



NEW ZEALAND COUNCIL OF TRADE UNIONS
Te Kauae Kaimahi

Joint Submission
from the
New Zealand Council of Trade Unions
Te Kauae Kaimahi

on the
Universal Periodic Review
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1. INTRODUCTION

- 1.1. This report on New Zealand's human rights record as part of the four-yearly Universal Periodic Review (UPR) 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 one of the largest democratic organisations in New Zealand. The CTU is the New Zealand national member of the International Trade Union Confederation.
- 1.2. The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga) the Māori arm of Te Kauae Kaimahi (CTU) which represents approximately 60,000 Māori workers. Te Runanga is one of the joint submitting organisations in the Indigenous People's Rights and the Treaty of Waitangi Coalition submission.
- 1.3. The CTU Out@Work Council representing LGBTI¹ workers participated in a joint coalition submission to the UPR process focusing on sexual orientation, gender identity and intersex / body diversity human rights issues. The CTU supports the submissions of its affiliates, the New Zealand Educational Institute and the New Zealand Nurses Organisation to the 2013/2014 UPR review.
- 1.4. The CTU submission focusses on employment and human rights in relation to the Universal Declaration of Human Rights (UDHR) and the other relevant human rights treaties New Zealand has ratified as well as International Labour Organisation (ILO) Conventions which are core working instruments for the CTU.
- 1.5. New Zealand has enjoyed a good record in protecting human rights at home and advocating them internationally. The CTU is keen to see that record and role continue but we are very concerned that it is currently at risk. This report identifies 11 major employment issues where either progress has not been made or where there have been retrogressive measures on human and employment rights. The submission makes 23 recommendations in respect of those concerns and rights.

2. THE RIGHTS TO COLLECTIVE BARGAINING AND FREEDOM OF ASSOCIATION

- 2.1. The Employment Relations (Film Production Work) Amendment Act 2010 effectively changed the status of all film workers to independent contractors. All three stages passed under urgency and no regulatory impact statement was prepared for the amendment. No public submissions were heard. Practically speaking, this law removed the right to collectively bargain for a whole industry sector. This is in breach of core ILO Convention No. 98 Right to Organise and Collective Bargaining and collective bargaining rights recognised by the Human Rights Committee and CESCR as fundamental to freedom of association.
- 2.2. Further law changes proposed in 2013 are similarly retrogressive and are another attack on collective bargaining rights. The proposed changes will remove important and essential workplace protections, undermine workers' rights, and change the balance of power further towards employers.
- 2.3. These changes have been proposed despite advice that the ability for employers to opt out of multi-employer bargaining breaches our obligations under ILO Convention No. 98 on the right to organise and collective bargaining².

¹ Lesbian, Gay, Bisexual, Transgender , Intersex, Takaatapuī , Fa'afafine

² Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO Fifth (revised) edition, [539] and [[540].

- 2.4. Collective bargaining is one of the fundamental core conventions of the International Labour Organisation (ILO) expressed in ILO Convention No. 98, the Right to Organise and Collective Bargaining. New Zealand has ratified this convention and has obligations by virtue of ratifying this convention and its ILO membership.
- 2.5. The right to join a trade union is enshrined in the UDHR and other international human rights treaties. Article 2(3) of the UDHR states: *“Everyone has the right to form and join trade unions for the protection of his interests”*. The right to a join a trade union is in both in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Cultural and Social Rights (ICESCR).
- 2.6. Article 22 of the ICCPR specifically protects the right to freedom of association: *“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”*. The ICESCR in Article 8 1(a) *“recognises protection of the rights to join trade unions”*.
- 2.7. The New Zealand Government maintains reservations on the articles in ICCPR and ICESCR that refer to trade unions. However the identically-worded reservations, entered into in 1978 referred to *“existing legislative measures.”* The Court of Appeal has noted that there no longer appears disconformity between these international instruments and New Zealand's domestic law³.
- 2.8. **Recommendation: That the amendment to the Employment Relations Act in 2010 which changed the status of all film production workers to independent contractors is repealed.**
- 2.9. **Recommendation: That the New Zealand Government seeks the advice of the ILO on the legality of the 2013 proposed changes to employment relations legislation.**
- 2.10. **Recommendation: That the definition of employee in the Employment Relations Act is amended to cover all workers including dependent contractors and those in a triangular employment relationship.**
- 2.11. **Recommendation: That New Zealand lifts its reservation on Article 22 of the ICCPR and Article 8 of the ICESCR.**
- 2.12. **Recommendation: That New Zealand seeks the assistance of ILO in ratifying core ILO Convention No. 87, Freedom of Association.**

