



NEW ZEALAND COUNCIL OF TRADE UNIONS
Te Kauae Kaimahi

**New Zealand Council of Trade Unions
Te Kauae Kaimahi**

Submission on the

**Taxation (Annual Rates, Business
Taxation, KiwiSaver, and Remedial
Matters) Bill**

to the

Finance and Expenditure Committee

12th July 2007

1.0 Introduction

- 1.1 The New Zealand Council of Trade Unions - Te Kauae Kaimahi (CTU) is the internationally recognised trade union body in New Zealand. The CTU represents 39 affiliated unions with a membership of over 350,000 workers. The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Runanga o Nga Kaimahi Māori o Aotearoa (Te Runanga) the Māori arm of Te Kauae Kaimahi (CTU) which represents approximately 60,000 Māori workers.
- 1.2 This submission will focus entirely on those aspects of the Bill that relate to KiwiSaver. However we do note that the Bill introduces a tax credit for R&D. The CTU has supported such a tax credit in our prior submissions on the basis that such a tax credit should encourage firms to be innovative, and is consistent with the recommendations of the Manufacturing+ report released in November 2006.
- 1.3 We note also that only some aspects of KiwiSaver are addressed in this Bill, whereas our submissions raise a number of issues including those already determined by existing legislation. However it is our view that this Bill is an opportunity to address key issues in the design of KiwiSaver.
- 1.4 The CTU supports the introduction of KiwiSaver.
- 1.5 The CTU has been a strong advocate for reform of workplace savings. We supported tax changes on employer contributions, changes in prospectus requirements, and have worked closely with Business NZ, Office of the Retirement Commissioner, ISI, ASFONZ, NZ Bankers' Association and other stakeholders to address issues which could promote workplace savings. We have supported the increases in NZ Superannuation payments, and a degree of prefunding of future payments of NZ Superannuation. The CTU also supported the 21-cent

tax rate that can be voluntarily applied (since April 2004) by employers to retirement savings contributions for those employees earning under \$38,000. We do not agree however with the application of this tax rate being at the discretion of the employer as it prevents some workers from accessing the benefit of the lower tax rate. We note that KiwiSaver schemes are exempt from SSCWT for up to 4% of contributions.

- 1.6 The CTU made submissions in support of the prospectus changes in the Business Law Reform Bill. The CTU made a submission on the Final Report of the Savings Product Working Group. In our submission we opposed the exemption for small firms and also the proposed “de minimus” of \$10 a week. These positions by the CTU are consistent with our advocacy that as many workers as possible should have access to KiwiSaver schemes. We are pleased therefore that both these aspects were dropped from the design of KiwiSaver.
- 1.7 The CTU was actively involved in the process to establish the State Sector Retirement Savings Scheme (SSRSS). We also participated in two working parties to examine the feasibility of enhancing SSRSS and also extending its coverage within the broader state sector. There is disappointment that the Budget 2007 announcements have now excluded that possibility. The relationship between the SSRSS and KiwiSaver will need to be worked through carefully and the CTU supports ongoing branding for state sector savings to help promote state sector employment and a whole of government approach, while ensuring that state sector workers have the best deal possible.
- 1.8 The CTU made extensive submissions on the original KiwiSaver Bill in early 2006.
- 1.9 In general the reaction of unions to KiwiSaver has been positive. We particularly support the Budget 2007 announcements of phased in employer contributions. However, there is a major concern that many

workers will struggle to save 4% of their gross pay. This is the key issue addressed in our submission.

2.0 Summary of submissions

2.1 A key issue is the minimum worker contribution rate. We have previously submitted that there should be a 2% entry point in addition to 4% and 8%. Our preference is to move to a situation where there is only a compulsory employer contribution and no requirement for a worker contribution. However we support a 2% entry point as an alternative. Another option is for workers to be able to phase in at 1%, 2%, 3% and 4% as employers can. The issue of a lower entry point than 4% has been consistently argued by the CTU.

