



**National Council of  
Women of New Zealand**

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Wahine O Aotearoa

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## **Submission to the Transport and Industrial Relations Committee on the Employment Standards Legislation Bill 53**

### **About NCWNZ**

The National Council of Women of New Zealand, Te Kaunihera Wahine o Aotearoa (NCWNZ) is an umbrella group representing 288 organisations affiliated at either the national level or to one of our 20 branches. In addition to our organisational membership, about 260 women are individual members of branches. NCWNZ's function is to represent and promote the interests of New Zealand women through research, discussion and action. This submission has been prepared by the NCWNZ Employment Standing Committee and the Parliamentary Watch Committee.

### **Summary**

NCWNZ policy supports legislation and policies that protect and promote the rights of workers engaged in insecure employment including the right to collective bargaining which we believe is good for women. Zero hour work is seen as an extreme form of insecure employment.

We believe that there has been an ongoing erosion of legislated employment rights in New Zealand and the zero hour section of this Bill can be seen as continuing that trend. We agree with the view that a root cause of the zero hour work problem, "...is the inherent imbalance between the parties to the employment agreement..." and that individual workers are "...less likely to be aware of their rights and entitlements and therefore unlikely to enforce them."<sup>1</sup>

It is our view that the Bill, despite its intent, does not adequately protect and promote the rights of those in zero hour employment. Instead, the Bill's proposals frequently legitimise zero hour employment agreements and may well encourage and accelerate their use.

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<sup>1</sup> Ministry of Business, Innovation and Education (2015). Regulatory Impact Statement: Addressing zero hour contracts and other practices in employment relationships, paragraphs 12 and 13.

<http://employment.govt.nz/er/services/law/legislationreviews/ris-2015-addressing-zero-hours-contracts.pdf>

## Introduction

Thank you for the opportunity to comment on the Employment Standards Legislation Bill (the Bill). Our submission focuses on sections of the Bill that deal with zero hour employment and related issues.

In response to concerns expressed by our members regarding the negative social and economic implications of insecure work and in particular zero hour contracts, the NCWNZ passed policy on the issue at its recent conference (September 2015). The policy: “...urges the Government to enact legislation and implement policies that protect and promote the rights of workers engaged in insecure employment, including the right to collective bargaining”.

While we are aware of debate regarding definitions of insecure work, our policy’s definition includes: casual, temporary, fixed-term and zero hour employment that can be characterised by low and/or fluctuating pay, uncertain duration and with limited or no access to training, career progression and employment rights and benefits such as sick leave and holiday pay. We see zero hours employment as an extreme form of insecure work. Women are disproportionately represented in the insecure, including zero hour, workforce, particularly in the hospitality, retail, aged care, home-based care and service sectors. We note that similar work arrangements are also growing in the public and that women are a significant part of that workforce.

NCWNZ conference discussion on the issue included concerns regarding what is seen as an ongoing erosion of legislated employment rights and protections, particularly for more vulnerable workers. The Bill appears to continue this trend. New Zealand ranks fourth in the OECD scale of countries with the least employment protection laws for insecure workers.<sup>2</sup> It was believed that New Zealand is stepping backwards in this regard, particularly in terms of reducing and inhibiting workers’ access to collective bargaining, which NCWNZ believes can provide substantial benefits for women.<sup>3,4</sup> We agree with the view that a root cause of the zero hour work problem, “...is the inherent imbalance between the parties to the employment agreement...” and that individual workers are “...less likely to be aware of their rights and entitlements and therefore unlikely to enforce them.”<sup>5</sup>

Our conference noted that the International Labour Organisation (ILO) has stated that ratification and implementation of existing ILO standards by governments would be a major contribution to reducing insecure employment. NZ has not yet ratified a range of ILO Conventions dealing with insecure work, including those related to migrant workers, workers with family responsibilities, part-time work, termination of employment and a recommendation on social protection floors.

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<sup>2</sup> Venn D. (2009). *Legislation, Collective Bargaining and Enforcement: Updating the OECD Employment Protection Indicators*, OECD Social, Employment & Migration Working Papers, OECD Publishing, Paris.

