



NEW ZEALAND COUNCIL OF TRADE UNIONS
Te Kauae Kaimahi

Submission

of the

New Zealand Council of Trade Unions, Te Kauae Kaimahi

to the

UN Office of the High Commissioner for Human Rights

on the

Universal Periodic Review

New Zealand

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1. Introduction

- 1.1. This joint submission is made on behalf of the 30 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With 320,000 members, the CTU is one of the largest democratic organisations in New Zealand. The CTU is the national member organisation of the International Confederation of Trade Unions (ITUC).
- 1.2. The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga) the Māori arm of Te Kauae Kaimahi (CTU).
- 1.3. The CTU welcomes making a submission to the Universal Periodic Review (UPR) having a made a submission to the first UPR round in 2014.
- 1.4. The CTU places a high priority on making submissions on international human rights treaties and conventions. In 2017 the CTU submitted on the Convention of the Elimination of All Forms of Discrimination against Women (CEDAW), The Convention on the Elimination of Racial Discrimination (CERD) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). We also report regularly on International Labour Organisation (ILO) Conventions.
- 1.5. The primary function of the CTU is advocating for all New Zealand workers to receive fair treatment, working conditions and recognition of their rights and their voice at work. Unions have the critical role of advocating for justice and rights for working people and ensuring access to decent work, fair incomes, and representation and to healthy and safe workplaces. These fundamental rights are enshrined in international human rights law.
- 1.6. Reporting on international conventions by the CTU ensures an organised voice for working people and unions in the monitoring and reporting processes on - international human rights treaties.
- 1.7. The United Nations Declaration of Human Rights (UNDHR) contains numerous references to the world of work, including freedom from slavery, child labour and

discrimination at work and the importance of trade unions in democratic societies. The UNDHR recognises in Article 23 “that everyone has the right to form and to join trade unions for the protection of his interests”.

- 1.8. A recent positive development and pressure for further progress on work rights is the United Nations Sustainable Development Goals Agenda 2030. This agenda with its 17 goals and 169 targets was signed by New Zealand in 2015. Many of these goals relate directly to work and employment rights.
- 1.9. This main focus on this CTU submission is on work rights and standards of living. This focus does not mean that the CTU is uninterested in compliance with other civil, political, cultural and social aspects of human rights. These are all critical rights for the working people for whom we advocate. Ours is not an exhaustive list of reporting on human rights. Time and resources, not any lack of concern, constrain us from commenting on other issues in New Zealand society to improve human rights and standards of living.

2. Background: Industrial Relations Framework

- 2.1. The industrial relations framework and employment law framework in New Zealand has been subject to massive upheaval in the past 30 years from a time in 1983 of compulsory unionism, national awards, compulsory arbitration to a polar-opposite direction, under the Employment Contracts Act 1991, of an employment relations system based on individual contracts with little scope for the exercise of collective rights.
- 2.2. The Employment Relations Act 2000 introduced by the Labour-led Government in 2000 restored some of the framework for collective bargaining and union rights but was not successful in significantly rebuilding union density and greatly increasing collective bargaining. The National Government, elected in 2007, introduced changes in 2011 and 2015 that again weakened collective bargaining and work rights.

- 2.3. Following the change of Government in 2017 to a Labour-led Coalition, a legislative programme is underway to repeal the regressive employment rights enacted in 2011 and 2015. The current Employment Relations Amendment Bill will reverse changes made by the National Government in 2011 and 2015 which were a backwards leap in employment relationships and contrary to New Zealand's international commitments.
- 2.4. Those employment changes contributed to the poor wage growth New Zealand working people have seen, the falling share they are receiving of New Zealand's income, and the failure of real wages to keep up with labour productivity growth. This resulted in high levels of financial stress, particularly in the face of increasingly unaffordable housing costs. It continued the pathway of New Zealand being an increasing unequal society with a host of negative social, economic, and health consequences.
- 2.5. Positive changes signalled by the 2017 Labour-led government can turn that tide around and proposed changes in the Employment Relations Amendment Bill will contribute to a fairer and more just employment relations framework.

