Safety, Hon Iain Lees-Galloway has received an application from the E tū union to add security officers to Schedule 1A of the Employment Relations Act 2000 (ER Act).

MBIE has now analysed the application, and consulted with stakeholders about the application to add security officers to Schedule 1A for the purposes of providing this report. Our view is that security officers do meet all three criteria in the Act for them to be added to Schedule 1A.

MBIE is seeking your views on this report to inform further advice to the Minister for Workplace Relations and Safety on whether security officers should be added to Schedule 1A. See Annex One for a number of consultation questions.

2. Background

2.1. Part 6A provides additional protections for specified categories of employees in certain sectors, facilities, or places of work

Part 6A (subpart 1) of the ER Act provides additional protections for categories of employees who are listed in Schedule 1A of the ER Act. These protections include¹:

- The right for employees to transfer to a new employer where, because of proposed restructuring (including contracting in, contracting out, or subsequent contracting), their work is to be performed by the new employer.
- If employees elect to transfer to the new employer, their terms and conditions of employment are transferred, and the new employer must recognise their entitlements to sick leave, annual holidays and their continuous service as unbroken.
- If employees elect to transfer to the new employer, and that new employer makes them redundant because of the transfer situation, they may become eligible for redundancy entitlements.

Part 6A also includes a system for ensuring prospective employers can request information relating to the transfer of employees from the current employer, including the number of employees eligible to transfer, wages, work hours, etc.

Schedule 1A currently provides additional protections for employees who work in the following areas:

- cleaning services and food catering services in any place of work
- laundry services for the education, health or age-related residential care sector
- orderly services for the health or age-related residential care sector
- caretaking services for the education sector.

The ability to add new categories of employees to Schedule 1A was reintroduced in the Employment Relations Amendment Act 2018.

¹ More information is available on the Employment NZ website:

<https://www.employment.govt.nz/workplace-policies/workplace-change/restructuring-when-business-sold-or-transferred/>

2.2. In order to add a category of employees to Schedule 1A certain criteria must be met

Section 237A of the ER Act sets out the process for amending Schedule 1A of the ER Act.

After receiving an application, the Minister can only recommend the Governor General should make an Order in Council adding a category of employees to the schedule of employees, if the Minister is satisfied that the category of employees:

- are employed in a sector in which restructuring of an employer’s business occurs frequently, and
- have terms and conditions of employment that tend to be undermined by the restructuring of an employer’s business, and
- have little bargaining power.

One part of the Ministry of Business, Innovation and Employment’s (MBIE) role under the ER Act is to prepare this report for the Minister on whether the employees identified in the application satisfy the criteria in the ER Act. If the Minister wants to amend Schedule 1A, the must first consult relevant employees, employers, and their representatives, as well as other persons or organisations the Minister considers appropriate.

2.3. The Minister has received an application for security officers to receive additional protections under the Employment Relations Act

On 3 July 2019 the Minister for Workplace Relations and Safety, Hon Iain Lees-Galloway received an application from the E tū union to add security officers to Schedule 1A of the ER Act.² This is the first application received since the passage of the Employment Relations Amendment Act 2018.

The application specifies the scope of what security officers do:

“Security officers carry out manned guarding outside banks, in courts, hospitals, universities and other buildings, watching security screens inside these buildings, crowd control for events, escorting of prisoners and mobile cash collection.”

The application notes that security officers are a growing workforce and are poorly paid. In the union’s experience “no security officers, outside of corrections officers, Government-employed aviation security workers, managers or private investigators would earn anything above \$21.00 an hour”.

It argues there is frequent restructuring, given that security contracts are typically tendered for periods of three years. It notes that if the incumbent company is not successful during a subsequent tender, employees are left with three potential options:

- Redeployment to a job on another site with the incumbent company (if one is available, and possibly at reduced hours).
- Try to get a job with the new company (if one is available, restarting entitlements such as sick leave).

² <https://www.mbie.govt.nz/business-and-employment/employment-and-skills/employment-legislation-reviews/security-officers-application-to-amend-schedule-1a/>

- Be made redundant, likely with no compensation.

E tū says it has over 1,000 members who work as security officers in the security industry. It suggests that due to the turnover of contracts and the turnover of security officers, it has little bargaining power to make a difference to wages. It notes that even some employers have complained that the nature of the industry and the contracting process drives increasingly lower bids. It also notes that a contributing factor to low bargaining power is that most security officers are employed in “isolated pockets” such as a bank, supermarket or train station, or at one-off events.

