



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
Committee**

on the

**Minimum Wage (Starting-Out Wage) Amendment
Bill**

**P O Box 6645
Wellington
November 2012**

27 November 2012

Contents

1. Principal recommendations	3
2. Introduction	4
3. Cutting the youth minimum wage will not stimulate employment	6
4. The value of young people's work.....	13
5. Discrimination on the basis of age and employment status	15
6. The starting-out rate is contrary to New Zealand's international obligations	17
7. Training Rates.....	18
8. Active Labour Market Policy.....	21
9. Under 16 year olds.....	22
10. Definition of continuous employment	23
11. Conclusion	24
12. APPENDIX: New Zealand's International commitments – UN & ILO	25

1. Principal recommendations

- 1.1. The CTU opposes the cutting of the youth minimum wage. Evidence shows it will have little or no effect on youth employment rates. Rather it will increase youth hardship. The CTU therefore recommends that this Bill does not proceed.
- 1.2. The CTU recommends that the Select Committee asks the Ministry of Business, Innovation and Employment (MBIE) to look at alternative policy settings that would better address the issues.
- 1.3. MBIE should undertake research on the extent to which training rates are used and the quality of the training received while trainees are paid less than the full adult minimum wage.
- 1.4. The active labour market policies that the Government is using to decrease youth unemployment should be substantially bolstered and widened.
- 1.5. The ILO should be approached to assist New Zealand to review our labour and education laws and policy in order to provide a threshold for the entry of young people into work, including the setting of minimum wage levels for young people under 16 years old.
- 1.6. If the Bill proceeds, the CTU recommends that the following wording is added to the six month time restriction under proposed section 4A(1)(c)(ii): *“It is from the day an employment agreement is signed, until six calendar months are up- regardless of how many hours are worked per week.”*

2. Introduction

- 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 350,000 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. Unions advocate for decent jobs and a living wage, whereas this Bill undermines those objectives.
- 2.4. New Zealand's outcomes for young people and youth unemployment are a national crisis. Boven et al. (2011) sum up the problem:¹

Every country has disadvantaged youth. New Zealand's are more disadvantaged than youth in other OECD countries on average, the disadvantage is strongly concentrated in Māori and Pacific ethnic groups and there is no convincing sign of improvement trends.

Unemployment is central; it is an important cause of disadvantage as well as a cause of further disadvantage. Disengaged, inactive youth are at greater risk of lower earnings, needing social assistance, criminal offending, substance abuse, teenage births, suicide, homelessness, and mental or physical health.

New Zealand 'allocates' a higher share of unemployment to its youth than any other OECD country. Forty-five percent of New Zealand's total unemployed are youth. Youth aged 20 to 24 years have similar experiences to 20 to 24 year olds in any other OECD country so it is the 15 to 19 year olds here who are different.

Many OECD countries insulate their 15 to 19 year olds from unemployment by keeping them in education or training so they are not in the labour force. New Zealand does not; it has the lowest median age of leaving initial education among OECD countries. Far too many youth are leaving school early and not successfully transitioning to work.

- 2.5. There is consensus as to the problem. The CTU differs from the Government as to the solution. The CTU does not support cutting minimum wages for 16-17 year olds or 18-19 year olds who have been on a benefit for 6 months or longer.

¹ Boven, R., Harland, C., & Grace, R. (2011) *More ladders, fewer snakes: Two proposals to reduce youth disadvantage* New Zealand Institute discussion paper 2011/1 p 2.

- 2.6. There is little evidence that lowering wages reduces unemployment.
- 2.7. Employers surveyed by the Ministry of Business, Innovation & Employment ('MBIE') in 2012 were markedly unenthusiastic about the sub-minimum wage rates. The study found that:²

A key theme arising from the quantitative interviews was the lack of incentive that reducing the cost of labour (wage rates) was for employers in terms of hiring staff or filling vacancies. Employers were clear that they preferred measures that would reduce risk to their business when taking on a new staff member rather than using the potential lower wage rates... available to them.

- 2.8. The proposals in this Bill will incentivise poor employment practices. There is a clear encouragement for some employers to sack young staff after 6 months – and they can do so at 90 days without any justification – in order to continue to get labour at a 20 percent lower cost.
- 2.9. MBIE's best guess is that the initiative would only create 400-1,100 new net jobs.³ Even if correct, this is a very small gain relative to the approximately 250,000 16-19 year olds in New Zealand.
- 2.10. The very modest projected gain should be treated with considerable caution. MBIE cannot project the impact of the policy introduction with any accuracy. In other words, there is no evidence that this policy will work. MBIE is quite explicit that it does not have the information necessary to make a credible estimate:⁴

The Ministry does not have any information on how many eligible beneficiaries may be employed at the Starting Out Wage and what the effect will be on the employment of 16-to-19 year old non-beneficiaries.

