



NEW ZEALAND COUNCIL OF TRADE UNIONS
Te Kauae Kaimahi

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

to the

Transport and Industrial Relations Select Committee

on the

Employment Relations Amendment Bill

Part I

P O Box 6645
Wellington

25 July 2013

Part I

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Note:

The CTU submission is in two parts. This part (Part I) reviews the justification for the Bill's proposed changes along with an overview of their likely effects on collective bargaining, vulnerable workers, income inequality and adequacy and on the economy. Part II contains detailed discussion of the significant changes and the CTU's recommendations. See Part II for further details including a summary of our recommendations on each of the significant changes.

Part I

2. Introduction and outline of submission

- 2.1. This submission is made on behalf of the 37 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With 340,000 members, the CTU is the one of the largest democratic organisations in New Zealand.
- 2.2. 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) which represents approximately 60,000 Māori workers.
- 2.3. The CTU advocates for all New Zealand workers to receive fair treatment and recognition of their rights and voice at work. Workers are entitled to decent, secure work that is healthy and safe and provides adequate remuneration to allow workers to live in dignity.
- 2.4. The CTU condemns the aims of this Bill and the means proposed to achieve them. Most of the changes have been undertaken against the advice of officials, contrary to New Zealand's international commitments, and in the face of evidence and common sense. They are a backwards leap in employment relationships towards the failed paradigm of the 1990s. The Bill should not be enacted.
- 2.5. Writing in 2011 about those of these changes signalled at the time, Otago Industrial Law experts Geare, Edgar and Honey¹ said:

In all honesty, can the Government claim these changes are for the mutual benefit of employers and employees, or even for the benefit of enhancing employment relations in the labour market, evidenced by a weakening of employee rights and a gradual return to numerical flexibility- features very much reminiscent of the early 1990s? These changes will not prosper the employment opportunities of the disadvantaged, but rather they will work against them- inherently discriminating against the young and against women who leave and re-enter the workforce more frequently than do men.

- 2.6. The two major strands of this Bill are an attempt to impact negatively on wages in general (particularly though an attack on collective bargaining and a deliberate weakening of the already diminished bargaining strength of workers) and the removal of protections for workers when they are most vulnerable.

¹ Geare, A., Edgar, F., and Honey, K. (2011) "The Employment Relations Act 2000: a Brief Overview and Suggested Changes" *NZJER* 36(2) 33, 42

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Structure of our submission

- 2.7. New Zealand has become an increasing unequal society with a host of negative social and health consequences. Our submission reviews the negative effects of inequality in section 3 of this part and details how this Bill will make this problem worse.
- 2.8. 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 primarily enterprise-based bargaining since 1991 has led to sharp increases in inequality. We discuss evidence of the importance of collective bargaining in section 4 of this part.
- 2.9. The proposed changes are contrary to International Labour Organisation ('ILO') rules and international treaties that New Zealand has committed to observe. As a result, they are also inconsistent with the provisions of a number of international free trade agreements. The CTU intends to complain to the ILO Committee on Freedom of Association in relation to these and previous breaches. We discuss New Zealand's international obligations in section 5 of this part.
- 2.10. The Government has justified these changes as adding flexibility, creating jobs, making work more productive and appropriately rebalancing the employment law framework towards employers. In section 6 of this part, we review the evidence for each of these claims in detail and conclude they are unsupported by evidence.
- 2.11. In sections 7 and 8 of this part we provide an overview of the likely effects that these changes would have, if enacted, on collective bargaining and on vulnerable workers respectively.
- 2.12. Section 9 of this part sets out the problems the proposed law poses to health and safety and how it may jeopardise efforts to reform New Zealand's abysmal record in this area.
- 2.13. Section 10 of this part summarises our assessment of the effects of the changes on workers, collective bargaining, recourse to legal action and consistency with the objects of the Employment Relations Act 2000 and leads into the detailed analysis of part II of our submission.
- 2.14. Part II of our submission makes technical comment on the significant changes in the Bill and largely follows the order of clauses in the Bill.

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3. The problem of inequality

3.1. We submit that there is a strong and demonstrable relationship between low wages, the removal of adequate structural support for collective bargaining and widening inequality.

3.2. Since deregulation began apace in the 1980s, New Zealand has become a starkly more unequal society. As Max Rashbrooke notes:²

- New Zealand now has the widest income gaps since detailed records began in the early 1980s
- From the mid-1980s to the mid-2000s. the gap between the rich and the rest has widened faster in New Zealand than in any other developed country
- The average household in the top 10 per cent of New Zealand has nine times the income of one in the bottom 10 per cent
- The top 1 per cent of adults own 16 per cent of the country's total wealth while the bottom half put together have just over 5 per cent.

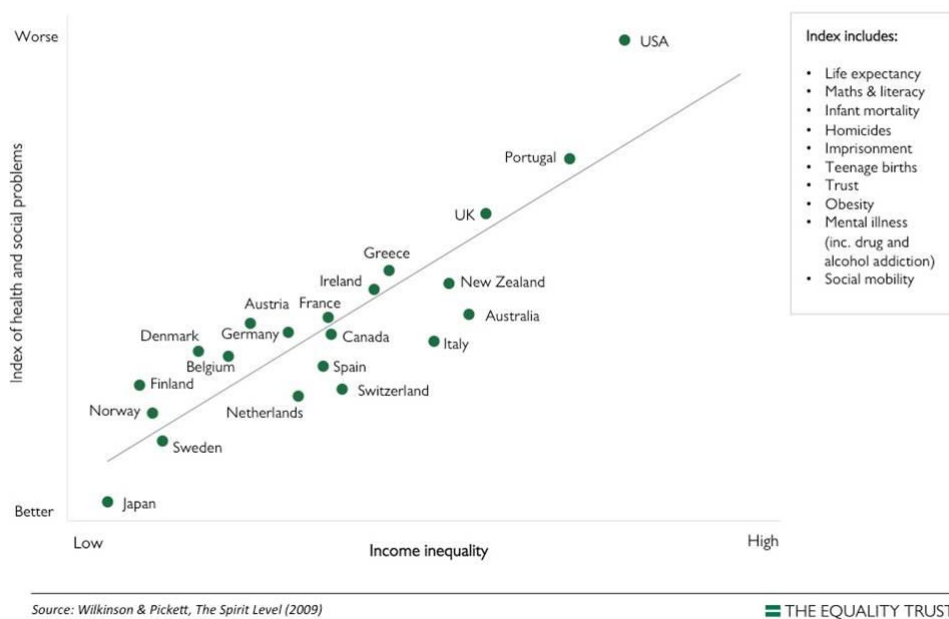
3.3. High levels of income inequality are bad for society. As Richard Wilkinson and Kate Pickett found in their 2010 book, *the Spirit Level*, high levels of income inequality have negative consequences for people at all levels of society. While the book has been the subject of debate, the sheer weight of peer-reviewed research they cite in support of their conclusions – research by themselves and by many other researchers from around the world – means their conclusions cannot be ignored. The following graph summarises their findings:³

² Rashbrooke, M (2013) 'Why Inequality Matters' in Rashbrooke, M (ed) *Inequality: a New Zealand crisis*, 1-2

³ Graph retrieved from <http://www.equalitytrust.org.uk/research/why-more-equality>

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Health and social problems are worse in more unequal countries



3.4. In a recent Guardian article, Wilkinson and Pickett noted:⁴

A growing body of research now shows that the quality of social relations is among the most powerful influences on the happiness, health and wellbeing of populations in the rich countries. After material needs have been met, research has repeatedly shown that further rises in material standards contribute less and less to wellbeing. In rich societies such as the UK, what makes most difference to the real quality of our lives is the quality of community life and social interaction.

Statistics now confirm what many people have always recognised: that inequality is divisive and socially corrosive. The evidence shows that greater equality provides the foundation on which higher standards of social wellbeing can be built.

3.5. Collective bargaining is an important means to greater income equality. This Bill deliberately undermines the bargaining power of workers in order to reduce wages and conditions. We argue that wages will be lower if this Bill is passed than if it is abandoned. This legislation will worsen inequality, increase hardship and poverty and lead to greater reliance on the welfare system or other forms of support rather than a decent job on a living wage as a foundation for well-being.

⁴ Wilkinson, R and Pickett, K (10 April 2013) 'Margaret Thatcher made Britain a less, not more, desirable place to do business' *The Guardian* retrieved from: <http://www.guardian.co.uk/commentisfree/2013/apr/10/inequality-margaret-thatcher-britain-desirable-business>

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3.6. Robert Wade dismantles the argument that an unequal winner-takes-all society generates economic efficiency and innovation. He notes, for example, that:⁵

Inequality above a certain level is macroeconomically inefficient, in that it raises the probability of financial crisis and economic slump. It does so through at least four mechanisms.

First, above a certain level of inequality, economies tend to become 'debt-intensive.' The other side of income concentration as the top is stagnant or falling incomes lower down. One result is insufficient aggregate demand to utilise productive capacity, including the employment of the labour force. So a 'common interest' develops among firms, households, politicians and financial regulators to allow an explosion in private debt to fill the gap between (a) the demand supported by incomes, (b) the demand generated by aspirations to participate in the boom and (c) the demand needed to utilise productive capacity.

Second, above a certain level of inequality, developed economies tend to enter bubble dynamics. After the early 1990s the surge in income concentration unleashed a flood of global capital as those at the top hunted for ways to store and multiply their wealth. Bank assets (loans) soared, and bubbles erupted in housing, property, business and art; with a repeat after the early 2000s. The bursting of the house price bubble in the US, the UK, New Zealand, Iceland and many other western economies helped to turn an ordinary business cycle downturn around 2007 into the larger financial crash and ensuing slump.

Third, the huge returns to financial operations distort business incentives, channelling investment away from productive uses into redistributive uses like mergers and acquisitions, private equity funds, property and financial engineering....

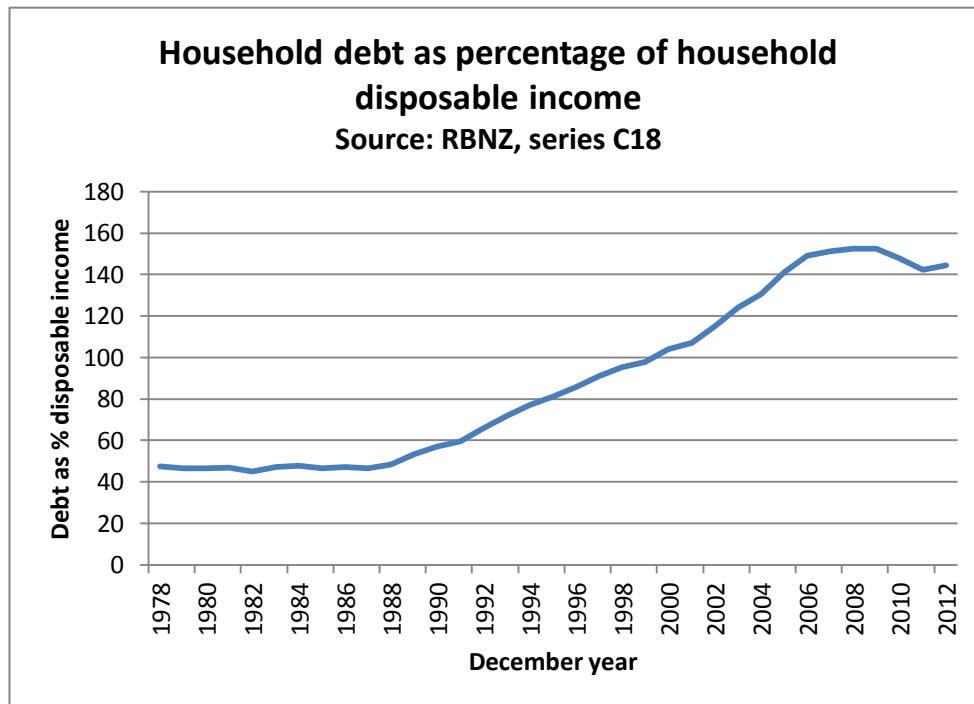
Fourth, and most fundamental, high concentrations of income and wealth propel 'state capture,' such that finance comes increasingly to dominate the state apparatus and the democratic process more generally. In the post-war decades, before the surge in income concentration, 'establishment' elites recognised that their prosperity and privileges depended on the prosperity and social peace of the society at large: accordingly, they designed tax systems to meet widely accepted criteria of equity, and devoted a large part of public spending to public goods rather than redistributive goods (to themselves). Since the 1980s the dominant elites in many capitalist countries see less of a mutual interest in the well-being of their society, and use the levers of state power to sluice resources upwards.

3.7. New Zealand has an extremely high rate of household indebtedness. According to the Reserve Bank of New Zealand's latest figures (Q1, 2013), household debt amounts to 146 percent of annual household disposal income. After being stable for at least a decade up to 1988 at around 47 percent of household disposable income, debt rose almost without pause until peaking at 153 percent in 2008 at the time of the global financial crisis. It has fallen only slightly since then and is beginning to rise again. The ratio rose fastest in 1992 and 1993 when aggregate household

⁵ Wade, R (2013) 'Inequality and the West' in Rashbrooke, M (ed) *Inequality: a New Zealand crisis*, 50

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incomes barely moved while debt continued to rise strongly.

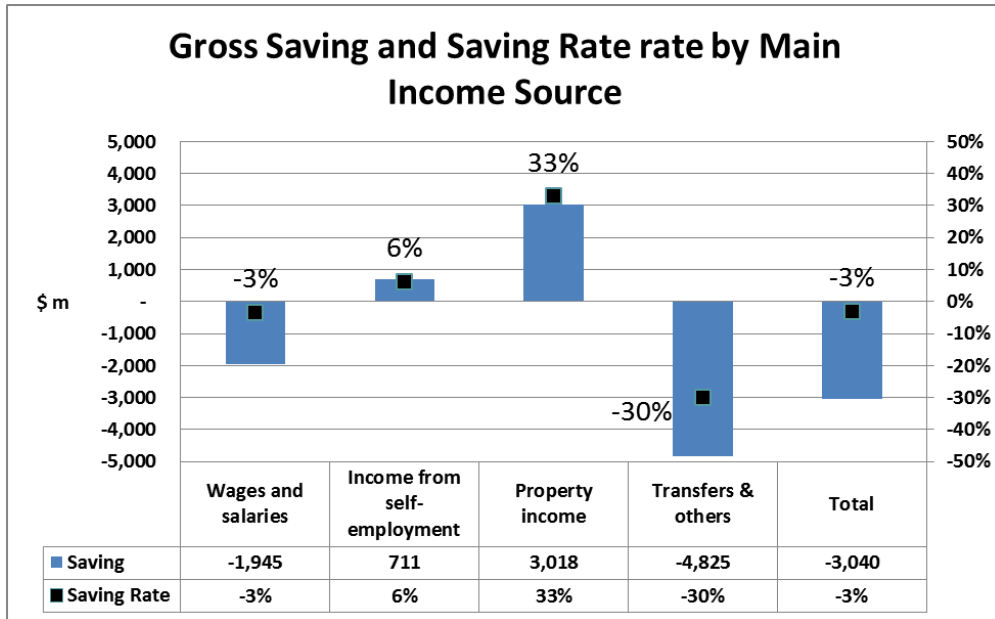


- 3.8. Compounding this, we have a major home affordability problem. Currently intensified by lack of supply of housing in Christchurch and Auckland, the problem is a much longer term one that is severely exacerbated by low incomes. A particularly serious aspect is that it is the lower cost housing (that forms the stepping stone into home ownership for many) which has risen in price most quickly, at least in recent years: a recently published Treasury study found that “lower quartile house prices increased by more than upper quartile house prices in all major regions.”⁶ The 40% of households with the lowest incomes showed high levels of unaffordability of expenditure on housing, whether rented or owned.
- 3.9. The problem is also reflected in low saving rates. The national accounts show household saving falling over the period from the late 1980s until the mid 2000s (which as will be seen below the mid-2000s coincided with increasing wages and salaries). It rose until 2011 and fell again in 2012.

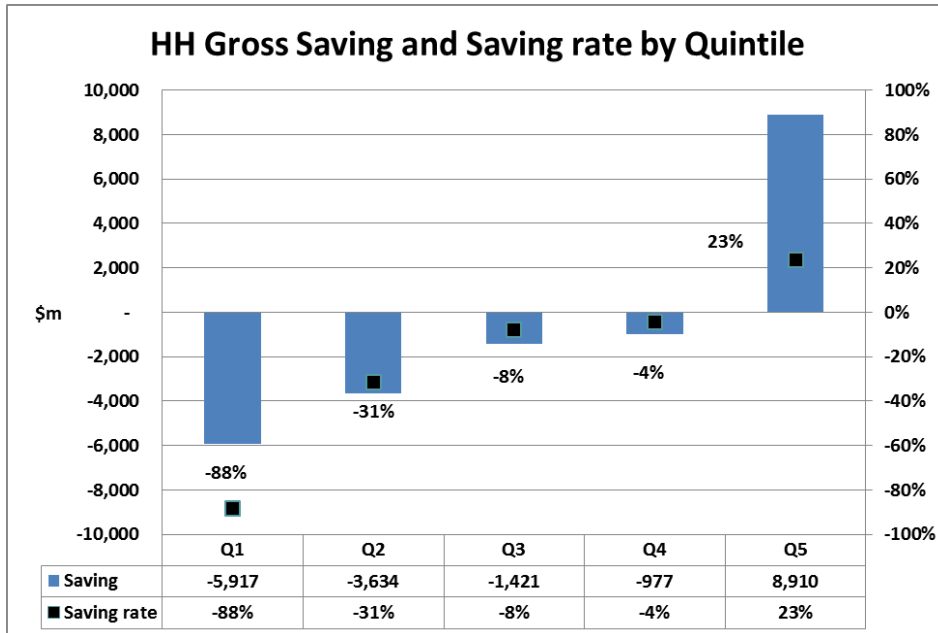
⁶ Law, D., & Meehan, L. (2013) ‘Housing Affordability in New Zealand: Evidence from Household Surveys’ (Working Paper No. WP 13/14) (p. 30). Wellington, New Zealand: The Treasury. Retrieved from <http://purl.oclc.org/nzt/p-1571>

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3.10. Research in progress by Statistics New Zealand shows that wage and salary earners on average are unable to save. Saving is principally by households⁷ whose primary income source is from property income (that is, from capital).



3.11. It also shows that only the top 20 percent of households by income were saving.



3.12. A common defence of a high level of inequality is that it encourages saving because high income households have a higher propensity to save. While saving is

⁷ These are by equivalised households: that is, taking into account the number of people in each household. Source: Cope, J (May 2013) 'Measuring Household Distributions within a National Accounts Framework', Statistics New Zealand, May 2013. Note that this is research in progress and the data used is from 2007.

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concentrated among high incomes, New Zealand's high levels of inequality have not had that effect in aggregate. Instead, saving fell during the 1990s and early 2000s as inequality rapidly increased and wages and salaries stagnated in real terms.

3.13. The trend did not reverse until incomes began rising consistently again in real terms in the mid-2000s. This was a period of changes to the Employment Relations Act 2000 which the current bill is now proposing to largely reverse; followed by a strong push by unions for wage increases including the "5% in 05" campaign and substantial pay rises to nurses and primary and early childhood teachers. It showed in the wages and salaries share of national income beginning to rise after falling almost every year since 1988. The inability of the great majority of households to save has outweighed the saving by the highest income households.

