



NEW ZEALAND COUNCIL OF TRADE UNIONS
Te Kauae Kaimahi

Submission
to the
Minimum Wage Review
2014

26 November 2014

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1. Introduction

- 1.1. The New Zealand Council of Trade Unions – Te Kauae Kaimahi (CTU) welcomes the opportunity to make a submission as part of the 2014 minimum wage review. The CTU is the internationally-recognised confederation of trade unions in New Zealand and represents 36 affiliated unions with a membership of over 325,000 workers. The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Nga Kaimahi Māori o Aotearoa (Te Rūnanga) the Māori arm of Te Kauae Kaimahi (CTU) which represents approximately 60,000 Māori workers.
- 1.2. This submission, supporting an increase in the Minimum Wage as from 1 April 2015, is shorter than in previous years. Its size does not signal that we place any less importance on Minimum Wage setting. Rather, it recognises that the process for review is now in a four year cycle, with a full review occurring next year with the resultant increase in the Minimum Wage taking force on 1 April 2016. We intend to return to a much fuller submission in that year. This submission should therefore be read in conjunction with our submission of 2013.
- 1.3. New Zealand workers have low wages by the standards of developed countries. The problems this is causing are well known. Three actions are vital in lifting the low wage levels in New Zealand.
- 1.4. Firstly, the minimum wage must be lifted significantly. It represents the wage ‘floor’.
- 1.5. Secondly, we need strong increases in productivity so that higher wages can be sustained and continue to be improved. This is a wider policy issue in which the union movement has been actively involved, to which we would like to see a new commitment from government.
- 1.6. Thirdly, we need to ensure that productivity is passed on to workers in their wages. This has not been the case in recent years. The most important and effective step to do this is to strengthen collective bargaining.
- 1.7. An increased minimum wage level is needed as a contribution towards:
 - Addressing the needs of many low income workers
 - Compensating for rising costs
 - Narrowing the wage gap with Australia
 - Providing a safety net for many vulnerable workers
 - Encouraging employers to invest in raising productivity
 - Raising New Zealand’s low general wage levels

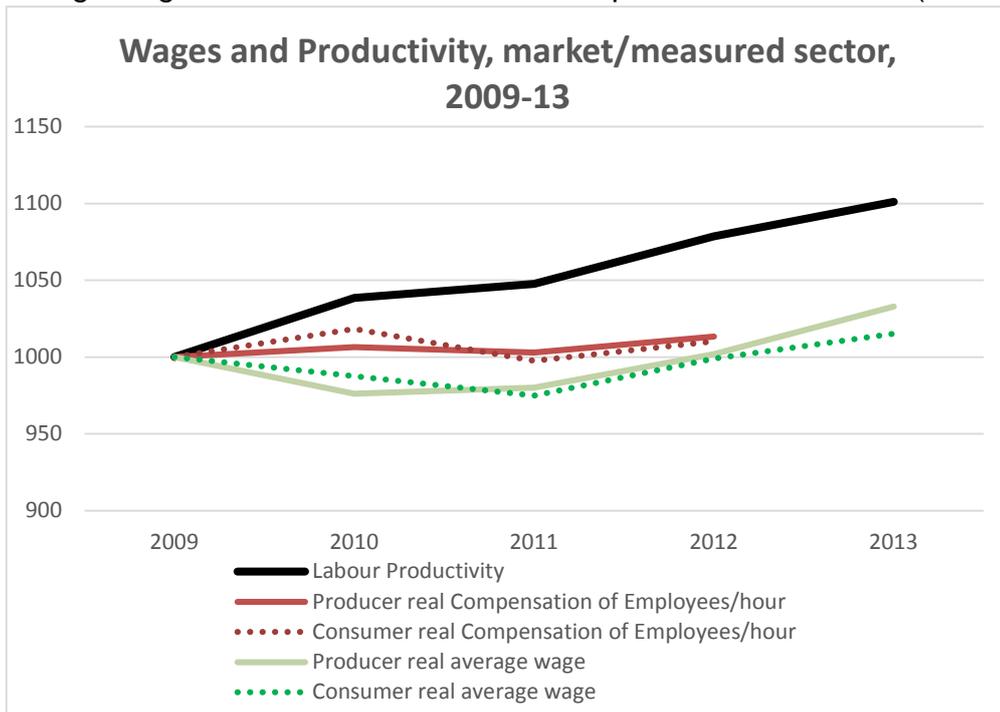
- Maintaining domestic demand and employment levels
 - Reducing New Zealand's high income inequality
 - Reducing poverty and especially child poverty
 - Reducing the gender pay gap and the ethnic gender pay gap
 - Improving the position of Māori and Pacific workers
 - Increasing labour participation rates, particularly of disadvantaged groups.
- 1.8. We analysed these in detail in our 2013 submission, but in this submission only present significant updates.
- 1.9. We would like to discuss the format of next year's full review with officials well in advance because of its heightened importance.
- 1.10. However we continue to advocate a return to the previous system of an annual comprehensive review as the current system provides inadequate opportunity for us to consult at the appropriate level, and prevents other unions and community groups from also submitting.

2. The wage level

- 2.1. Our preference is for an immediate rise in the minimum wage to 66 percent of the average ordinary time wage to set a clear base. For the minimum wage from 1 April 2014 we estimate this to be \$19.08. It is calculated as follows: the average ordinary time wage as at March 2014 in the Quarterly Employment Survey was \$28.18 an hour and we allow for the 2.6 percent increase in average ordinary-time hourly wages forecast by Treasury in the 2014 PREFU to take it to \$28.91 by the end of March 2015. Taking 66 percent of this amounts to \$19.08.
- 2.2. An alternative would be to move to this position over three years. Using Treasury forecast increases of 3.1 percent for the year to March 2016 and 3.2 percent for the year to March 2016, the average wage would reach \$30.76 in in March 2017. This would imply a target of a minimum wage of \$20.30 as from 1 April 2017. Three equal percentage increases of 12.5 percent in the interim would take it to \$16.03 as from 1 April 2015, \$18.04 as from 1 April 2016, and \$20.30 as from 1 April 2017.
- 2.3. Some employer groups will counter that increases impose unbearable costs on employers. But low wages in New Zealand have for some time been more than a social issue or a debate about the balance of competing interests. Low wages have become an intrinsic barrier to economic development in New Zealand with international salary differentials limiting New Zealand's ability to attract or retain (particularly) skilled workers. The current special circumstances in Canterbury and depressed conditions in

Europe and to a lesser extent in Australia should not be allowed to obscure this longer-term context.