- 2.11. We object to the Orwellian misuse of language used in justifying the Bill. To refer to a young worker as being "eligible" for a reduction in pay is abuse of the language. It is the employer who is eligible to reduce the pay of its staff. To refer to it as being not compulsory because "the employee has to agree"

² MBIE (2012) *Employers' Perspectives- Part Two: The Minimum Wage System* p 25. Retrieved from <http://dol.govt.nz/publications/research/employers-perspectives-part2-minimum-wage/employers-perspectives-part2-minimum-wage.pdf>

³ MBIE (2012) *Aide Memoire: Impact of the Starting Out Wage* table 4. From the 40% 16-17 uptake of the Starting Out Wage (the median of the scenarios that MBIE "is most confident in"). Retrieved from: <http://www.dol.govt.nz/er/pay/starting-out-wage/sow-employment-impacts-advice.pdf>

⁴ *Ibid.* Para 14.

ignores the balance of power in the workplace – particularly for young people who are most unlikely to feel able to negotiate such matters.

- 2.12. The CTU believes that there are more effective and equitable means to improve outcomes for 15-19 year olds by way of investment in education and active labour market policies.
- 2.13. We therefore strongly oppose this Bill.

3. Cutting the youth minimum wage will not stimulate employment

- 3.1. A 93 per cent increase in the adult minimum wage and tripling of wages for 15-19 year olds since 1999 has not been a disincentive for employers to take on new staff. The adult minimum has risen 23 percent faster than the average hourly wage and youth wages have risen twice as fast. There have been considerable periods during this time where rising labour force participation and falling unemployment demonstrated workers were not being priced out of the labour market. The tired argument that an increase in the minimum wage must mean an increase in unemployment is now discredited.
- 3.2. We are unconvinced by the standard model used by the former Department of Labour to forecast the employment outcomes of a rise or fall in the minimum wage and note that a different method of estimating the effects is used in this case. The standard model has routinely predicted employment losses based on minimum wage rises contrary to many empirical findings. There are useful theoretical discussions in papers by Herr, Kazandziska and Mahnkopf-Praprotnik⁵, and Zelenska⁶.
- 3.3. There are numerous studies concluding “no significant impact” on employment (let alone unemployment) of changes to the minimum wage. The evidence gathered in this submission uses findings from studies set in the United States, Europe, Australia and New Zealand. These findings do

⁵ “The Theoretical Debate about Minimum Wages”, by Hansjörg Herr, Mika Kazandziska and Silke Mahnkopf-Praprotnik, Working Paper No. 6, *Global Labour University Working Papers*. Berlin: Global Labour University, p.24. Retrieved from http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_115075.pdf

⁶ “Channels of Adjustment in Labor Markets: The 2007-2009 Federal Minimum Wage Increase”, by Tetyana Zelenska, 2011, Economics Dissertations, Georgia State University, Paper 70, http://digitalarchive.gsu.edu/econ_diss/70.

27 November 2012

not mean there will be no impact under any circumstances, but improvements in statistical methodology and greater understanding of the factors connecting wages and employment cast doubt on effects that have been found.

- 3.4. Most of the studies we cite are concerned with increases to the minimum wage but the inverse scenario should also hold true: If raising wages has no significant negative impact on employment then cutting them will have no significant positive impact either.
- 3.5. Economist Arindrajit Dube, along with colleagues William Lester, Sylvia Allegretto and Michael Reich, has conducted several studies based on the fact that many States in the US have their own minimum wages at a level above the Federal minimum. By comparing firms operating in counties on either sides of borders of States with different minimum wages they have been able to isolate employment effects of minimum wage increases, and consistently find no significant effect on employment.
- 3.6. Dube recently summarised the state of minimum wage research.⁷ He described one of his key studies (with Lester and Reich)⁸: They compared contiguous counties across state borders, over 64 different border segments with minimum wage differences over a 17-year period (1990-2006). Employment effects were positive rather than negative but not statistically significant, even over the long run. The study period spanned several recessions, and subsequent analysis by one of the co-authors finds that “the overall results hold when only recession periods are considered.”⁹ Another

⁷ “Minimum Wage Laws and the Labor Market: What Have We Learned Since Card and Krueger’s Book *Myth and Measurement*?”, Arindrajit Dube, 1 September 2011, <http://www.newdeal20.org/2011/09/01/minimum-wage-laws-and-the-labor-market-what-have-we-learned-since-card-and-kruegers-book-myth-and-measurement-57160/>.

⁸ “Minimum Wage Effects Across State Borders: Estimates Using Contiguous Counties”, by Arindrajit Dube, T. William Lester, and Michael Reich, *The Review of Economics and Statistics*, November 2010, 92(4): 945–964.

⁹ “An Increased Minimum Wage Is Good Policy Even During Hard Times”, by T. William Lester, David Madland, and Nick Bunker, 7 June, 2011, available at http://www.americanprogressaction.org/issues/2011/06/higher_minimum_wage.html.

study looked at the effects on teenage employment, again finding no employment effect, and again that held over recession periods.¹⁰

3.7. Dube notes that:¹¹

The most common [research approach] since the 1990s has been the ‘state panel’ approach pioneered by David Neumark and William Wascher. Like the individual case study, it uses only differences in minimum wages across states to form inference. However, instead of comparing two areas that may be similar based on, say, proximity, the ‘state panel’ studies effectively compare all states to all states, while accounting for possible differences by including statistical controls. The state panel approach has tended to find negative effects, especially when considering a high impact demographic group such as teenagers... However, it also assumes that we can find enough control variables to include in our regression that will make Texas look like Massachusetts. As it turns out, this is a heroic assumption that badly biases the results.”