3. YOUTH WAGE RATES

- 3.1. Legislative changes made in 2013 reduced the wages for young people between the ages of sixteen to nineteen to 80 percent of the minimum adult wage for a period of not less than six months and this wage can be applied one or more times.
- 3.2. The Government claimed that the change will improve youth employment, that it is voluntary and that young people can negotiate their own wages with employers. The CTU agrees there is a critical problem of youth unemployment but lowering pay for young people is not a solution. The CTU's submission on this legislative amendment cited strong evidence that lower wage rates will have little or no effect on youth employment rates⁴. The CTU submits that lower wages for young workers will increase youth hardship. Young workers in their first employment placing are not in a position to bargain on the same terms as employers.

³ *Eketone v Alliance Textiles (NZ) Ltd* [1993] 2 ERNZ 783, 794-795 (CA) per Gault J.

⁴ <http://union.org.nz/policy/minimum-wage-starting-out-wage-amendment-bill>.

- 3.3. The change allows employers to pay lower wages solely on the basis of age, implying that the work of younger workers is of lesser value than that of older workers. Paying lower wages to young workers is contrary to the principle of non-discrimination in ILO Convention No. 111, Discrimination (Employment and Occupation) 1958, one of the core ILO conventions that outlaws unequal payments for work of equal value.
- 3.4. **Recommendation: That the amendments to the Minimum Wage Act made in 2013 that introduced youth wage rates are repealed as they are in breach of core ILO Convention No.111, Discrimination.**

4. MINIMUM WAGE REVIEW

- 4.1. The CTU is seeking a return to the previous system of conducting a comprehensive review of the minimum wage annually. The Government introduced significant change in 2012 that restricted the input into this annual review. The minimum wage review is a significant annual opportunity for the Government to intervene to support those on low incomes. This review requires a broad-based enquiry assessing the needs of workers and their families, the role of social security benefits and the assessment of economic factors.
- 4.2. The change in the review and narrowing of the criteria was undertaken without consulting the CTU or other relevant stakeholders contrary to ILO obligations under ILO Convention No 26 Minimum Wage Fixing Machinery. The new limited review provides inadequate opportunity for the social partners to consult on the appropriate level for the minimum wage. Narrowing the criteria and limiting the depth of the review are retrogressive steps and the Government has significantly undermined the integrity of the review process by these changes.
- 4.3. New Zealand has ratified ILO Convention No. 26 sets out the obligations for consultation with workers and employers' representatives. These have not been respected.
- 4.4. The international consensus on setting minimum wages are set out in ILO Conventions No. 131 which establishes the need to take into account the general level of wages social security, the relative living standards of others, economic factors, levels of productivity and employment levels. New Zealand should ratify this Convention.
- 4.5. **Recommendation: New Zealand should ratify ILO Convention No 131 on Minimum Wage Fixing.**
- 4.6. **Recommendation: That the terms of reference for the annual minimum wage review are set to be in compliance with the rights established in ILO Convention No.131 and ILO Convention No. 26.**

5. CHILDREN IN EMPLOYMENT

- 5.1. Participation in employment after school is a common activity for students with about 40 percent of secondary school children working in part time work. Difficult economic times and growing rates of poverty have changed some of the reasons why children work. Students from higher deprivation areas and Pacific students are more likely to be working to earn money for their families.
- 5.2. Research shows children have low levels of awareness about employment rates, low rates of union membership and only a 50 percent likelihood of having a written employment agreement⁵. Lack of employment protections for children are associated with a more common incidence of injuries and some industries are more prone to injuries than others.

⁵ *Schoolchildren in Paid Employment: A Summary of Research Findings*, Department of Labour, Wellington, 2010.