2.2 The transitional provisions (Schedule 4) that allow a worker to make a 2% contribution matched by the employer and for that arrangement to stay in place until 1st April 2010 should continue beyond 1st April next year. It is recognised that this proposal depends also on whether or not there is an ongoing 2% entry level or some other option of less than 4% as outlined above. However, a less favourable alternative is for employer contributions to continue to count towards 4% as an ongoing feature of KiwiSaver. A minimal option would be for this to apply until April 2010, then convert to 6% and then to 8% by 2011. We also submit that at least for employers that have entered such arrangements prior to April, 2008, then those employers should be allowed to offer a 2+2 facility to workers commencing employment with that employer after April 2008.

2.3 Employer contributions should be either the relevant percentage of \$20 a week whichever is the greater. Given that an employer tax credit is available, the CTU believes that employer contributions should not be less than \$20 a week. This would apply in the case of our submission that a minimum of 2% would apply for a minimum worker contribution, or under the transitional provisions.

- 2.4 The CTU submits that contributions should be over and above wages and salary. Some employers are trying to persuade workers to accept a salary sacrifice, then the employer from April next year can claim the full employer tax credit, but the employer has not made any additional contributions. All that has happened is the worker has taken part of their wage as a retirement savings contribution and the employer gets a windfall tax credit.
- 2.5 Also, some employers are attempting to get workers to agree, once they get a wage increase, not to enrol into KiwiSaver in the subsequent year. That appears to be a breach of the Act but this should be clarified. In our previous submissions on the KiwiSaver Bill, the CTU raised issues about good faith requirements of employers in respect of workplace savings. Given reported actions of employers it may now be necessary to revisit this proposal.
- 2.6 It is unclear that the \$20 figure for the member tax credit and the employer tax credit is to be adjusted annually to take account of inflation and wage adjustments. This is presumably by regulation.
- 2.7 The exclusion of those aged 16/17 years from automatic enrolment and also the benefits that accrue in the form of tax credits is discriminatory. The CTU submits that there should be no such exclusion and that the full benefits of KiwiSaver apply to those workers aged 16 and 17 years old.
- 2.8 When a worker takes a contributions holiday, the CTU submits that employer contributions should continue. It is recognised that the worker would not get the member tax credit for that period.
- 2.9 The CTU does not support the deduction of contributions from redundancy pay as that is a compensatory payment.

- 2.10 The CTU submits that when a worker is on paid parental leave or ACC and continues to contribute, then the employer contributions should also continue. The employer contributions could be based on up to 4% of an average week's pay prior to leave or ACC being taken.
- 2.11 The CTU notes that assurances were made on 5th June that the Social Security Amendment Act will not require that a person needs to withdraw retirement savings before any eligibility for a benefit but this needs to be confirmed.
- 2.12 The CTU submits that the \$5,000 matching for first home buyers is too low and we propose instead a 2:1 subsidy from the Government (i.e. up to \$10,000).
- 2.13 The CTU supports a principles-based regulatory framework. We recognise that the regulatory aspects are not being specifically addressed in this Bill, but it is important to raise these issues in the context of the submission.
- 2.14 The CTU supports the need for ethical investment rules.
- 2.15 The CTU believes that it should be possible for a worker to transfer from a KiwiSaver scheme to a complying fund with no loss of benefits except for the fees subsidy.

3.0 2% minimum contribution

- 3.1 In our submission on the KiwiSaver Bill (28 April 2006), the CTU said that:

"It is accepted that a 4% contribution is desirable. However, 2% is better than no contribution. Also a 2% deduction may be a better point of entry for new savers to establish a savings habit. The major concern is that thousands of workers will either opt out or not opt in to a KiwiSaver scheme because the minimum employee contribution rate is too high. This combines with the problem that an employer contribution cannot count as part of the minimum contribution. The options of 4% or 8% are too inflexible and may be contrary to the purpose of the Bill".