- 2.4. The public picks up the tab from poor pay and poor business practices through wage subsidies (such as Working for Families), through the greater burden on the welfare system exacerbated by low incomes with their attendant health and education problems, and through poor productivity performance in firms relying on low pay rather than adding greater value.
- 2.5. As the Reserve Bank acknowledged in its September 2014 Monetary Policy Statement, wage growth is being suppressed by high net immigration (p.4), continuing high unemployment compared to the 2000s and the exit from previous recessions (“remaining slack in the labour market”, p.15) and “increased labour supply” (p.20) which is contributed to by both immigration and heightened pressure on beneficiaries to work, despite poor prospects of higher incomes and good quality jobs. Rising labour market participation rates may well be driven by both punitive social welfare policies and low incomes.
- 2.6. Even in these favourable circumstances for labour supply, the October 2014 New Zealand Manufacturers and Exporters Association (NZMEA) Survey of Business Conditions (2014) showed moderate shortages of operators and labourers along with tradespersons, supervisors, and managers and a minor shortage of professionals/scientists. Yet wages and salaries are not responding.
- 2.7. The economy can afford higher wages. Between the lowest point in the recession, 2009, and 2013, the most recent productivity statistics available from Statistics New Zealand, labour productivity has increased 10.1 percent in the market economy (the “measured sector”). Over the same time, the average wage for the same sector rose 1.5 percent in real terms (relative to



CPI), and 3.3 percent relative to the GDP deflator (a measure of product prices which takes costs into account). A wider measure of wage costs, compensation of employees per hour paid¹, rose only 1.0 percent between 2009 and 2012 after CPI, and 3.8 percent after GDP deflation.

- 2.8. Wages have therefore fallen well behind productivity growth over this period and the economy can afford a significant catch-up.
- 2.9. We have had relatively strong productivity growth, but New Zealand's wage system has not ensured that a fair share flowed into workers' bank accounts. The minimum wage is the only direct means the government has to address this misallocation of resources and should use it to do so. We are not suggesting that the minimum wage can or will fix the breadth and depth of this problem, which requires changes to employment law to strengthen collective bargaining among other measures, but strong rises in the minimum wage would be an important and very useful step.
- 2.10. In the opposite direction of causality, it is notable that there is no acknowledgement of the ability of wage rises to encourage productivity growth. It appears to be acceptable to acknowledge that weak wage growth may lead to low productivity growth but not the natural corollary that strong wage growth encourages higher productivity. For example Treasury (2014, p. 5, fn 6) admits that low wage growth in the early 1990s "may have encouraged businesses to use more labour relative to capital and, therefore, reduced the capital available per worker and measured labour productivity." Its inability to admit to the causes of that low wage growth do little for its credibility, but the conclusion is not new and others have been more forthright as to the drivers (e.g. Black, Guy, & McLellan, 2003, pp. 24–25 who connect the low wage growth to the Employment Contracts Act).
- 2.11. We address the causality from wage rises to productivity gains in more detail in our 2013 submission, but we can add to that recent research (Mayneris, Poncet, & Zhang, 2014) which looked at the effects of substantial increases in minimum wages to between 40 percent and 60 percent of local average wages in Chinese cities. Using firm-level data from 160,000 manufacturing firms, the authors found no net employment effect and "higher minimum wages fostered aggregate productivity growth thanks to productivity improvements of incumbent firms and net entry of more productive ones."
- 2.12. We are not advocating policies that lead to widespread layoffs and job losses, but it is wrong to omit these considerations from policy making, with long-term consequences.

¹ Calculated from the Compensation of Employees aggregate for the measured sector from the National Accounts, divided by hours paid, obtained from Statistics New Zealand. Compensation of Employees includes not only wages and salaries but other benefits such as employer contributions to superannuation, medical insurance contributions, and ACC levies. The average wage is calculated for the measured sector from the Quarterly Employment Survey.

- 2.13. The case for strengthening the role of the minimum wage is even greater given the Government's determination to weaken other employment protections, many of which have affected and will affect low income workers disproportionately. This includes the recently passed Employment Relations Amendment Act 2014 as well as previous changes to the ERA. Nonetheless it must be acknowledged that weakening unionisation and collective bargaining in turn weakens the impact and effectiveness of the minimum wage, as Grimshaw, Bosh and Rubery (2013) concluded. Changes to Part 6A allowing SMEs to avoid employing workers in industries such as catering, cleaning and orderly services on the same terms and conditions when contracts change will result in a ratcheting down of their terms and conditions and more workers in these industries being paid on or near the minimum wage (Ministerial Advisory Group on Contracting Out and Sale and Transfer of Business, 2001, p. 72).
- 2.14. Our 2013 submission presented the now strong international evidence that rises in the minimum wage have very small or no effect on employment or unemployment. The intensive international methodological debate continues, but a recent major review of minimum wage research (Belman & Wolfson, 2014) confirms this position. Among many studies it discusses is the New Zealand one of Pacheco (2011) which attempted to distinguish between young workers most likely to be earning at or near the minimum wage and those who were not. It finds significant problems with Pacheco's methodology (p.91-92) that invalidate its conclusions of strong negative employment effects for the near minimum wage group.
- 2.15. We are not confident that the model used by MBIE to estimate the employment effects of increases in the minimum wage takes the latest research sufficiently into account. For example the report (Zeng & Yang, 2012) which outlines the review of the previous model and proposes a new one, omits prominent and active researchers such as Addison, Allegretto, Blackburn, Cotti, Dube, and Reich in its summary of methodologies, and appears to focus primarily on model types rather than sample structure and methodology which is also crucial (e.g. Addison, Blackburn, & Cotti, 2014; Belman & Wolfson, 2014; Kuehn, 2014). For policy purposes, the macroeconomic effects resulting from increased demand from low income workers are also important, particularly when considering more substantial increases in the minimum wage.
- 2.16. The minimum wage in New Zealand currently stands at 74 per cent of the Australian federal minimum wage converted on the exchange rate² and only 60 percent for casual workers, given that the Australian minimum wage has a 25 percent loading for such workers. These differentials are unchanged since last year despite the weakening of the Australian economy. The New Zealand minimum wage is even further behind Australia's system of