3.8. The closer a study can control dynamically for the specific characteristics of different labour markets that occur within the country, usually defined by locality (such as state or county in the US), the less likely it is to find negative employment effects. This includes differences such as in business cycles, seasonality, and wage, age and sectoral patterns. It may not be enough to control by using fixed effects models (where the differences between localities are assumed to be the same throughout the period of study). Or put the other way, studies that fail to control properly for these local differences may spuriously detect negative employment effects.

3.9. Dube considers these findings provide evidence for models of the labour market in which employers have monopsony power (the power to set wages or conditions due to job shortages and reluctance or inability of employees to move jobs, giving the employer the position of monopoly provider of employment for its employees – like the “inherent inequality of power in employment relationships” recognised in the object of the Employment Relations Act 2000).

3.10. John T. Addison, McKinley L. Blackburn, and Chad D. Cotti have made similar findings to Dube and his colleagues, covering the US retail trade

¹⁰ “Do Minimum Wages Really Reduce Teen Employment? Accounting for Heterogeneity and Selectivity in State Panel Data”, by A. Allegretto, A. Dube and M. Reich, *Industrial Relations*, Vol. 50, No. 2 (April 2011). Also available at <http://www.escholarship.org/uc/item/7jq2q3i8>.

¹¹ *Ibid.*

sector¹², the effect of the current recession¹³, and a re-examination of the restaurant-and-bar sector¹⁴. The first of these studies found employment effects were eliminated by controlling for locality using Census division in the US.

3.11. A study of minimum wage changes in Australia found that “the introduction of minimum wage legislation in Australia in 1997 and subsequent minimum wage increases appear not to have had any significant negative employment effects for teenagers.”¹⁵

3.12. An international review of minimum wage studies of the impact of minimum wages on the youth labour market organised by the U.K. Low Pay Commission, was published in March 2011¹⁶. It covered 12 countries and concluded that:

The size of employment effects from the introduction of or increases in minimum wages for young people in general are extremely small and on the margins of statistical significance in the great majority of studies surveyed.

3.13. While “the impact of minimum wages upon the youth labour market is more likely to be negative where there is no separate subminimum... for younger workers as for example in Spain”, it also concluded that “the method by which the minimum wage is set is relevant, with systems which set rates by collective bargaining less likely to experience negative employment effects.”

3.14. On New Zealand, Croucher and White concluded that:

The literature indicates the following conclusions. First, there were no or very small effects of the minimum wage on employment for the 20-24 age group. There were varied findings on the impact of rises in the minimum wage on employment for younger

¹² “Do Minimum Wages Raise Employment? Evidence from the U.S. Retail-Trade Sector”, John T. Addison, McKinley L. Blackburn, and Chad D. Cotti, 2009. *Labour Economics*, vol. 16(4), pages 397-408, August.

¹³ “Minimum Wage Increases in a Soft U.S. Economy”, John T. Addison, McKinley L. Blackburn, and Chad D. Cotti, 2011, Institute for Advanced Studies. Available at: <http://ideas.repec.org/p/ihs/ihsesp/273.html>.

¹⁴ “The Effect of Minimum Wages on Labor Market Outcomes: County-Level Estimates from the Restaurant-and-Bar Sector”, John T. Addison, McKinley L. Blackburn, and Chad D. Cotti, 2011, Rimini Centre for Economic Analysis. Available at: <http://ideas.repec.org/p/rim/rimwps/02-08.html>.

¹⁵ “Minimum Wages and Employment: Reconsidering the Use of a Time Series Approach as an Evaluation Tool”, by W.-S. Lee and S. Suardi, 2011. *British Journal of Industrial Relations*, 49, p.s376–s401.

¹⁶ “*The impact of Minimum Wages on the Youth Labour Market, an International Literature Review for the Low Pay Commission*”, by Richard Croucher and Geoff White, March 2011.

age groups, with estimates ranging from 'non-robust', to zero or fairly weak negative effects (Chapple, Hyslop and Stillman). The employment elasticity for 16-17 year-olds in 2003 in Hyslop and Stillman (2007) was -0.1 to -0.2: this is consistent with other literature.

- 3.15. A recent meta-analysis by Doucouliagos and Stanley¹⁷ covers much of the contemporary US literature on the minimum wage, concluding that there is "little or no evidence of a negative association between minimum wages and employment."¹⁸ With specific reference to the youth labour market they find that:¹⁹

A 10 per cent increase in the minimum wage reduces employment by about 0.10 per cent. But even if this adverse employment effect were true, it would be of no practical relevance. An elasticity of -0.01 has no meaningful policy implications. If correct, the minimum wage could be doubled and cause only a 1 per cent decrease in teenage employment.