3. International Treaties

- 3.1. New Zealand has signed and ratified all of the major international conventions and covenants which uphold workers' rights to employment rights, freedom of association and trade union rights. But there are reservations in both the International Covenant on Economic, Social and Cultural Rights ('ICESCR') and International Covenant on Civil and Political Rights (ICCPR) relating to trade union rights. There is also a reservation in the United Nations Convention the Rights of the Child (UNCROC) relating to the minimum age at which children in New Zealand are permitted to be in employment.
- 3.2. Work rights and obligations in specific areas of work and on specific issues are explicitly expressed in the ILO Conventions. New Zealand has ratified six of the eight fundamental ILO Conventions, with the exception of C87, Freedom of Association and Protection of the Right to Organise, 1948; and C138 Minimum Age Convention

1973. Alongside the fundamental conventions, New Zealand has ratified another 45 currently in-force conventions covering a wide range of areas including minimum wage fixing, labour inspection, unemployment provision, migration, occupational safety and health and labour statistics.

3.3. Treaties protecting the rights of workers are a vehicle for progressive change and a safeguard against regressive action by Governments. New Zealand was a leader in international human rights in the middle of the twentieth century but has slipped behind.

3.4. ***Recommendations***

3.4.1. A programme of work to ratify important international treaties and conventions.

3.4.2. As a matter of priority the ratification by New Zealand of ILO C87.

3.4.3. The New Zealand Bill of Rights Act 1990 should be amended to recognise that rights to join a union, collectively bargain and strike are part of the right to freedom of association. This will enable the lifting of the reservations on ICESCR and ICCPR.

4. Unions and Collective Bargaining

4.1. Collective bargaining is one of the most important means for fair income distribution. The dismantling of the award system in 1991 and the inadequacy of a primarily enterprise-based bargaining since 1991 has led to sharp increases in inequality.

4.2. The falling share of income and poor real wage increases going to wage and salary earners is primarily a result of weakened bargaining power in the face of employment legislation being skewed towards employers' interests, high unemployment for much of the period (and still too high even now), the use of immigration to avoid the need to raise wages or train local workers and the continued threat of offshoring.

- 4.3. Low wages are a cause of the sharp rise in income inequality between the mid-1980s and mid-1990s. Wages and salaries are by far the largest part of household incomes and so inadequate wage rises, particularly in low income households, must be seen as a significant contributor to household income inequality. Increasing the wage levels of low paid and middle income workers will have an impact in reducing levels of inequality.
- 4.4. Specific improvements that the CTU has advocated for in the Employment Relations Amendment Bill to help vulnerable workers are better protection for the pay and conditions of new employees, restoring employment protections for workers when there are changes of contracts, removing the threat of 90 day trials for workers, removing barriers to union access to workplaces, and restoring rights to rest and meal breaks. The Employment Relations Amendment Bill currently before Parliament makes progress on each of these points, although as currently drafted would retain 90-day trials (during which the protection from unjustified dismissal is removed) for businesses with fewer than 20 employees.
- 4.5. Since the removal of industry bargaining arrangements in 1991, New Zealand has lacked a mechanism to negotiate and set standards for terms and conditions on an industry basis, with collective bargaining limited to the enterprise level and limited provision for multi-employer agreements. In addition to strengthening support for collective bargaining, the CTU has supported development of a system for industry standard agreements. The 2017 Labour-led coalition government has signalled support for developing a process for such arrangements, to be known as Fair Pay Agreements.
- 4.6. As well as strengthening collective bargaining there is a need for continual lifting of the minimum wage. The CTU policy is for the minimum wage to be two thirds of the average wage.

4.7. Paying a Living Wage ¹and progressing pay equity claims and settlements are critical mechanisms to raise the pay of undervalued and underpaid groups of workers and to achieve greater income equality.

4.8. ***Recommendations***

4.8.1. Stronger collective bargaining and union protections for vulnerable workers union coverage of new and agency workers; union preferences, access to worksites and delegate rights.

4.8.2. Implementation of Living Wage mechanisms and progressing pay equity claims and settlements to achieve greater income equality.

4.8.3. That the amendments to the current Employment Relations Amendment Bill are supported in order to better protect vulnerable workers.

4.8.4. That processes to negotiate industry standards, to be known as Fair Pay Agreements, be developed in consultation with social partners as an effective means of improving wages and conditions of work.

5. Incomes and Inequality

5.1. The pattern of generally low incomes and high levels of inequality in the New Zealand economy has produced high rates of child poverty. This is particularly so for people dependent on benefits but four out of ten children in poverty are in households where at least one adult was in full-time paid employment or was self-employed (Perry, B, 2017).