E tū’s application also includes qualitative evidence from interviews with security officers. Workers reported a variety of concerns, including being paid minimum wage, being placed alone in difficult situations, being on the receiving end of abuse and violence, and having poor quality uniforms.

2.4. We have consulted a number of stakeholders, whose views have informed our thinking

In the process of preparing this report MBIE has gathered evidence and consulted a number of stakeholders, whose views have informed our thinking. These stakeholders include the New Zealand Security Association, security companies and unions.

Most of the stakeholders we consulted agreed that security officers met the criteria in the Employment Relations Act to be added to Schedule 1A.

However, there were mixed views on whether it would be beneficial overall to add security officers to Schedule 1A of the Act. The unions we consulted (including the applicant union E tū) supported the application. However, employers noted the following:

- The industry was working collaboratively to improve conditions.
- The change would not be beneficial, would increase compliance costs, and without rigorous enforcement would fail to affect change.
- If the security industry was covered by Part 6A, it would reduce the incentive for employers to invest in training for their employees, as they could lose those workers to another company in the event of a contract change.

Many employers noted they would like to reward their workers with higher wages (e.g. the living wage), but their clients were unwilling to pay higher prices for the security contracts which would enable higher wages. These employers suggested it was an ongoing process to educate clients about the benefits of higher wages and a higher quality service.

Some of the employers we consulted argued that there were factual inaccuracies in the application, particularly in the interviews with workers at the end of the application document. For instance, one security company noted that it was not correct that employees had not received pay rises given the minimum wage was consistently rising each year, and objected to the characterisation that its security officers did not receive any training.

2.5. Background information about the security industry and workers

The latest information available about the security industry comes from the 2013 Census. As at 2013, there were 5,532 security officers. Almost 80% worked full-time, with 21.6% working part time.

Security officers are disproportionately Māori and Pasifika, and less likely to be European or Asian. Around 80% of security guards are male. Approximately 55% of security officers had no post-school qualifications.

The Auckland, Wellington and Otago regions have a higher percentage share of security officers and guards than each region's share of all occupations.

A significant proportion of work in the security industry is tendered on a national basis, and there are three large national providers – Armourguard Security, Allied Security, and First Security. Stakeholders have informed us that the focus of these national contracts for purchasers of services tends to be on low cost, and wages are typically at the minimum wage or slightly above it.

3. We have assessed whether the criteria in the Employment Relations Act have been met

In the sections below we have assessed whether the three criteria in the ER Act have been satisfied.

3.1. We consider security officers are employed in a sector in which restructuring of an employer's business occurs frequently

Stakeholders generally agreed that there was frequent restructuring of employers in the security industry.³

We understand contract periods for security services are typically three years long. However, this can vary, with some contracts ranging up to 10 years.

Overall we consider that a typical contract period of three years satisfies the requirement in the Act that the restructuring occurs frequently. This level of frequency appears to be consistent with other sectors already included in Schedule 1A.⁴

³ Some employers commented that changes in contracts often came down to the performance of the company – if an engager was unsatisfied they might look elsewhere for a different company to provide security services. Another stakeholder noted that while contracts did change, given the tight labour market (as of late 2019) a company who lost a contract would be reluctant to make anyone redundant in that situation. However, it is not directly relevant to assessing the criteria as to whether frequent restructuring is occurring.

⁴ Building Services Contractors NZ advised us that in the cleaning industry, for larger contracts, a three-year term (with a two year right of renewal) was standard, with smaller contracts having shorter one-year lengths. In 2009, the Service and Food Workers Union confirmed to the Department of Labour that typical contracts for cleaning in commercial buildings, universities, polytechnics, schools and hospitals are for 2–3 years, as are those for hospital orderlies, hospital and commercial catering. However, laundry contracts were sometimes longer.

3.2. We consider that security officers' terms and conditions of employment tend to be undermined by the restructuring of an employer's business

3.2.1. There are multiple ways of interpreting this criterion

We have considered two possible ways conditions could be undermined:

1. Static terms and conditions for employees are undermined by the fact that employees may be made redundant when contracts are retendered (e.g. employees lose sick leave, continuous service).
2. Over time, terms and conditions are being undermined by restructuring – e.g. more generous terms get eroded, or there is an absence of improvement.

We interpret the words 'tend to be' to mean that it is likely that terms and conditions are undermined by restructuring across the industry. This is a higher standard than just isolated examples of terms and conditions being undermined by restructuring.