- 3.16. Applying this analysis to New Zealand the abolition of the youth rate of the minimum wage increased the effective minimum wage for 16 and 17 year old workers by 28.2 percent²⁰. As there were around 60,000 16 and 17 year olds employed in 2008 this would imply that there would be a decline in employment of about 160 people. Even if the minimum wage did adversely effect on youth employment, this level of elasticity would yield trivial changes in employment.
- 3.17. The Hyslop and Stillman study²¹ referenced above considered the effects of the very sharp increase in minimum wage that occurred in April 2008 for 16 and 17 year olds here in New Zealand.
- 3.18. It shows that the employment rate among non-students increased by about 3 percentage points. While it concludes that the change lowered employment for the age group overall by 3-6 percentage points in the two years following

¹⁷ Doucouliagos, H., & Stanley, T. D. (2009). Publication Selection Bias in Minimum-Wage Research? A Meta-Regression Analysis. *British Journal of Industrial Relations*, 47(2), pp 406–428.

¹⁸ *Ibid.* p 415

¹⁹ *Ibid.* p 415-416, Several specifications were tried and this is the only one to find any significant effect for the minimum wage on youth employment.

²⁰ Hyslop, D. & Stillman, S. (2011), *The Impact of the 2008 Youth Minimum Wage Reform*, Wellington: New Zealand Department of Labour (Labour and Immigration Research Centre) Available at: <http://www.dol.govt.nz/publications/research/impact-2008-youth-minimum-wage-reform/exec-summary.asp>.

the change, with no significant effect in the first year, the loss of employment was largely borne by 16-17 year old students, to some extent to the benefit of 18-19 year old students.

- 3.19. However there was no increase in the rate of 16-17 year old unemployment as a result of the changes. The loss of employment was more than offset by an increase in those studying and not working. Indeed, there was a reduction in the rate of inactivity among 16-17 year olds (not in employment, education or training).
- 3.20. Under some assumptions, average hours worked by 16-17 and 18-19 year-olds fell after 2008, as did their earnings and total incomes. The changes in main-job earnings for 16-17 year olds were a fall of around 15 percent in 2009 and a rise of around 10 percent in 2010; and a fall of 5-10 percent for total earnings. For 18-19 year olds the main-job earnings fell 10-15 percent in 2009 and 2010.
- 3.21. However under other assumptions, the falls in earnings and hours worked were smaller, some even showed increases in earnings or hours, and some were not statistically significant. The negative findings were not robust to all specifications. While the analysis implicitly controls for the recession by its methodology of comparing 17-18 year olds with 20-21 year olds, where further controls were added for the business cycle, some of the negative effects became weaker (e.g. loss of hours worked) or even disappeared (e.g. loss of earnings).
- 3.22. It is possible that the control for the business cycle using aggregate adult unemployment may not be appropriate given that employment of teenagers is highly concentrated in the retail trade and accommodation, cafes and restaurants sectors. The effect of the global recession was significantly greater in those sectors than the average effect for the economy as a whole. The control in Hyslop and Stillman's models may underestimate the global recession effect, thus inflating the negative effects (if any) of the 2008 minimum wage changes.

- 3.23. Given that 18-19 year olds were not directly affected by the change in minimum wage – if anything they might have been expected to benefit from being preferred to the younger workers– it is not clear that their loss of hours and earnings was due to the minimum wage change. There could have been a “teen effect” such as for example the sector effects mentioned in the previous paragraph, or employers favouring older workers when reducing hours or taking on new employees during the recession whose beginning coincided with the change to the minimum wage.
- 3.24. It is also possible that the experimental design has not sufficiently taken into account Dube’s findings on the importance of locality. Given that there are significant regional variations in employment in New Zealand, such as urban/rural differences, seasonality, age and skill levels of the labour force, sectoral composition and differences in unemployment levels this may be a significant factor here too. Unemployment in the South Island (at least prior to the earthquakes, as in this study) was low even at the height of unemployment nationally. Most of the rise in unemployment has been in the north and east of the North Island.
- 3.25. The changes appear to have encouraged more 16-17 year olds to continue in education which is a positive long term outcome for that age group. While a loss of employment, hours and income (if it occurred) was unfortunate for the 16-19 year old students, many, including the CTU, have long argued that teenagers should be in education and training rather than encouraged into work.
- 3.26. Those not studying have not been badly affected, though they may have lost income at least in the short run.
- 3.27. Given the very large increase in the 16-17 year old minimum wage – 28 percent in real terms, and affecting most 16-17 year olds in work (60-70 percent were below the adult minimum in 2007), these findings are very consistent with the usual findings of no, or small employment impacts of minimum wage changes. It implies the starting out wage is unlikely to reduce

rates of either unemployment or inactivity (not in employment, education or training).

4. The value of young people's work

- 4.1. The implication of the starting out wage is that the work of younger workers is of lesser value than older workers. There is no evidence presented to support this position.
- 4.2. To the contrary, Tipper (2012) finds in an industry-level study of New Zealand's workforce that there is "no relationship between workforce age structure and labour productivity", and in fact that "younger workers are paid less than their productivity would warrant."²²
- 4.3. If the argument is instead made on the basis of the young worker being new to the job, it is not at all obvious why that logic should not apply to an older worker new to a job too. This is something that we would strenuously resist, but it illustrates the inequity of the proposals. Employers know that new employees take some time (depending on the complexity of the job) to "learn the ropes."
- 4.4. The argument that 16 and 17 years olds entering the workforce do not have work skills or employment experience and need more supervision and training than workers aged over 17 perpetuates stereotypes about the capabilities of young people. It also ignores the fact that many young people have had prior work experience and have been in the workforce for a considerable period before they turn 16 years old.
- 4.5. Proponents of youth rates say that young workers need orientation and training when they start a new job. But that same logic applies to anyone who starts a new job. There is no evidence that young workers need more training and take longer to orient into work. The reverse may be true in many cases.