- 5.3. Children under 16 commonly work as independent contractors, leaving them without minimum standard employment protections. There is no robust and effective system for collecting data on children and young people in the workforce, including the numbers and ages of those working as contractors and employees.
- 5.4. Very high rates of unemployment for young people in New Zealand are strongly concentrated in Māori and Pacific youth.
- 5.5. Article 2 of United Nations Convention on the Rights of the Child (UNCROC) sets out obligations for the protections of children from discrimination. Article 27 recognises the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
- 5.6. The Convention for the Elimination of Racial Discrimination (ICERD) requires an undertaking from the State to eliminate discrimination all its forms. Article 5(e)(i) of the ICERD recognises the rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work and to just and favourable remuneration.
- 5.7. The lack of a minimum age for children in employment under age 16 puts New Zealand in breach of the obligations under the UNCROC, resulting in New Zealand not ratifying a core international labour standard: ILO Convention No. 138, Minimum Age, 1973.
- 5.8. **Recommendation: That a review of the employment of children in New Zealand looks at additional protective mechanisms for children and young people in work including a definition of light work and ensures a minimum wage be established that applies regardless of age.**
- 5.9. **Recommendation: That the ILO is approached to participate in a process for the ratification of ILO Convention No. 138, Minimum Age Convention, 1973 enabling the removal of New Zealand's reservation against UNCROC Article 32.**
- 5.10. **Recommendation: That active labour market policies targeted at youth should be substantially bolstered and widened, and programmes and additional employment funding to counteract the labour disadvantage experienced by Māori and Pacific youth.**

6. PAY AND EMPLOYMENT EQUITY

- 6.1. Pay equity progress has either stalled or gone backwards since 2009. The situation for many women workers in New Zealand has worsened and there is strong evidence of gender discrimination.
- 6.2. The biennial report of the Human Rights Commission, the New Zealand Census of Women's Participation, reported in 2012 on an overall gender pay gap in the public sector of 14.3 percent, slightly less than its 2010 figures of 15.4 percent. It found that five government departments had increased their gender pay gaps with one increasing to an unacceptable 42 percent⁶.
- 6.3. An approach commenced in 2005 to embed instruments to implement pay and employment equity first in the public sector and progressively to the private sector has been almost completely abandoned by the current Government. Pay reviews have stalled, the two pay investigations that were underway have been discontinued and there is no plan of action or strategy to address the wide spread occupational discrimination and poor rates of pay for women working in occupationally segregated sectors.

⁶ Human Rights Commission, *New Zealand Census of Women's Participation 2012*, Wellington, 2012.

- 6.4. An inquiry in 2011 by the Human Rights Commission examined equal employment opportunities in the aged care sector. The resulting report, “Caring Counts”⁷, gathered overwhelming evidence of the persistence and extent of the undervaluation and underpayment of thousands of women working in the aged residential care sector.
- 6.5. The 30,000 caregivers, who are mainly women, working in this sector are one of the lowest paid occupational groups in New Zealand with pay rates commonly at or close to minimum wage rates. There are instances of caregivers who have worked for 13 years in a facility still being on the minimum wage⁸.
- 6.6. The New Zealand Educational Institute’s 2012 report to the UPR raises concerns regarding the employment of education support workers - a female dominated workforce - working with children with high special education needs. Pay reviews found that these workers had low pay rates, little access to training and development, no career pathways, precarious employment status with a high level of part-time and fixed term positions, and working arrangements that precluded full employee participation.
- 6.7. While a pay investigation was recommended for special education workers, this has never been done due to a Cabinet decision in 2009 discontinuing pay investigations on the basis that they were unaffordable⁹. In 2013, responsible and skilled education support workers remain employed in precarious, low-paid and low status employment.
- 6.8. In the tertiary education sector pay reviews have found systemic pay and employment inequity. A pay review in one university found that the factors leading to a gender pay gap of 21 percent were about how the jobs that women did were organised and how they were valued. Women tended to be in higher grades in smaller proportion than men and on less pay¹⁰.
- 6.9. New Zealand signed the Convention on the Elimination of Discrimination against Women (CEDAW) in 1985 and signed the optional protocol in 2000. Article 11 of 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”.
- 6.10. ILO Conventions No.100, Equal Remuneration and ILO No.111, Discrimination are core ILO conventions setting out obligations regarding equal pay for work of equal value and non-discrimination.
- 6.11. **Recommendation: That New Zealand takes the necessary steps to be in compliance with the CEDAW Convention and ILO Convention No. 100, Equal Remuneration and ILO Convention No.111, Discrimination.**
- 6.12. **Recommendation: That measures and indicators for pay equity implementation be developed, and a process for the implementation of pay parity and pay equality for female workers in the aged care, disability and special education sectors be established.**
- 6.13. **Recommendation: That the Government continues to monitor pay and employment equity in the state sector and develop yearly plans on pay and employment equity in each government department.**

⁷ Caring Counts , Human Rights Commission , Wellington , May 2012

⁸ A Report into Age Care “What does the Future Hold for Older New Zealanders” October 2010.