² Calculated at an exchange rate of NZ\$1.00 to A\$0.888, the conversion rate at 3 November 2014 according to the Reserve Bank of New Zealand.

minimum wages under its Modern Award and National Minimum Wage Order system.

- 2.17. While Working for Families softens the effects of low wages for those households who qualify, some minimum wage workers do not qualify and its benefits are weakening as a result of thresholds not being adjusted for inflation. In any case, a higher minimum wage still has an important role to play in reducing New Zealand's high level of inequality. It raises the wage floor and, indirectly, wage expectations. It tends to compress the wage distribution, particularly in the lower half of the distribution. Belman and Wolfson (2014, p. 336) conclude from their survey of research on the minimum wage and wage inequality that "higher minimum wages reduced wage inequality by raising the wages of those in the lower tail of the earnings distribution", including "spillover into higher deciles of the wage distribution, particularly among women". Maloney and Pacheco (2012) show that in New Zealand, the strong rises in minimum wages over the 2000s disproportionately benefitted low income households.
- 2.18. The minimum wage is low compared to minimum wages for workers covered by collective agreements. Currently, the average minimum printed weekly wage in collective agreements surveyed by the Industrial Relations Centre at Victoria University is \$647 – or \$16.18 per hour based on a 40-hour week (Blumenfeld, Ryall, & Kiely, 2014, p. 44). This is \$77 higher than the current weekly minimum wage.
- 2.19. Rises in the cost of living do not affect all workers equally. Statistics New Zealand is planning to publish price indexes for different households, including by income. Research it carried out in preparation for this decision (Statistics New Zealand, 2014b, p. 33) shows that between June 2008 and September 2012, the lowest income 20 percent of households experienced annual inflation at almost twice the rate of the highest income 20 percent: at an annual rate of 2.55 percent compared to 1.33 percent (on a payment-based framework, so not directly comparable to the CPI).
- 2.20. In addition, it is well known that home ownership is becoming increasingly unaffordable, and this is not well represented in these price indexes.
- 2.21. Given the evidence that higher minimum wages can increase equity and productivity and considering the relative strength of New Zealand's economy, the minimal real wage increases since the recession began, the recent weakening of other employment protections, and the history of low wages in New Zealand, this is an ideal time for the New Zealand Government to send an unambiguous signal, which is well overdue, that low wages will not be tolerated in this country.

3. Other considerations

International conventions

- 3.1. Article 7(a) of the International Covenant on Economic Social and Cultural Rights (‘ICESCR’) and article 23 of the Universal Declaration of Human Rights call for State Parties to recognise the right of everyone to “[f]air wages and equal remuneration for work of equal value without distinction of any kind” and a “decent living for themselves and their families.” Through ratification of ICESCR, New Zealand has committed to progressive realisation of these rights. Changes to the minimum wage setting process are a step backwards.
- 3.2. New Zealand has committed to the constitution of the ILO which incorporates the Declaration of Philadelphia. Article III(d) of the Declaration states that governments have a responsibility to pursue “policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of such protection.”
- 3.3. ILO Convention No. 131 on Minimum Wage Fixing provides a more modern and effective framework for consultation on wage fixing than ILO Convention No. 26 on Wage Fixing Machinery (which came into force more than 80 years ago). The ILO has urged New Zealand to consider ratification of this convention for several years. We believe there are few and minor obstacles to ratification and recommend that work should begin towards ratifying it.

The Living Wage

- 3.4. The call for a Living Wage for workers in New Zealand has gained significant community and public support in the last 12 months. This support is a sign of the growing public concern about low wages. The Living Wage – a wage to support a household of 2 adults and 2 children on 1.5 incomes – was adjusted in February 2014 to \$18.80 an hour. The New Zealand Living Wage Employer accreditation system and trade mark was launched in February 2014 and the first Living Wage Employers were announced in July of this year. There are now 27 accredited Living Wage Employers across a range of sectors including hospitality, security, social services, NGOs and food processing.
- 3.5. Thousands of New Zealand workers and their families, despite working full time, are not able to afford basic necessities, let alone live with dignity and participate as active citizens in society. A Living Wage aims to not only ensure access to the basic necessities of life but also to provide sufficient income to enable social inclusion. While the Living Wage is expressed as an hourly wage for the sake of simplicity, the principle is based on household income to enable ongoing needs, not just immediate needs, to be taken into account.
- 3.6. Treasury’s critique of the Living Wage, despite its flawed critique of the concept itself, in fact provided strong evidence for lifting wage levels through

its analysis of who is affected by very low wages. Treasury estimated that 45 percent of wage earners earned less than \$18.40 in 2013, of whom 56 percent earned between the then minimum wage of \$13.75 and \$15.00, and it included 60 percent of Māori and Pacific workers. “In 25 percent of households with two adults and dependents, the principal earner of the household is on a wage rate below the Living Wage.” Other earners in the household generally “will have an even lower wage rate if they are earning wages or a salary” (Galt & Palmer, 2013, pp. 7, 8).

- 3.7. This evidence also contributes to the case for an increase in minimum wage levels and helps to explain the growing community support for the Living Wage.