²² "Labour productivity, real wages, and workforce age structure", by A. Tipper, Statistics New Zealand, Paper presented at the 53rd New Zealand Association of Economists conference, at Palmerston North, New Zealand, 28 June 2012.

- 4.6. As far as training goes, reducing the threshold of the amount of training required before an employer reduces the young employee's wages sends the wrong message about the value of training. It runs in the face of efforts in the tertiary education system generally to ensure young people gain higher level (Level 4 and above) qualifications. It also invites abuse of the system – pressuring young workers to enrol in lightweight, low relevance courses simply to be able to pay them a lower wage.
- 4.7. The CTU agrees that New Zealand has a youth employment crisis and that there is an urgent need to reduce youth unemployment. But starting out rates are not a solution to this complex problem. The CTU supports the recommendations of the New Zealand Institute²³ for better transitions of young people between education and employment and more investment in education and training.
- 4.8. The CTU conditionally supports a trainee wage, since there is an additional employment cost for employers supporting employees to undertake training on the National Qualification Framework. This is covered in more detail below.
- 4.9. One of the rationales for this proposal (set out in the explanatory note) is that it “complements the Government’s reform of the welfare system.” A low wage provides a very weak work incentive. This appears to be acknowledged in that beneficiaries may have no choice but to accept such jobs. Not only do they lose pay themselves, but this pushes down wages generally: as the MBIE estimates indicate, others may lose out on jobs as a result – anything between 600 and 2,800 18 and 19 year olds on its favoured estimates.
- 4.10. The “Questions and Answers” published by MBIE about the proposal state that 18 and 19 year olds on a benefit may be forced to accept jobs on the lower pay rate: “as part of the Government’s welfare reforms, they will be required to accept suitable job offers, including those which are offered at the starting-out wage. When considering whether a job is suitable, Work and

²³ *“More ladders, Fewer snakes: Two Proposals to reduce youth disadvantage”* by R. Bowen, C. Harland, and L. Grace, The New Zealand Institute, July 2011.

Income takes a range of factors into account including the location of the job, and whether adequate childcare is available. Those who fail to accept an offer of suitable employment can have a sanction of up to 13-weeks non-entitlement to benefit.”²⁴

4.11. The starting out wage may also act as a disincentive to young workers’ participation in superannuation schemes such as KiwiSaver and lessen the value of their contributions if they do. Early entry into superannuation schemes has the largest individual and societal benefits.

5. Discrimination on the basis of age and employment status

5.1. The starting out wage is unfair and discriminatory: it allows employers to pay lower wages to a worker performing the same work as another worker on the basis of age.

5.2. This Bill leads to discrimination and inequity. For 16 and 17 year olds, a person who has previously had say 12 months fulltime work experience and then starts a new but similar job (moving from one supermarket to another for example) may find himself or herself receiving 20 percent less than someone who has been doing the job part-time for 6 months and a day. They are doing the same work for unequal pay.

5.3. The Bill will create a situation where for instance a 19 year old worker who has had two years’ working experience followed by 6 months of unemployment on a benefit, will receive 20 percent less than an 18 year old worker on their first day working alongside that person.

5.4. It is unjust to effectively blame the unemployed person for their situation when it is the global financial crisis and the Government’s failure to prioritise jobs that has led to high unemployment. Blaming the unemployed person by requiring their pay rate to be discounted to gain a job is totally unfair.

5.5. The CTU notes the advice of the Acting Chief Legal Counsel, Melanie Webb, regarding consistency of the Minimum Wage (Starting-Out Wage)

²⁴ http://beehive.govt.nz/sites/all/files/Starting_Out_QAs.pdf.

Amendment Bill with the New Zealand Bill of Rights.²⁵ Ms Webb's advice states that:

[The starting out wage has] the potential to result in financial disadvantage for young workers and those who have received a social security benefit. We therefore consider the Bill to give rise to prima facie discrimination under section 19(1) of the Bill of Rights Act on the basis of age and employment status.

5.6. Following the test set out by the Supreme Court in *R v Hansen* [2007] 3 NZLR 1 Ms Webb goes on to examine whether the measures have a rational connection with the objective of assisting youth and inexperienced workers to get employment and whether the measures proposed are proportionate to the end sought. She concludes that they do in both cases.

5.7. In a technical sense there is a rational connection between cutting youth rates and the objective of assisting youth and inexperienced workers to get employment, though we do not agree it will have that outcome.

5.8. As we outline in part three of this submission there is compelling evidence that the introduction of subminimum wages does not increase youth employment. Beneficiaries who decline this work face significant benefit stand down periods if they decline work at the starting out wage.

5.9. In our view therefore there the proportionality test has not been met. This failure is rendered more significant by the failure to consider less discriminatory alternatives. In the regulatory impact statement MBIE notes that:

The starting out wage proposal is a pre-election policy commitment. The Ministry's analysis has therefore not considered other options for achieving the objectives of the proposed starting out wage package. The analysis has focussed primarily on how to implement decisions that have already been signalled by Government. The Ministry has been instructed by the Minister of Labour on key features of the policy design.