In analysing a previous application received in 2008 for a small group of water maintenance workers in Wellington, the Department of Labour focussed on the second approach above. The Department was able to specifically trace a deterioration of conditions over a 10-year period from 1998 to 2008. These deteriorating conditions included a decline in wages for experienced workers, loss of redundancy pay and longer service leave, and the erosion of other terms and conditions such as penalty and standby rates. This analysis was possible because the application related to a group of only 18 employees, which made tracing their conditions over time feasible.

3.2.2. Although there is some uncertainty, we are satisfied security officers' terms and conditions do tend to be undermined by restructuring of an employer's business

In the event that there was restructuring of employers' businesses, security officers would lose any accrued sick leave and any benefits which might accrue based on length of service. Evidence in the application suggests security officers do have terms and conditions such as these undermined when a contract changes from one company to another.

Employer stakeholders generally disagreed that terms and conditions were undermined by frequent restructuring, with the exception of static terms and conditions such as losing entitlements to sick leave and long service benefits. We consider it is clear that the static terms and conditions of security guards are being undermined in restructuring situations.

However, it is much less clear whether, over time, terms and conditions *tend to be* undermined by restructuring (i.e. terms get worse or fail to improve). The application includes a number of examples of conditions deteriorating, and E Tū has subsequently provided additional examples. These examples includes instances of security guards facing reduced pay and working hours following a restructuring situation, if they were successful in keeping their jobs.

While we have access to collective agreements from the security industry, we are not able to trace the same workers through multiple different employers in the event of a restructuring situation.

Overall, despite some degree of uncertainty, we are satisfied that this criteria is met. As noted above, employees' static terms and conditions appear to be frequently undermined by restructuring in the industry. We have some anecdotal evidence of terms and conditions being undermined over time, however, there is no readily available data to substantiate whether this occurring systematically. Nonetheless the combination of static terms being consistently undermined, and evidence of at least some cases of terms being undermined over time is enough to satisfy us that the criteria is met.

3.3. We consider security officers do have low bargaining power

We consider a workforce having little bargaining power could be indicated in a number of ways. To simplify matters we have categorised these as either

- Low wages, and unfavourable terms and conditions.
- Low union coverage. Union organising is typically more difficult when workplaces are fragmented and there is high turnover.
- A high number of vulnerable workers (e.g. migrants, overrepresentation of Māori and Pacifica in the workforce, etc)

We have analysed these factors below.

3.3.1. Low wages, and unfavourable terms and conditions

Various evidence indicates that security officers receive low pay. Stakeholders indicated that security officers are typically paid close to the minimum wage, with sometimes up to a couple of dollars premium per hour for guards with additional qualifications.

The estimated annual average income of a security worker is \$41,900 (\$20.14 per hour),⁵ compared to the comparable minimum wage salary of \$36,816 (\$17.70 per hour at the time).⁶ This is at a similar level to the estimated annual income of \$38,000 for cleaners (\$18.30 per hour) for Cleaners and Caretakers.⁷

There is also evidence that the returns to qualifications for security officers is low. Three years after completion of a Level 1, 2 or 3 Certificate – Security Services, the median salary was around \$43,000.⁸

Data provided by E tū shows that pay increases for collective agreements they have negotiated typically range between 1–2 per cent per year. However, in the recent past, larger increases in the minimum wage have led to higher pay increases, because pay rates in collective agreements maintained a margin above the minimum wage.

The interview notes appended to the application include complaints about uniforms and equipment, but we do not have other evidence about this issue.

⁵ MBIE Occupation Outlook, estimated using New Zealand Income Survey 2018 data.

<https://occupationoutlook.mbie.govt.nz/service-industries/security-workers/>

⁶ Assumes 2,080 hours in a working year.

⁷ MBIE Occupation Outlook <https://occupationoutlook.mbie.govt.nz/service-industries/cleaners-and-caretakers/>. The hourly figure assumes 2,080 hours in a working year.

⁸ MBIE Occupation Outlook <https://occupationoutlook.mbie.govt.nz/service-industries/security-workers/>

3.3.2. Low union coverage

Security officers are largely not unionised. There is very limited data available on union density among security officers,^{9 10} but both the security companies and unions we talked to indicated very few security officers were union members. Stakeholders estimated union density was about 10% among security guards averaged across the industry.

As the application notes, security officers tend to work in fragmented workplaces, or at one-off events, which can make organising difficult. This difficulty is likely exacerbated by frequent restructuring and employer changes, as well as high turnover among employees.