The ‘Starting Out’ rate and Training Rate

- 3.8. We reiterate that the CTU opposes the ‘Starting Out’ rate and advocates moving back to the position where the minimum wage applies fully to those aged 16 years and over.
- 3.9. Changes introduced by the Minimum Wage (Starting-Out Wage) Amendment Act 2013 mean that the training rate for under-20s meets none of our criteria for support and we recommend that this rate is repealed along with other youth subminimum rates.
- 3.10. According to the National Survey of Employers 2012/13 (Ministry of Business, Innovation and Employment, 2014b) neither the new entrants rate or trainees rate were often used. Only 2 percent of employers had used the new entrants rate and only 1 percent of employers used the trainees rate.
- 3.11. We propose 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.

Children and Young People in Employment

- 3.12. The research confirms that there are widespread problems relating to children and young people’s employment. We reiterate the points from our 2013 Submission on the need for a minimum wage for children and young people under 16. Studies cited by (O’Neill, 2010) found between 4 and 11 percent of school children earned less than \$2.00 an hour.
- 3.13. Concerns with young people and children employment are wider than just the lack of a minimum wage but introducing a minimum wage would be one measure in providing better employment protection for children and young people. The research confirms that they are vulnerable to greater health and safety risks (Pugh, 2007), are less likely to have an employment agreement (Pugh, 2007) and are more likely to have a poor understanding of their employment rights (Gasson, Linsell, Gasson, & Munder-McPherson, 2003).
- 3.14. The absence of adequate protection for these young people means New Zealand is an outlier among developed countries in not having ratified one of

the core international labour conventions: the Minimum Wage Convention, 1973, No. 138. It is also one of the barriers preventing full ratification by New Zealand of the United Nations Convention on the Rights of the Child. With the unacceptably high rates of poverty experienced by children, workers and families in New Zealand, the lack of a minimum wage increases the risk of more children and young people being exploited by working in unsafe employment without adequate employment protection.

Low Pay and Insecure Work

- 3.15. The rise in non-standard working arrangements and the propensity of non-standard employment to be precarious and low-paid exposes gaps in the current coverage of the Minimum Wage Act. On these grounds the CTU believes the current minimum wage protection provisions are excluding an unacceptable number of workers and are increasingly ineffective at extending protection to non-standard working arrangements like contracting. The growth of non-standard work is undermining good, healthy and safe working conditions and secure and acceptable incomes. Case studies in the 2013 CTU research report into insecure work, *Under Pressure* (New Zealand Council of Trade Unions Te Kauae Kaimahi, 2013) highlight the association of insecure work with low wages and detail the real experiences of people in insecure work and on low wages.
- 3.16. Low wages force workers into insecure employment and working very long hours or taking on other jobs. It is very common for low-paid cleaners, aged care and home support workers for example to be working long hours, day and night in multiple jobs.
- 3.17. We note in answer to your Question 4 in Section 4 below the increasingly problematic interaction between low pay, insecure hours, the welfare benefit system and the taxation system. Together they undermine the purpose of a minimum wage, which is to ensure people have enough to live on. For that, the number and certainty of hours matter as well as the hourly wage rate.
- 3.18. Though data is available on the number of people in permanent and temporary employment arrangements, there is insufficient information on the relationship to low wages, employment conditions, health and safety, and employment representation, protection and rights in New Zealand. We reiterate the recommendation made in our 2013 Submission for a government agency to be gathering both quantitative and qualitative information about the prevalence of low pay in New Zealand including the ethnic, migrant and gender aspects of low pay, and to monitor, collect and publish this information.

Minimum Wage exemption permits

- 3.19. The CTU’s 2013 submission to the Minimum Wage Review urged a review of the minimum wage exemption permits system which enable the payment of appallingly low wages. The majority of people on minimum wage permits are earning less than \$3.00 an hour and some less than \$1.00 an hour (Human Rights Commission, 2011). The current permit system embeds

discrimination and does not reflect modern disability empowerment principles.

- 3.20. New Zealand has obligations under the United Nations Convention on the Rights of Disabled Persons to increase employment opportunities and ensure employment rights for disabled people. The replacement of minimum wage exemption permits with a better and alternative system is a complex and technical piece of work due to its interface with the benefit system and the concerns about ensuring a range of vocational opportunities for disabled people.
- 3.21. The work commenced by MBIE, MSD and disabled persons organisations, and the establishment of a reference group looking at the permit system, are encouraging developments. The reference group, which has CTU and Public Service Association representation, has the potential to develop a model that replaces the current minimum wage exemption permit system with a much fairer wage assessment tool.

Gender Pay Gap

- 3.22. Raising the minimum wage will help reduce poverty among women and their families and make progress towards closing the gender pay gap. We reiterate our concern outlined in the CTU Minimum Wage Submission 2013 that consideration of the gender pay gap has been removed as a criterion in deciding the level of the minimum wage.
- 3.23. The removal of that consideration along with other changes resulting in the absence of any government action or directive to reduce the gender pay gap is lamentable. It must come as no surprise, therefore, that legal action is being turned to, with significant public support, to rectify the inequity of large cohorts of women workers in the female-dominated aged care and disability sectors being locked into an established pattern very low wages. This is the basis for the legal case taken by the Service and Food Workers Union and Kristine Bartlett, who despite having 20 years of care-giving experience was on a wage of \$14.46 an hour at the time of the first Court hearing.
- 3.24. Data from the New Zealand Income Survey in 2014 (Statistics New Zealand, 2014a) once again demonstrate the lack of progress in closing the gender pay gap. Women's average hourly earnings at \$24.70 compared to \$28.70 for men reveal a 14 percent wage gap and a widening of the gap from 12.7 percent in June 2013. The ethnic gender pay gap is even greater. Using average hourly earnings as the measure, Māori women earned 76 percent and Pasifika women earned 69.9 percent of men's earnings in 2014.
- 3.25. The accumulated effect of this gender pay difference over a life time has significant effects in women being able to have adequate, equitable savings and support themselves in retirement.
- 3.26. While not resolving these issues, a significant rise in the minimum wage would help the women working under these conditions and make a solution more feasible.