5.2. As well as major inequalities in health and education, Māori face glaring inequality in the labour market and workforce. Those inequalities create significant social and economic harm to whānau and communities. A report released in 2018 by Business and Economic Research Ltd (BERL), Ngai Tahu and the Maori Futures Collective calculated the financial cost to Maori workers of the inequality (Te Rūnanga o Ngāi Tahu, Business and Economic Research Ltd , & Maori Futures Collective, 2018). The

¹ The official Living Wage is current set at \$20.25 an hour.

current working Māori population are taking home NZ\$140 a week less than average workers and Māori workers between the ages of 40-59 are taking home NZ\$200 less a week. One factor in this inequality identified by the report was that of the working Māori population, one third have no qualifications and over half are employed in lower-skilled jobs. Increasing insecurity of work is widely recognised as an issue for New Zealand working people. Workers outside of the protections of the employment relationship are most vulnerable of all.

- 5.3. Statutory redundancy payments for workers are lacking. An OECD analysis has commented that our redundancy protections and income replacement rates are among the lowest in the OECD and that working people have shouldered most of the costs of economic restructuring themselves (OECD, 2017). There is a collective responsibility to protect the security of working people and their families when jobs are taken off them in a highly insecure job market.
- 5.4. There is a strong and demonstrable relationship between low wages, the removal of adequate structural support for collective bargaining and widening inequality. Weak wage and salary growth for people on low and middle incomes and growing inequality in gross incomes requires additional support through the tax and transfer (benefits and income support) system to prevent the growth of high levels of inequality.
- 5.5. The New Zealand tax-and-transfer system is among the weakest in the OECD in reducing income inequality. Systems for both tax and transfers were weakened by the previous Government. For example, the Working for Families welfare programme reduced in real value by \$700 million between 2010 and 2017. Abatement rates were increased in the 2011 Budget and the threshold reduced. While Labour has announced a substantial increase in Working for Families payment rates, abatement rates remain high.
- 5.6. Benefits rates are too low and there has been no substantive adjustment to the benefit rates to rectify the savage welfare cuts made in 1991. Benefit levels are

inadequate to provide a reasonable standard of living and participation in society. They almost guarantee that those dependent on them will live in poverty.

5.7. Added to these problems is that New Zealand has a very high rate of household indebtedness and a major housing unaffordability problem. Home ownership is increasingly unaffordable nationally and in Auckland among the least affordable in the world, private rental housing is poor quality, frequently dangerous to its residents' health, and rents are rising much faster than incomes.

5.8. **Recommendations**

5.8.1. The introduction of statutory redundancy payments for all workers.

5.8.2. Benefits levels increased to a level that is enough to ensure people do not live in poverty.

6. Work and Discrimination

6.1. The CTU is concerned that minimum wage exemption permits are still in place, which enable the payment of appallingly low wages to disabled people. The current permit system embeds discrimination and does not reflect modern disability empowerment principles.

6.2. While a working group was established with the objective to review minimum age exemptions, it has stalled completely and there has been no progress on this in the last two years. This work needs to be recommenced with the objective to cease the current minimum wage exemption process on the grounds of breaching human and employment rights.

6.3. Social services to Māori communities, including early childhood education (ECE) and primary healthcare, are frequently provided by dedicated Māori community organisations receiving government funding. However, funding arrangements mean that Māori ECE teachers working for Kōhanga Reo (Māori language early childhood centres) education providers and Māori nurses working for Māori and iwi (tribal)

health providers receive lower pay for work of equal value to that of their counterparts in non-Māori organisations.

- 6.4. The CTU has submitted on previous social security legislation that there needs to be changes to treatment to ensure that Work and Incomes practices are in line with International Labour Convention 44 on Unemployment Provision. This compels the government not to sanction beneficiaries for refusing jobs unless the offer is “on terms and conditions no less favourable than those usually offered for the type of work in the region”.
- 6.5. It is important to note that a new working group has been established to review New Zealand’s welfare system. We strongly support and commend the goal of the current Government to move to a fairer welfare system that is focused on benefit entitlements and not sanctions resulting in hardship and poverty.

6.6. **Recommendations**

6.6.1. Remove minimum wage exemptions for disabled people.

6.6.2. That it is noted that workers employed in Māori based services such as Kōhanga Reo and iwi health providers face considerable pay inequality.

6.6.3. The removal of sanctions whereby beneficiaries are stood down from benefits for refusing jobs unless the offer is “on terms and conditions no less favourable than those usually offered for the type of work in the region”.

7. Children and Employment

- 7.1. In the 2014 CTU submission to the UPR we submitted that the lack of a minimum age for children in employment under age 16 results in New Zealand not ratifying a core international labour standard: ILO Convention 138, Minimum Age, and also places a reservation by New Zealand under the UNCROC Treaty.
- 7.2. While Section 30 of the Education Act 1989 places restrictions on the employment of children aged under 16 to ensure that any employment does not interfere with their schooling, it is inadequate as a full protection.