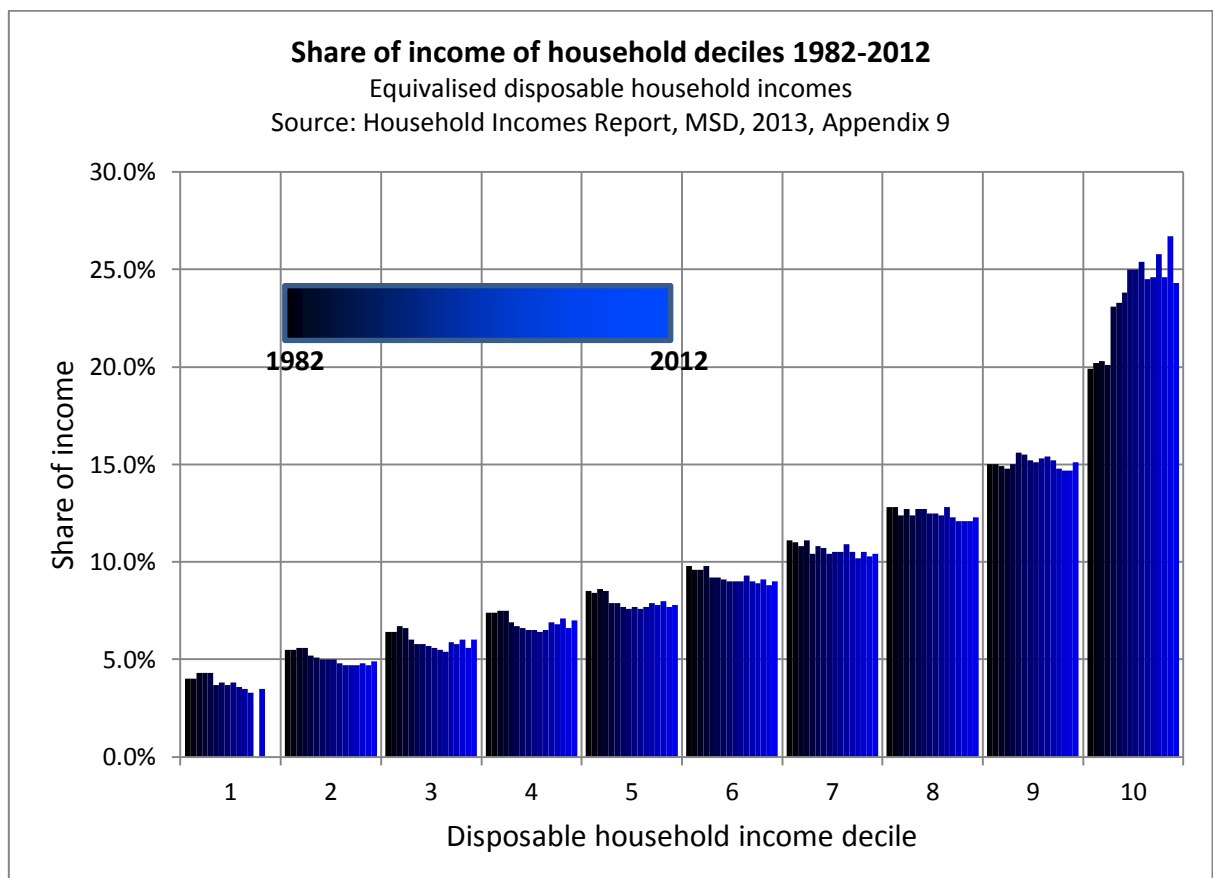


3.14. Since wages and salaries are by far the largest part of household incomes, the inadequate rises particularly in low incomes must be seen as a significant contributor to household income inequality. For households with working age

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members, on average, wages make up almost three-quarters (74 percent) of household income⁸.

- 3.15. Treasury research shows that from 1988 to 2010, the lowest income half of New Zealand households had no increase in income from wages and other “market” income in real terms (that is, after rising prices were taken into account) despite the economy growing by one-third per head of population during the same time.
- 3.16. Stated baldly, all the increase in income in the economy over this period of over two decades has gone to the highest income households. Among these households, the lion’s share has gone to the top 10 percent – and probably, with the exception of the current recession when income from investment and capital gains has temporarily fallen, to the top 1 percent. We deal with this in more detail below.
- 3.17. Even in terms of disposable income, all but the top two deciles of households (taking account of household size) lost income share, and the 9th decile only held its own.



⁸ New Zealand Income Survey 2012, Statistics New Zealand

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- 3.18. The OECD ranks New Zealand at 23rd out of 29 member countries in the strength of its redistribution through the tax and transfer system in 2008.⁹ With such weak redistribution, which has weakened further since 2008, New Zealand is particularly reliant on its wages system for fair distribution.
- 3.19. OECD researchers Koske, Fournier and Wanner also find that in general, higher union density (particularly if it is concentrated among lower and middle income earners) and stronger employment protection legislation for temporary and low paid workers (particularly alongside minimum wages) reduce income inequality. Stronger, effective active labour market policies reduce unemployment and thus labour income inequality.
- 3.20. In particular they find that the strong tendency of trade to increase inequality is reduced by a sufficiently strong union presence and strict employment protection. Given the desire of most political parties to intensify New Zealand's trade, this is an important consideration.¹⁰ A combination of strong unions, good employment protection, especially for low income and temporary workers, and well-designed intensive active labour market policies may allow countries to reap benefits from increased trade without the employment loss and greater inequality that is frequently the case.
- 3.21. Similar findings on the effect of unions have been made by other researchers. For example, Alan B. Krueger, outgoing Chairman of the US President's Council of Economic Advisers and a prominent researcher in related labour market matters, said in a speech on "The Rise and Consequences of Inequality in the United States"¹¹ "David Card and others have shown that unions affect the wage structure primarily by raising the wages of lower middle class workers so they can make it to the middle class". Western and Rosenfeld find that "Accounting for unions' effect on union and non-union wages suggests that the decline of organized labor explains a fifth to a third of the growth in inequality [in the US between 1973 and 2007] – an effect comparable to the growing stratification of wages by education."¹²

⁹ Calculated from data provided with 'Divided We Stand – Why Inequality Keeps Rising', OECD (2011).

¹⁰ Koske, I., J. Fournier and I. Wanner (2012), 'Less Income Inequality and More Growth – Are They Compatible? Part 2. The Distribution of Labour Income', OECD Economics Department Working Papers, No. 925, OECD Publishing.

¹¹ Available at <http://www.whitehouse.gov/blog/2012/01/12/chairman-alan-krueger-discusses-rise-and-consequences-inequality-center-american-pro> , 12 January 2012.

¹² Western, B., & Rosenfeld, J. (2011). Unions, Norms, and the Rise in U.S. Wage Inequality. *American Sociological Review*, 76(4), 513–537.

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- 3.22. Some arrangements regarding unions and collective bargaining are more effective and some are less. It would be much more productive not only for union members but for the country and its economy if these were debated rather than taking measures that unambiguously reduce the effectiveness and coverage of unions and collective bargaining.
- 3.23. As Wade, Kumhof and Rancièrè (among others) observe, the levels of inequality reached in New Zealand are a recipe for social and economic instability and failure.
- 3.24. Good and rising wages bring multiple benefits to families and society. They are necessary to ensure that parents have enough resources to raise their families within a healthy and supportive physical and emotional environment, including good housing. This provides a strong basis for children to benefit from the education that the State offers to them. Adequate wages allow parents more time to spend with their children, to provide stability in the home and the support that is essential for the children to succeed in their education. These are consistently identified as the most important factors in educational success.
- 3.25. Rising incomes allow families to save to buy a home, to provide for retirement, and to be in a sufficiently secure position financially to ride out difficult times.
- 3.26. Along with direct benefits, these buffers reduce the costs to the State of families who are unable to cope without assistance, of health problems caused by poverty, excessive stress and poor housing, and of educational failure brought about by inadequate support for children in the home due to circumstances beyond their parents' or caregivers' control. Transfers such as Working for Families, welfare benefits and many of the costs of ill-health have risen as a result of the failure of the wages system to provide adequately for the needs of the majority of New Zealand's households.
- 3.27. Finally, and equally importantly, good incomes that provide families with a fair share of the production of the nation's economy give them dignity and the confidence that they have a part to play in our society. They encourage participation in our political and social institutions, ranging from sports clubs to political parties and government. They are the basis of a healthy society.

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4. The importance of collective bargaining

- 4.1. Senior researchers at the International Monetary Fund have highlighted the role of income equality and household debt as a root cause of both the Great Depression of 1929 and the current 'Great Recession.' Michael Kumhof and Roman Rancière propose that a key mechanism to avert future crises could be:¹³

[A] restoration of workers' earnings- for example, by strengthening collective bargaining rights- which allows them to work their way out of debt over time. This is assumed to head off a crisis event. In this case, debt-to-income ratios drop immediately because of higher incomes rather than less debt. More importantly, the risk of leverage and ensuing crisis immediately starts to decrease.

Any success in reducing income inequality could therefore be very useful in reducing the likelihood of future crises. But prospective policies to achieve this are fraught with difficulties. For example, downward pressure on wages is driven by powerful international forces such as competition from China, and a switch from labor to capital income taxes might drive investment to other jurisdictions. But a switch from labour income taxes to taxes on economic rents. Including on land, natural resources, and financial sector rents, is not subject to the same problem. As for strengthening the bargaining power of workers, the difficulties of doing so must be weighed against the potentially disastrous consequences of further deep financial and real crises if current trends continue.

Restoring equality by redistributing income from the rich to the poor would not only please the Robin Hoods of the world, but could also help save the global economy from another major crisis.

- 4.2. What evidence is there that unionisation and collective bargaining lifts wages? The evidence for a union wage premium is consistent though as may be expected given the marked different industrial relations systems and histories the effect varies considerably between countries and industries.
- 4.3. English academics Blanchflower and Bryson reviewed the union wage differential in the United States in 2004. They found that while the union wage premium varied considerably between workers and industries it was substantial by international standards.¹⁴ Branchflower and Bryson calculated the 2002 union wage premium at

¹³ Kumhof, M and Rancière, R (December 2010) 'Leveraging Inequality' *Finance & Development* 28, 31

¹⁴ Blanchflower, David G and Bryson, Alex (2004) 'What effect do unions have on wages now and would Freeman and Medoff be surprised?' *Journal of Labor Research* Vol XXV(3) Summer 2004 383, 406-407

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16.5% (slightly down from the historical average of 17.1% between 1973 and 2001).¹⁵

- 4.4. Fournier and Koske of the OECD find in an analysis for six countries for which data on union membership is available (Australia, Canada, Japan, Korea, Switzerland, and the US) that “the earnings of union members are higher and less dispersed than those of other workers, even if one controls for the influence of other factors such as age, education and gender. These findings are in line with earlier evidence (e.g. Gosling and Machin(1995); Machin (1997)). The lower dispersion of earnings among union members may reflect that unions push for greater wage equality among their members or that individuals with higher earnings potential have lower incentives to join a union.”¹⁶
- 4.5. Robust New Zealand research on the union wage premium is scarce but what data there is supports a union wage premium. The CTU’s Bill Rosenberg has compared annual data on wage increases compiled by the Victoria University Industrial Relations Centre (‘IRC’) with the annual Labour Cost Index (‘LCI’):¹⁷

...Going back 20 years to 1992, all wages measured by IRC rose at the rate of 2.9 percent per year, while the LCI rose only at a 2.1 percent rate; the private sector collectives rose by 3.1 percent annually while the LCI rose at only 2.1 percent; core government services collectives rose by 3.0 percent per year while the LCI rose only at 2.2 percent; and core local government services rose 2.3 percent per year while the LCI rose at 2.2 percent.

If we only go back 10 years, to 2002, all wages measured by IRC rose at the rate of 3.5 percent per year, while the LCI rose only at a 2.6 percent rate; the private sector collectives rose by 3.8 percent annually while the LCI rose at only 2.5 percent; core government services collectives rose by 3.1 percent per year while the LCI rose only at 2.2 percent; and core local government services rose 3.4 percent per year while the LCI rose at only 2.6 percent. Even during the years 1992-2002, which was mainly covered by the anti-union and anti-collective Employment Contracts Act, collectives did better... though government employees suffered.

These are significant differences in pay rises. A \$10 wage in 1992 rising at 2.9 percent a year for the next 20 years would be \$17.60 in 2012, but rising at 2.1 percent would be only \$15.30. A \$10 wage in 2002 rising at 3.5 percent per year for 10 years would be \$14.20 in 2012, but rising at 2.6 percent would be only \$12.90.

The average never tells the full story of course. I don’t have the data to compare the distribution of wages and salaries in the collectivised and non-collectivised sectors but one significant difference is that employees on collectives almost all get a pay rise each year. According to the survey done for the LCI, in the three months to June 2012, 43 percent of employees had not received a wage or salary increase in the previous year. The number was as high as 56 percent in late 2009, 58 percent in 1999, and in the early 1990s was up to 69

¹⁵ Blanchflower and Bryson (2004) *op. cit.*, 393..

¹⁶ Fournier, J.-M., & Koske, I. (2012). Less Income Inequality and More Growth – Are they Compatible? Part 7. The Drivers of Labour Earnings Inequality – An Analysis Based on Conditional and Unconditional Quantile Regressions (Working Paper No. 930) (p. 88). Paris, France: OECD. Retrieved from <http://dx.doi.org/10.1787/5k9h28s354hg-en>.

¹⁷ Rosenberg, B (2012) CTU Monthly Economic Bulletin No 139 September 2012 available at: <http://union.org.nz/economicbulletin139>. Note the difference between direct wage comparison in Blanchflower and Bryson’s study and wage increases in the CTU comparison.

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percent, with further employees receiving pay cuts. However for people on collectives, even in those dark days of the early 1990s, around 30 percent – less than half of the proportion in the work force generally – received no increase or pay cuts. Since 1997 there has never been a year when employees on collectives have received a pay cut and since 2003, the number receiving no increase has been in single figures apart from 2012 when it was at 11 percent.

- 4.6. Collective bargaining has importance to wage setting that considerably exceeds the union members directly covered by collective agreements. IRC researchers Blumenfeld and Ryall note that, while the proportion of workers covered by collective agreements is low, the precedent-setting value of collective agreement negotiations is much higher:¹⁸

[T]he prevalence of general terms and conditions which closely mirror settlements reached with trade unions suggests the true reach of collective bargaining extends well beyond union membership roles. Nevertheless, only one-in-five wage and salary workers are directly represented in collective bargaining; most others are non-union workers employed under IEAs. Most often, those agreements will simply reflect those terms and conditions determined through collective bargaining involving unions and employers in the industry.

- 4.7. The International Trade Union Confederation ('ITUC') undertook a detailed review of available evidence regarding the impact of collective bargaining in April 2013. The ITUC concluded that:¹⁹

The facts are clear.

There is absolutely no evidence that countries with highly decentralised collective bargaining systems and weak trade unions gain any economic advantage.

Countries with strong unions, high collective bargaining coverage and synchronised collective bargaining systems have some distinct advantages.

In particular these countries have consistently performed better in terms of unemployment, and they produce a wage distribution that is more compatible with social cohesion, political stability and stable economic growth.

The economic advantages that accrue to countries with highly centralised and coordinated bargaining and high levels of union authority and concentration do not result from excessive wage restraint. Rather they appear to stem from taking labour out of competition. This encourages constructive competition in terms of product innovation, advanced technology, human capital development and better work practices.

- 4.8. The same review found that the New Zealand had the lowest ratio of collective bargaining coverage to union density of the 21 OECD countries it studied (it is

¹⁸ Blumenfeld, S. and Ryall, S. 'Trends in Collective Bargaining: A review of the 2011/2012 year' in Blumenfeld, S., Ryall, S. and Kiely, P. (2012) *Employment Agreements: Bargaining Trends & Employment Law Update 2011/2012* Victoria University of Wellington Industrial Relations Centre, 118

¹⁹ *ITUC Frontlines Report* April 2013 at 47

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currently estimated at around 19 percent), and the third lowest collective bargaining coverage. The widest coverage was in the Nordic countries plus Austria (100 percent), Belgium, France, Spain and the Netherlands, almost all of them high-performing economies. Below New Zealand were only Japan and the US. The next higher than New Zealand was Canada with double New Zealand's collective bargaining coverage, followed by the United Kingdom and Australia (which as of May 2012, had 42.0 percent coverage plus 16.1 percent set by Award only, totalling 58.1 percent).

5. Collective bargaining and New Zealand's international commitments

- 5.1. New Zealand has signed several international instruments mandating work rights for its citizens. Two of the most wide-reaching and fundamental instruments are the International Covenant on Civil and Political Rights ('ICCPR') and the International Covenant on Economic Cultural and Social Rights ('ICESCR').
- 5.2. New Zealand ratified both the ICCPR and the ICESCR on 28 December 1978.
- 5.3. In relation to freedom of associate and trade union rights, art 22 of the ICCPR states:

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

- 5.4. The ICESCR is more expansive in relation to work rights. Arts 6, 7 and 8 of the ICESCR provide the core work rights:

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

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2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 8

- 1. The States Parties to the present Covenant undertake to ensure:
 - (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
 - (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in

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the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country. ...

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

5.5. A leading Canadian labour academic, Professor Roy Adams has researched and written extensively on work rights and international law. According to Adams, “[t]he UN’s covenant oversight committees [the Human Rights Committee and CESCR] have handed down decisions making it clear that both of the core covenants do, in fact, protect the right to bargain collectively as an inherent and inseparable aspect of freedom of association.... From the perspective of the international human rights community, collective bargaining is both an economic right and a civil right.”²⁰

5.6. On ratification, the New Zealand Government placed and has maintained identically worded reservations on Article 22 of the ICCPR and Article 8 of the ICESCR as follows:

The Government of New Zealand reserves the right not [to] apply article [8 or 22] to the extent that existing legislative measures, enacted to ensure effective trade union representation and encourage orderly industrial relations, may not be fully compatible with that article.

5.7. It is important to note the limited nature of the reservation. It did not constitute a blanket ‘opt out’ of the trade unions rights within the ICCPR and ICESCR, only a restriction to ‘ensure effective trade union representation’ or ‘to encourage orderly industrial relations.’²¹

5.8. Arguably, the reservations also applied to “existing legislative measures” in 1978. The changes to the employment law framework have removed the reasons for

²⁰ Adams, Roy J (2008) ‘From Statutory Right to Human Right: The Evolution and Current Status of Collective Bargaining’ 12 Just Labour 48, 49.

²¹ The reservation originally related to compulsory industry-based union membership for the purposes of award coverage and to restrictions on minimum union size. These were expressed as reasons for the original non-ratification of ILO C87 and C98. See (1995) NZPD 49 (6 April 1995).

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these reservations which primarily related to compulsory union membership and minimum union size restrictions. As Gault J noted in *Eketone v Alliance Textiles (NZ) Ltd* 22 with the passage of the Employment Contracts Act 1991 “there no longer appears disconformity between these international instruments and New Zealand's domestic law.” However, the Government's stated view (in 2001) was that although the original reasons for the reservation had been removed, on-going maintenance of the reservation permitted new measures to be inconsistent with art 8 of ICESCR.²³

- 5.9. New Zealand was a founding member of the International Labour Organisation ('ILO') in 1919. From very early on in its history the ILO has recognised the fundamental importance of collective bargaining rights. The Declaration of Philadelphia concerning the aims and purposes of the International Labour Organisation states at art 3(e):²⁴

The Conference recognizes the solemn obligation of the International Labour Organization to further among the nations of the world programmes which will achieve:
(e) the effective recognition of the right of collective bargaining, the cooperation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures;

- 5.10. In 1998, the ILO's annual conference passed the Declaration of Fundamental Principles and Rights at Work. The Declaration passed unanimously with a handful of abstentions. As Adams notes “ In the context of the Declaration collective bargaining was clearly deemed to be equivalent in stature and concern with employment equity and freedom from child and forced labour.”²⁵
- 5.11. In 1948 and 1949, the ILO enacted two interrelated conventions; C87 Freedom of Association and Protection of the Right to Organise and C98 Right to Organise and Collective Bargaining. New Zealand has ratified C98 but not yet C87.
- 5.12. C87 provides the right for workers and employers to establish, join and operate organisations of their choosing (including federations of such organisations) without government interference so long as they follow the law of the land. Art 3 allows “Workers' and employers' organisations... the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their

²²[1993] 2 ERNZ 783, 794-795 (CA)

²³ Second Periodic Report submitted by States Parties under articles 16 and 17 of the Covenant: New Zealand, 16 October 2001, E/1990/6/Add.33 [30 September 2001] at [183]-[184]

²⁴ Adopted by the International Labour Conference in 1944 and annexed to the constitution in 1946.

²⁵ Adams, Roy J (2008) 'From Statutory Right to Human Right: The Evolution and Current Status of Collective Bargaining' 12 Just Labour 48, 54.

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administration and activities and to formulate their programmes” without any interference that would restrict this right.

5.13. C98 regulates interaction between workers, employers and their organisations. Art 1 protects workers against acts of anti-union discrimination (including as a reason for hiring or dismissal). Art 2 protects workers’ and employers’ organisations from acts of interference. A particular prohibition is placed on employers setting up or otherwise attempting to gain control of workers’ organisations. Art 3 requires countries to establish measures allowing the right to organise.

5.14. In relation to collective bargaining art 4 of C98 states that:

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

5.15. There is a special ILO committee tasked with the enforcement of freedom of association and collective bargaining rights (the Committee on Freedom of Association or CFA) and a dedicated complaints process. While New Zealand has not ratified C87 the rights of freedom of association and collective bargaining are recognised by the ILO as sufficiently fundamental that membership of the ILO creates obligations to observe and promote these rights. The CFA has stated that:²⁶

5. Complaints lodged with the Committee can be submitted whether or not the country concerned has ratified the freedom of association Conventions. ...

15. When a State decides to become a Member of the Organization, it accepts the fundamental principles embodied in the Constitution and the Declaration of Philadelphia, including the principles of freedom of association.

5.16. In 1993, the CTU lodged a complaint with the CFA regarding the New Zealand Government’s derogation of rights of freedom of association and collective bargaining by the passage of the Employment Contracts Act 1991. Although New Zealand had not then ratified either C87 or C98, the CFA investigated the matter and found (among other things) that the Act did not sufficiently promote collective bargaining.

5.17. Some of the comments that the ILO made about the Employment Contracts Act can be used also as a benchmark to evaluate the current law. The ILO Committee on

²⁶ *Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO’ Fifth (revised) edition.*

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Freedom of Association found that the lack of support for collective bargaining in the Employment Contracts Act 1991 was incompatible with ILO principles:²⁷

255. As regards employment contracts, the Committee finds it difficult to reconcile the equal status given in the Act to individual and collective contracts with the ILO principles on collective bargaining according to which the full development and utilisation of machinery for voluntary negotiations between employers or employers' organisations should be encouraged and promoted, with a view to the regulation of terms and conditions of employment by means of collective agreements. In effect, it seems that the Act **allows** collective bargaining rather than **promoting** and **encouraging** it.