5.10. Section 5 of the New Zealand Bill of Rights Act 1990 states "the rights and freedoms contained in this Bill may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." By failing to consider other alternatives the Government cannot demonstrably justify the discrimination on this basis.

²⁵ Retrieved from: <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/minimum-wage-starting-out-wage-amendment-bill>

- 5.11. The CTU recommends that the Committee asks MBIE to look at alternative policy settings that may better address issues of youth unemployment without discrimination or increasing hardship. We believe that increased usage of targeted Active Labour Market Policies provides the best mechanism for doing so. We outline these in section 8 below.
- 5.12. We note that the Bill does not provide a mechanism for employers to enquire about whether a worker is eligible for the starting out wage on the basis of age or employment status. The Human Rights Commission's advice is that asking either of these questions would be contrary to the Human Rights Act.²⁶

6. The starting-out rate is contrary to New Zealand's international obligations

- 6.1. Paying lower wages to one group of workers, based solely on their age, is contrary to the principle of non-discrimination in employment. ILO Convention No. 111 Discrimination (Employment and Occupation) 1958, is one of the core ILO conventions and outlaws unequal payment for work of equal value.
- 6.2. New Zealand is also a signatory to and bound by International Labour Organisation ('ILO') Convention 44 - Unemployment Provision. Article 10(1) of that Convention sets out when employment may be considered suitable for the purpose of benefit sanction including, inter alia:

10(1) A claimant may be disqualified for the receipt of benefit or of an allowance for an appropriate period if he refuses an offer of suitable employment. Employment shall not be deemed to be suitable—...

(b) if the rate of wages offered is lower:

(i) where the employment offered is employment in the claimant's usual occupation and in the district where he was last ordinarily employed, than those which he might reasonably have expected to obtain, having regard to those which he habitually obtained in his

²⁶ Human Rights Commission (2008) *Getting a job: An A to Z for employers and employees Pre-employment guidelines* pp. 3, 5-6. Retrieved from: http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/31-Jul-2008_21-34-42_A-Z_Pre-employment_Guide.pdf

27 November 2012

usual occupation in that district or would have obtained if he had continued to be so employed;

(ii) in all other cases, than the standard generally observed at the time in the occupation and district in which the employment is offered;

- 6.3. Sanctioning beneficiaries for refusing to take a job at the starting out wage is a breach of the ILO Convention since the wages must be lower than a beneficiary would have expected to obtain if they had remained employed and lower than the general regional standard.
- 6.4. The CTU has made submissions to the Social Services Committee regarding change to the suitable employment test in relation to the Social Security (Benefit Categories and Work Focus) Amendment Bill. It is hoped that the Committee may address this issue by amending the definition of suitable employment in the Social Security Act 1968 to recognise New Zealand's obligation. The CTU is the designated Workers Organisation for New Zealand at the ILO and in that role we are concerned with the observation of ratified ILO Conventions by New Zealand. If the definition of suitable employment is not clarified (by statute, regulation or guidance to Work and Income staff) we may need to consider making a representation to the ILO Governing Body for their consideration and possible action.
- 6.5. The appendix to this submission summarises New Zealand's other international commitments in the United Nations and ILO.

7. Training Rates

- 7.1. The CTU supports an exemption for trainees on a conditional basis. The conditions are that wage rates are negotiated on a scale which sees the rate progressively increase to at least the minimum wage; that the training requires 60 credits a year on a programme on the National Qualifications Framework; and that the maximum length of time that a trainee can remain on a rate lower than the adult minimum wage rate is 12 months. There must also be oversight to ensure that a significant training component exists in the job and that trainees are getting access to quality training.

- 7.2. If these conditions are not accepted then we submit that the trainee rate should be abolished. These are safeguards to ensure that the trade-off between provision of such training and exemption from the minimum wage is not being exploited.
- 7.3. It is with some reserve we support the existing policy, however. While we recognise the additional costs of training to the employer and accept the case for some compensation for training costs incurred by an employer to fully support a trainee, there must be strict supervision to ensure the training and support occurs.
- 7.4. A reason given for trainee rates is that workers will acquire higher wages following training and qualification achievement. But this is only true at higher qualification levels such as degrees. Employers 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 Department of Labour²⁷ 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 who have made an effort to increase their skills. For some, their pay actually falls after attaining a qualification, and most see at best small increases in their pay²⁸.

²⁷ “Does Workplace-based Industry Training Improve Earnings?”, by Sarah Crichton, Statistics New Zealand and New Zealand Department of Labour, September 2009. Available at <http://www.dol.govt.nz/publication-view.asp?ID=318>.

²⁸ “Labour Market Returns to Further Education for Working Adults”, by Sarah Crichton and Sylvia Dixon, Department of Labour, 2011, available at <http://www.dol.govt.nz/publication-view.asp?ID=380>.