Enforcement

- 3.27. A significant issue with the minimum wage is the lack of enforcement of its provisions in several sectors and for vulnerable groups of workers.
- 3.28. Although we acknowledge that effort has been stepped up by inspectors, it is still far from adequate. As we note in our reply to Question 2 in our submission on the MBIE discussion document “Playing by the Rules” (New Zealand Council of Trade Unions Te Kauae Kaimahi, 2014), the resourcing for the Labour Inspectorate is dangerously low and almost a third of the per capita resource of the Fair Work Inspectors in Australia.
- 3.29. We submitted in detail on issues relating to enforcement of the minimum code legislation (including the Minimum Wage) in that submission.
- 3.30. As noted there, penalties for breaches of the Minimum Wage Act 1983 are far too narrowly circumscribed and too low. In *Yu v Da Hua Supermarket Central Ltd* [2013] NZERA Auckland 344, the Authority found that Da Hua paid Ms Yu only \$8 per hour (instead of the adult minimum wage of \$13.50 at the time). Among other remedies, Ms Yu sought a penalty (paid to the Crown) of \$1,000 for breach of the Minimum Wage Act 1983. In relation to this penalty, Member Anderson found at [19]:

[19] ...[W]hile I am satisfied that there has been a breach of the Minimum Wage Act, for a penalty to be recovered for the breach, an action must be brought to the Authority by a Labour Inspector hence the Authority does not have the jurisdiction to impose a penalty without proceedings being commenced by a Labour Inspector.

- 3.31. A recent example of the inadequacy of the current system is provided by the case of *Labour Inspector (Brown) v Su t/a Kippers East* [2014] NZERA Wellington 68. In that case, an employer failed to provide remotely sufficient wage and time records of employment agreements for his staff when given a compliance notice by the Labour Inspector. The Employment Relations Authority levied a penalty of \$5,000 for failure to produce the requested records. However, given that the requested records cover three employees per shift over five years, it is very likely that Mr Su saved thousands of dollars by effectively refusing to cooperate with the labour inspector. This makes a mockery of the enforcement system.

Minimum Wage Amendment Order

- 3.32. In May 2014 the Government passed the Minimum Wage Amendment Order introducing a new fortnightly threshold for assessing hours worked where the wage was not expressed hourly, daily, weekly or as a piece rate.
- 3.33. A move to fortnightly averaging allows an employer to offset payments payable to a worker for work in one week against payments due to the worker in the following week towards the minimum wage rate.
- 3.34. A simple example illustrates this. A salaried adult worker earns \$670 in one week and \$470 dollars in the next week. Under the previous Minimum Wage

Order, they have a claim in relation to the second week and under the amended Order they do not.

- 3.35. This change will affect many of the lowest paid workers in the country. In several industries salarisation is likely to become the norm as a means to reduce pay.
- 3.36. CTU affiliate union, Unite, provides an existing example in the accompanying box.
- 3.37. As Chief Judge Colgan stated in *Law (and others) v Board of Trustees of Victoria House* [2014] NZEmpC 25 at [54]:

[54] The MW Act exists to provide minimum essential terms and conditions of employment and to avoid the exploitation of employees with little or no bargaining power. It should be interpreted accordingly and not so artificially that it could easily be rendered impotent. The MW Act can hardly be said to create a bonanza of riches for employees covered by it. Those who should justifiably expect its protection should not be turned away from it by the technicality of an employer's choice of an annual salary as the method of remuneration payment.

- 3.38. Callister and Tipples (2010) note at 12:

When the long hours worked by dairy workers are taken into consideration, they are very low at an average level. ... [O]nly 39.4 percent of farmers record staff hours, leaving considerable scope for paying an hourly rate of pay below the minimum hourly rate of pay set for a normal 40 hour week (Minimum Wages Act 1983).

- 3.39. Recent enforcement action by MBIE has shown that almost three quarters of dairy farmers (31 of 44 inspected) are not complying with basic employment law protections. Among Bay of Plenty 35 kiwifruit contractors visited, MBIE found 39 minimum employment standard breaches and 8 illegal immigrant workers (Ministry of Business, Innovation and Employment, 2014a). In Queenstown hospitality, retail and service industries MBIE inspectors found among 41 employers no less than 64 minimum employment standards breaches, including employees not receiving the minimum wage for the hours they worked, and issued 15 improvement notices and 2 enforceable undertakings with seven further formal investigations pending (Ministry of Business, Innovation and Employment, 2014d).
- 3.40. In addition, MBIE's enforcement actions in Christchurch labour hire and construction found 16 companies to be in breach of employment standards out of 23 completed audits (Ministry of Business, Innovation and Employment, 2014c). There has been widespread publicity this month about service station and supermarket employers making unlawful and unconscionable deductions from their employees' pay packets, many of them reportedly on or near the minimum wage.
- 3.41. Though these may be small samples, the rate of breach of basic employment laws is profoundly disturbing. It makes it clear that effective enforcement is essential and that New Zealand employment law cannot be designed on the assumption that employers will behave reasonably – let

Box 1: Salarisation and the minimum wage in the hospitality sector

It is commonplace in the hospitality sector that low salaried jobs are being used to avoid minimum wage obligations. Salaried positions are seen as an improvement by many employees in the industry because a salaried position provides a guarantee full-time regular employment as opposed to the widespread use of variable part time wage positions which offer no guarantee of work (e.g. Zero Hour Contracts).

Hospitality employers deliberately use the incentive of regular work provided by a salary to coerce workers to accept a lower hourly rate.

Using an example of a prominent restaurant chain:

- The company has a waged position of “Shift Supervisor”, paid at \$20.77 per hour.

The waged position is entitled to a late shift allowance of 0.36 (per half hour), broken shift allowance of \$2.11 per day, Higher Duties Allowance of 0.72 per hour, Overtime (at T1.5) when working more than 8 hours per day or 40 hours per week.