5.18. The ILO added that to comply with international principles the new Bill must not only allow collective bargaining to occur, it must promote and encourage the regulation of terms and conditions of employment by collective agreements. They said that to achieve this:

- (1) The collective bargaining mechanisms must be clear and easy to operate so that they do not restrict the right of representative unions to bargain.
- (2) The provisions on the relationship between collective and individual employment contracts must reflect the overall principle that collective bargaining should be promoted.
- (3) The provisions on good faith must reflect the overall principle that collective bargaining should be promoted.

5.19. The significant of these treaties should not be understated: In *Kelly v Tranz Rail Ltd*, Chief Judge Goddard noted:²⁸

I acknowledge at once the traditional common law view that treaties that New Zealand makes with other nations are not, by reason of that fact alone, part of the domestic law of New Zealand but require to be embodied in an Act of the New Zealand Parliament before they can become such. ... However, in *Tavita v Minister of Immigration* [1994] 2 NZLR 257 (CA) this view may have been modified, at any rate in relation to treaties establishing international human rights norms, or obligations.

In that case, the Court of Appeal made it clear that such treaties are far more than mere window-dressing. On the contrary, instruments of ratification of international conventions are documents of great solemnity under which, typically, the Government acknowledges that it has considered the convention and "[h]ereby confirms and ratifies the same and undertakes faithfully to observe the provisions and stipulations therein contained" (New Zealand's ILO Treaty Actions as shown in the International Labour Office Official Bulletin 1926-89 compiled in Ministry of Foreign Affairs and Trade, Wellington, June 1996). ...[B]y becoming a member of the United Nations Organisation and its agency the International Labour Organisation, New Zealand has, as a matter of international law, accepted a number of fundamental principles

²⁷ Committee on Freedom of Association, 295th Report_Case No. 1698, emphasis in original.

²⁸ [1997] ERNZ 476, 501

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including those embodied in the Charter of the United Nations, the Constitution of the International Labour Organisation and the Declaration of Philadelphia. These include freedom of association principles. There are, in addition, United Nations Organisation conventions that New Zealand has ratified and which seem to cover the same ground, albeit in somewhat different terms and in less detail than the International Labour Organisation conventions. I am, of course, referring to the International Covenant on Civil and Political Rights and more especially the International Covenant on Economic, Social and Cultural Rights. Both seem to contain, more or less directly, a guarantee of the right to strike as one of the fundamental freedoms, while recognising that it may be subject to limitations under national law as it is in New Zealand. ... The two conventions are plainly treaties establishing human rights norms, or obligations within the contemplation of *Tavita v Minister of Immigration* [1994] 2 NZLR 257 (CA).

- 5.20. In Canada and Europe (including the United Kingdom)²⁹ collective bargaining has been recognised as a fundamental human right integral to the right of freedom of association. New Zealand does not yet but is out of step with comparable jurisdictions in failing to do so.
- 5.21. Nonetheless, the import of these various international treaties is unambiguous. New Zealand has a binding legal obligation to promote and strengthen collective bargaining mechanisms. The Government has failed previously to uphold these obligations at massive cost to New Zealand's workers and our international reputation.
- 5.22. This Bill repeats these mistakes. We outline the ways in which the proposed law changes breach detailed ILO jurisprudence around collective bargaining and rights to strike throughout our technical submission. In brief, we believe all of the following constitute breaches of the Government's international obligations
- Weakening of the duty to conclude undermines the duty of parties to bargain in good faith and make every effort to voluntarily conclude a collective agreement;
 - A sixty-day 'free hit' period where parties cannot commence bargaining without agreement constitutes an unacceptable restriction on the right to strike and will undue delay in negotiations;

²⁹ Following the ground-breaking decisions of the Canadian Supreme Court in *Health Services and Support – Facilities Subsector Bargaining Assn. v British Columbia* 8 June 2007, 2007 SCC 27; [2007] 2 S.C.R. 391 and the European Court of Human Rights in *Demir and Baykara v Turkey*, Application No 34503/97, 12 November 2008.

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- Effective removal of the right to strike in support of multi-employer bargaining is a breach of collective bargaining rights. New Zealand has been heavily criticised by the ILO for similar laws in the 1990s; and
- Unnecessary obstacles to and disproportionate deductions for taking strike action are a breach of the right to strike.

5.23. Taken individually or as a whole, the measures in the proposed law do not fulfil New Zealand's obligation to promote collective bargaining. They do the opposite.

5.24. Alongside previous and proposed changes³⁰ these constitute a serious breach of the New Zealand Government's duty to its citizens and its international obligations. The CTU intends to make a formal complaint to the ILO regarding these breaches and to request an investigation.

5.25. A consequence of the breach of New Zealand's international obligations in relation to workers' rights is that New Zealand will be in breach of our obligations under a number of our existing bilateral or multilateral free trade agreements ('FTAs'). Article 2 of Chapter 16 of the New Zealand-Taiwan Economic Co-operation Agreement states that:

- "Each party shall respect, promote, and recognise in its laws, regulations, policies and practices, the following internationally recognised fundamental labour principles and rights:
- a) freedom of association and the effective recognition of the right to collective bargaining
 - b) the elimination of all forms of forced or compulsory labour
 - c) the effective abolition of child labour
 - d) the elimination of discrimination in respect of employment and occupation.

5.26. Several trade agreements and their accompanying memoranda of understanding seek to promote and enforce observance of the principles underlying the 1998 ILO Declaration of Fundamental Rights and Freedoms at Work.³¹ Given the importance placed on collective bargaining in that document (discussed above) it is likely that we are in breach of these obligations and may be seen as competing internationally by lowering labour standards.

³⁰ Such as the effective restriction on the right of film and television workers to collectively bargain in the Employment Relations (Film Production Work) Amendment Act 2010 and the strike-breaking provisions in Jami-Lee Ross's Employment Relations (Continuity of Labour) Amendment Bill recently drawn from the ballot.

³¹ See for example the New Zealand-Malaysia Agreement on Labour Cooperation art 2 and the China-New Zealand Memorandum of Understanding on Labour Cooperation. Similar commitments exist in relation to Hong Kong, Thailand and the Trans-Pacific Strategic Economic Partnership Agreement (P4)

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6. Challenging the Government's rationale for this legislation

6.1. The Government's primary rationales for the changes to the Employment Relations Act 2000 appear to be that

- (a) The law needs more flexibility;
- (b) It will create jobs;
- (c) It needs to be "rebalanced" towards employers³²; and
- (d) It will lead to greater productivity³³.

6.2. In this section we address each of these issues then consider the economic effect of legislation that provides insufficient protection to workers and provides incentives for a low-wage, low-productivity economy.

*Flexibility*³⁴

6.3. Evidence that current employment law lacks flexibility is noticeably lacking. We analyse elsewhere the specific aspects of this bill which are said to indicate "inflexibility", and strongly disagree that an appropriate balance is being proposed. In many areas we believe the current law is too "flexible" already.

6.4. In any area of conflicting interest such as employment law and employment agreements, both sides can claim they have insufficient "flexibility" or conversely insufficient "certainty" or "security" in any arrangement reached. Every such arrangement is a compromise. Flexibility cannot stand alone as an unqualified benefit. For the state to change the balance there ought to be a public purpose and benefit that rises above simply giving a particular party an advantage. There is no evidence there is such a public purpose. The evidence is to the contrary.

6.5. The CTU does not oppose flexibility per se. We recognise that circumstances change and workplaces need a degree of flexibility to adapt and also meet new challenges. But flexibility that impacts on employment conditions should be by mutual agreement, both flexibility and security there should be flexibility should be

³² Interview between Simon Bridges and Corin Dann, Q&A, TVNZ, 9 June 2013, transcript available at www.scoop.co.nz/stories/PO1306/S00102/ga-corin-dann-interviews-simon-bridges.htm.

³³ "Employment law legislation passes first reading", Simon Bridges, 5 June 2013, available at <http://www.beehive.govt.nz/release/employment-law-legislation-passes-first-reading>.

³⁴ We are referring here not to the extension of (voluntary) flexible working arrangements to all workers, but to the additional flexibility given to employers in the types, conditions, and nature of employment relationships available to them.

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considered based on what workers are seeking, and the role of the union should also be recognised.

- 6.6. A number of different sorts of 'flexibility' can be distinguished. For example Peter Auer, Chief of the Employment Analysis and Research Unit in the ILO, breaks it down into external flexibility, internal flexibility and wage flexibility.³⁵ In each instance, the key issues are who benefits from the flexibility and what control workers have over the changing arrangements.
- 6.7. External flexibility can take the form of hiring, firing, temporary jobs, and outsourcing. All of these have major implications for job security, pay rates and working conditions and have been the subject of major industrial disputes.
- 6.8. Internal flexibility includes changes in hours worked hours, changes in work organisation (restructuring), multi-skilling, and work time arrangements such as shift work. Changes in hours worked can include reduction or increase in overtime, or through mechanisms like the four-day week which was used in some firms in New Zealand with government support during the worst of the recent recession. Some forms of internal flexibility can be mutually beneficial, such as the ability for an employee, at his or her choice, to vary by agreement hours worked on a short or medium term basis to accommodate changes in family responsibilities. However this is not typical of "flexibility" as most forms are initiated by the employer for the benefit of the firm. Employees may or may not benefit.
- 6.9. Wage flexibility implies rapidly changing wage rates and hence incomes in response to changes in production arrangements and markets. This reduces the advantages to an employee of the employment relationship with a significant increase in income insecurity, and at worst implies sharing losses and not profits: experiencing the risks of a business without the benefits of ownership.
- 6.10. Each of these cases can clearly be a win-lose rather than win-win situation. Where change is justifiable and necessary, any accommodation must be by negotiation supported by a high degree of trust between parties. Fair negotiation requires sound bargaining and representational arrangements. Trust is essential because it is often the case that it is difficult to know whether changes in production arrangements and markets are permanent or temporary, real or game-playing; and

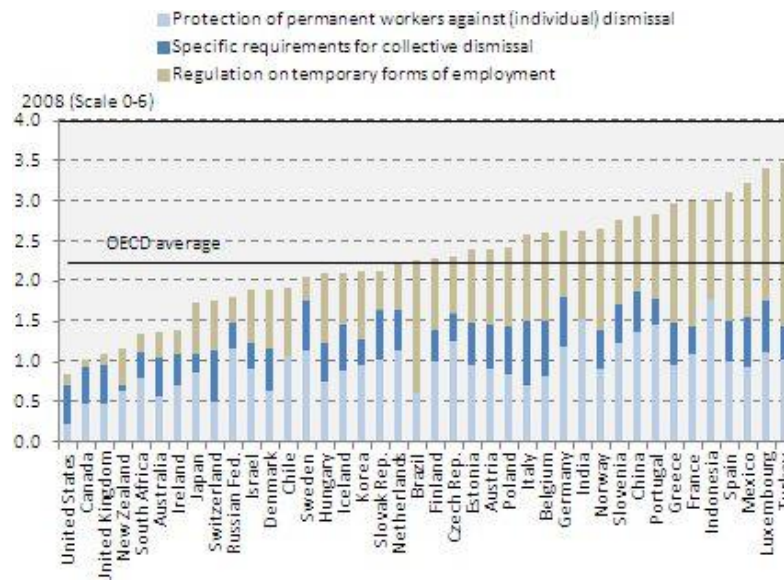
³⁵ Auer, P (2007) Security in labour markets: Combining flexibility with security for decent work', ILO Economic and Labour Market Paper 2007/12, available at http://www.ilo.org/empelm/pubs/WCMS_113923/lang-en/index.htm

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there must be trust regarding returning to previous arrangements if disadvantageous changes are temporary. The alternative is that changes to working conditions are imposed, in which case the term “flexibility” is simply a misleading euphemism. In the absence of sound bargaining and representational arrangements, all forms of “flexibility” will be imposed and can be used to repress wages, working conditions and job security.

6.11. New Zealand’s employment legislation is already among the most flexible in the OECD. For example, an International Monetary Fund (IMF) assessment of the responses of six OECD countries (Germany, Korea, Mexico, New Zealand, Spain, and Sweden) to the Global Financial Crisis, New Zealand was described as having “the least regulated labour market.”³⁶

6.12. The OECD also rates New Zealand’s labour market as one of the most deregulated in the developed world. As the chart on the next page shows, New Zealand ranked fourth in the OECD’s most recent employment flexibility rankings³⁷ in 2008 (and this is prior to the 2009 and 2010 changes to the Employment Relations Act 2000 which further undermined worker job security through, for example, introduction of 90 day “dismissal at will” periods and relaxation of the dismissal justification test). In particular, New Zealand has the lowest level of protections in collective dismissals in the OECD.



³⁶ Darius, R., Nkusu, M., Thomas, A., Vamvakidis, A., Vidon, E., & Vitek, F. (2010), ‘Cross-Cutting Themes in Employment Experiences during the Crisis,’ Staff Position Note SPN/10/18, Washington DC, USA: IMF, 6.

³⁷ OECD Indicators of Employment Protection, 2008 available at: <http://www.oecd.org/employment/employmentpoliciesanddata/oecdindicatorsofemploymentprotection.htm>

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- 6.13. Similarly, the World Bank's "Doing Business" Report for 2013 lists New Zealand as having no limits (and so complete flexibility) in almost all the 21 areas it regards as pro-business, covering difficulty of hiring (such as a minimum wage and restrictions on use of fixed term contracts), rigidity of hours (such as allowing a 50-hour week and allowing a 7-day week), difficulty of redundancy (such as permitting redundancies without consultation) and redundancy cost. The only exceptions were the existence of a minimum wage, paid annual leave and retraining or reassignment in case of redundancy. This makes very clear the "win-lose" aspects of "flexibility". The labour conditions criterion for its annual ranking of countries is highly contested, was not ranked in 2013 because of the Bank's belated recognition of the extreme, one-sided nature of its evaluation, taking no account of the interests of workers, health and safety or effects on productivity and wellbeing.
- 6.14. "Flexibility" in the present case clearly gives workers less protection when taking on a new job; less bargaining power when negotiating for new employment conditions and wages; less certainty over rest breaks, and so on. The flexibility being demanded by this bill is therefore not a 'win-win' for all participants in the workplace. It is a loss for workers. The only possible legitimate rationale – other than the unbalanced one of giving employers greater advantage – is perhaps that it could encourage employers to provide more jobs. We address this below.
- 6.15. The amendments will promote further lowering of wages (as has been acknowledged in the relevant Cabinet papers) and encourage employers to undermine secure employment with various forms of contracting out, casual, temporary and short term positions, labour hire and in general what is internationally known as precarious working conditions. We return to these themes below when discussing their negative incentives for raising productivity.
- 6.16. Low paid, insecure work has many negative consequences for workers affected.
- 6.17. It is very difficult to raise a family without secure work at a living wage – described by Living Wage Aotearoa New Zealand as "the income necessary to provide workers and their families with the basic necessities of life. A living wage will enable workers to live with dignity and to participate as active citizens in society." We should not be surprised at increasing numbers of dysfunctional families, with social, health and educational consequences for children, when income is sporadic and uncertain. Business says it needs certainty, but so do families – and more so, because of their small size and access to resources.

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- 6.18. There is considerable evidence that the quality of work matters for health and family life. The 2010 Marmot Review of Health Inequalities³⁸ in the United Kingdom found that:

[J]obs need to be sustainable and offer a minimum level of quality, to include not only a decent living wage, but also opportunities for in-work development, the flexibility to enable people to balance work and family life, and protection from adverse working conditions...

Insecure and poor quality employment is also associated with increased risks of poor physical and mental health. There is a graded relationship between a person's status at work and how much control and support they have there. These factors, in turn, have biological effects and are related to increased risk of ill-health. Work is good – and unemployment bad – for physical and mental health, but the quality of work matters. Getting people off benefits and into low paid, insecure and health damaging work is not a desirable option.

- 6.19. An extensive literature review³⁹ for the Ministry of Women's Affairs found that:

Employment conditions are important in relation to the mother's time spent away from home and parenting behaviours. Research indicates that low job satisfaction and work-place tension have negative impacts on child development (OECD, 2003: 138). Difficult job conditions create psychological distress, which affects parenting, which affects child outcomes...

Part-time work and family-friendly policies that allow parents time with young children have a positive impact on cognitive development (OECD, 2003: 138). Family-friendly workplace policies can help to reduce negative stress (for example, Reynolds, Callender and Edwards, 2003). However, part-time work, the most common 'flexible arrangement' for women, can reduce career prospects and opportunities. Part-time work conditions are generally worse than full-time work: fewer promotion opportunities, fewer financial benefits (such as less superannuation and sick and annual leave) and fewer training opportunities (Bittman, Hoffman and Thompson, 2004: 47). In addition, part-time work is available only in a small range of sectors, constraining women's choices and career opportunities (Byrne, 2002: 17–18).

Two types of part-time work exist: work negotiated by 'career women' and work that suits employers (with more unreliable hours, and so on). The latter type has worse conditions of employment, but both suffer from a lack of promotion opportunities (State Services Commission, 2002: 71; Bittman, Hoffman and Thompson, 2004: 47-8).

- 6.20. A 2005 literature review for the Department of Labour⁴⁰ found that: "Low quality jobs are usually dead-end 'McJobs' [sic] with little training to improve the worker's human capital and their chances of moving to better quality jobs. Hence, a bad job

³⁸ Marmot, Michael (2010) *Fair Society, Healthy Lives Review of Health Inequalities* at 26.

³⁹ Brewerton, Melissa (2004) 'Influences of Maternal Employment and Early Childhood Education on Young Children's Cognitive and Behavioural Outcomes', Ministry of Women's Affairs, October 2004, at 28.

⁴⁰ Johri, R. (2005). 'Work values and the quality of employment: a literature review'. Wellington: Department of Labour, at 2

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is seldom a stepping stone to a better job.” The review also notes that: “Workers’ families feel the effects of poor quality employment in work-life balance, health costs, social interaction and their standard of living.”

- 6.21. This view is backed up by recent OECD research into inequality. The 2011 report, *Divided We Stand*⁴¹ specifically urged “inclusive” employment practices – including greater protection for temporary workers – as a means of tackling in-work poverty. It noted that countries should create “jobs that enable people to avoid and escape poverty. Recent trends towards higher rates of in-work poverty indicate that job quality has become a concern for a growing number of workers. Policy reforms that tackle inequalities in the labour market, such as those between standard and non-standard forms of employment, are needed...” The Bill encourages employers to go in exactly the opposite direction.
- 6.22. Low-wage, low-quality work may also be harmful to the long-term employment prospects of parents. As Schmitt points out:⁴²
- Low-wage jobs, like spells of unemployment, may, for example, be associated with the erosion of a worker’s accumulated skills. If so, a worker’s long-term earnings potential would be enhanced more by a period of education and training than by working in a low-wage job ... Based on an analysis of data for the United Kingdom, Stewart, for example, finds that low wage work has ‘almost as large an adverse effect as unemployment’ on low-wage workers’ future employment prospects.
- 6.23. Such forms of work also make on-the-job training less attractive to employers. If the workers are employees, high staff turnover means returns to the investment in training become too risky. If the workers are contractors, or employees of contractors, or labour hire firms, no employer has the incentive and certainty to train employees for what may be limited periods of employment in one position.
- 6.24. Flexibility must therefore be carefully balanced by substantial employment and social protections, such as a strong social welfare system and active labour market policies. These too are currently being weakened rather than strengthened.
- 6.25. The following IMF description concluding its analysis of New Zealand and five other countries’ response to the global financial crisis, appears to fit New Zealand:⁴³

⁴¹ OECD, (2011) *Divided We Stand: Why Inequality Keeps Rising* OECD Publishing.

⁴² Schmitt, John (2012) ‘Low-wage lessons’, Center for Economic and Policy Research, Washington DC, USA, January 2012, at 9.

⁴³ Darius et al (2010), op. cit., p.at 21.

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Before the crisis, some economies encouraged temporary employment contracts that were not subject to the strict protection that applied to regular contracts. Although this led to fast employment growth, temporary contracts became the weak link of labor markets during the recent crisis, leading to large overall employment losses and reducing the role of other shock absorbing mechanisms.”

- 6.26. This indicates a key weakness of the Employment Relations Act 2000 in exactly the opposite direction to the proposed amendments: greater protection should be given to workers in insecure work rather than encouraging employers to make work more insecure.
- 6.27. We have also pointed out above the OECD’s finding that weakened employment protection for temporary and low income workers leads to greater income inequalities.
- 6.28. There are also dangers to workers’ health and safety in low paid, insecure work with few union protections and interventions. We discuss these issues in section 9 of this part.