- 7.5. Trainees are faced with very low income while they are training and, in some cases, little reward once they complete their qualification. There are limited incentives for young workers to make the effort to gain these qualifications – or to take a vocational training pathway in the first place – when rewards are so poor. Under these conditions, trainee rates are a barrier to skill development. Pay recognition for qualifications gained and for skills developed on the job should be a condition of subsidising industry trainees taken on by employers. Unions should be encouraged to take an active role in supporting this, including collective bargaining coverage for trainees.
- 7.6. The need for more focus on training and vocational support in the workplace is undisputed. But the quality and access to training can vary enormously. Therefore the CTU recommends a more robust process to ensure oversight of the conditions allowing a trainee rate.
- 7.7. Given that trainee rates could extend to young workers in the Youth Guarantee Scheme, and this scheme may be expanded, it is even more necessary to ensure oversight of those on a trainee rate and ensure that the conditions are being met.
- 7.8. Apprenticeships, trades training and industry training are all ways to increase the skill levels of workers in employment. But lower wage rates for trainee rates should not mean that trainees get unsustainable wages. This will not assist the need to increase the appeal of trades training and apprenticeships.
- 7.9. Trainees require adequate wages to meet their reasonable costs of living and some need to support families. Very low wages will only serve to increase the dropout rate of trainees. Payment of a fair wage will increase the chance of completion of industry training courses or apprenticeships and increase the likelihood of an employer having a trained worker at the end of the training period.
- 7.10. Apprenticeship wage rates in the past were on a graduated scale recognising that following the completion of an apprenticeship, a higher rate of pay would compensate for the lower initial starting rate. But this is not the case for women who have completed apprenticeships.

- 7.11. A 2006 study commissioned by the Ministry of Women's Affairs showed that despite similar starting rates once an employee in a male-dominated occupation had completed their apprenticeship their wages jumped up considerably (to \$19 an hour when the minimum wage was \$10.25), whereas the rates for females in female-dominated occupations stayed close to minimum wage levels.
- 7.12. Regrettably the Modern Apprenticeship Scheme continues to preserve inequities in relation to gender, ethnicity and people with disabilities.
- 7.13. MBIE's presumption that "all notional learning is conducted during work hours"²⁹ is not borne out by the reality of work in many of the industries that will use the newly-reduced minimum wage. Trainees are likely to be doubly penalised by a lower hourly rate and significant unpaid study time.
- 7.14. We propose again that MBIE undertakes research on the extent to which training rates are used and the quality of the training received while they are paid less than the full adult minimum wage.

8. Active Labour Market Policy

- 8.1. A people-centred approach which invests in beneficiaries' skills, experience and potential is commonly known as active labour market policy. The Ministry of Social Development (MSD) already supports elements of such an approach. The MBIE document *Starting Out Wage, questions and answers* identifies several of these measures³⁰ such as the Youth Guarantee Scheme, Maori Trades Training - He Toki ki te Rika, Pasifika Trades Training , Vocational Pathways, Job Opportunities, and Community Max. "Job Streams" incorporates many of these programmes. While these could be added to and deepened, in many cases they simply need more funding to cater for young people who are looking for work.
- 8.2. The principle of this approach is that the Government invests in a person in order to enhance the labour-market-matching process. The scale of this

²⁹ At para 30 of the Starting Out Wage regulatory statement.

³⁰ Retrieved from <http://www.dol.govt.nz/er/pay/starting-out-wage/qas.asp>

investment needs to be appropriate and as much as possible it should be tailored to the circumstances.

- 8.3. Rather than blame the young person for being out of work and try to discount their wage, this approach ensures that many young people can be matched into an appropriate job with the right type of investment. Of course this depends on there being a substantial economic basis for a job so that the subsidy is a top up. And there would need to be jobs in sufficient numbers.
- 8.4. Therefore we also need active job creation initiatives and a set of economic policies that are pro-employment. This includes both work schemes that create work in the central and local government and not-for profit sectors such as Taskforce Green, and industry development strategies that encourage investment that leads to job creation. But it also includes industry policies that promote value-added growth, monetary policy settings and tools that reduce the high exchange rate, and a Government that commits to job growth rather than a tax switch that hugely favoured those on high incomes. If a small part of that tax switch had been used for an Employment Fund to promote jobs then we would all be in a much better situation with lower unemployment and also less income inequality.
- 8.5. It would be wise to accompany them with supportive active labour market policies. The importance of collective bargaining highlighted in the Low Pay Commission's comprehensive study should be acknowledged with legislation to strengthen it (rather than hinder it). The government should also focus much more on stimulating the economy to lower unemployment for all age groups, and should be taking much more action to actively engage workers in training and other productivity improvements. Young people should be encouraged to continue their education by raising the caps on tertiary education places and putting a high priority on changes that will encourage school leavers into industry training.

9. Under 16 year olds

- 9.1. A major issue for the government and certainly a long standing concern for the CTU is the absence of a minimum wage for those aged under 16 years of

age. Workers under 16 years of age can be paid wage rates lower than those received by other workers, and there is no redress or any protections limiting how low these rates can fall.