- 7.3. The position of the Government previously has been that there are a range of protections and restrictions on young people's work, mainly regulated by a combination of education and health and safety legislation removing the need for changes to legislation and not requiring a minimum age of employment.
- 7.4. But there are problems with this. Children and young persons have a must less understanding of their employment rights. In surveying 11-15 year olds in work, (Gasson, Linsell, Gasson, & Munder-McPherson, 2003) found that only 15 percent were aware of any employment rights at all while 40 percent did not know and a third avoided the question. Secondary school students in employment have low levels of awareness surrounding their employment rights, low rates of union membership and a 50 percent likelihood of having a formal written employment agreement (O'Neill, 2010).
- 7.5. Because of this vulnerability and their weakened bargaining power, there is a need to ensure youth are well protected in employment relationships.
- 7.6. There is a compelling case for better data about children in employment. Current government statistics do not adequately capture youth employment.
- 7.7. Stronger measures need to be in place and implemented to ensure safety of children in employment and an examination of ways in which New Zealand could be compliant with the relevant ILO standards.
- 7.8. **Recommendations**
- 7.8.1. *Data on children in employment to be annually collected and analysed.***
- 7.8.2. *Investigation of how New Zealand could ratify ILO C138 and lifting of the reservation on UNCROC relating to a minimum age for children entering employment.***

8. Equal Pay for Work of Equal Value

- 8.1. Equal pay and pay equity are fundamental human rights and core trade union concerns, enshrined in international law, that require men and women to be paid

fairly and according to the value of their work and to eliminate pay and employment discrimination in the workplace on the basis of gender.

- 8.2. Major progress has been made on the implementation of equal pay for work of equal value following the case taken by the then Service and Food Workers Union, on behalf of experienced caregiver Kristine Bartlett. The Union claimed that Kristine being paid a wage close to the legal minimum, despite having over 20 years caregiving experience, was in breach of the Equal Pay Act 1972 (Bartlett versus Terranova).
- 8.3. Following the success of this case in the Employment Court and Court of Appeal, the then government established a tripartite group to establish principles in the Equal Pay Act 1972 that would provide for clear processes for taking equal pay for work of equal value pay claims. The Bartlett case was the first case to be successful in showing that the Equal Pay Act 1972 did provide for equal pay for work of equal value. In the wake of the Bartlett case, a tripartite Joint Working Group was established and principles developed and agreed to by government, employers and the union parties. These principles are now in the process of moving into legislation and will provide a much stronger and established process for taking equal pay for work of equal value claims. As well they provide a climate and an expectation of gender equality in wages.
- 8.4. The current Government has a commitment to closing the gender pay gap. The care and support workers settlement in 2017 increased the pay of more than 55,000 support workers in the aged care and disability sector by an average of 20 percent. In 2018, 5,000 mental health support workers were added and included in that settlement. Now, other occupational groups who work in historically undervalued work are taking equal pay claims and have an expectation of equal pay for work of equal value. School support workers, teacher aides, social workers working in the Ministry for Children (Oranga Tamariki) and administrative support staff in District Health Boards all have active pay equity claims and processes in train.

8.5. Lack of transparent pay rates hides the problems of unequal pay. The intention of the new Minister for Women to introduce pay transparency and bring transparency about women's pay rates will contribute to gender pay equality. Ethnicity data should be collected to establish ethnic gender pay gaps.

8.6. Recommendations

8.6.1. Legislation that provides for women workers to take cases under the Equal Pay Act 1972 that will ensure the upholding of the principle of equal pay for work of equal value.

8.6.2. Pay transparency processes and information to achieve gender wage equity.

9. Parental Leave

9.1. Parental leave is a human rights obligation and a fundamental component necessary to achieve gender equality in the workplace. Article 11(2)(b) of CEDAW requires States "to introduce maternity leave with pay or comparable social benefits. One of the first acts of the new Government was to increase paid parental leave to 26 weeks. The full availability of 26 weeks paid parental leave will be in place by 1 July 2020.

9.2. While this is extremely welcome, New Zealand provisions for paid parental leave are low and lag behind comparable OECD countries. The maximum rate of the parental leave payment (from July 1 2018) is \$563.83 per week (gross). This is nearly \$100 less than a 40 hour week on the minimum wage (\$660).