Creating jobs

- 6.29. No evidence has been provided that jobs will be created by this legislation. Since its approach is further deregulation of employment relations on top of the existing high level of deregulation it is most unlikely to have any noticeably positive impact on job creation, even if a relationship between deregulation and job creation to exist.
- 6.30. New Zealand had one of the largest increases in unemployment rate in the world between 2007 and 2010, according to the IMF.⁴⁴ Contrary to expectations that more flexible employment regimes would lead to more rapid rises in unemployment, followed by rapid falls, and despite the global financial crisis not hitting New Zealand’s economy nearly as hard as many others, New Zealand’s unemployment has not fallen as rapidly as other countries, worsening from 3rd lowest in 2004-05 to 11th lowest now.⁴⁵ This was in the face of increased “flexibility” introduced in various amendments to the Employment Relations Act 2000 over the 2009-10 period.

⁴⁴ ILO-IMF (2010) ‘The Challenges of Growth, Employment and Social Cohesion - Joint ILO-IMF conference in cooperation with the office of the Prime Minister of Norway’ at 17. http://www.ilo.org/global/about-the-ilo/press-and-media-centre/news/WCMS_144399/lang-en/index.htm.

⁴⁵ Harmonised unemployment rates from OECD and Statistics New Zealand.

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- 6.31. New Zealand's employment creation record over the period is no better. Between December 2007 and December 2010, New Zealand had a mediocre 14th highest employment growth rate in the OECD (out of 31). Following the changes in the Employment Relations Act 2000 over the 2009-10 period New Zealand's relative record worsened to 20th (between December 2010 and December 2012).⁴⁶
- 6.32. With the exception of an uptick in employment in the March 2013 quarter, employment growth has been falling since the passage and coming into force of the last major amendment of the Employment Relations Act 2000. The trend of quarterly increases peaked in September 2010 and fell until September 2012.⁴⁷
- 6.33. Of course other events and policies impact on employment creation and unemployment, and this Government's record on job creation has been poor compared to Australia, but there is no evidence that weakened employment laws have helped the situation.
- 6.34. The Government continues to quote a poor quality piece of NZIER research as evidence that the 90-day "fire at will" law of 2008 for small employers, which came into force in April 2009 at the same time as a package of other measures aimed at SMEs, led to increased employment. The NZIER research failed to distinguish the effects of the employment law amendment from the other changes going on at the time including the SME package, tax reductions, and upheavals in the economy, international trade and the job market still deeply in recession. Statistical artefacts could have contributed. NZIER was unable to link employment creation to the new employer powers to dismiss employees at will. The study has been rebutted by the CTU in a paper available on our web site.⁴⁸ It is also of note that unemployment fell sharply in the period after the Employment Contracts Act was repealed and without any such measures as the 90 day 'fire at will' law.
- 6.35. Other research on the same legislation by the Department of Labour and MBIE⁴⁹ has done little more than interview employers to ask their view of the legislative changes. Some employers said they would not have hired the particular worker they did without the 90-day trial. That does not tell us whether they would have hired another worker to the same position without the trial periods. Given employers'

⁴⁶ Total employment, quarterly increases, OECD.

⁴⁷ Statistics New Zealand, Household Labour Force: employed full and part-time, trend series.

⁴⁸ Rosenberg, Bill (2011) 'Unsupportable conclusions from NZIER study on 90-day trial policy' available at <http://union.org.nz/news/2011/90-day-research-fatally-flawed>.

⁴⁹ See for example <http://union.org.nz/policy/economicbulletin115>.

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support for the legislation which reduces employer responsibility for their staff and encourages shortcuts to replace more careful employment practices, it is scarcely surprising that many employers said it influenced their employment decisions. Few workers have been interviewed, and those that have been interviewed resented the insecurity and vulnerability; those dismissed felt unfairly treated, and many had been given no reason for their dismissal. The CTU has been contacted by dismissed workers with much worse experiences.

- 6.36. This is not evidence for job creation. The researchers acknowledged that: "it cannot be stated categorically that trial periods had created extra job opportunities. The international literature suggests that exemptions to employment protection legislation, such as the trial period legislation, increase both hiring and firing but have an unclear overall impact on unemployment." It is appalling and unacceptable that such weak research should be used politically to justify poor employment practices with potentially devastating impacts on workers.
- 6.37. It is not clear on what basis the Government can justify its claim that this legislation will help job creation other than that, as the Minister reported to Cabinet, it will lower wages. We do not accept a direct connection between lowering wages and job creation: During the period of the Employment Contracts Act 1991, low wages led to weak investment, unemployment never falling below 6 percent, and greater profits at the expense of wages as shown by the dramatically reduced labour share of income of that period. But if that is the Government's logic, it should be honest and make it clear to workers that lower wages are its expectation and its intent.
- 6.38. At a time when so many families are struggling and have done so over an extended period, this would be an appalling piece of public policy.

Productivity

- 6.39. Again, no evidence has been provided that productivity will rise from this legislation.
- 6.40. New Zealand's low productivity growth compared to other countries has been described by the Productivity Commission and the OECD as 'New Zealand's Productivity Paradox' "given New Zealand's generally good regulatory and institutional settings"⁵⁰. The OECD has repeatedly puzzled over why what it describes as "best practice" policies since the late 1980s, including in employment

⁵⁰ See for example <http://www.productivity.govt.nz/event/unpicking-new-zealand%E2%80%99s-productivity-paradox-symposium>; and OECD Economic Survey of New Zealand, June 2013, p.59.

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legislation, have not led to the outcomes it insists should have resulted. This was most recently stated in its June 2013 Economic Survey of New Zealand when it stated:⁵¹

Far-reaching structural reform programmes in the late-1980s and early-1990s put New Zealand among the forefront of policy regimes, positioning the country well to reverse the long-term decline in per capita incomes relative to the OECD average. Despite these reforms, income and productivity gaps have shown no signs of narrowing.

- 6.41. It is well past time this evaluation of the policies of the late 1980s and early 1990s was reconsidered given its failure. This is not the place to go into that in detail. But an important part of those reforms was one of the most extreme deregulated employment regimes in the world⁵² under the Employment Contracts Act 1991. The OECD commented approvingly that “even flexible job markets such as in the United States did not give workers and employers such contracting freedom at the time.”⁵³ Collective bargaining coverage fell by 53 percent between 1979/80 and 2007/08, one of the most rapid falls in the OECD⁵⁴, and even that figure does not reveal the substantial loss of national and multi-employer bargaining. A recent international comparison showed New Zealand with one of the lowest rates of collective bargaining coverage in the OECD.⁵⁵
- 6.42. Data compiled by the Industrial Relations Centre at Victoria University⁵⁶ shows the proportion of private sector jobs covered by collective bargaining fell from 48 percent in 1990 to 21 percent in 2000 and 10 percent in 2012. The number in 2000 was boosted by employer-controlled collective agreements which were not allowed under the Employment Relations Act 2000. In the public sector it fell from 97 percent in 1990 to 69 percent in 2000 and 60 percent in 2012. There are some caveats about the completeness of the data on which these figures are based, but the trend is clear: collective bargaining has not been restored by the Employment Relations Act 2000. Hamstringing of collective bargaining and union activities has clearly failed to achieve the objective of raising productivity growth.

⁵¹ OECD (2013), op.cit. at 32.

⁵² “Employment Agreements: Bargaining Trends and Employment Law Update, 2011/2012”, Stephen Blumenfeld, Sue Ryall and Peter Kiely, Industrial Relations Centre, Victoria University of Wellington, 2012, at 17.

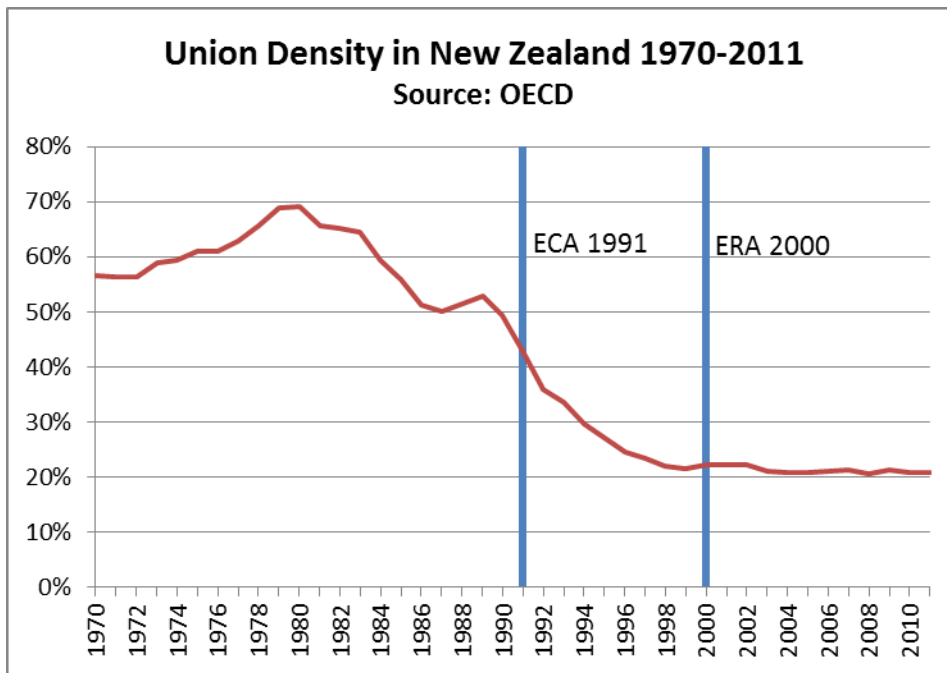
⁵³ OECD (2013), op.cit. at 115.

⁵⁴ Blumenfeld et al (2012), op.cit. at 18.

⁵⁵ International Trade Union Confederation. (2013). *ITUC Frontlines Report* (p. 55). Brussels, Belgium: International Trade Union Confederation. Retrieved from <http://www.ituc-csi.org/new-report-ituc-frontlines-2012>

⁵⁶ Blumenfeld et al (2012), op.cit. Table 2., p.20.

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- 6.43. OECD data shows that the proportion of workers in unions plummeted from 43 percent in 1991 to 22 percent in 2000. It had been depleted during the 1980s by the destruction of industries with high union membership and generally higher pay, and by changes in legislation by both National and Labour during that decade. But while the proportion fell by 28 percent during the 1980s (from 69 percent to 49 percent), it fell by 54 percent during the 1990s (from 49 percent to 22 percent), and a further 7 percent during the 2000s (to 21 percent in 2010).
- 6.44. The Employment Relations Act 2000 was a mild reform of the worst excesses of the Employment Contracts Act 1991 regime and far from a restoration of the pre-1991 state.
- 6.45. Any argument that faster productivity growth will arise from the current proposed amendments, which again make collective bargaining and the work of unions more difficult, is thus purely theoretical, based on unrealistic assumptions about the labour market and New Zealand's particular circumstances, and contrary to the evidence of our history.
- 6.46. We document below the effect of this industrial relations regime on wages and salaries for employees: they are low compared with the rest of the OECD. This has provided a number of incentives to employers, including reducing pressure to invest in training workers and to invest in raising capital intensity and hence productivity. This has not been helped by a dysfunctional industry training system, and economic policies which opened the economy to international competition without sufficient

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support for the growth of new exporters, high income inequality which reduced saving, and monetary policies which drove up interest rates.

6.47. In a 2003 Treasury paper, Hall and Scobie found that from being equivalent with Australia in the 1980s, the relative cost of labour to capital in New Zealand had fallen by 60 per cent⁵⁷ and observe that, “with labour relatively cheaper in relation to capital than in Australia, it appears that New Zealand firms have opted for a lower level of capital intensity.”

6.48. Other research has shown the same outcome: that the low wage structure led to reliance by business on low wages rather than increases in productivity through investment. For example, Deardorff and Lattimore⁵⁸ found in 1999 that:

By 1986, the importable sector supported by trade barriers, was both more capital intensive than the exportable sector and more intensive in all categories of higher labour skills than exportables... This group had nearly halved by 1996 as the tradeable sector shed labour during the early phases of the economic reforms. ... The traded goods sector is not intensive in the use of employees, of either sex, with degrees or advanced tertiary training.

6.49. By 2002, capital intensity in Australia was more than 50 per cent higher than New Zealand. From this Hall and Scobie find that between 1995 and 2002, 70 per cent of the difference in the growth of labour productivity in New Zealand is explained by a lower growth rate in capital intensity.

6.50. Similarly, Parham and Roberts (of the Australian Productivity Commission) noted in a presentation to a Treasury-run productivity workshop that:⁵⁹

The fall in New Zealand's labour costs was very marked. Black, Guy and McLellan (2003) report that NZ labour costs fell 22 per cent relative to capital costs from 1992 to 1996 and attribute the reduction to the introduction of the Employment Contracts Act and welfare reform.

6.51. The International Monetary Fund⁶⁰ estimated that in 1999, average labour productivity in market sectors in New Zealand was only 73 percent of the Australian

⁵⁷Hall, J and Scobie, G (June 2005) 'Capital Shallowness: A Problem for New Zealand?' NZ Treasury Working Paper 05/05

⁵⁸Deardorff, A and Lattimore. R (June 1999) 'Trade and Factor-Market Effects of New Zealand's Reforms', New Zealand Economic Papers, June 1999 v33 i1 p71.

⁵⁹ Parham, D and Roberts, P (2004) 'Productivity Growth and its sources: How do New Zealand and Australia compare?' Paper presented at for Productivity: Performance, Prospects and Policies Workshop 28-29 July 2004

⁶⁰ K Kochhar, M Cerisola, R Cardarelli and K Ueda (2002) 'New Zealand: Selected Issues', IMF Country Report No 02/72, , Washington

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level, down from 82 percent in 1988. Productivity in relation to Australia was higher when there was the award system for wages in New Zealand.

- 6.52. A study by NZIER⁶¹ suggested the emphasis on capital intensity was overplayed and that there should be more focus on multifactor productivity characteristics such as skills of workers and management. Industry-specific factors were also important.
- 6.53. Research presented at a recent symposium on the “Productivity Paradox” organised by the Productivity Commission in June this year also found that New Zealand’s capital intensity was low. London-based consulting research economist and labour productivity expert Geoff Mason for example found an increasing gap between the capital intensity per hour worked in Australia and New Zealand with New Zealand 13 percent behind Australia in 1997 and 38 percent behind in 2009. Less than 40 percent of the difference was due to industrial structure. Only three out of 26 industrial sectors had increased their capital intensity relative to Australia. He notes that “relatively low labour costs in New Zealand compared to the cost of capital” was one of the explanations⁶².
- 6.54. In a presentation at the same symposium, MBIE Chief Economist Roger Procter observed that when opening its economy in the 1980s and 1990s it had made the mistake of replacing higher productivity industries with lower productivity ones. While New Zealand might have regulatory settings that are good for an average OECD country he said, New Zealand is not an average OECD country: we are unusually small, sparsely populated and distant from markets. “Small countries are not scaled big ones”, and so we need different policy settings. New Zealand already has flexible labour markets and it was other areas that need focus, such as the overvalued exchange rate, and attention to more than the primary sector⁶³.
- 6.55. A presentation by Alain de Serres, Head of the Structural Surveillance Division of the Economics Department at the OECD also highlighted New Zealand’s “fixed effects” – its remoteness and distance – in accounting for the productivity gap. His group’s analysis was that New Zealand’s most fruitful policy options lay with more government and business research and development, better market access to

⁶¹Qing Yang and John Stephenson, J (September 2011) ‘Industry Productivity and the Australia-New Zealand income gap’, NZIER

⁶²Mason, G (2013) ‘Investigating New Zealand-Australia Productivity Differences: New Comparisons at Industry Level. A paper prepared for the Productivity Hub Symposium: Unpicking New Zealand’s Productivity Paradox’, National Institute of Economic and Social Research, London, 16 June 2013, at34-35

⁶³ See http://www.productivity.govt.nz/sites/default/files/symposium-ppt-02_b_procter_causes.pdf.

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markets in our region. and raising our internationally mediocre management quality, which fails most notably on people management. He noted that “poorly managed firms survive better in New Zealand than in the US market”, perhaps as a result of little competitive pressures. He also found that New Zealand’s high employment of low skilled workers contributed to the productivity gap.⁶⁴

- 6.56. None of the speakers considered that any lack of “flexibility” in New Zealand’s labour market regulation was a significant barrier to raising New Zealand’s productivity. On the contrary, in that the “flexibility” of existing law since 1990 has encouraged intensive employment of low skilled workers, it has itself been a barrier. Recent research for the IMF by De Michelis, Estevão and Wilson found “robust cross-country evidence of a strong negative correlation between growth in TFP [Total Factor Productivity] and labour inputs over the medium to long run”, or in other words, high employment levels lead to reduced productivity performance⁶⁵. This finding can be seen as similar to those we quote below regarding the pressure that higher wages exert on firms to raise productivity.
- 6.57. We are of course not asserting that a high employment level is a bad thing. We want to see employment at the highest practicable level possible. But when this is achieved by forcing people into too often unsatisfactory, poorly paid and insecure work because of chronically low household incomes and punitive conditions attached to welfare benefits, we should not pretend that all work is beneficial for people. Neither is it necessarily good for the economy. We now have the ‘working poor’. The objective should be to get all those seeking work into decent jobs at fair wages and levels of security or flexibility that are genuinely negotiated between workers and employers. The basis for this must be collective bargaining. It must be accompanied by both institutional and work-based education and training to raise skill levels and flexibility to adapt to new needs and technology.
- 6.58. The poor quality of New Zealand management has frequently been measured and commented on.⁶⁶ Weakening labour laws and thereby requirements for good

⁶⁴ de Serres, A (2013) ‘An International perspective on the productivity paradox’ OECD, available at http://www.productivity.govt.nz/sites/default/files/symposium-ppt-02_a_de-serres_solow.pdf

⁶⁵ De Michelis, A., Estevão, M., & Wilson, B. A. (2013). ‘Productivity or Employment: Is It a Choice?’ (Working Paper No. 13/97) Washington DC, USA: International Monetary Fund. Retrieved from <https://www.imf.org/external/pubs/cat/longres.aspx?sk=40506.0> at 31.

⁶⁶ For example, Roger Procter. (2011) ‘Enhancing Productivity: Towards an Updated Action Agenda’ (Occasional Paper No. 11/01) (at 71) Wellington, New Zealand: Ministry of Economic Development. Retrieved from <http://www.med.govt.nz/about-us/publications/publications-by-topic/occasional-papers/11-01-pdf/view>.

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management practices is exactly the wrong way to respond to this. The Government should be addressing the problem directly.

- 6.59. This is evidence that New Zealand's productivity problem is not a lack of labour market flexibility or that wages are too high. The problem is that wages are far too low and that firms are investing in more low-skilled workers and engaging in poor workplace practices rather than more capital-intensive use of labour.
- 6.60. Instead, the evidence points to low wages having a negative impact on productivity. Low pay discourages investment in capital and skills, and locks many New Zealand firms into low targets for efficiency and harms economic transformation.
- 6.61. The effect of higher wages works at three levels. First, higher wages and fair treatment lead to better motivated workers who put more effort and thought into their work, raising productivity and efficiency. Staff turnover also falls, reducing employers' recruitment and training costs. There is a long-standing literature on this idea of an "efficiency wage", but a 2008 survey by Swiss and US researchers Fehr, Goete and Zehnder reviewed more recent evidence, particularly from behavioural economics showing that workers put in more effort, beyond the minimum required, when they were treated in ways they considered fair including their pay level.⁶⁷
- 6.62. Second, higher wages encourage employers to invest more in productivity-raising equipment and methods. There have been numerous international studies of the effect of rises in the minimum wage (including in New Zealand) showing little, if any, effect on employment. The CTU submission on the Minimum Wage Review in 2012 (available on our website) includes an extensive review of this research. The outgoing chairman of the US President's Council of Economic Advisers, Alan Krueger, was a pioneer in this research. Why does raising the minimum wage have little employment effect? Part of the answer is because employers respond by raising productivity through investment, reducing waste, and reorganising work. For example, a 2011 study by Tetyana Zelenska of significant increases in the minimum wage in the US tracked store-level payroll records for individual employees in fast-service restaurant chains in Georgia and Alabama. It found no negative effect on employment and identified twenty-three different cost-saving measures taken by the

⁶⁷ Fehr, E., Goette, L., & Zehnder, C. (December 2008) 'A behavioral account of the labor market: the role of fairness concerns' Discussion Paper No. 3901, Institute for the Study of Labor (IZA), Zurich. Retrieved from <http://ideas.repec.org/p/zur/iwwpx/394.html>.

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firms.⁶⁸ There are many more such studies regarding the minimum wage and the living wage (for which we can provide a bibliography).

- 6.63. There is also considerable evidence more generally. In a recent paper, Dutch academics Storm and Naastepad listed 17 studies, 15 of which show increases in productivity as a result of either increases in the real wage or improved worker rights.⁶⁹ They explain:

There is one more reason why higher real wages are associated with higher labour productivity. This explanation goes back at least to Karl Marx, who argued in *Capital* that high wages lead to a labour-saving bias in innovation and technological progress – because only labour-saving technological progress, which he identifies with rising labour productivity, ensures the reproduction of a positive economic surplus. Higher wages thus stimulate capital deepening, drive inefficient firms off the market and encourage structural change, increase the proportion of high-skilled workers in the labour force, and, in general, promote labour-saving technological progress. Marx's idea of wage-cost induced technological progress has gone through various incarnations including: Hicks (1932), Kennedy (1964) and, more recently, Foley and Michl (1999) and Funk (2002).