<sup>3</sup> Pillinger, J (2014). *Bargaining for Equality: How Collective Bargaining Contributes to Eliminating Pay Discrimination between Women and Men Performing the Same Job of Equal Value*. European Trade Union Confederation.

<sup>4</sup> Blumenfeld S, Ryall S, Kiely P (2014) *Employment Agreements Update 2013/14* (Wellington: Centre for Labour, Employment and Work, Victoria University).

<sup>5</sup> MBIE (2015).

We were initially encouraged to hear that the Government was to introduce legislation to address the issue of zero hour work. However, our view is that the Bill, despite its intent, does not adequately protect and promote the rights of those in zero hour employment. Instead, the Bill's proposals frequently legitimise zero hour agreements, without specified protections for workers, and we believe may well encourage and accelerate their use.

We comment on the following sections of the Bill: zero hour contracts; restrictions on secondary employment; shift cancellation; and unreasonable deductions from wages.

## **Zero Hour Contracts**

### **Proposed sections 67C-67F of the Employment Relations Act 2000.**

Currently, some zero hour agreements can be interpreted as a permanent, rather than a casual, employment relationship. They can be subject to legal challenge. This provides a barrier of sorts to their more widespread use. Instead, the Bill's proposals frequently legitimise zero hour agreements, without specified protections for workers, and we believe may well encourage and accelerate their use.

NCWNZ notes that the proposals only require an individual employment agreement to contain "...an indication of the arrangements relating to the times the employee is to work." We believe that not specifying hours to be offered by the employer and requiring only "...an indication" provides insufficient protection for the worker.

Under the Bill, an availability clause must be included in the employment agreement, if the employer requires the worker to be available for work beyond their contracted hours. We support the employer being required to pay compensation for availability, however, there is no threshold for how low that compensation can be. Faced with a serious need for employment, and given the employer's stronger bargaining position, a worker may agree to be available for very low compensation. This clause could also prevent the worker from working for another employer during specified times and defeat the purpose of section 67H below. As with other aspects of the Bill, the intent is laudable but the implications of the proposal do not appear to be rigorously assessed.

We are concerned that, under the proposals, zero hour agreements will continue to omit basic rights to sick leave, public holiday leave and other employment benefits that are generally expected by the workforce at large.

## **Restrictions on Secondary Employment**

### **Proposed section 67H of the Employment Relations Act 2000**

This proposal intends to make an employer's prohibition on secondary employment unenforceable unless there is a genuine reason based on reasonable grounds and that reason is set out in the employment agreement. We note that the proposals set out a series of possible genuine reasons.

We are unconvinced, however, that the proposed changes improve on current law. Our understanding is that currently the question of whether undertaking secondary employment breaches an employee's duty to their employer, depends both on the nature of the interest that the employer wishes to protect – and whether the new job infringes on that interest. Instead, the proposal allows an employer to build into an employment agreement specified restrictions on secondary work. It also allows an employer to insist on availability for additional work that precludes acceptance of any other employment, either as part of a salary package or for a nominal sum.

## **Unreasonable Deductions from Wages**

### **Proposed section 5A Wages Protection Act 1983**

We support the intent of the proposal to amend the Wages Protection Act 1983 to restrict “unreasonable” deductions from wages. As with other aspects of the Bill, however, there is no definition of what an “unreasonable” deduction is and it would be useful if clarification of this was provided in the Bill.

## **Shift Cancellation**

### **Proposed section 67G of the Employment Relations Act 2000**

The proposals make it mandatory for an employer to include a clause in the employment agreement setting out a period of reasonable notice for the cancellation of a shift along with compensation payable if the shift is cancelled without such notice. Again, as with the issue of compensation for availability, there is no minimum level or reasonableness test and there will be an imbalance of bargaining power between the employer and the individual worker.

## **Conclusion**

We support the intention of the Bill but believe that the proposals do not protect and improve the rights of those engaged in zero hour contract work, but are likely instead to entrench and legitimise its practice.



Rae Duff  
National President



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Convener, Employment Standing Committee