9.3. Current priority issues are not only the low level of the leave payment but also the unavailability of paid parental leave to partners – both essential provisions for gender equality. The CTU submitted in their submission to CEDAW (NZCTU, Te Kauae Kaimahi, 2017) that there needs to be a comprehensive evaluation of paid parental leave in New Zealand including analysis of gender equality impacts and issues in returning to work – the last evaluation having been more than 10 years ago.

9.4. **Recommendation**

9.4.1. Investigation of mechanisms to increase the minimum paid parental leave payment; paid leave of four weeks for partners; and evaluation of New Zealand's paid parental leave systems.

10. Health and Safety at Work

- 10.1. Working people deserve to have workplaces that are healthy and safe. They have the right to expect that they will return home from work every day free from injury and work-related disease.
- 10.2. The Independent Taskforce on Workplace place health and safety was established in 2020 to assess whether the workplace health and safety system in New Zealand was fit for purpose and to recommend strategies to reduce the unacceptable and appalling rate of workplace fatalities and serious injuries. The Taskforce described the situation as “appalling, unacceptable and unsustainable” (Independent Taskforce on Workplace Health and Safety, 2013).
- 10.3. The new health and safety legislation (the Health and Safety at Work Act 2015 and its regulations) has been a significant step forward in establishing a better framework for health and safety. But there are still significant gaps and problems and considerable work to do in rebuilding the regulations and guidance and improving the health and safety outcomes for New Zealand workers.
- 10.4. A priority for the CTU is for unions to be restored as recognised partners in the health and safety system. Proposed solutions and changes should include better union access to workplace and plant for health and safety reasons. Workers and their unions should be fully involved in all health and safety systems in the workplace.
- 10.5. The exemption for small-to-medium businesses to not be required to have health and safety representatives or committees is unprincipled and undermines workers' safety and health protection. This should be overturned.

- 10.6. There are some specific issues and risks that need attention by the regulator. In its advice to the Incoming Government in 2017 the CTU listed asbestos, methyl bromide, silica, fatigue, workplace violence, construction-related risks, risks to young people and risks to female workers all as health and safety issues needing more attention.
- 10.7. Māori and Pasifika workers are consistently over-represented in workplace injury rates. This reflects systematic racial inequalities in New Zealand workplaces. Between 2002 and 2015, Māori workers were on average 39 percent more likely to suffer a serious non-fatal injury at work than the general population. For the years 2013-2015, Māori workers were 31 percent more likely to suffer a non-fatal serious work injury.²
- 10.8. Research by the Department of Labour (now part of the Ministry of Business, Innovation, and Employment – MBIE) in 2012 found that Pasifika workers in manufacturing had consistently higher rates of injury than the general population, with Pasifika people working as labourers injured almost twice as often as non-Pasifika people in the same jobs (Labour and Immigration Research Centre, Department of Labour, 2012) .The report also suggested that inequality of power in the workplace and the hesitance of workers to challenge authority had negative effects on health and safety
- 10.9. **Recommendations**

10.9.1. Restore the role of unions in health and safety legislation and government agencies recognise and promote the benefits of union involvement in health and safety.

10.9.2. Repealing the legislation that allows an exemption of small to medium sized businesses from health and safety obligations.

² Based on a comparison of three-year averages for age-normalised injury rates reported by Statistics NZ. http://www.stats.govt.nz/browse_for_stats/health/injuries/serious-injury-outcome-indicators-reports.aspx

11. Child Poverty: A Major Issue

- 11.1. New Zealand has very high child poverty rates, high rates of domestic violence, very high rates of suicide, high imprisonment rates, and very unequal outcomes for Māori and Pasifika. The effect of high levels of income inequality impact on economic growth, physical and mental health, social cohesion, trust, serious crime levels and social mobility.
- 11.2. New Zealand has one of the highest child poverty rates in the developed richer nations (Perry, 2016). Māori and Pasifika children are grossly over-represented in the child poverty statistics. Just under half of children in poverty by current measurements are Māori or Pasifika and rates of poverty (including persistent poverty) for Māori or Pasifika children are around double those for Pākehā/ Palagi.
- 11.3. The experience of child poverty is directly responsible for many of the difficulties that people experience later in life. Children are unable to participate in their communities and do not have the necessary conditions in life to enable them to become functioning and participative members of their communities. It imposes deleterious effects that have life time effects for adults from poor long-term health, missed educational and job opportunities.
- 11.4. **Recommendation**

11.4.1. The CTU's support for the Child Reduction Poverty Bill currently before Parliament is noted. This legislation contains an agreed suite of measures, and a regular system for measuring and reporting on child poverty.

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