- 3.2 In that submission we suggested a 2% level even if the default position remained at 4% (meaning that automatic enrolment was at 4%, but workers could opt for either 2% or 8% as an alternative). Existing workers could choose 2% or 4% or 8%.
- 3.3 In the event, Parliament did not accept our proposal and opted instead for our second-best alternative proposal which was for the employer contributions to count towards the minimum of 4%. However, this Bill removes that option from 1st April 2008 unless it already applies to a particular worker and employer at that time.
- 3.4 Prior to Budget 2007, the savings industry was generally opposed to a 2% contribution level as they thought it would mean low (and uneconomic) savings balances. However, since Budget 2007, the industry, we believe, is far more sympathetic to a lower entry level of 2% because they know that employer contributions and member tax credits will build up reasonably healthy savings balances especially once KiwiSaver is fully phased in.
- 3.5 So what could possibly be the objection to a lower entry rate of 2%? If it is a concern that 2% from a worker (even with tax credits and employer contributions) will not deliver an adequate lump sum (or annuity) for retirement, then surely a lower than desirable balance is better than no balance. If it is a desire to see more income from workers put into savings rather than consumption to ease inflationary pressures, then that allows the design of KiwiSaver as an effective retirement savings scheme to be compromised because of other policy considerations. And in any case, if more workers join KiwiSaver because of a 2% entry level, then they also sacrifice some consumption.
- 3.6 If KiwiSaver is meant to be a retirement savings scheme for middle-income New Zealanders on the basis of research that shows that if there is a savings problem it is primarily among that group, then why

does the scheme not only apply to a specific income group, or why doesn't the \$20 member tax credit start abating against income from say \$80,000? It is not an adequate argument to say that because low income workers have low pay when they work then having the low NZ Super when they retire is fair enough because they are no worse off. They are worse off because there are specific benefits to retirement savings that provide a greater level of income security in retirement that they could now miss out on.

3.7 Union officials are reporting that there is quite a lot of resistance among low income workers to join at a minimum of 4% of gross salary (which of course is more than 4% of take-home pay). While the Government may be relying on a significant number of workers joining when they start a new job and do not opt out at that stage, it would be much better if as many workers as possible were now enthusiastically joining KiwiSaver without seeing the 4% minimum contribution as a barrier.

3.8 The fact is that there are now significant publicly funded benefits to belonging to a KiwiSaver scheme. In addition, the voluntary action of joining triggers employer contributions of up to 4%. It is therefore extremely unfair to set the bar too high at 4% minimum contribution and we urge the Committee to recommend a 2% option.

3.9 An alternative is to phase in worker contributions from now starting at 1%, changing to 2% in April 2009, 3% in April 2010 and 4% in April 2011. But this means low income workers in 2011 face the same hurdle as now so the preference is for the 2% contribution level as a permanent feature of KiwiSaver.

4.0 Continue to allow employer contributions to count towards the minimum

4.1 The transitional provisions (Schedule 4) that allow a worker to make (for example) a 2% contribution matched by the employer and for that

arrangement to stay in place until 1st April 2010 should continue beyond 1st April next year.

4.2 It is recognised that this proposal depends also on whether or not there is an ongoing 2% entry level or some other option of less than 4% as outlined above. This is our preference. However, a less favourable alternative is that the ability for employer contributions to count towards 4% continues as an ongoing and permanent feature of KiwiSaver as originally provided in the KiwiSaver Act.

4.3 A minimal option would be for this to apply until April 2010, then convert to 6% and then to 8% by 2011. This makes a lot of sense. For employers of low income workers there are some incentives to offer an employer contribution of more than 1% from April 2008 because the maximum tax credit of \$20 is fully payable. While this can still apply if there is a 4% minimum for the employee contribution, it is clear that there is an ongoing logic for employers and workers to agree to 2% + 2% arrangements post April 2008 and prior to April 2010.

4.4 We also submit in the alternative that at least for employers that have entered such arrangements prior to April, 2008, then those employers should be allowed to offer a 2+2 facility (or some other variation to reach 4%) to workers commencing employment with that employer after April 2008 and prior to April 2010.

5.0 Minimum employer contribution to be set at \$20

5.1 Employer contributions should be either the relevant percentage or \$20 a week whichever is the greater. Given that an employer tax credit is available, the CTU believes that employer contributions should not be less than \$20 a week. This would apply in the case of our submission that a minimum of 2% would apply for a minimum worker contribution, or under the transitional provisions.