- The company also has a more senior salaried position of “Assistant Manager” with an annual salary of \$32,987.

Assistant Managers are not entitled to overtime or other allowances and are contractual bound to work up to 45 hours with no additional compensation. When they work a completed shift (8 hours) over their scheduled 40 hours they are entitled to apply for time in lieu, however the application for the time in lieu is often denied by the company. Anecdotally we are told that Assistant Managers in a normal working week will work far in excess of 45 hours per week.

Converting the annualised salary of the Assistant Manager position (\$32,987) to an hourly rate of \$15.82 based on the 40 hour week that they are contractually obliged to work shows that the salaried position is paid significantly less than the more junior waged position of Shift Supervisor. In addition the Assistant Manager position fails to provide compensation for overtime below 45 hours per week which means that where an Assistant Manager works more than approximately 44 hours in a week but doesn’t work an additional whole shift (of 8 hours) or doesn’t achieve pre-approval for working an additional whole shift, the Assistant Manager will be paid less than the current adult minimum wage of \$14.25 per hour.

Despite the extraordinarily poor remuneration, employees continue to accept salaried positions of Assistant Manager for three core reasons:

1. A guarantee of regular income (which enables greater access to finance and loans).
2. To progress onto higher salaries through further promotion in the future.
3. To assist in gaining permanent residency or citizenship.

This is example is not an exception within the industry and is becoming an increasingly common practice.

alone tailoring laws to the actions of the worst employers as in the case of this Minimum Wage Amendment Order.

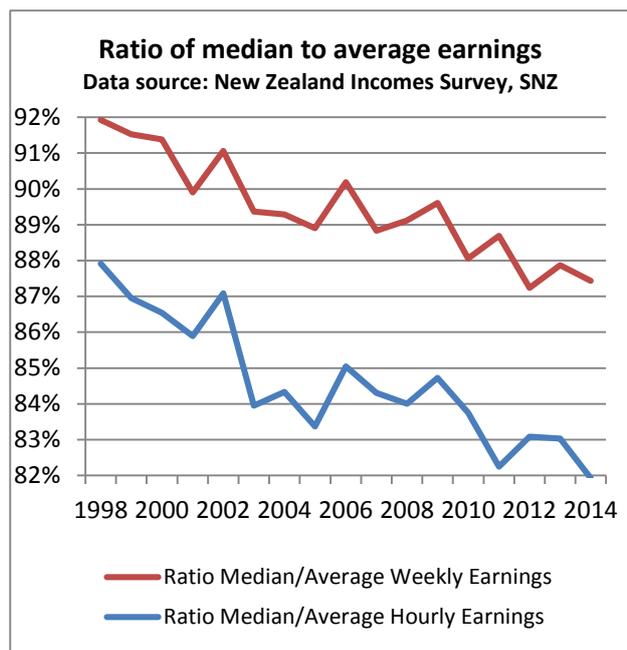
- 3.42. The new calculation represents an example of very poor policy making under lobbying pressure. We urge the Minister to amend the Minimum Wage Order to remove the unnecessary and destructive fortnightly rate.

4. Addressing the Objectives of the Minimum Wage Review

- 4.1. The process for the Minimum Wage Review was changed in 2012. This includes a new objective:

To keep increasing the minimum wage over time to protect the real incomes of low-paid workers while minimising job losses.

- 4.2. The CTU believes that the revised objective contains two flawed assumptions. The first is that the minimum wage is currently at the correct level and therefore should only be increased in order “to protect the real incomes of low-paid workers.” This fails to recognise the significance of the minimum wage as a macroeconomic lever to address issues of social justice, income inequality, poverty and improvement of the position of disadvantaged groups.
- 4.3. We do not believe that this narrow consideration adequately guarantees citizens’ rights to “a just and favourable remuneration” under article 23(2) of the Universal Declaration of Human Rights or to provision of an adequate living wage under the Declaration of Philadelphia.
- 4.4. The second flawed assumption is that increasing the minimum wage leads to significant job losses. See above and Section 7 of our 2013 submission for further details.
- 4.5. We encourage the Government to recognise the importance of increasing the minimum wage as a tool to improve social outcomes, productivity and social justice and to recognise these as ‘other factors’ in terms of the criteria for assessment.
- 4.6. The criteria are now much more limited. Inflation in the September 2013 year was 1.4 percent and in the September 2014 year was 1.0 percent. It would be unconscionable for the Government to base the minimum wage movement



solely on inflation in the last year. We note that the average ordinary time hourly wage as measured by the Quarterly Employment Survey increased by 2.7 percent in the year to June and the average wage in the New Zealand Income Survey rose 3.0 percent. The median wage in our view is not the most important comparator because it is falling behind the average wage (see the accompanying graph), rising only 1.7 percent in the June 2014 year. The minimum wage is also about equity and basing it on a ratio (such as 66 percent) of the average wage recognises and corrects for the effects of widening income disparity.

- 4.7. The minimum wage review is a significant annual opportunity for the Government to intervene to support those on low incomes. That requires a broad-based enquiry against rigorous and balanced criteria along with widespread consultation. Narrowing the criteria and limiting the depth of the review are retrograde steps.
- 4.8. A number of questions were asked in the invitation to contribute to this year's review. Our responses are as follows:
 1. ***What impacts have you observed as a result of changes to the minimum wage? (You may wish to discuss the April 2014 increase, and/or increases over the past 5 years. Please define the time period you are discussing).***
- 4.9. Evidence of the impacts of changes to the minimum wage are spread throughout our submission above and our 2013 submission (and we refer to differing time periods for each).
- 4.10. We have provided evidence that the minimum wage is too low in relative terms and that growth in the minimum wage has slowed significantly (or reversed in the case of the minimum wage for young people) since 2008.
- 4.11. The slow growth of the minimum wage disproportionately affects part-time workers, women, under-25s, Māori, Pacific, Asian and other ethnic minorities along with those in service-related, residential care, retail and hospitality industries.
- 4.12. The Public Service Association for example estimates that approximately 1,300 of their members in home support are directly affected by increases to the minimum wage because that is what they are paid. On top of that are non-unionised staff and there are a large number of members who are paid just above the minimum wage such as clerical administration workers in DHBs.
- 4.13. A low minimum wage keeps New Zealand's general wage levels low and traps many workers and employers in a low-wage low-skill equilibrium. It consequently has negative consequences for productivity, equality, poverty, the gender pay gap and labour participation rates.
- 4.14. Evidence is clear that increases in the minimum wage have not appreciably increased unemployment nor impacted employment.