- 6.64. Third, if wage rises are widespread, and particularly during times like the present when there are underused resources in the economy, the increased spending creates greater demand for goods and services in the community, encouraging employers to invest in their firms, installing new technology and raising productivity and employment.
- 6.65. The internationally recognised most effective mechanism for maintaining wage levels is collective bargaining which allows both recognition of market issues through the bargaining process, and protection of the process and the deal reached (for both sides) through legislated means.
- 6.66. Australia has a much more extensive mandated wage structure than our minimum wage, in its Modern Awards. Even though most Australian workers are not on award wages, they cover 96 percent of private sector employment and the majority of public sector workers, underpinning the whole wage structure. The Award system has a surprisingly pervasive effect in wage determination, reaching about 80

⁶⁸ Zelenska, T. (2011) "Channels of Adjustment in Labor Markets: The 2007-2009 Federal Minimum Wage Increase", Economics Dissertations, Georgia State University, Paper 70, http://digitalarchive.gsu.edu/econ_diss/70.

⁶⁹ Storm, S., and Naastepad, C. W. M. (2011) 'The productivity and investment effects of wage-led growth' *International Journal of Labour Research*, 3(2), 189–217.

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percent of employees according to one study⁷⁰. It is likely that it has played a significant, if indirect, role in maintaining wage levels in Australia through significant changes in the economy.

- 6.67. As of May 2012, 42.0 percent of Australian employees had pay set by collective employment agreement, and 16.1 percent by Award only, totalling 58.1 percent by some form of collective process. By contrast, New Zealand has very weak collective wage setting. The Industrial Relations Centre at Victoria University estimates that approximately 19 percent of the workforce is covered by collective bargaining and as noted above, a recent international comparison showed New Zealand with one of the lowest rates of collective bargaining coverage in the OECD.⁷¹ The impact of the collective bargaining is wider than the direct coverage, but it is still considerably lower than most other OECD countries, including, for example, the Nordic countries which have excellent productivity, economic growth and wellbeing records.
- 6.68. It is very significant that a recent International Monetary Fund (IMF) paper by its chief economist Olivier Blanchard and others⁷² recommended the “Nordic model – based on a medium to high degree of employment protection, on generous but conditional unemployment insurance, and on strong, active labor market policies – which allows for reallocation while maintaining low unemployment.” While noting that detail is very important, it recommends on efficiency grounds a combination of national centralised bargaining and firm-level bargaining: “Firm-level agreements can adjust wages to the specific conditions faced by firms. National agreements can set floors and, when needed, help the adjustment of wages and prices in response to major macroeconomic shocks.” There is much we would contest in the paper, and the recommendations are in stark contrast to labour market policy conditions in practice placed by the IMF on countries in difficulty in the EU (and in many other cases), but that such an institution is recognising the economic efficiency and welfare benefits of a much stronger collective bargaining structure than New Zealand has had for the last 20 years signifies a profound philosophical sea change that cannot be ignored.

⁷⁰ “Buchanan, J. and Considine, G. (2008) ‘The significance of minimum wages for the broader wage-setting environment: understanding the role and reach of Australian awards’ in *2008 Minimum Wage Research Forum Proceedings, Volume 1* October 2008, Australian Fair Pay Commission.

⁷¹ International Trade Union Confederation. (2013). *ITUC Frontlines Report* (at 55). Brussels, Belgium: International Trade Union Confederation. Retrieved from <http://www.ituc-csi.org/new-report-ituc-frontlines-2012>

⁷² Blanchard, O., Jaumotte, F., & Loungani, P. (2013). *Labor Market Policies and IMF Advice in Advanced Economies During the Great Recession* (Staff Discussion Note No. SDN/13/02) (at30). Washington DC, USA: International Monetary Fund. Retrieved from <https://www.imf.org/external/pubs/cat/longres.aspx?sk=40412>

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- 6.69. Other aspects of New Zealand's deregulated regime act against productivity development. Workers are discouraged from raising their skill levels, and particularly industry-related skills because of uncertainty about job security and lack of recognition in their wages. Employers are reluctant to spend time and money on training for fear of their workers leaving once they have acquired new skills, a problem that has not been resolved by current industry training structures.
- 6.70. Excessively flexible labour laws can act against knowledge acquisition, creation and innovation. Workers are unable to gain or see little point in gaining sufficient firm-specific knowledge to develop and improve processes if they have poor job security. An example was provided by researchers Acharya, Baghai, and Subramanian who found that "Stringent labour laws can provide firms a commitment device to not punish short-run failures and thereby spur their employees to pursue value-enhancing innovative activities." Using patents and citations as an indicator of innovation, they analysed the effect of country-level changes in dismissal laws. "We find that within a country, innovation and economic growth are fostered by stringent laws governing dismissal of employees, especially in the more innovation-intensive sectors. Firm-level tests within the United States that exploit a discontinuity generated by the passage of the federal Worker Adjustment and Retraining Notification Act confirm the cross-country evidence."⁷³
- 6.71. New Zealand employers also frequently do not recognise industry training qualifications and subsequent experience on the job sufficiently in better wages. For example a 2009 study of the earnings effect of workplace-based industry training by Statistics New Zealand and the then Department of Labour showed that 15–19 year old males experienced an annualised increase in average monthly earnings of just 11.3 percent as a result of undertaking and obtaining a Level 4 qualification, 3.6 percent for a Level 3 qualification, and no increase for lower levels. Even worse, 15–19 year old females benefited by just 6.8 percent from a Level 4 qualification, 9.7 percent for a Level 3 qualification, and no increase for lower levels. The increases were even less for older participants (for example 5.4 percent for male 20-24 year olds, 1.1 percent for female 20-24 year olds, and negative for 25-29 year old females completing a Level 4 qualification), and the study warned that the results for 15-19 year olds were overestimated. The position is even worse for further education by existing workers making the effort to increase their skills. For

⁷³ Acharya, V. V., Baghai, R. P., & Subramanian, K. V. (2010) 'Labor Laws and Innovation' National Bureau of Economic Research Working Paper Series, No. 16484. Retrieved from <http://www.nber.org/papers/w16484>

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some, their pay actually falls after attaining a qualification, and most see at best small increases in their pay.⁷⁴

- 6.72. In addition, the growing pressure for increased temporary migration into New Zealand creates disincentives for training and downward pressure on wages.
- 6.73. Low pay worsens the performance of labour by creating high levels of labour market churn. In a labour market with 1.8 million filled jobs, a new job was started on 1.03 million occasions during the year⁷⁵; this was down from 1.2 million in previous years. The number of workers involved was something over half the number of job starts: many workers change jobs more than once a year. While a certain level of labour turnover is indicative of a dynamic labour market, this significant a level of churn must impact negatively on firm performance and overall labour productivity.
- 6.74. It is of course possible for firms to use low wages as a business model. Professor Morris Altman (Professor of Economics at Victoria University of Wellington) showed that two business models can exist side by side – one based on low wages and low productivity, the other on high wages and higher productivity. He gives the example of retail chains Walmart (low wage) and Costco (higher wage) in the US⁷⁶. Citing a 2007 article he says that “Costco pays employers much higher wages and greater benefits that does Wal-Mart. For example, on average, Costco, the fourth-largest U.S. retailer, paid fulltime employees an average hourly wage of \$17, whereas Wal-Mart, the world’s largest retailer, paid \$9.68, in the recent past. But in Costco labour turnover was 50 percent lower than in Wal-Mart and productivity was higher. However, Costco shareholders have not lost out from the better treatment of its employees as Costco’s returns have been better than that of Standard and Poor’s 500 average returns and better than Wal-Mart’s.”
- 6.75. The advantage of a high wage/high productivity model should be obvious: among others, it addresses social issues such as New Zealand’s high income inequality, it increases domestic demand, and it encourages people to stay in New Zealand. In addition high productivity allows firms to compete internationally, helping to address New Zealand’s high international indebtedness.

⁷⁴ “Crichton, S. and Dixon, S. (2011) Labour Market Returns to Further Education for Working Adults”, Department of Labour available at <http://www.dol.govt.nz/publication-view.asp?ID=380>.

⁷⁵ Statistics New Zealand: Linked Employer-Employee Data, March 2010 quarter – latest available.

⁷⁶ For example, Altman, M. (2011). The Living Wage, Economic Efficiency, and Socio-Economic Wellbeing in a Competitive Market Economy. *Forum for Social Economics*, 1–17

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- 6.76. McLaughlin⁷⁷ compares Denmark to New Zealand and argues that raising the minimum wage will “shock” firms into raising productivity if there are strong incentives and pressures for them to do so. Based on the Danish experience, he suggests a coordinated approach incorporating employers, government supported institutions including funding for training, and an active union movement with legislatively supported industry bargaining mechanisms. These should work together to support investment in skills and training which are an essential contributor to enhancing productivity. “The coordination mechanisms between employers and unions at various levels of the economy play a pivotal role in ensuring that the funding is used effectively through an on-going process of developing, implementing and reviewing training programmes”, he writes.
- 6.77. Rasmussen and Foster consider the evidence regarding the rise in individualism in New Zealand employment relations and the link with productivity:⁷⁸

“[The] suggestion that legislative support of more individualism may encourage greater competitive flexibility and innovation which would then drive higher productivity appears to have little empirical basis. For example, the productivity experience of the 1990s where employers had a remarkable free hand in terms of establishing their preferred working arrangements... does not provide a convincing scenario.

Generally, it is unclear how employer preferences for workplace and individualised employment relations can be part of a successful attempt to build a sustainable route to a high-wage, high-skill economy in New Zealand. As discussed below, there seems [sic] to be at least three types of issues associated with this approach.

1. There are few major New Zealand owned firms (except Fonterra) and industries which have shown substantial growth recently, and arguably too few industry-level collaborative solutions exist which can establish a sustainable economic growth path.
2. The lack of major collaborative solutions is particularly noticeable in the training and skills area because the key actors appear to have some overlapping interests. Recently, management capabilities have been raised as a crucial training and skills issue.
3. There is a distinct lack of a broadly-based ‘plan’ of how to inform and persuade employers to adopt more productive employment relations approaches.

⁷⁷ “McLaughlin, C. (2009) The Productivity-Enhancing Impacts of the Minimum Wage: Lessons from Denmark and New Zealand”, *British Journal of Industrial Relations*, 47:2 June 2009, 327–348.

⁷⁸Rasmussen, E and Foster, B “New Zealand Employer Attitudes and Behaviours: What are the Implications for Lifting Productivity Growth?” (2011) *NZJER* 36(2) 61, 70

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4. Employer aversion to mandatory minima and/or collectively agreed minima facilitates a low cost, low skill 'equilibrium' where mainstream employers have to compete with employers who have rock-bottom employment conditions and invest little in their staff.

6.78. We do not pretend there are easy solutions here, but the existing path of a low wage economy has not produced economic, commercial or social success for New Zealand. Economies such as those of the Nordic countries have been successful based on a quite different model including high union density, widespread collective bargaining and high wages. The attractions of this alternative path are overwhelming. The bill takes us in entirely the wrong direction, repeating the failures of the past.

A need for “rebalancing” towards employers

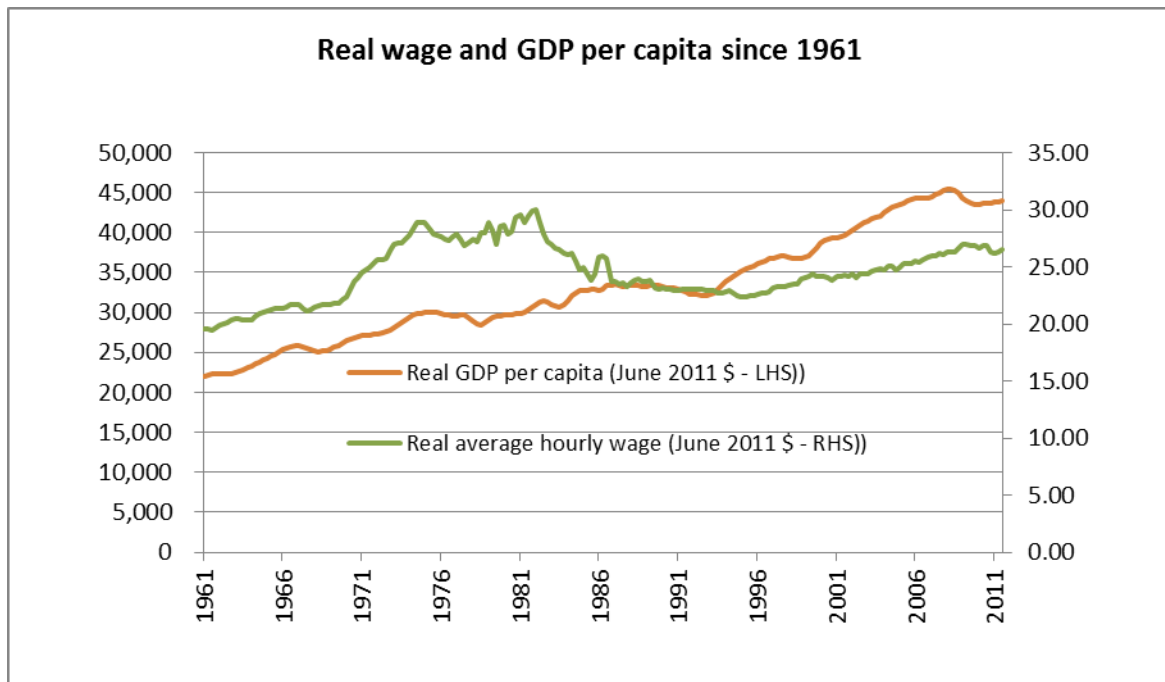
6.79. We cover elsewhere particular aspects of this bill and discuss whether there is any need for 'rebalancing.' Here we look at the path of wage and salary levels in New Zealand to consider whether there has been a major shift against employers, as Government and employer spokespeople assert.

6.80. A simple place to start is to look at average hourly wage statistics over the 50 years since 1961 and compare it to per capita growth in the economy. These are graphed on the following page. The real average wage (that is, after consumer price inflation is taken into account) was at its highest in March 1982 when it was \$29.97, using June 2011 dollars. In June 2011 it was \$26.27. The current level of the average wage (in March 2013) is about the same as it was in December 1973. Clearly, wages fell substantially from the early 1980s and have not yet recovered.

6.81. Yet this is not an issue of affordability of wage levels. The output of the economy per person (real GDP/capita) in June 2011 was 41 percent higher than it was in March 1982 and 58 percent higher than it was in December 1972⁷⁹.

⁷⁹ "Lattimore, R and Shamubeel Equb, S. (2011) *The New Zealand Economy: An Introduction*", by Auckland University Press 2011, long term data series <http://sites.google.com/site/equbs/>.

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- 6.82. Per capita GDP is a measure of productivity. A more precise measure is the labour productivity series provided by Statistics New Zealand. Orthodox (neoclassical) economic theory says that real wages should rise at the same rate as the growth in labour productivity. Treasury bases its economic models on this assumption. It is common in everyday argument and in wage negotiations: “Real wages can only rise if productivity rises.” One of the founders of welfare economics, Arthur Pigou, called a situation where wages fell behind productivity “exploitation.” Productivity is therefore a useful benchmark for wages.
- 6.83. Statistics New Zealand’s labour productivity measure is calculated for the part of the economy where productivity can be reliably measured (the ‘measured sector’, which is not very different to the private sector). Labour productivity in this sector rose 48 percent between 1989 and 2011. The real average hourly wage (for all work paid, including overtime) rose just 14 percent. Put in dollar terms, the average hourly wage rose in real terms from \$21.49 in 1989 to \$24.43 in 2011 in March 2011 dollar terms. If it had risen as fast as labour productivity it would have been \$31.85 in 2011. The picture looks very similar if the prices firms received for their products (the producer price index for outputs) are used to calculate (deflate) the real

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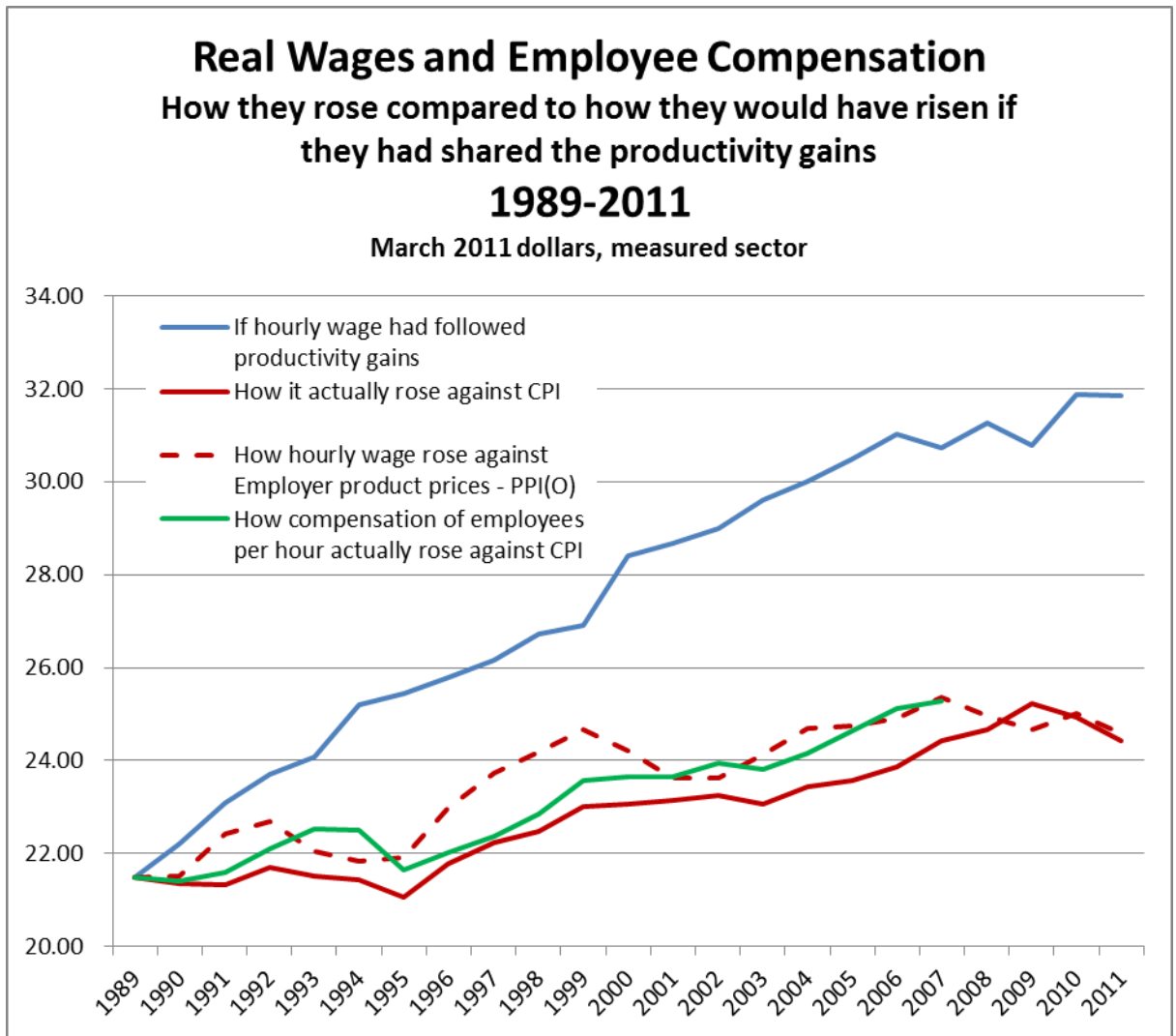
average wage, or if we use a wider measure of wages including other benefits to employees such as employer contributions to superannuation (see graph).⁸⁰

- 6.84. During the period of the Employment Contracts Act 1991 (we have used 1990 to 2000 as this encompasses a full productivity cycle) labour productivity rose 28 percent while average hourly wages rose only 8 percent in real terms compared to CPI and 13 percent compared to producer prices.
- 6.85. A documented example of the effect of the Employment Contracts Act 1991 on wages is found in research on its effect on supermarket checkout wages. The research⁸¹ found that real wages for part-time adults fell 30.1 percent between 1989 and 1997, 44.4 percent for students and 11.2 percent for full-time adults.
- 6.86. From 2000 to 2006, under the Employment Relations Act 2000, labour productivity rose 9 percent while wages rose only 4 percent in real terms compared to CPI and 3 percent compared to producer prices. Between 2006 and 2011, labour productivity rose 3 percent while wages rose 2 percent in real terms compared to CPI and fell 1 percent compared to producer prices. In all, during the Employment Relations Act 2000 between 2000 and 2011, labour productivity rose 12 percent, real wages rose 6 percent compared to CPI and 2 percent compared to producer prices.
- 6.87. There are some measurement issues, including changes in the measured sector over the period and comparing over productivity cycles (it cannot yet be determined if the most recent one has ended) but the picture looks clear: wages and other compensation to employees, whether measured against consumer prices or the prices received for their employers' production, have fallen behind productivity gains. This is not a picture of imbalance towards employees: indeed it shows a strong imbalance towards employers under both the Employment Contracts Act 1991 and Employment Relations Act 2000.