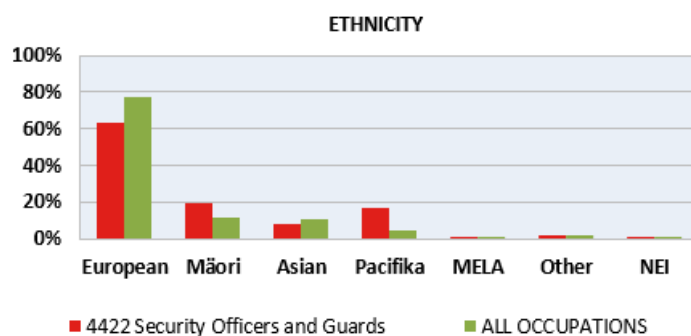
E tū notes that there are very few collective agreements in place in the industry, and even the existing collectives are becoming difficult to maintain, with protracted bargaining.

Industrial action among security guards appears to be very rare, with only a handful of strikes in recent years. E tū suggested one factor explaining why industrial action was so rare was that workers were fearful of losing their jobs or having their hours of work reduced in response. The lack of industrial action is another indicator that the bargaining power of workers is likely to be low.

Finally, the fact that the security industry operates on a tendering model is likely to reduce the bargaining power of unions and workers. Even if a security company is willing to negotiate with a union on behalf of workers, the company is likely to only be able to negotiate within the boundaries of what the engaging client is willing to pay.

3.3.3. Vulnerable workers

As at the 2013 Census, a higher proportion of Security Officers and Guards were Māori and Pacifica compared to workers across all occupations. While the majority of Security Officers and Guards were European, this was a lower proportion compared to workers in all occupations.



We do not have data available on the number of migrants in the sector, but E tū noted that a high proportion of the workforce in the urban centres are migrant workers

⁹ Union density at the 3-digit level is 40%, but this includes prison officers who are likely skewing the union density rate far above what is actually is for security officers.

¹⁰ As at 1 March 2018, there were 21,890 union members in the 'public administration and safety' sector. <https://www.companiesoffice.govt.nz/all-registers/registered-unions/annual-return-membership-reports/>

3.3.4. Other factors

There is also evidence of high demand for security officers, with the number of vacancies for security officers since 2013 rising much faster than the average for all occupations. The MBIE Occupation Outlooks suggests the number of security officer will increase from 6,714 in 2013 to 8,270 in 2023, and 9,050 in 2028.¹¹ The fact that there is both significant demand for security officers and low average levels of pay is another indicator which suggests security officers have low bargaining power.

4. We conclude that security officers meet the criteria in the Act

Overall we consider that security officers meet the three criteria required in the Employment Relations Act to be added to Schedule 1A and to receive additional protections.

We note our analysis has some limitations. In a number of instances, we have had to rely on information provided by stakeholders. This is because there does not appear to be any other data which we can use to test whether the criterion has been met.

¹¹ <https://occupationoutlook.mbie.govt.nz/service-industries/security-workers/>

Annex One: How to give feedback

MBIE is collecting written submissions on this report, including on the questions below.

We need to hear what you think by **no later than 5pm on 12 June 2020**.

Please email your response to employmentrelationspolicyteam@mbie.govt.nz

If you can't email your response, you can post it to:

Employment Relations Policy
Ministry of Business Innovation and Employment
PO Box 1473
Wellington 6145

Your feedback will contribute to our advice to the Minister of Workplace Relations and Safety on whether security officers should be added to Schedule 1A of the Employment Relations Act.

Your submission will be kept by MBIE and will become official information. This means that a member of the public may request a copy of your submission from us under the Official Information Act.

Questions for consultation

1. Do you agree with our conclusion that the criteria for adding security officers to Schedule 1A are met? Why or why not?
 - a. Are you aware of other data which could be used to inform whether the criteria are met?
2. What would be the benefits of adding security officers to Schedule 1A?
3. What would be the costs of adding security officers to Schedule 1A?
 - a. What compliance costs would employers face from complying with Schedule 1A?
4. Would the benefits of adding security officers to Schedule 1A outweigh the costs?
5. If security officers were to be added to Schedule 1A, should the occupation of 'security officers' be further defined?
 - a. In the application, E tū said: "*Security officers carry out manned guarding outside banks, in courts, hospitals, universities and other buildings, watching security screens inside these buildings, crowd control for events, escorting of prisoners and mobile cash collection.*" Do you agree that this is an appropriate definition?
 - b. Are there any important sub-groups of security officers which should be included or excluded in the definition?
 - c. Could the definitions in the Private Security Personnel and Private Investigators Act 2010 be used to describe in more detail which categories of security officer employees should be covered in Schedule 1A?
6. Should security officers in all industries be included in Schedule 1A?