2. *What are the gains or positive impacts likely to be from a moderate increase in the minimum wage rates for the people you represent? (The 2014 increase was 50 cents).*

- 4.15. The use of the term “a moderate increase in the minimum wage” suggests some predetermination in the minimum wage review or begs the question of what constitutes a moderate increase.
- 4.16. An increase in the minimum wage that is greater than the increase in the cost of living and raises the minimum wage towards two-thirds of the average wage will assist in making New Zealand a more equal society including by narrowing the gender pay gap. It is likely to assist in raising productivity.
- 4.17. A rise in the minimum wage towards a ‘living wage’ is more consistent with New Zealand’s international treaty commitments and is good for New Zealand’s international reputation.
- 4.18. Our affiliate, FIRST Union, which covers the retail sector observes that in the non-unionised retail sector, wage rates have stagnated and reintroduction of youth rates has depressed wages. The increase in the minimum wage provided the only wage increase for these workers, which the PSA also notes.
- 4.19. Affiliates also note that it is common for workers just above the minimum wage not to get the same increase unless it results in their pay or pay scale falling below the new rate. While unions work to remedy this, it limits the impact of a “moderate” increase in the minimum wage.

3. *What are the costs or negative impacts likely to be from a moderate increase in the minimum wage rates for the people you represent? (The 2014 increase was 50 cents).*

- 4.20. See discussion of “moderate increase” under question 2 above. We do not believe an increase of that size sufficiently addresses the problems faced by low income workers and the other issues we have discussed, including low wages more generally. It would only marginally assist low income workers. For many, it is still a poverty wage. Employers who pay close to the minimum wage only match the new rate.

4. *How do you see the minimum wage working with other employment and income related government interventions? (For example the tax system and social assistance)*

- 4.21. It is important to consider the underlying reason for minimum wage laws: it is to ensure workers have enough to live on. In this spirit, we have already quoted Chief Judge Colgan in paragraph 3.37:

[54] The MW Act exists to provide minimum essential terms and conditions of employment and to avoid the exploitation of employees with little or no bargaining power. It should be interpreted accordingly

and not so artificially that it could easily be rendered impotent. The MW Act can hardly be said to create a bonanza of riches for employees covered by it.

- 4.22. While we appreciate this was written in the context of interpretation of the law, it is the purposive spirit and its logical consequences that are important in the present context.
- 4.23. Having enough on which to live depends on hours worked as well as the rate paid, and on the benefit and tax systems. For many workers, there is an increasingly toxic mix of insecure hours (or indeed employment), the rules in the welfare benefit system and the taxation system, including Working for Families tax credits, that indeed tend to “render impotent” the rationale for Minimum Wage laws. This is further exacerbated by weak enforcement of the minimum wage rate, inadequate rises in the hourly rate, and artifices such as that in the Minimum Wage Amendment Order, described above, designed for employer convenience rather than employee protection.
- 4.24. An affiliate described a case which they say exemplifies the situation for many of their members,

The experience of one of our members working for a large supermarket chain in the Wellington Region highlights many of these issues. Worker A is a single mum and used to have a regular 25 hours working at the supermarket. Following a review of hours of all employees, A’s regular hours were cut to 19 a week. Due to the thresholds for particular tax credits/benefits the cut in hours just created a nightmare for this worker and had a significant impact on her earnings. As she was no longer working 20 hours a week she lost her entitlement to the In-Work tax credit. The change to her hours also affected her accommodation supplement and other Working for Families payments. Worker A took any additional hours that were offered to her, but these fluctuated from week to week. To make matters worse, WINZ then made her go to ‘job search training’ and hounding her to get a job with more hours, that then jeopardised the 19 hours of regular work she did have. Someone described the situation as “demanding she go and learn how to work when she was working her arse off”.

- 4.25. Another affiliate reports:

There can be issues for members who work part time and are on benefits as well. They are having to work as a matter of necessity to earn enough to live but can be penalised when their hours go up. For example a member is on an unemployment benefit. If she earns more than \$80 a week she has her benefit reduced. With no guaranteed hours she has felt financially compromised at times. Not only has her benefit been reduced (or increased) but there can be delays with Work and Income making those adjustments – up two weeks. On one occasion she tried to turn down a negotiated increase because it would take her over the threshold at a time when she felt she had her benefits and income from work in balance.

- 4.26. While these problems are not necessarily specific to workers earning the minimum wage, those on or near the minimum wage are particularly vulnerable to their effects. The rules can effectively defeat the rationale of a minimum wage providing a living.
- 4.27. We emphasise that this is *not* a reason to restrict increases in the minimum wage. The problem is in the often punitive design of the welfare system, the design of Working for Families, and the administration of them by WINZ and IRD.
- 4.28. On their administration, an affiliate wrote:

Despite not being in control of how many hours they work each week, workers are expected to continuously report their changing earnings to the IRD/WINZ as it has an impact on their working for families/tax credit entitlements. To make matters worse, the IRD calculates earnings on a monthly basis, and this often has the effect of overestimating 'one-off' earnings, leading to the IRD sending a letter out announcing their weekly Working for Families payments will be cut more than they should be. This creates situations where entitlements are too complex and too cumbersome to claim, and the result is that many workers simply give up. It's like they have to spend a significant amount of their non-work hours taking care of their working ones. It's tiring and not surprising that workers make mistakes. Many workers do not know or understand what information they should provide. Many are cash poor and cannot wait until the end of the year, yet on the other hand if the state decides they have been overpaid they are faced with having to refund this money.