⁸⁰ For details, see Rosenberg, Bill (2010) 'Real wages and productivity in New Zealand. Presented at the 14th Conference on Labour, Employment and Work in New Zealand' Wellington, New Zealand: Industrial Relations Centre, Victoria University of Wellington.

⁸¹ Conway, P. (1999). 'An 'unlucky generation'? The wages of supermarket workers post-ECA' *Labour Market Bulletin*, 23–50. Available at from <http://www.dol.govt.nz/PDFs/>

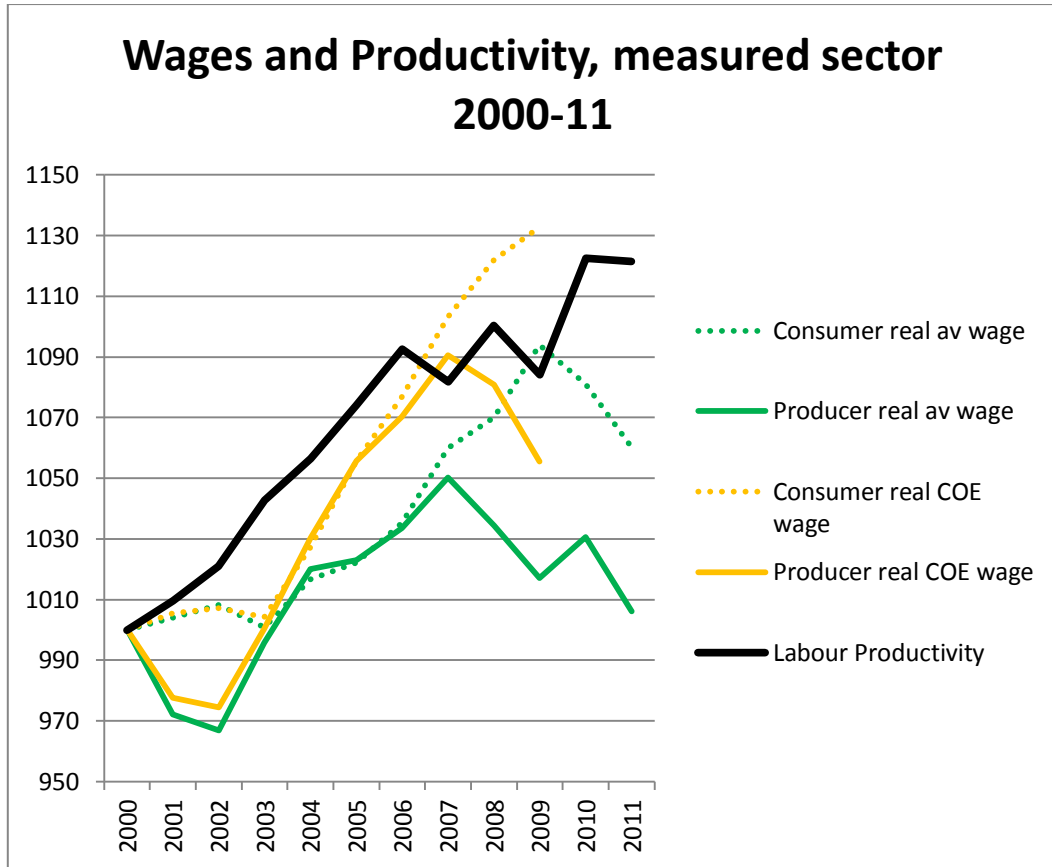
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Note: "Compensation of Employees" is sourced from the National Accounts and is divided by an index of hours paid. It should be taken as an index rather than an hourly value. The hourly wage is the average total hourly wage including overtime. Data is sourced from Statistics New Zealand.

- 6.88. Between about 2003 and 2009 real wages rose relatively steeply, probably partly due to a union-led '5% in 05' wage campaign. Total compensation of employees was also increased by the legislated additional week's leave which took effect in 2007 and the initiation of Kiwisaver including compulsory employer contributions. However the effect was to increase the real wage compared to CPI (the "consumer real wage") until 2009 at the same rate as productivity growth, but the real wage compared to producer output prices (the "producer real wage") which indicates affordability to the employer still fell well behind productivity growth. After 2009, real wages fell behind productivity growth.

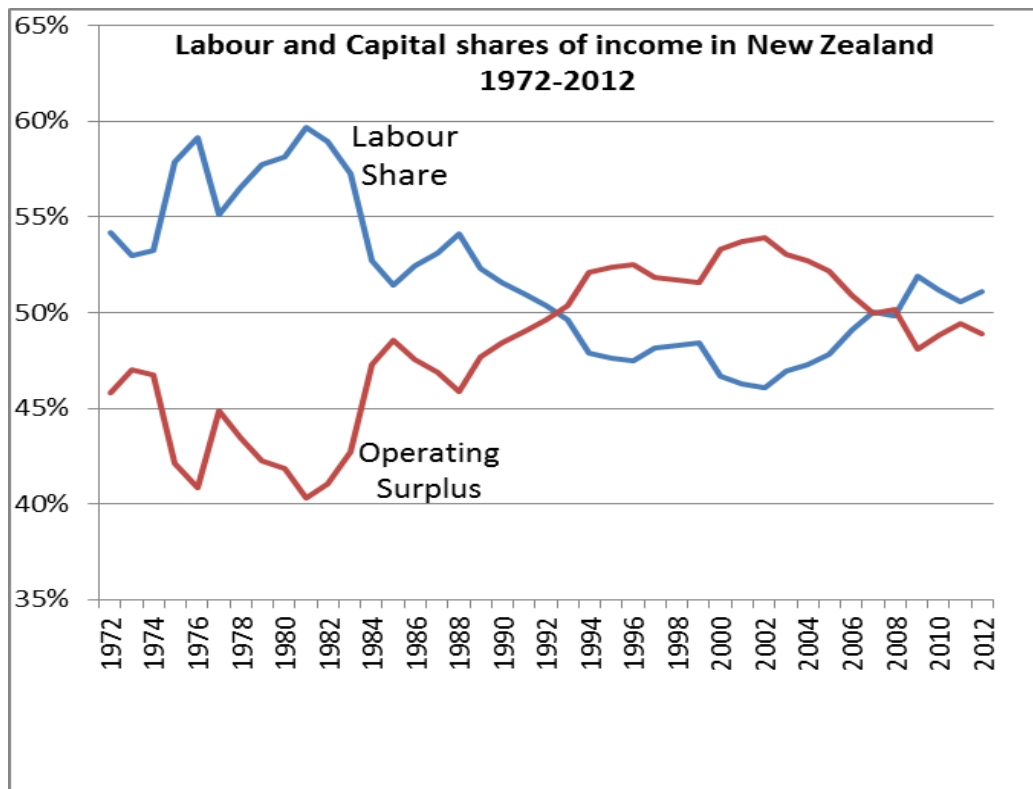
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- 6.89. We conclude from this that the Employment Relations Act 2000 made little change to the imbalance which has favoured employers for a number of years. Indeed in its early years, real wages fell on some measures. The changes made in 2004 which are being explicitly reversed by this bill may have helped right some of the imbalance as wages grew more strongly than before over this period. However that period was brief and real wages fell behind labour productivity growth with the onset of the global financial crisis and it is likely that the changes made to the Employment Relations Act 2000 with the change of government from 2008-2010 influenced the falloff. Wages have still failed to keep up with productivity growth over the period.

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6.90. Another way of looking at the same issue is to examine how income generated by the economy is shared. The share going to employees is “compensation of employees”, and its share in the total income is called the “labour share”. The remainder is mainly interest and dividends going to owners of capital and is called “operating surplus” in the National Accounts and its share of the total income is often called the “capital share”. As a share of income they by definition add to 100 percent (some issues about the allocation of some types of tax aside). In New Zealand, the labour share fell from 60 percent in the early 1980s to a low of 46 percent in 2002, having fallen through most of the 1980s and 1990s.⁸² In other words, during that period wage and salary earners lost about a quarter of their share of the income that the economy generated. It began to rise again but by 2010 was only 51 percent – still well below thirty years earlier. The labour share can fall if production becomes more capital intensive – if employers have invested in plant and machinery to make their firms more productive. As already noted, it is well recognised capital intensity is relatively low and that that type of investment has been weak in New Zealand.

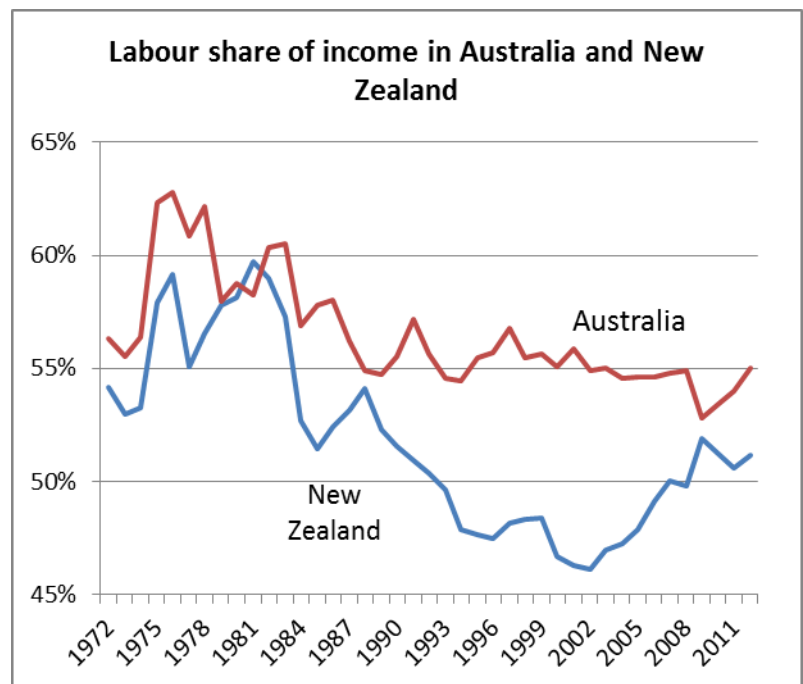


⁸² National Accounts, Statistics New Zealand.

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- 6.91. The Labour Share fell sharply in the early 1980s, probably as a result of the wage freeze then in place, it recovered somewhat until 1988 but then fell almost constantly until 2002. It is likely that the effects of the structural reforms of the 1984-1999 era, particularly the destruction of many firms and well-paid jobs as a result of the opening of the economy to international competition without proper action to assist the development of new industry and jobs, reinforced in 1991 by the Employment Contracts Act 1991, all had their effect. If the Employment Relations Act 2000 had an effect it was two to three years after its initial passage – a similar picture to that shown by the analysis of wages against productivity. The labour share appears to have peaked at 52 percent in 2009, likely as a result of the fall in investment income as a result of the global financial crisis, and appears to be falling again. It is still about 10 percentage points behind its level in the early 1980s.
- 6.92. Note again that this is not about the affordability of wages, but of the share of income that the economy generates. It is a distributional issue and while there are other effects at work including industry composition, New Zealand's fall in labour share is one of the sharpest in the OECD.
- 6.93. There is no case here that the employer-worker power relationship has become imbalanced towards workers – quite the contrary. There is still considerable rebalancing needed towards workers.

- 6.94. By comparison, Australia's labour share has been higher than New Zealand's for virtually this whole period. Its labour share did fall from 64 percent in 1976, but bottomed out around 56 percent in 1989 and stayed around that level while New Zealand's continued to fall.⁸³ Yet if anything, Australia's



⁸³ Australian data from Australian Bureau of Statistics.

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capital intensity is higher than New Zealand's.

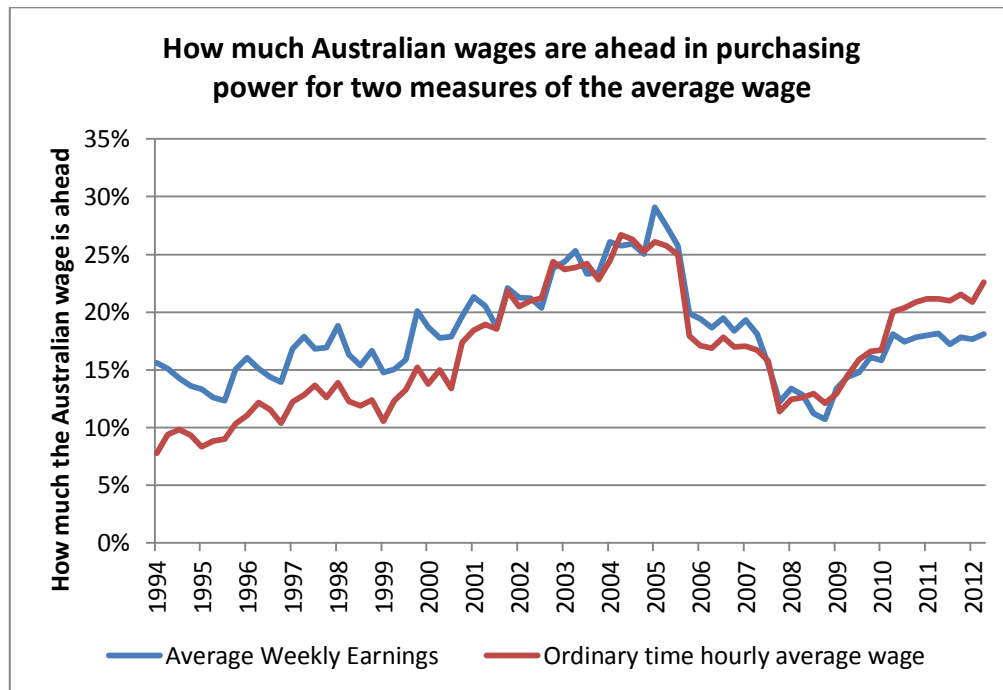
- 6.95. Australia's economy has thrived, with more of its income going to wage and salary earners than in New Zealand. That has almost certainly been helped by its award system, which as noted above sets scales of rates that underpin the country's wages. It is therefore absurd to assert that a degree of centralised wage bargaining or wage setting is bad for an economy.
- 6.96. OECD private sector hourly earnings and consumer price statistics show that between 1990 and 2011, real hourly earnings in the private sector increased by 36.2 percent in Australia but only 14 percent in New Zealand. From 2000-2011, private sector real hourly earnings rose 18.7 percent in Australia and 6.3 percent in New Zealand. They rose 6.5 percent between 2008 and 2011 in Australia (and 0.7 percent in the last year) but fell 1.2 percent and 2.0 percent respectively in New Zealand. For the period 1996-2010 (for which richest OECD data is available), New Zealand had the 6th lowest increase among 18 OECD countries, from 2000-2010, 6th lowest, from 2008-2010, 5th lowest, and from 2009-2010, 7th lowest. The last two are particularly surprising given that New Zealand's economy as a whole was less affected by the global recession than most of the OECD. The periods (June years) are not affected by the GST increase on CPI.
- 6.97. Average fulltime adult ordinary time earnings in Australia were A\$36.83 in November 2012⁸⁴, and the New Zealand average ordinary time earnings were NZ\$27.25 in December 2012. At straight exchange rate conversion the Australian rate was \$46.37 or 70 percent higher than the New Zealand equivalent. In purchasing power terms it was worth NZ\$35.91 or 32 percent higher. Even if we add 7.5 percent to the New Zealand average wage to make allowance for it including part-time workers⁸⁵, so estimating the average ordinary time wage for fulltime workers to be \$29.29, the gap is still 58 percent on the exchange rate comparison, and 23 percent in purchasing power terms. The graph on the next page shows the difference between New Zealand and Australian wages in

⁸⁴ Average weekly full time ordinary time earnings, seasonally adjusted, were \$A\$1,396.00 in May November 2012 (Australian Bureau of Statistics). This is divided by 37.9 to obtain hourly earnings. Purchasing power is estimated using the latest (September 2012) OECD values for Comparative Price Levels between New Zealand and Australia.

⁸⁵ This is the difference between median hourly earnings for fulltime and all wage and salary earners shown in the New Zealand Income Survey, June 2012. It was 7.9 percent in 2011.

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purchasing power terms using both the ordinary time hourly wage and the average weekly wage including overtime (which is the most directly comparable measure).⁸⁶



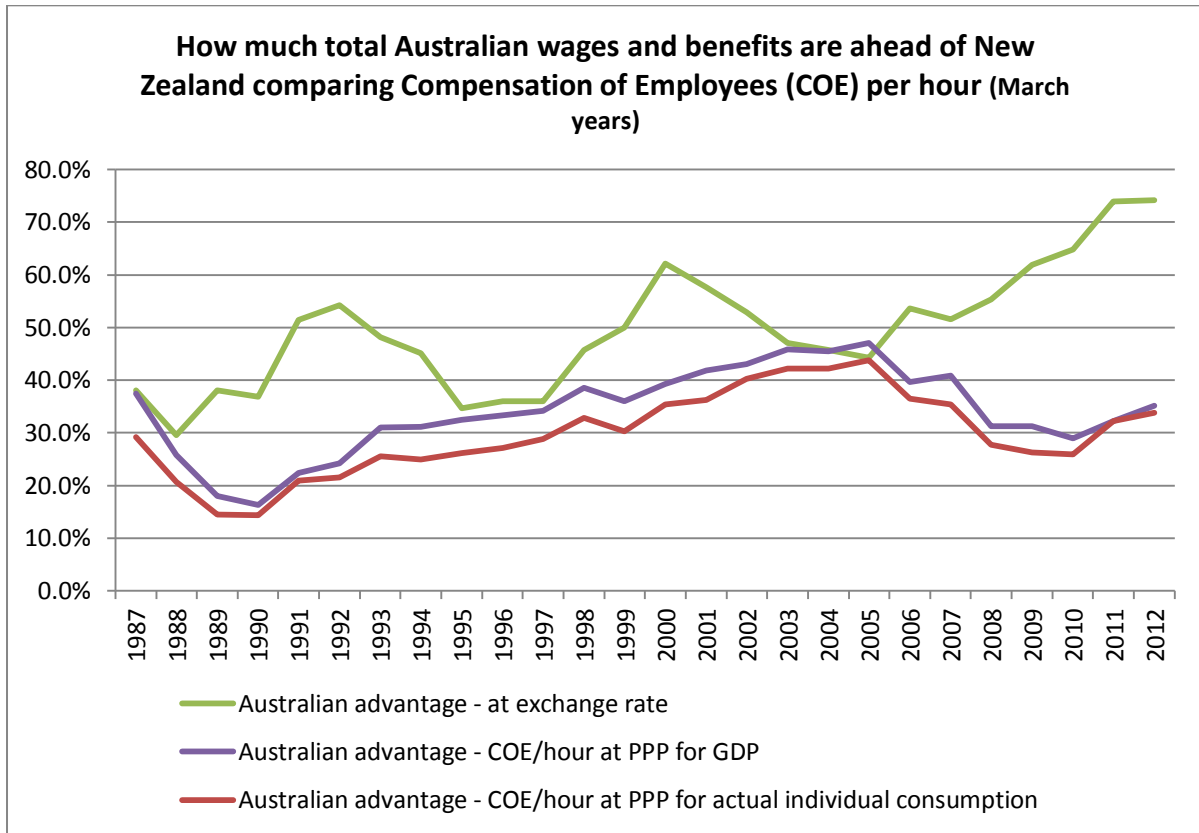
- 6.98. This does not take full account of casual employment loadings paid in Australia, nor does it include their substantial compulsory employer superannuation contributions. All employee benefits can be included by comparing compensation of employees (an aggregate from the National Accounts) per hour worked.⁸⁷ The following graph shows the gap in the period we have data for (1987-2012) in exchange rate terms, which was at its highest ever at 74 percent in the year to March 2012; in GDP purchasing power terms which approximate those for firms and was at 35 percent in 2012, having peaked at 47 percent in 2005; and in consumer purchasing power terms (actual private individual consumption) which was at 34 percent 2012 having peaked at 44 percent in 2005. The pattern at purchasing power is very similar to that for the average wage, but the gap is much larger. The exchange rate conversion shows a quite different pattern, driven much by the volatility in the exchange rate rather than wages themselves, though in a rising trend. The exchange rate conversion is what is seen by Australian businesses contracting work to New

⁸⁶ Further details can be found at <http://union.org.nz/economicbulletin125>.

⁸⁷ Compensation of Employees is from the National Accounts of the two countries. Actual hours worked for employees is from the Labour Force Survey in Australia and the Household Labour Force Survey in New Zealand (special data request). Data is from Australian Bureau of Statistics and Statistics New Zealand respectively.

