

Submission to FINANCE AND EXPENDITURE COMMITTEE on the:

Employment Relations (Protection for Kiwisaver Members) Amendment Bill

Submitted by the New Zealand Council of Trade Unions Te Kauae Kaimahi

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This submission is made on behalf of the 31 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With over 340,000 union members, the CTU is one of the largest democratic organisations in New Zealand.

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.

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1. Introduction

- 1.1. The New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU) welcomes the opportunity to submit on the Employment Relations (Protection for Kiwisaver Members) Amendment Bill (**the Bill**).
- 1.2. The CTU **strongly supports** this Bill, which will restore the legal protection of workers not to be discriminated against for joining KiwiSaver. This is a straightforward – though long overdue – amendment that closes a loophole created by the Employment Relations Amendment Act 2008.

2. Comments and recommendations

- 2.1. The CTU strongly supports the legislative intent of this Bill, which is to ensure workers are legally protected against unfair treatment, or the threat of unfair treatment, based on their decisions to join KiwiSaver and save for retirement. The Employment Relations Amendment Act 2008 unnecessarily weakened workers' rights not to be discriminated against by employers for joining KiwiSaver. This Bill reestablishes the necessary legislative protections.
- 2.2. The CTU notes that the Bill is a straightforward amendment that effectively reinstates previous elements of the Employment Relations Act 2000 and the KiwiSaver Act 2006. Regarding the former, clause 4 and clause 5 of the proposed Bill reverse the repealing of section 103(1)(h) and section 110A of the Employment Relations Act by the Employment Relations Amendment Act 2008, using almost unchanged language. Regarding the latter, clause 8 reverses the repealing of section 101B(5)(b) of the KiwiSaver Act by the Employment Relations Amendment Act 2008, using almost unchanged language.
- 2.3. In doing so, the Bill supports two important objectives. First, the Bill helps to protect workers' rights. Section 101B of the KiwiSaver Act 2006 establishes that compulsory employer contributions must be paid in addition to an employee's gross salary or wages. However, the Employment Relations Amendment Act 2008 repealed the right of employees to pursue a personal grievance if this obligation is not upheld by the employer. In effect, the 2008 amendment to the Employment Relations Act 2000 weakens the force of section 101B of the Kiwisaver Act, because it means workers do not have recourse to action if they are penalised in some way by their employer for joining KiwiSaver.

- 2.4. As recognised by the Employment Relations Act, there is an inherent imbalance of power between employer and employee, due to the latter's financial dependence upon the former. The evidence shows that if there are insufficient legislative protections in place, some employers will use this imbalance of power to their advantage to pressure workers into accepting unfair terms and conditions. This undermines a worker's ability to freely enter an employment relationship and runs counter to the government's obligations to promote decent work.¹ It also creates an unfair playing field for the majority of businesses who want to do the right thing by their employees. The proposed Bill restores the necessary legislative protections for workers and supports those businesses who want to treat their employees fairly.
- 2.5. Second, the Bill supports all New Zealand workers to prudently save for retirement. The purpose of the KiwiSaver Act, as outlined in section 3(1), is to "*encourage a long-term savings habit and asset accumulation by individuals who are not in a position to enjoy standards of living in retirement similar to those in pre-retirement. The Act aims to increase individuals' well-being and financial independence, particularly in retirement, and to provide retirement benefits*". The Employment Relations Amendment Act 2008 undermined this objective, by creating a loophole through which employers can pressure workers into not joining KiwiSaver.
- 2.6. This also has equity and fiscal consequences. Regarding equity, people who are precariously attached to the labour market, or are in low-skilled and low-paid occupations, tend to be most disadvantaged by insufficient legislative protections. This is because they have very limited bargaining power and, often, lack the necessary information about their employment rights. These same workers are also those most at risk of entering retirement with insufficient financial resources. The reinstatement of the protections provided for by the Employment Relations Act, prior to the Employment Relations Amendment Act 2008, would therefore help to ensure that vulnerable groups of workers are able to prudently save for retirement.
- 2.7. Regarding the fiscal consequences, New Zealand has a rapidly ageing population, which is going to place significant fiscal pressure on future governments. In this context, it is incumbent on government to support all workers to prudently save for retirement, as this will help to alleviate the fiscal burden of an ageing population and ensure all New

¹ As a Party to the International Organization's Decent Work Agenda and associated instruments.

Zealanders enter retirement with the financial resources needed to live with dignity and participate in society.

- 2.8. Finally, the CTU notes that legislative protection is a necessary, though not sufficient, condition for eliminating unjust and unfair employment practices. Among other things, proactive enforcement is also critical. Currently, the Labour Inspectorate remains significantly under-resourced, which enables some employers to breach employment law without consequence. If employment legislation is to be effective, employers need to have a realistic expectation that if they breach the law they will be held to account. Additionally, the penalties for breaching the law need to be sufficiently high – i.e., have a meaningful material impact – to deter unlawful activity. The CTU therefore encourages government to significantly strengthen the enforcement capacity of the Labour Inspectorate, to ensure that Bills such as this one have teeth.

3. Conclusion

- 3.1. This submission has endorsed the proposed Employment Relations (Protection for Kiwisaver Members) Amendment Bill.
- 3.2. The CTU thanks the Finance and Expenditure Committee for the opportunity to submit on this important work. The CTU looks forward to seeing this long-overdue Amendment promptly come into effect.

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