⁹ New Zealand Cabinet 2009, Cabinet economic growth and infrastructure committee: minutes of Decisions. EGI (09) 16/12. Wellington.

¹⁰ Pay and Employment Equity Review Report and Action Plan, Massey University, March 2011.

- 6.14. **Recommendation: That the CEDAW Convention and the complaints mechanisms under the Optional Protocol are promoted.**

7. PAID PARENTAL LEAVE

- 7.1. New Zealand's paid parental leave (PPL) provisions are out of step with comparable countries and well short of international standards. However, the length of the parental leave period is not the only concern. The current PPL provisions do not provide entitlement for most casual workers, seasonal workers or workers who have more than one job. This exclusion of people who are in casual employment from PPL entitlement is discriminatory and is particularly disadvantageous to low income workers.
- 7.2. There are compelling reasons for extending the length of entitlement of PPL from its current 14 weeks. We note this is beyond the minimum entitlement in ILO Convention No. 138, Maternity Convention Protection. But New Zealand sits at the bottom of OECD child well-being statistics on a number of measures and the need for action is critical as various reports have noted¹¹. New Zealand's PPL provisions are among the least generous and least comprehensive in the OECD¹². An evaluation of PPL found that financial pressures are a key reason for returning earlier to work¹³.
- 7.3. A Bill has been introduced by an opposition Member of Parliament to extend PPL from 14 to 26 weeks. Though the Bill is still in Parliamentary process, the Finance Minister, following the first reading of the Bill, stated that extending the period of PPL was unaffordable and that the Government would use its financial veto at the third stage of the reading of the Bill to block the passage of the Bill.
- 7.4. Article 12 of CEDAW is a requirement to ensure appropriate services in connection with pregnancy, confinement and the post natal period. Article 11(1)(f) provides rights to protection of women's health and safety in working conditions. Similarly, Article 10 of ICESCR commits governments to progressive realisation of families and new mothers in particular.
- 7.5. **Recommendation: That the Paid Parental Leave Act is amended to ensure the eligibility of seasonal and casual workers to PPL.**
- 7.6. **Recommendation: That the UPR Committee supports the extension of the PPL entitlement from 14 weeks to 26 weeks paid leave.**

8. LIVING STANDARDS

- 8.1. Current wages levels for salary and wage earners and wage increases are not meeting workers' needs for an adequate standard of living. A Treasury study showed that the market incomes of the lowest income 50 percent of households did not change in real terms (that is, after CPI inflation) between 1988 and 2010¹⁴. The ordinary time average wage rose by just 0.4 percent between March 2009 and March 2013 in real terms; the Labour Cost Index fell by 1.7 percent in real terms over the same period.

¹¹ *Solutions to Child Poverty in New Zealand Evidence for Action*, Expert Advisory Group on Solution to Child Poverty, December 2012.

¹² http://www.oecd.org/els/soc/PF2.1_Parental_leave%20-%20updated_18_July_2012.xls

¹³ *Parental Leave in New Zealand 2005/2006 Evaluation*, Department of Labour, 2007. Wellington, 2008.

¹⁴ *Fiscal Incidence in New Zealand: The Distributional Effect of Government Expenditure and Taxation on Household Income, 1988 to 2010*, Omar A. Aziz, Matthew Gibbons, Chris Ball and Emma Gorman, New Zealand Treasury, 2012, available at http://www.nzae.org.nz/wp-content/uploads/2012/07/Aziz_Fiscal-Incidence-NZAE-2012-Conference-Paper.pdf.

- 8.2. Low wages and salaries contribute to the high levels of income inequality that have grown during the past two to three decades in New Zealand. Over 270,000 children (1 in 5) live in poverty and two in five children living in poverty are from households where at least one adult is in fulltime employment or self-employed.
- 8.3. Low wages are due to the bargaining power of employers greatly outstripping that of employees. Less than 10 per cent of private sector employees are covered by collective bargaining. The further weakening of the Employment Relations Act by the present Government threatens that again.
- 8.4. The current minimum wage level is \$13.75 an hour. Research commissioned by Living Wage Aotearoa to ascertain an “income necessary to provide workers and their families with the basic necessities of life... to enable workers to live with dignity and to participate as active citizens of a society”¹⁵ found that an hourly wage of \$18.40 is necessary for a “living wage”. It is estimated that more than a third of New Zealand wage and salary earners are below this figure.
- 8.5. Low wages and consequent poor living conditions are in breach of Article 7 (a) of ICESCR which holds that everyone has the right to just and favourable conditions of employment and remuneration which provides a decent living for themselves and their families.
- 8.6. **Recommendation: the immediate lift of the minimum wage to \$15 per hour and to two thirds of the average wage within 3 years and strengthening of collective bargaining provisions.**