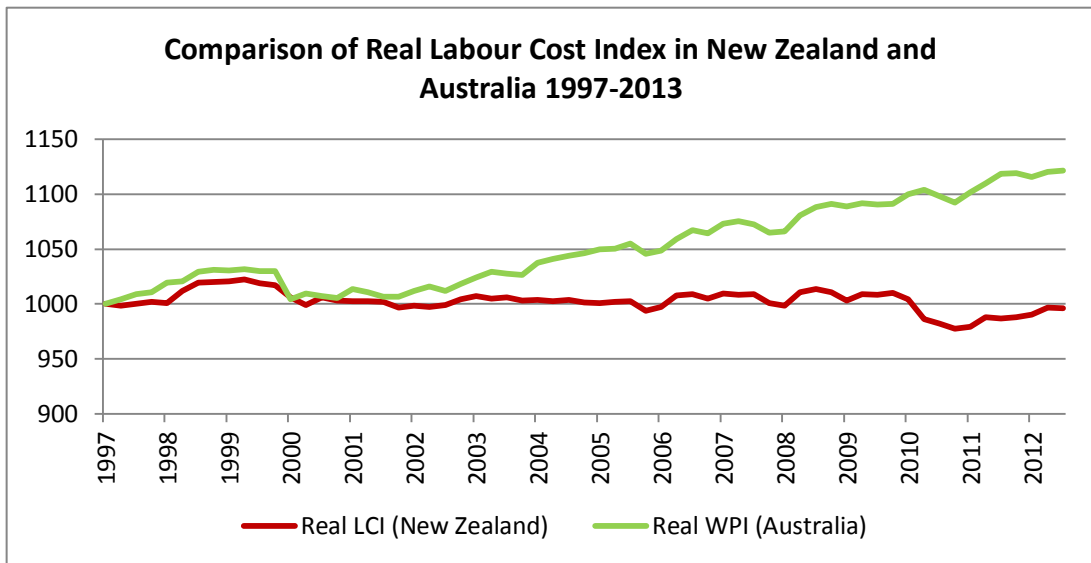
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Zealand firms and therefore not experiencing New Zealand output prices (such as call centres).

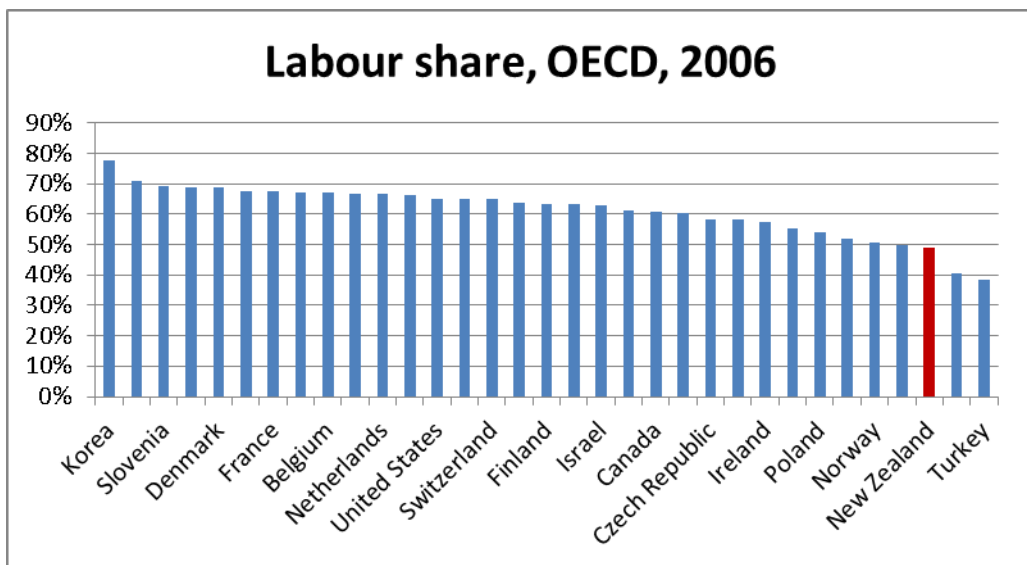


- 6.99. The wage gap rose during the 1990s and 2000s until about 2005, shortly after the 2004 amendments to the Employment Relations Act 2000, and then fell until the beginning of the global financial crisis. Since 2008, Australian wages have continued to grow rapidly in real terms while New Zealand wages have fallen in real terms leading to the gap widening again.
- 6.100. The difference in wage dynamics between the two countries can also be seen in a comparison between New Zealand’s Labour Cost Index and Australia’s Wage Price Index, nearly identical measures. Both are indexes so show only movements in levels of wages and other costs, but in real terms, the New Zealand LCI has been virtually flat or falling slightly since it began in 1992. However the Australian WPI, which is available only since 1997, has risen in real terms as the graph below shows.

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6.101. The comparison of New Zealand's labour share with Australia is not unique. In fact, New Zealand has one of the lowest labour shares in the OECD according to OECD data. In the accompanying graph, only Turkey and Mexico have a lower share.⁸⁸

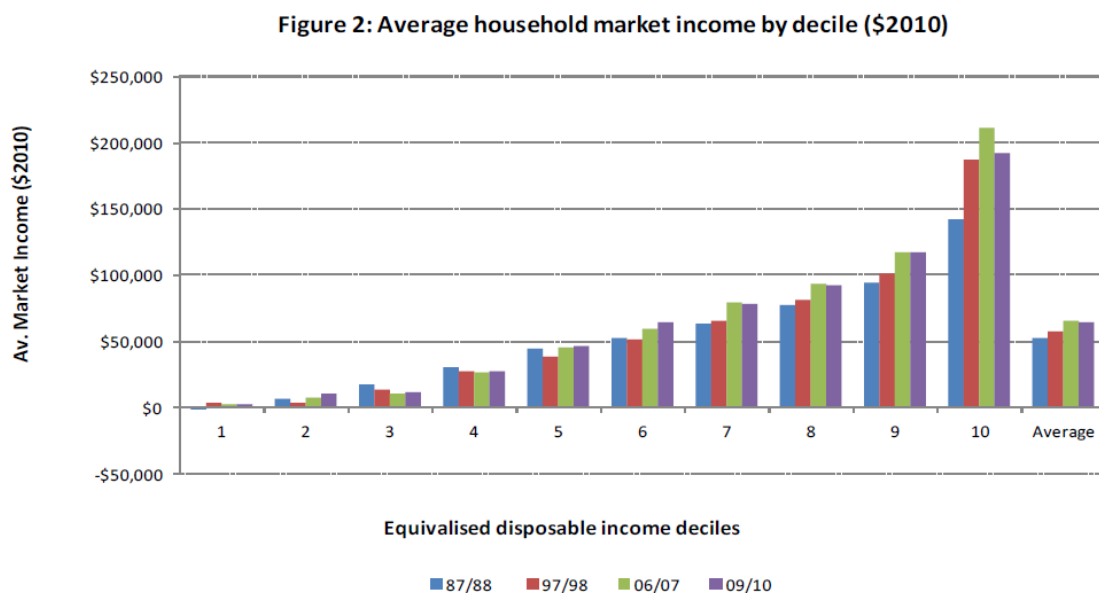


6.102. The measure graphed here is slightly different from the labour share previously described in that it includes the imputed labour income of the self-employed and working proprietors. It is also known as the "Real Unit Labour Cost" and is a measure of the labour cost of producing one unit of output in the economy. This is another indication that New Zealand has very low labour costs relative to the rest of the OECD.

⁸⁸ Source: OECD. This refers to a slightly different measure of labour share, which includes the labour income of self-employed people (called real unit labour cost).

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- 6.103. A result of this has been stagnant household incomes for the 50 percent of households with the lowest income. Wages are important. Statistics New Zealand's 2012 New Zealand Income Survey indicates that 74 percent of income for households with members in the 18-64 age range is from wages and salaries (before tax but after transfers). It is slightly higher for couples with dependent children but still over 50 percent for single parents with dependent children who are much more likely to have to depend on benefits. Wages therefore have a huge impact on the income available to a household.
- 6.104. The following figure comes from a recent Treasury report.⁸⁹ It shows market income for the ten equalised household deciles (that is, household income adjusted to take account of the number of adults and children in the household). Between 1988 and 2010, the market incomes of the lowest income deciles (one to five) were static. Half of New Zealand's households receive no more income in real terms than a generation ago, despite significant growth of income in the economy and increased hours worked. Increased hours come from individuals working longer hours and from increasing numbers of households having both partners working.



- 6.105. Even deciles 6 to 8 had relatively modest increases in income. Only decile 9 and – particularly – decile 10 had significant increases in market income. Decile 10 had a

⁸⁹ Aziz, O.A. Matthew Gibbons, M., Ball, C., and Gorman, E (2012) 'Fiscal Incidence in New Zealand: The Distributional Effect of Government Expenditure and Taxation on Household Income, 1988 to 2010' by Omar A. Aziz, Matthew Gibbons, Chris Ball and Emma Gorman, Treasury, June 2012. Available at http://www.nzae.org.nz/wp-content/uploads/2012/07/Aziz_Fiscal-Incidence-NZAE-2012-Conference-Paper.pdf.

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reduction in market income between 2007 and 2010, probably due to falling investment income as a result of the global financial crisis, but as the Ministry of Social Development's Household Incomes Report 2012 has documented, this reversed in 2011. For 2007, Treasury calculated a Gini coefficient of 0.54 for market income and 0.52 for 2010. These levels of income inequality are exceptionally high by OECD standards.

- 6.106. Many of these matters are investigated in detail by Stillman, Le, Gibson, Hyslop and Mare (2012)⁹⁰ in their recent study, "The Relationship between Individual Labour Market Outcomes, Household Income and Expenditure, and Inequality and Poverty in New Zealand from 1983 to 2003". Looking only at households that have at least one member aged 25-59, so excluding most of the households without dependent children (such as student households and the retired), they note that "labour income is by far the largest component of income and made up between 84 percent and 90 percent of regular income during the sample period" (at10) and conclude (at29):

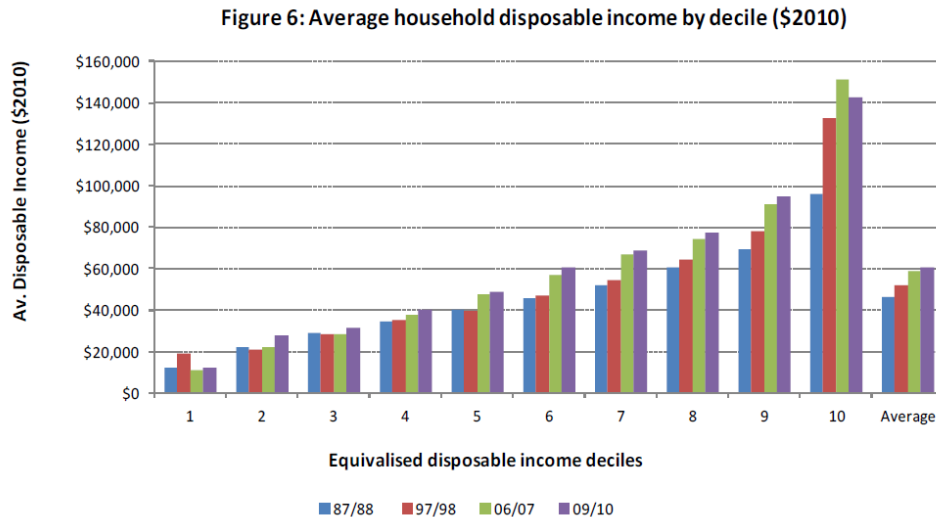
[C]ontrolling for changes in household composition, demographics, qualifications, and employment rates does not explain the increase in poverty that occurred in the 1980s. Taken in conjunction with previous work by Gibson and Harris (1996), Dalziel (2002) and Stillman et al. (2011), these results suggest that the structural reforms undertaken in the 1980s led to permanent changes in the distribution of resources across households in New Zealand, in particular a reduction in resources for the poorest households.

- 6.107. They make the stark observation that "the cohort of individuals born in the 1960s stands out for the fact that, compared to those born in the 1940s and 1950s, mean incomes and expenditure have generally been declining in real terms over their entire lifetimes. This is quite likely related to the fact that this is the cohort which was just getting started in the labour market when New Zealand underwent comprehensive economic reforms" (at 15).

⁹⁰ " Steven Stillman, Trinh Le, John Gibson, Dean Hyslop, and David C. Maré, (February 2012) 'The Relationship between Individual Labour Market Outcomes, Household Income and Expenditure, and Inequality and Poverty in New Zealand from 1983 to 2003' Motu Working Paper 12-02

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6.108. We have deliberately focussed only on market incomes here because we are submitting on the wage setting system. Taxes, transfers (including benefits, allowances and tax credits such as Working for Families) clearly moderate this effect to a degree, but still leave much slower growth in the incomes of lower income households than high income households. The effect of market income is still very apparent in the following figure from the Treasury report.



6.109. Reforms that made taxes less progressive, and benefits which were cut savagely in the early 1990s and have continued to fall relative to market incomes, both also carry heavy responsibility for poverty in New Zealand. However, market incomes and the drivers of them (such as structural reforms and changes in employment legislation) are major contributors that cannot be ignored. New Zealand lower-income working age households suffered significantly due to structural and regulatory reforms during the 1980s and 1990s, from which they have barely recovered. According to Perry, only Working for Families and income-related rents – not market wages – have made a difference, and it is apparent that they have done little more than to stop the rise in income inequality and poverty, not significantly reverse it.

6.110. Under these conditions it is no surprise that we have severe problems of poverty among very many families. Low wages and salaries play a significant part in causing those problems.

6.111. Put another way: all the benefits of the growth of the economy since the late 1980s have gone to the highest income households, with at least the bottom half of households missing out on the benefits of the growth (inadequate as many consider

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it to be) that did occur. The wages system, along with severe cuts in welfare benefits, must bear the brunt of the blame for this state of affairs.

7. Impact of the changes to collective bargaining and industrial action

- 7.1. The CTU analyses the detailed effect of the amendments in our technical submission. This section however gives an overview of the cumulative effects of the changes in relation to collective bargaining and industrial action.
- 7.2. Collective bargaining is a critical mechanism to protect and raise the wages and conditions of workers. It already exists within a relatively weak framework. This Bill deliberately aims to weaken the bargaining strength of collectivised workers in the sure knowledge that this will result in lower wages and conditions not just for unionised workers but for all workers that benefit from positive spill-over effects from union-negotiated wage increases and wage trends.
- 7.3. As we have explored earlier in our submission, there are a range of productivity issues that need to be addressed. But there is also a desperate need to lift the share that workers receive. This Bill drives us as a country in the opposite direction.
- 7.4. The Employment Relations Act 2000 specifically recognises in its objects the value of collective bargaining and need to promote it. Under current law, the parties are strongly encouraged to work through their differences and a collective agreement should result from bargaining unless there is a genuine reason (based on reasonable grounds) not to agree. Philosophical disagreement with collective bargaining is not treated as a genuine reason.
- 7.5. If enacted the changes in the Bill mean there will be less collective bargaining. There will be fewer collective agreements. There will be less bargaining power for workers. The Bill is fundamentally unfair.
- 7.6. A union negotiating team meets with an employer to negotiate a replacement collective agreement on behalf of the workers on site. After agreeing the bargaining process, the negotiations proper commence. After hearing the workers' claims, the employer may say "I'm sorry; I simply do not want to have a collective agreement on site anymore."⁹¹

⁹¹ Philosophical resistance to collective bargaining expressed this openly could constitute a breach of good faith through "undermining the bargaining" under s 32(d)(iii) of the Act. However, as Business New Zealand point out (see quote from Paul MacKay at 4.3 of our technical sub) employers

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- 7.7. An employer may effectively opt out of the collective bargaining process. They will be required to go through some of the motions of negotiation but their philosophical position will probably win out in the end.
- 7.8. Where parties disagree on an issue in collective bargaining, the law currently requires them to keep discussing other issues rather than letting the point of disagreement end or stall the bargaining completely. The removal of the requirement to consider and discuss other issues where agreement cannot be reached on a particular claim may have very serious consequences depending on the Court's interpretation of the change.
- 7.9. The reality of bargaining is that certain elements of the settlement (wage increases and the term of the agreement) will almost always be the last thing agreed since they are directly linked with the overall quantum of the settlement. Allowing employers to treat failure to agree on these issues as deadlock will fatally undermine the negotiating process.
- 7.10. Altering the bargaining process in favour of employers will push workers to use their most significant source of leverage in collective bargaining: strike action. Forty days from the commencement of negotiations both workers and employers may issue notice of strike or lockout. Here too, the Government has tilted the balance in favour of employers. The new law requires all strike action to be notified to the employer (and the Chief Executive of MBIE) in writing setting out a detailed and technical set of information. If the strike notice is incorrect in any way this may allow the employer to treat the strike as illegal.
- 7.11. The consequences of an illegal strike are grave for the union and workers. The employer may seek an injunction to stop the strike or seek substantial damages from the union for the effects. Striking workers may be replaced for the duration of the strike or even dismissed for participation. The harshness of these consequences will substantially constrain the effective right to strike.
- 7.12. Employers will be able to issue workers who partially withdraw their labour (such as by refusing to answer the phones) with a letter saying that their pay will be docked but not specifying how much money will be taken. These letters are likely to be intimidating documents and they will tend to push workers towards full strikes. It is

fundamentally opposed to unionisation will simply cover up their motives by taking bargaining positions that preclude settlement with the same essential effect.

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worth remembering that according to the latest figures all forms of industrial action are at their lowest level since the current records began in 1985.

- 7.13. The proposed law creates a mechanism for either party (but in practice the employer) to apply to the Employment Relations Authority for a declaration that bargaining has ended. The Authority will look at whether mediation or other methods may break the impasse and can recommend these.
- 7.14. A useful dispute resolution mechanism is facilitation (where an Authority Member hears each side and makes non-binding recommendations as to the best way forward). However, facilitation is only available where bargaining has gone on for a long time, has been conducted in breach of the Act, that a strike or lockout would be against the public interest or that there have been “protracted or acrimonious strikes or lockouts.” Ironically, this last ground acts as an incentive for workers to escalate the dispute as soon as possible and get it into facilitation before the employer succeeds in having bargaining declared over. Both scenarios damage relationships in the workplace and lead to court processes (contrary to the objects of the Employment Relations Act 2000).
- 7.15. If bargaining is declared over, several bad things happen from the workers’ perspective. The workers’ existing collective agreement (which normally continues in force for a year while a replacement is negotiated) immediately comes to an end and members go onto individual employment agreements. The workers cannot take industrial action. In some circumstances, workers are protected from their employer contracting out their work during bargaining but this protection comes to an end when the bargaining does.
- 7.16. The proposed law also includes a period of 60 days where bargaining cannot be initiated without agreement follow a declaration that bargaining has concluded. The employer may negotiate with individual union members and induce them to accept terms rejected by the union in collective bargaining or incompatible with the expired or proposed collective agreement.
- 7.17. All of these changes tilt the balance of power in negotiations toward the employer. The result of this will be fewer collective agreements and lower-paid collective agreements.

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8. Impact of the changes on vulnerable workers

- 8.1. This section provides an overview of the effects of the proposed repeal of the 30 day rule for new workers, removal of Part 6A protections for ‘vulnerable’ workers, and changes to meal break provisions.

New workers

- 8.2. The Bill proposes to remove the right of new workers to be covered by the terms and conditions of an existing collective agreement for their first 30 days of employment regardless of their union membership status. As the first cabinet paper notes:⁹²

Repealing the 30-day rule will provide employers with more flexibility on what they are able to offer to new employees as their starting terms and conditions of employment. It will enable employers to offer individual terms and conditions that are less than those in the collective agreement.

- 8.3. For many workers (particularly in a tight labour market) there is a significant imbalance of bargaining power in favour of the employer at the point of accepting a new job. As the Ministry of Social Development notes “repealing the 30 day rule will disadvantage young people, those exiting benefits for employment and other vulnerable workers.”⁹³

- 8.4. Currently, the terms of an existing collective agreement form a baseline entitlement that may not be negotiated below though employers may agree enhanced terms. The law changes may induce prospective workers to agree to worse terms and conditions than existing workers. This is particularly likely where new workers do not seek advice on their offer of employment (most will not), where the terms of the collective agreement are difficult to understand or where they are not provided with a copy of the applicable collective agreement (this last is noted as a risk in the Regulatory Impact Statement).⁹⁴

- 8.5. New workers, particularly those on 90-day trial periods where they may be fired for no or any reason, may be hesitant to join the union and thereby the collective agreement if they fear disfavour or reprisals from the employer (proving

⁹² ‘Employment Relations Amendment Bill 2012: Paper One- Collective Bargaining and Flexible Working Arrangements’ at [15]

⁹³ ‘Regulatory Impact Statement: Improving how collective bargaining operates’ at 19.

⁹⁴ ‘Regulatory Impact Statement: Improving how collective bargaining operates’ at [36]

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discrimination under s 104 or duress under s 110 of the Employment Relations Act 2000 is difficult).