6.0 Contributions should be on top of wages

- 6.1 The CTU submits that contributions should be over and above wages and salary. Some employers are trying to persuade workers to accept a salary sacrifice, then the employer from April next year can claim the full employer tax credit, but the employer has not made any additional contributions. All that has happened is the worker has taken part of their wage as a retirement savings contribution and the employer gets a windfall tax credit.
- 6.2 This is against the spirit of KiwiSaver. The CTU can accept that those employers that have been making genuine contributions to retirement savings now have the opportunity post April 2008 to recoup some of that expense via the employer tax credit.
- 6.3 Some employers will agree with unions to pass those benefits on to workers in the form of higher employer contributions.
- 6.4 But it is unfair that some employers are attempting to pervert the employer tax credit by suggesting salary sacrifice arrangements as a means of avoiding the cost of employer contributions while at the same time getting tax credits.
- 6.5 The Committee needs to address this issue.
- 6.6 One option is to look again at making contributions over and above salary or wages.
- 6.7 Another option is to make the employer tax credit contingent on a genuine employer contribution by establishing some clearer rules around its application.

7.0 Impose good faith requirements on employers

- 7.1 Some employers are attempting to get workers to agree, once they get a wage increase, not to enrol into KiwiSaver in the subsequent year. That appears to be a breach of the Act but this should be clarified.
- 7.2 This appears to arise from an employer belief that it is unfair to treat two workers differently on the basis of one getting an employer contribution whereas the other employee does not. But this is not logical. KiwiSaver is voluntary. Employer contributions are only triggered if an employee joins. The Government is compensating employers for a significant portion of employer contributions. Employers should therefore not lump retirement savings contributions and wages into the same package.
- 7.3 Some employers have taken the opposite approach and have said they will give all employees an employer contribution. So we are only talking about a small minority of employers but it is still a major concern.
- 7.4 In our previous submissions on the KiwiSaver Bill, the CTU raised issues about good faith requirements of employers in respect of workplace savings. Given reported actions of employers it may now be necessary to revisit this proposal.
- 7.5 There were some practical issues about the application of good faith, and it may be better to separate out this concept from the Employment Relations Act and make it part of a set of stand-alone employer requirements in respect of KiwiSaver.
- 7.6 The CTU proposes therefore that workers can directly (or through their union) take an action against an employer if they have attempted to get workers to agree to contract out of KiwiSaver entitlements, or there has been some other deliberate employer action that has disadvantaged the worker. Remedies should be available.

7.7 We distinguish this behaviour from the actions of an employer wanting to avoid giving advice to workers and thus appearing to promote unfairly a scheme, contribution level, investment option or some other course of action and risk liability in the process. We are talking about deliberate attempts to undermine the intention of KiwiSaver.

8.0 Regularly adjust \$20 maximum

8.1 It is unclear that the \$20 figure for the member tax credit and the employer tax credit is to be adjusted annually to take account of inflation and wage adjustments. This is presumably by regulation.

8.2 The Act should make it clear that the \$20 will be adjusted on 1st April or 1st July each year.

9.0 Include 16 and 17 year old workers

9.1 The CTU does not support the exclusion of 16 and 17 year old workers from the full benefits of KiwiSaver.

9.2 It is acknowledged that a person under the age of 18 can join a scheme and receive the \$1000 kick start. However, this is different from a person who is already in employment and who should be treated the same as a worker aged 18 years and over in respect of KiwiSaver.

9.3 Preventing young workers from the benefits that accrue in the form of all the available tax credits and employer contributions is discriminatory. The CTU submits that there should be no such exclusion and that the full benefits of KiwiSaver apply to those workers aged 16 and 17 years old.

9.4 If a young person has obtained an exemption for early release from schooling under the Education Act and enters the workforce at 15, they too should be eligible.

10.0 Contributions holiday

10.1 When a worker takes a contributions holiday, the CTU submits that employer contributions should continue. It is recognised that the worker would not get the member tax credit for that period.

10.2 It is acknowledged that the design of the scheme is such that employer contributions are only triggered by worker contributions. We also note that there could be opportunities for some “gaming” around contributions holidays if some of the benefits continue.

10.3 However in the circumstances where a worker withdraws for a period but then in effect makes up the annual payment it would be difficult then to require the employer to match if their contributions had been stopped. It would be helpful if consideration could be given to these circumstances and whether employer contributions should continue even if there is provision for such contributions to be repaid to the employer in some circumstances.