9. OCCUPATIONAL SAFETY AND HEALTH

- 9.1. The workplace tragedy resulting in the death of 29 miners in the Pike River Mine was one factor in the establishment of an Independent Taskforce on Workplace Health and Safety to assess the workplace health and safety system in New Zealand as to whether it is fit for purpose and to recommend practical strategies for reducing the rate of workplace fatalities and serious injuries by 2020. The CTU was represented on this Taskforce.
- 9.2. The Taskforce’s report to the Minister of Labour in April 2013 stated that New Zealand’s health and safety performance was “appalling, unacceptable and unsustainable”.¹⁶ The Taskforce found systemic problems: “there is no single critical factor behind our poor health and safety record. Rather, our workplace health and safety system has a number of significant weaknesses that need to be addressed if we are to achieve the major step-change in performance that we as a nation should demand”. At least one in ten workers are being injured at work every year, and many times more than that are harmed by occupational disease.
- 9.3. The report stated that some groups of workers are particularly vulnerable to injury and fatalities. Work related injury claims, occupational disease and fatality data show that Māori, Pasifika and workers of other ethnicities are more likely to be injured at work. Other vulnerable groups include males, youth, older workers, the self-employed, workers in temporary, casual or seasonal work, and workers with low literacy and numeracy skills.
- 9.4. The report is extensive and compelling and the recommendations are very specific in regard to the need for worker participation and for a strong tripartite health and safety system all the way from the workplace to governance of a new regulatory agency. As well as the new agency, the recommendations include new workplace health and safety legislation that will support more effective worker participation, a strengthened regulator, greater effort in providing and enforcing

¹⁵ <http://www.livingwage.org.nz/>

¹⁶ *The Report of the Independent Taskforce on Workplace Health and Safety, He Korowai Whakaruruhau*, April 2013, Wellington.

regulation and guidance, and a range of more effective penalties, incentive and educational mechanisms. The CTU strongly supports the report's findings and recommendations.

- 9.5. The forestry industry in New Zealand with its high death rates is one which requires urgent intervention. Forestry is one of New Zealand's most dangerous industries. In 2013 there have been four deaths of forestry workers. Since 2008, 23 workers have died and almost 900 have been seriously injured. A New Zealand forestry worker is 6 times more likely to die at work than a United Kingdom forestry worker, and twice as likely as an Australian forestry worker.
- 9.6. Safety standards for the forestry sector have been developed but without any participation from workers or unions in the forest industry. The standards state that workers can refuse unsafe work but require them to work it out with their employer first rather than establishing reciprocal obligations which employers have an obligation to listen to and to respond.
- 9.7. Obligations under ILO Convention No. 155 which New Zealand has ratified provides for the adoption of a national health and safety policy conventions and sets out the actions to be taken by government, employers and industries to improve occupational health and safety and the general working environment.
- 9.8. ILO Convention No. 144 which New Zealand has also ratified requires tripartism and social dialogue at the national level by ensuring the involvement of employers' and workers' organizations in standards-related activities.
- 9.9. **Recommendation: Full implementation of all of the recommendations of the Independent Workplace Health and Safety Taskforce.**
- 9.10. **Recommendation: An independent inquiry into health and safety practices in the forestry industry.**

10. LABOUR INSPECTION

- 10.1. The CTU is concerned at the inadequacy of staffing levels in the Labour Inspectorate (part of the Ministry of Business Innovation and Employment, formerly the Department of Labour). Currently there are 35 Labour Inspectors with responsibility for ensuring compliance in New Zealand (and fisheries within our exclusive economic zone). According to the latest Household Labour Force Survey (March 2013)¹⁷, 2,234 million people are employed in New Zealand. This equates to one labour inspector per every 63,829 people. By ILO standards this is far too few¹⁸. The ILO sets the number of labour inspectors as one per 10,000 workers in developed countries.
- 10.2. New Zealand's current rates are as a result of the chronic understaffing of the labour inspectorate. Labour inspectors are forced to choose which of their core functions to prioritise. The labour inspectorate's focus on high risk areas leaves them with little resource to deal with day to day breaches of the minimum employment rights (particularly in un-unionised industries such as hospitality) and many workers experience major delays or denials of effective enforcement of their rights.