- 8.6. The primary issue for unions organising in the workplace is the undermining of terms and conditions for union members through the introduction of workers on alternative terms and conditions. This may undercut the terms of the collective agreement (for example, by subverting seniority rules by offering additional shifts to non-union workers). Employers will be able to employ a cohort of new workers on terms which undermine the collective agreement and therefore weaken the bargaining position of the union in future negotiations. The 30-day period as it now applies offers a significant protection for new workers while they get information and experience in the workplace.
- 8.7. Also there will be a detrimental impact on union membership as new workers will be employed on terms that are inconsistent with the collective agreement and may face adverse consequences if they then opt to join the union and therefore the collective agreement.

Part 6A

Fortune may favour the strong, but justice must favour the weak.⁹⁵

- 8.8. It is important to recall the reasons Part 6A of the Employment Relations Act 2000 was introduced. The report of the Public Advisory Group on Contracting Out and Sale of Business includes a CTU survey of affiliate unions on the issue of transfer, sale and contracting out. The survey found that the impact on workers included:⁹⁶
- inferior terms of employment
 - redundancy
 - deterioration in quality of service provided and work standards...
 - long periods of stress and uncertainty
 - concern about continual re-letting of contracts undermining job security
- 8.9. The survey also asked whether those workers who transferred to the new employer had changes to their terms and conditions of employment and, if so, what these changes were. Transferring workers received:
- fewer hours
 - lower wage rates

⁹⁵ *Ford v Capital Trusts Ltd* [1995] 2 ERNZ 47, 66 (per Chief Judge Goddard)

⁹⁶ Report of the Advisory Group on Contracting Out and Sale and Transfer of Business to the Minister of Labour (April 2001) at 72

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- reduced holiday entitlements
- higher workloads
- “culture” changes

8.10. The 2012 Review of the Operation of Part 6A notes that:⁹⁷

[T]he Stage One review process concluded that overall the legislation contributes to positive social and economic outcomes in New Zealand. These findings are partly premised on the following:

- industries with low-skilled and low-paid employees can benefit when wages and employee conditions are excluded from the contest for contracts and competition is instead focused on management, technical innovation and investment,
- continuity of employment protection in labour-intensive industries with high employee turnover can improve workplace stability and productivity, and
- broad socio-economic benefits can be achieved through improving the job security and workplace stability of employees who lack scarce skills and who are at risk to unemployment and related negative outcomes.

8.11. The workers in the industries listed in Schedule 1A of the Employment Relations Act 2000 are disproportionately female and disproportionately non-European. As the Review notes:⁹⁸

Gender

The 2006 Census indicates that amongst specific occupational classes such as cleaners and laundry employees, and food preparation assistants, women were the majority of employees (68 percent and 64 percent respectively).

Ethnicity

From the ethnicity data available for specific occupational groups it is estimated that employees covered by Schedule 1A of ER Act are 62 percent New Zealand European, 18 percent Māori, 9 percent Pacific, 9 percent Asian, and 10 percent other categories (Middle Eastern/Latin American/African, and other ethnicity).

8.12. The Service and Food Workers Union- Nga Ringa Tota and its members will submit in detail on the importance of the protections in Part 6A to affected members' working conditions and wellbeing. We endorse these submissions and urge the Government to reconsider measures that will undermine these workers.

⁹⁷The Findings of the Review of Part 6A of the Employment Relations Act 2000, [14]

⁹⁸The Findings of the Review of Part 6A of the Employment Relations Act 2000, [33] and [34]

Rest and Meal breaks

- 8.13. The Bill proposes to remove workers' entitlement to breaks of a certain length at a particular time and replace these meal with a general obligation for the employer to "provide [workers] with a reasonable opportunity for rest, refreshment, and attending to personal matters" that is "appropriate for the duration of [their] work period." When these breaks are to be taken is, unless agreed otherwise, purely at the employer's reasonable discretion.
- 8.14. Under the proposed changes, where an employer believes they cannot reasonably provide breaks (or if agreed) then they can make workers go without any meal or rest breaks at all. Where this occurs they are required to compensate workers for this (for example with an extra allowance or through an earlier finish) but this is not the same as getting a break. The proposal poses real issues for health, safety and happiness at work.
- 8.15. These changes will affect vulnerable workers such as young people disproportionately. Workers in the restaurant, hotel, retail and food industries are likely to be particularly affected.
- 8.16. In most developed countries statutory minimum rest breaks are the norm and there is essentially no evidence that the current law is not working. Removing these protections is a step backwards for workers, for healthy workplaces and for New Zealand.
- 8.17. In the light of New Zealand's experience with a high degree of self-regulation by employers of workplace health and safety, which led to an appalling state and too frequent abuse due to employers prioritising production over safety, it is astonishing that similar self-regulation is now being proposed for an important aspect of workplace health and fair conditions which will also come up against production pressures. New Zealand employers have not earned the trust that is needed for this proposal to operate fairly and safely.

9. Impact on health and safety

- 9.1. Improvement in New Zealand's appalling state of workplace health and safety is compromised in a number of ways by the proposals in this bill. As already noted, regular work breaks are an important for the health of workers but are being compromised by the bill. Insecure and low wage workers, who are particularly at risk in the changes proposed, are especially at risk of injury and occupational

disease. Unions play a valuable role in securing and improving workplace health and safety, but their role will be weakened. This section reviews some of the evidence on these latter two aspects.

- 9.2. The Independent Taskforce on Workplace Health and Safety reported⁹⁹ that “self-employed workers are more likely to be injured at work than employees”, which has consequences for contracting out of work that could be done in-house, and “employees new to positions or engaged in temporary, casual or seasonal work may be particularly at risk” (p.13). It also reported from submissions (at 35):

Workers working long hours. Long hours contribute to fatigue and distraction issues. Fair and decent pay rates (removing the need to work double shifts, etc.) and placing limits on the number of hours that workers can work in a given period were recommended.

Workers in insecure employment relationships. Casual workers, those on 90-day trials, short-term contractors and seasonal workers were all identified as less likely to report injuries or voice concerns for fear of not being reemployed in the future.

- 9.3. The Taskforce also noted that “workers in short-term or contract work relying on English as a second language are at greater risk than recent migrants in permanent employment.”
- 9.4. Canadian research shows that workers new to their job are at much higher risk of injury: “workers on the job for less than a month had four times as many claims as those who held their current job for more than a year.” Although this ratio has declined more recently it remained above three. This has significant implications for casual, temporary and other short term workers including contractors.¹⁰⁰
- 9.5. Similarly a European Parliament study found that:¹⁰¹

Temporary workers on average face more difficult working conditions (e.g. shift work and hazardous tasks) than permanent workers. They are also affected by poorer ergonomic conditions than permanent workers and are at higher risk of developing MSDs [Musculoskeletal Disorders]. Some national and regional studies have found that temporary workers face higher levels of occupational injuries.

⁹⁹ *Report of the Independent Taskforce on Workplace Health and Safety*, April 2013.

¹⁰⁰ “Institute of Work and Health (2009) ‘Newness’ and the risk of occupational injury’, Policy Briefing, Institute for Work and Health, May 2009, available at <http://www.iwh.on.ca/briefings/newness>.

¹⁰¹ “Occupational health and safety risks for the most vulnerable workers”, Belin, A., Zamparutti, T., Tull K., Guillermo, K., Hernandez, G., Milieu Ltd, and Graveling, R. (August 2011) ‘Occupational health and safety risks for the most vulnerable workers’ European Parliament Policy Department: Economic and Scientific Policy, IP/A/EMPL/ST/2010-03, at 92.

These workers have less access to training and are less likely to be unionized; this can lead to a lower level of social and OSH protection than permanent workers receive.

Temporary workers can experience high level of stress and frustration, which can negatively affect their lifestyle.

9.6. Elsa Underhill of Deakin University who has conducted research into temporary agency workers, notes that:¹⁰²

International and Australian research agrees that temporary agency workers have a higher incidence of workplace injury, and those injuries are more severe” and finds for such workers in Victoria, Australia that labour hire workers were more likely to be injured early in their placement than direct employees, despite similar qualifications.

9.7. A major review of research in 2001 by Michael Quinlan and colleagues found that:¹⁰³

Of the 93 published journal articles and monographs/book chapters reviewed, 76 studies found precarious employment was associated with a deterioration in occupational health and safety (OHS) in terms of injury rates, disease risk, hazard exposures, or worker (and manager) knowledge of OHS and regulatory responsibilities. Of the more than 25 studies each on outsourcing and organizational restructuring/downsizing, well over 90 percent find a negative association with OHS. The evidence is fairly persuasive for temporary workers, with 14 of 24 studies finding a negative association with OHS. The evidence is less strong for small business, and a handful of studies on part-time workers found no clear association with negative OHS outcomes (in some cases the reverse).

9.8. An analysis of the association between job insecurity and health carried out by European researchers from five European countries found that “Persons with insecure jobs were at an increased risk of poor health in most of the countries included in the analysis. Given these results and trends towards increasing frequency of insecure jobs, attention needs to be paid to the public health consequences of job insecurity.”¹⁰⁴

¹⁰² Underhill, E. (2007). ‘Temporary agency workers and the contribution of workplace unfamiliarity to workplace injuries’. In AIRAANZ 2007: diverging employment relations patterns in Australia and New Zealand”, conference proceedings (at 11). Presented at the Association of Industrial Relations Academics of Australia and New Zealand. Conference, Auckland N.Z.: University of Auckland. Retrieved from <http://hdl.handle.net/10536/DRO/DU:30008220>

¹⁰³ Quinlan, M., Mayhew, C. and Bohle, P. (2001) ‘The global expansion of precarious employment, work disorganization, and consequences for occupational health: a review of recent research”, *International Journal of Health Services*, Vol 31 No.2, 2001.

¹⁰⁴ László, K. D., Pikhart, H., Kopp, M. S., Bobak, M., Pajak, A., Malyutina, S., Gyöngyvér Salavec, Marmot, M. (2010). Job insecurity and health: A study of 16 European countries. *Social Science & Medicine*, 70(6), 867 – 874.

9.9. The importance of unions in strengthening workplace health and safety has been recognised by both the Pike River Royal Commission and the Independent Taskforce on Workplace Health and Safety. The former recognised the importance of the union role in a number of ways including its recommendation to reinstitute union-appointed check inspectors and its support for tripartite governance of the new workplace health and safety agency.

9.10. The Taskforce noted that one of the factors in New Zealand's weak health and safety system was "Liberalisation of the labour market and the weakening of union representation"¹⁰⁵. It recognised that lack of collaboration with unions (as well as businesses) was one of the failings of the regulator, and that falling union density was an important factor in poor worker participation in workplace health and safety (at 24). It observed:

111. Leadership has also been hampered by the regulator's failure to engage with unions. While unions today are limited in their coverage, with the right support from the regulator and employers they can play a very positive role. This role includes: driving up health and safety standards; supporting worker participation; providing a safer channel for workers to report risks and incidents; contributing expertise; and building support for better health and safety practices. Unions' positive role was recognised in a recent government report¹⁰⁶, which recommended "greater collaboration with unions on health and safety, who are seen as having a positive impact on health and safety practice", by the Royal Commission, and in international research. Unions' positive role is also recognised in international conventions ratified by New Zealand, and is seen as an important factor in more successful health and safety systems in other countries. (p.26)

9.11. It also recognised the fundamental importance of tripartism which it described as follows (at 40), and recommended should be fundamental to the structure of the new health and safety system, from representation on the board of the new agency, to the form of advisory groups to the agency, to relationships with health and safety inspectors, to arrangements between employers and workers in the workplace.

Tripartism throughout the system

178. Our vision is that tripartism is inculcated throughout the workplace health and safety system. Tripartism involves the government regulator, employers and unions working together to improve workplace health and safety outcomes. The UK has shown respect for tripartism for

¹⁰⁵ Report of the Independent Taskforce on Workplace Health and Safety", April 2013, at 21.

¹⁰⁶ Labour and Immigration Research Centre, Department of Labour. (2012). In Harm's Way: A case study of Pacific Workers in Manukau Manufacturing. Wellington, New Zealand: Department of Labour. Retrieved from <http://www.dol.govt.nz/publications/research/hs-practices-in-pacific-workplaces/report.pdf>

40 years. Tripartism is also the dominant model in Australia. The Royal Commission found that a key reason for DoL being an ineffective regulatory body was that it had “no shared responsibility at governance level, including the absence of an active tripartite body” [at.296]. Tripartism needs to be reflected in engagements between the Government and peak representatives of employers and workers, and in the governance of the regulators. Similarly, the implementation of the Robens model needs to be done on a tripartite basis, with representatives of employers and workers actively engaged in the development of regulations, ACoPs [Approved Codes of Practice] and guidance material.

9.12. Among other recommendations were, as part of a recommendation for stronger worker participation requirements, the right of workers to participate in their workplace health and safety through representation systems mechanisms of their own choosing including unions (at 60); to provide increased support for unions’ existing rights of entry to the workplace to carry out their health and safety role (at 62); and in leadership (at 77).

9.13. A Department of Labour report on the health and safety of Pacific workers in Manukau manufacturing firms remarked on the positive role recognised for the unions:¹⁰⁷

The practices of firms appeared to be influenced by union presence in the workplace. Participants felt that unions had a two-fold positive influence on health and safety: through being a vehicle of information dissemination and through pushing for stronger practices from employers.

9.14. Accordingly it recommended (at vi):

[G]reater collaboration with unions on health and safety, who are seen as having a positive impact on health and safety practice,

9.15. These directions should not be a surprise. International authority on workplace health and safety, David Walters, who has specifically researched its success factors, summarised the state of knowledge in a paper for the Pike River Royal Commission as follows:¹⁰⁸

When taken together, the overwhelming majority of studies that have considered the evidence of the effectiveness of employee consultation and representation on health and safety are positive about its benefits. Studies using objective indicators are inconsistent concerning their

¹⁰⁷ Labour and Immigration Research Centre (2012). In Harm’s Way: A case study of Pacific Workers in Manukau Manufacturing. Wellington, New Zealand: Department of Labour, at iv. Retrieved from <http://www.dol.govt.nz/publications/research/hs-practices-in-pacific-workplaces/report.pdf>

¹⁰⁸ Walters, D (2011) ‘A Review of the Evidence of the Effectiveness of Representation and Consultation on Health and Safety at Work’ at 3.

conclusions about the exact factors that promote and sustain such benefits but are broadly in agreement that positive outcomes are associated with joint arrangements for health and safety and that outcomes are better under such arrangements than when employers attempt to manage health and safety without the consultation and representation of their employees in these processes. Studies of the proxy indicators of effectiveness consistently find them improved under arrangements to manage health and safety that include measures to represent employees and consult with them. A variety of other studies suggest that the institutions of employee representation — trade unions — play a considerable role in promoting and sustaining health and safety improvement, through supporting representation of employee interests at workplace, sectoral, national and international levels.

- 9.16. This bill will weaken the freedom of workers to join unions, strengthen the hand of employers who wish to exclude unions from the workplace by damaging unions' unique and fundamental role in collective bargaining, and hence further undermine the ability of unions to carry out their function in workplace health and safety. The bill will give encouragement to anti-union employers, which will harm health and safety along with many other aspects of workplace relationships. It repeats the mistakes of the 1990s which in hindsight have now been seen as (unfortunately literally) fatal.

10. Summary of effects of changes and consistency with objects of the Act

This section provides an overview of the effects of the most significant changes and their consistency with the objectives of the Employment Relations Act 2000. These changes are discussed in more detail in part two of our submission.

CHANGES RELATING TO COLLECTIVE BARGAINING AND INDUSTRIAL ACTION

Clause	Proposed change	Bargaining	Industrial action	Legal action	Effect on workers	Consistency with objects of ER Act
10	Equalisation of bargaining timeframes.	Disputes around collective agreement coverage and cross initiation may hinder early bargaining.	No change.	Increase: factual disputes around initiation will be common.	Some may fall out of collective agreement coverage due to successful employer arguments in coverage disputes.	Inconsistent. Does not recognise inherent inequality of employment relationship or promote collective agreements.
11	Employers may exit of multi-employer bargaining within 10 days of initiation.	Unions forced to negotiate greater numbers of CAs.	Decrease.	Decrease.	Fewer covered by collective agreements. Less industry agreement and coordination.	Inconsistent. Does not promote collective bargaining.
7, 9, 12	Removal of duty to conclude a collective agreement unless there are genuine reasons based on reasonable grounds not to.	Fewer collective agreements concluded. Bargaining may be protracted by 'free hit period' of 60 days and re-initiation. Promotes surface bargaining.	Likely increase in industrial action earlier in bargaining in an attempt to settle faster or attempt to put into facilitation.	Significantly increased: Employers will seek declaration of conclusion from Authority and unions will often wish to oppose.	Likely reduction in pay and conditions through fewer successfully concluded collective agreements.	Inconsistent. Does not promote collective bargaining. Does not promote low level dispute resolution. Does not reduce the need for judicial intervention.
8	Removal of duty to continue bargaining where deadlock on certain matter reached.	Promotes surface bargaining. Promotes bargaining not in good faith.	Possible increase to shift intractable employer positions.	Increased. Allegations of bargaining not in good faith will be common.	Likely reduction in pay and conditions through fewer successfully concluded collective agreements.	Inconsistent. Does not promote collective bargaining.

Clause	Proposed change	Bargaining	Industrial action	Legal action	Effect on workers	Consistency with objects of ER Act
48-53	Requirement of written strike and lockout notices in all instances.	Likely diversion of bargaining energy into dispute around legality of notices. Protraction.	Likely increase in full withdrawal of labour: notices are easier to give.	Significantly increased: Employers will seek to challenge validity of strike notice.	Likely reduction in pay and conditions through reduced leverage in negotiations.	Inconsistent. Does not promote bargaining. Does not reduce judicial intervention.
56, 57, 59	Ability for employer to institute pay deductions for partial strikes.	Likely diversion of bargaining energy into dispute around calculation of partial strike deduction. Protraction.	Likely increase in full withdrawal of labour (due to punitive and legalistic partial strike system). Some workers may be less willing to take even limited action.	Significantly increased: formal process for challenge of calculation rests with Authority.	Likely reduction in pay and conditions through reduced leverage in negotiations.	Inconsistent. Does not reduce the need for judicial intervention.
14-19	Repeal of 30-day coverage under existing collective agreement for new workers.	Possible undermining of collective agreement terms through incompatible agreements with new workers.	No change.	No change.	Likely reduction in pay and conditions. Directly for new workers and indirectly for existing workers through undermining of collective agreements.	Inconsistent. Increases inherent imbalance of power. Does not promote collective bargaining.

CHANGES TO PART 6A (TRANSFER OF EMPLOYEES)

Clause	Proposed change	Effect on process	Recourse to legal action	Effect on workers	Consistency with objects of ER Act
28-31, 36	Incoming Small-to-Medium Enterprise (SME <20 employees) exemption to Part 6A.	Warranty system renders significantly more complex. SMEs given advantage in tendering process.	Increased: outgoing employers and workers will look to challenge SME status.	Many vulnerable workers will be given choice between worse conditions (including pay) or end of employment.	Inconsistent. Increases inherent imbalance of power.
32-34	Election to transfer to new employer must be: <ul style="list-style-type: none"> In writing and signed; and Within 5 working days (or longer by employer agreement). 	Will speed up transfer process. Some eligible workers will not transfer due to short timeframe or strict notice requirements.	Unclear.	Timeframe is too short for many workers to consider and seek independent advice. Timeframe is often also too short to correct personal information pre-transfer.	Inconsistent. Short timeframe and restriction on election worsen the inherent imbalance of power.
35	Apportionment of service-related liabilities in employer transfers. Outgoing employer warranties re no change to terms and conditions or job.	Default formula for service-related liability will speed the process.	Implied warranty may lead to increased litigation between incoming and outgoing employers.	None.	Consistent.
37-41, 58	Transfer of individualised employee information to incoming employer.	Process rendered more complex by large scale transfer of information and on-going obligation of correction.	Potential increase in grievances and subsequent litigation.	Many may be disadvantaged by pass on of incorrect or irrelevant information.	Inconsistent. May impact working relationship by lessen trust between employers and workers.

OTHER CHANGES

Clause	Proposed change	Recourse to legal action	Effect on workers	Consistency with objects of ER Act	Other issues
4	Removal of duty to provide confidential or evaluative material in employment at risk situations.	Potential increase in grievances and subsequent litigation.	Disadvantaged in termination of employment situations.	Inconsistent. Undermining of good faith. Fails to recognise inherent inequality of power.	Inconsistency with Privacy Act 1993 definition of evaluative material may lead to overly wide interpretation by employers.
20-26	Flexible working requests: <ul style="list-style-type: none"> • Extension to all workers; • No minimum time limit; • Faster employer response required. 	None.	Some additional access to process rights. However no additional substantive rights means of little significance.	Consistent.	
43-47	Changes to meal breaks.	None.	Many disadvantaged / fatigued by lack of adequate breaks. Greater risk of accidents.	Inconsistent. Fails to recognise inherent inequality of power.	Also inconsistent with objects of the Health and Safety in Employment Act 1992.
61	Authority to issue oral determination or preliminary findings and provide determination within 3 months except in exceptional circumstances	None.	None.	Consistent.	May create issues of natural justice or fairness when hasty initial determinations are reached. Significant resourcing issue for Authority in light of other changes.