11.0 Contributions should not be deducted from redundancy pay

11.1 The CTU does not support the deduction of contributions from redundancy pay.

11.2 Redundancy pay is a compensatory payment and therefore should not be included as part of gross income for this purpose even though it is taxable income.

11.3 This should be considered alongside other issues such as overtime, irregular allowances and so forth that should not be considered as part

of wages for the purpose of retirement savings contributions. It is acknowledged that there needs to be a simple formula that is not too burdensome for employers to administer.

12.0 Employer contributions to continue when worker is on paid parental leave or ACC

12.1 The CTU submits that when a worker is on paid parental leave or ACC and continues to contribute, then the employer contributions should also continue. The employer contributions could be based on up to 4% of an average week's pay prior to leave or ACC being taken.

13.0 No requirement to withdraw savings to ensure benefit entitlement

13.1 The CTU notes that assurances were made on 5th June that the Social Security Amendment Act will not require that a person needs to withdraw retirement savings before any eligibility for a benefit but this needs to be confirmed.

14.0 Lift matching for first-home buyers

14.1 The CTU submits that the \$5,000 matching for first home buyers is too low and we propose instead a 2:1 subsidy from the Government (i.e. up to \$10,000).

14.2 This submission is made in the light of the huge problem of home affordability. We have made extensive submissions on that matter elsewhere. Given the current average house price of \$378,672, a \$5000 contribution is helpful but hardly significant.

14.3 It is important also that organisations and individuals have the opportunity to make submissions in 2009 on the income and house price caps in respect of eligibility.

15.0 A principles based regulatory framework

15.1 The CTU supports a principles-based regulatory framework. We recognise that the regulatory aspects are not being specifically addressed in this Bill, but it is important to raise these issues in the context of the submission.

15.2 We have noted various comments made in the media about unitisation, use of reserves, disclosed but un-quantified expenses, and discretionary Trusts as intermediaries.

15.3 We urge the Committee to examine these issues and consider a recommendation that any regulations are based on a principle that is of fairness. This would mean that KiwiSaver providers would be barred from pursuing their commercial gain at the expense of their clients – otherwise than to the extent that is fully declared in the scheme documents.

16.0 Ethical investment

16.1 The CTU supports the need for ethical investment rules. We recognise that any investment fund will always want to seek maximum returns subject to what the particular design of that fund is. However KiwiSaver providers are in effect receiving a significant level of public funding and it is appropriate for the Government to set certain standards of ethical investment in such circumstances.

16.2 At the very least, the Committee should require that funds disclose whether they have a responsible investment policy and if so describe it.

17.0 Transferability

- 17.1 The CTU believes that it should be possible for a worker to transfer from a KiwiSaver scheme to a complying fund with no loss of benefits except for the fees subsidy.
- 17.2 We accept there is a risk of gaming around the \$1,000 kick start if a person transfers to a KiwiSaver scheme, picks up the \$1,000, and then transfers back to a complying fund. However that could be addressed.
- 17.3 But we do not see why any option for a worker to transfer to a complying fund should be barred. For instance a worker may join a firm where there is a complying fund, but the worker is already in a KiwiSaver scheme. Upon learning that all her or his workmates are in another scheme, the worker may want to swap to the complying fund. This should be allowed.

18.0 Summary

- 18.1 The CTU supports KiwiSaver. Our submission focuses almost entirely on this aspect of the Bill.
- 18.2 The CTU has made a number of submissions on the minimum level of contribution, extension to the Schedule 4 transitional window of opportunity, a minimum employer contribution of \$20, concerns about employer conduct, deductions from redundancy pay, discrimination against workers aged under 18 years, regular adjustment of the \$20, first-home buyer scheme, transferability to complying funds, ethical investment, regulatory requirements, the position of workers on paid parental leave or ACC and contributions holiday arrangements.
- 18.3 However our primary submission is that we urge the Committee to address the minimum level of contribution. Our preference is for compulsory employer contributions only with no requirement for an

employee contribution. However, consistent with the position we have advocated in prior submissions we advocate a 2% minimum for the worker (with a \$20 minimum employer contribution) with the option that it could be an opt-in minimum for the worker with the default level remaining at 4%.