- 9.2. Research by Caritas in 2003³¹ and 2006³² found that that there is inadequate attention given to the working experiences of New Zealand children. They showed that children working in delivery work are exposed to significant health and safety hazards and experience injuries as a result.
- 9.3. It was a revelation to many parliamentarians at the time of the Abolition of the Age Discrimination Bill that there is no minimum wage level or employment protection for young people under the age of 16 years. This is in breach one of the core international labour standards - ILO Convention No. 138 Minimum Age Convention 1973.
- 9.4. We submit that there should be an approach to the ILO that would assist us to review our labour and education laws and policy to provide a threshold for the entry of young people into work, and that must include the setting of minimum wage levels for young people under 16 years old.

10. Definition of continuous employment

- 10.1. It is not clear what “continuous employment” means. If for example a young person is employed on a casual basis with no regular pattern of work, there appears to be nothing to stop him or her being paid at the 80 percent rate for two years. Similarly, it is not clearly whether a series of fixed term agreements is continuous service. A young worker could gain equivalent experience from these as for six months in “continuous” employment – particularly if that continuous position is part time.
- 10.2. This point is partially clarified by MBIE’s document ‘Proposed starting out wage, questions and answers’ referenced above. In reply to the question, ‘How is ‘six months’ continuous employment defined?’ MBIE states:

³¹ “*Protecting Children at Work: Children’s Work Survey*”, Caritas Aotearoa New Zealand, Wellington 2003.

³² “*Delivering the Goods, A survey of Child Delivery Workers*”, Caritas Aotearoa New Zealand, 2006.

27 November 2012

It is from the day an employment agreement is signed, until six calendar months are up-regardless of how many hours are worked per week.

- 10.3. If this Bill proceeds, the CTU recommends that this wording is added to in the six month limiting period under proposed section 4A(1)(c)(ii) of the Bill. It may also be helpful to include an example.

11. Conclusion

- 11.1. This Bill is unfair and discriminatory to some of the most vulnerable workers in New Zealand's labour force. Its objectives and methods to achieve them are muddled, have no evidence to support the claims made for their outcomes, and it is unlikely to succeed in its aim of reducing youth unemployment.
- 11.2. Instead, it will discourage many young people from work and encourage bad employment practices among employers. It will force many young beneficiaries into work which is poorly paid and undervalues their contribution.
- 11.3. We strongly oppose the Bill and submit that it should not proceed.

12. APPENDIX: New Zealand's international commitments – UN & ILO

- 12.1. International instruments that prohibit discrimination and are relevant to the minimum age level are: the Universal Declaration of Human Rights; the Convention on the Elimination of Discrimination Against Women; the Convention on the Elimination of all Forms of Racial Discrimination; and the Convention on the Rights of Persons with Disabilities.
- 12.2. As a member of the United Nations, we have made commitments to all these international agreements. Adherence to international agreements is an enduring obligation and commitment.
- 12.3. Article 23(2) of the Universal Declaration of Human Rights and also article 7 of the International Covenant on Economic Social and Cultural Right affirms “the right to a just and favourable remuneration”.
- 12.4. Article 23 (3) and Article 25 (1) of the Universal Declaration of Human Rights and Article 7 of International Covenant of Education, Social and Cultural Rights, and ILO C131 Article 3 refer to the minimum wage stating:
- The elements to be taken into consideration in determining the level of minimum wages shall, so far as possible and appropriate in relation to national practice and conditions, include:
- (a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups;
- (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.
- 12.5. Article 11 of The Convention on the Elimination of Discrimination Against Women (CEDAW) requires state parties to take all appropriate measures to eliminate discrimination in employment. CEDAW specifically refers to equal pay for equal work and “fair wages and equal remuneration for work of equal value”.
- 12.6. New Zealand took a leading role in the development of the Convention on the Rights of Persons with Disabilities. Article 27 of this Convention includes provisions that prohibit discrimination in employment for people with

27 November 2012

disabilities; protects the rights of persons with disabilities to just and favourable conditions of work including equal remuneration, and equal remuneration for work of equal value; and states that people with disabilities must be able to exercise their labour and trade union rights on an equal basis with others.

- 12.7. Membership of the ILO also confers obligations under international labour treaties and convention. The founding Convention of the ILO, the Declaration of Philadelphia (1944), states that governments have a responsibility to ensure the provision of an adequate living wage.
- 12.8. In 1998, the International Labour Conference adopted the ILO Declaration on Fundamental Principles and Rights at Work. This declaration commits all ILO member states to respect the principles in the four core labour areas whether or not they have ratified the specific conventions. Most relevant to minimum wages is the elimination of discrimination which is one of the four core labour areas.
- 12.9. ILO Convention No. 111 Discrimination (Employment and Occupation) 1958, ratified by New Zealand, requires member states to pursue equality of opportunity and treatment in employment and occupation, in order to eliminate discrimination.
- 12.10. ILO Convention No.26 Minimum Wage-Fixing Machinery 1928, requires member states to create and maintain machinery to fix minimum rates of wages for workers employed in certain sectors where there are no effective arrangements for regulating wage rates (whether by collective agreement or otherwise) and in which wages are exceptionally low.
- 12.11. ILO Convention No. 131 Minimum Wage (1970) refers to the minimum wage level and states that the minimum wage must cover the living expenses of the employee and his/her family members. Moreover it must relate reasonably to the general level of wages earned and the living standard of other social groups. Although New Zealand has not ratified this convention, its ILO membership still confers obligations to respect its principles.