¹⁷ http://www.stats.govt.nz/browse_for_stats/income-and-work/employment_and_unemployment/HouseholdLabourForceSurvey_HOTPMar13qtr.aspx

¹⁸ ILO (2006) *Strategies and practice for labour inspection*, [13]

10.3. New Zealand has ratified ILO No. 81, Labour Inspection Convention. Art 10 of ILO No. 81 states that “the number of labour inspectors shall be sufficient to secure the effective discharge of the duties of the inspectorate.”

10.4. **Recommendation: that the Government commits to significantly increasing the number of labour inspectors to meet the requirements of ILO No. 81. The CTU recommends a doubling of the number of labour inspectors by July 2014 (to 70 inspectors or 1/32,000 workers) and another doubling by July 2015 (to 140 inspectors or 1/16,000 workers).**

11. MIGRANT WORKERS

11.1. There are increasing numbers of reports of the abuse of migrant workers in New Zealand and evidence that migrant exploitation is growing. Industries at particular risk are horticulture, viticulture, aged care sector and restaurant and café industries. There are reports of workers’ visas being withheld, wages being paid below the minimum wage levels and workers not having written employment agreements as legally required.

11.2. The extent of the problem of migrant worker abuse is far greater than is the picture provided by official statistics. The migrant workers’ section of FIRST Union report on migrant workers not wanting to speak out because of the fear of reprisals including that workers may lose their immigration status if they speak out against abuse ¹⁹. The CTU commends the Government for considering sanctions against employers who are found guilty of breaches of employment law against migrant workers.

11.3. **Recommendation: In association with the recommendation in paragraph 10.4, that high priority is assigned by the Ministry of Business, Innovation and Employment to labour inspectorate monitoring to prevent abuses of migrant workers’ employment rights.**

11.4. **Recommendation: That the New Zealand Government ratifies the International Convention on the Protection of the Rights of All Migrant Workers.**

12. WELFARE REFORMS

12.1. The changes to the social security legislation that introduce stringent work-testing procedures on beneficiaries will cause severe hardship for some beneficiaries and their children. The changes mean that any failure to accept an offer of “suitable employment” (through work testing) will result in a cancellation of the social security benefit and a 13 week stand-down period. Solo parents with dependent children could have their benefits abated by 50 percent.

12.2. The cancellation of benefits for a refusal to accept work deemed as “suitable employment” is in breach of the right to freely choose to accept work identified in Article 6 (1) of IESCR. New Zealand has also ratified ILO Convention 44- Unemployment Provision. Article 10(1) of Convention 44 sets out mandatory factors to be considered in decided whether a job constitutes suitable alternative employment. The Government’s current test does not reflect all of these factors particularly whether the job has ‘no less favourable wages, terms and conditions than reasonably expected in the occupation type and region’.

12.3. **Recommendation: That the definition of suitable employment in the Social Security Act 1968 is amended to recognise New Zealand’s obligations under the ICESCR and Convention 44.**

¹⁹ <http://www.scoop.co.nz/stories/PO1306/S00191/changes-to-migrant-worker-protections-needed.htm>

13. RECOGNITION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

- 13.1. The New Zealand Bill of Rights Act 1990 ('NZBORA') was enacted to ensure New Zealand's compliance with (most of) the rights set out in the ICCPR. It requires the Government to assess proposed laws for compatibility with the rights set out in NZBORA, requires courts to read legislation in a manner consistent with the NZBORA rights and allows courts to declare legislation inconsistent with NZBORA (though not to strike it down).
- 13.2. The non-inclusion of ESCR has led to insufficient consideration of them in the legislative process. The CTU believe this has contributed to several of the problems outlined above (such as the incorrect definition of suitable alternative employment- section 12; and minimum wage fixing issues- section 8).
- 13.3. Economic, Social and Cultural Rights ('ESCR') were deliberately excluded from the NZBORA despite New Zealand's ratification of ICESCR in 1978. The CESCR has criticised the non-inclusion of ESCR in NZBORA and has asked that they be included along with effective remedies for breach²⁰.
- 13.4. **Recommendation: That the NZBORA be amended to expressly recognise the ESCR contained within ICESCR.**

²⁰ Concluding observations of the Committee on Economic, Social and Cultural Rights- New Zealand (18 May 2012) [9]-[10].