- 4.29. While the Working for Families package was a significant contributor to the decline in inequality in New Zealand between 2004 and 2007, the inapplicability of the In-Work Tax Credit to beneficiary families is a significant cause of child poverty in New Zealand.
- 4.30. An explicit reason for this exclusion is to create an incentive to enter work. We do not give great credence to this argument, which greatly oversimplifies the reasons people have for deciding to work or not to work. In addition, data from Perry (2014 Figure C.7) show that even if the present equivalent of the Domestic Purposes Benefit was lifted by a quarter it would be no higher than the levels relative to the average wage that it was cut to in 1991. The single unemployment and invalids benefits would need an even larger rise to take them back to the 1991 relative rates, let alone the pre-1991 rates. If the levels after the benefit cuts in 1991 were enough to "incentivise" employment, then even a substantial rise in current benefit levels would do no harm.
- 4.31. However, whether or not credence is given to the "incentives" argument, a higher minimum wage would allow the extension of the In Work Tax Credit while giving much more substantive encouragement to enter work without requiring benefits to be kept at a level which keeps families in poverty and deprivation.

4.32. Actions taken by the Government to force more beneficiaries into work are almost certainly increasing unemployment and helping to maintain low wages while in many cases not resolving issues of poverty and lack of future prospects. Insecure employment and the Government's own law changes are adding to their problems: we note the comments in the *Benefit System Performance Report for the year ended 30 June 2013* (Raubal & Judd, 2014, p. 33):

4.50 The largest portion of returning beneficiaries (44%) had been off benefit for less than one year. A further 19% had been off benefit for less than two years. Some possible causes are:

- Seasonal employment in regions which have industries like agriculture, horticulture and freezing works. These workers are entitled to receive Jobseeker Support in the out of season periods off work and intervention strategies for these people during their periods off work are likely to differ from other churn clients. Seasonal employment also is evident in major centres in education, hospitality and some retail sectors. These workers are expected to be found in the less than one year on benefit segments.
- Casual labour workers with a low skill level in low-income employment are characteristics that can create instability for people in this type of work and increase the likelihood of returning to benefit.
- The 90 day trial period also is likely to be a factor for those with barriers to sustainable employment. Figures published by the Ministry of Business, Innovation and Employment show that, in 2012, 27% of employers said they had fired at least one new employee during or at the end of their trial. For clients who have had multiple periods on and off benefits over the last five years, the greatest number of spells off benefit lasted between 31 and 90 days. Vulnerable clients with low skills and complex needs face increased barriers to staying in work.

4.33. We recommend that as part of the 2015 Minimum Wage Review a work programme be undertaken to consider the interaction between the minimum wage, regulation of work hours, insecurity of employment and work hours, the benefit system and the taxation (and tax credit) system.

4.34. See also sections 2 and 11 of our 2013 submission for further details.

5. *What sector or industry-specific issues related to changes in the minimum wage are you aware of? In what circumstances or types of work?*

4.35. The growth of salarisation to reduce workers' pay following the May 2014 Minimum Wage Amendment Order is a growing concern. Several industries with female-dominated workforces such as residential aged care have large cohorts of workers at or near the minimum wage. This has a significant impact on the gender pay gap.

- 4.36. There are many issues in home support where there is a preponderance of part time, casual workers with highly variable hours of work. Many workers are nominally paid at the minimum wage but the lack of guaranteed hours, inadequate travel compensation and lack of compensation for travel time together means that these workers earn less than the minimum wage. Because providers are not being fully funded for increases in pay in general, service provision gets cut: an example is a move to 15 minute home visits.
- 4.37. As described in the body of our submission, we are concerned about the still extremely inadequate enforcement. The added complexity of two-week averaging, ‘starting out’ and trainee rates alongside the growth of non-standard work arrangements, insecure jobs and highly varying hours (including ‘zero hour’ contracts) make this a toxic mix which invites exploitation.

6. *Do you think there are any additional issues relating to minimum wage rates that are relevant to specific groups you represent? (eg: women, Maori, Pacific Island peoples, people with disabilities, migrants, temporary workers, SME's or employers?)*

- 4.38. The re-introduction of youth sub-minimum wages in the form of the starting out wage has significantly disadvantaged young people in a discriminatory and unfair manner. There is little or no evidence that cutting their wages will result in more work, or indeed that most employers really want it. We are strongly opposed to any form of discrimination in pay rates that lowers those rates, whether on the basis of age, disability or jobs traditionally performed by women.
- 4.39. Our affiliates are aware of situations where migrants have not been paid even the minimum wage.
- 4.40. One notes that in most areas in its coverage, it is predominantly women workers who are in jobs paid at or just above the minimum wage. Maori and Pacific workers are disproportionately represented in the home support workforce.
- 4.41. There are issues around night work and transport, as workers have no control over where a business is situated yet often face difficulties in getting to work at times where there is no public transport and the initial costs of running a car are high (meaning the loan shark gets a customer). Night-fill work is largely now performed by migrant workers in the retail sector, yet no premiums or allowances are paid for working nights or other anti-social hours.
- 4.42. The work to review Minimum Wage Exemption Permits must be carried through to its conclusion.

7. *What would you consider an appropriate setting for the 2014 adult minimum wage? Why?*

See section 2 (and particularly paragraphs 2.1 and 2.2).

8. Are there any other issues you would like to raise in relation to changes to the minimum wage rates?

- 4.43. See above. We urge the Government to reinstate wider consultation and consideration of social justice and equity factors in the setting of the minimum wage.
- 4.44. We would like to discuss at any early stage the form of the full review of the Minimum Wage that is scheduled for 2015.
- 4.45. We believe that the Government should consider ratification of ILO Convention No. 131 on Minimum Wage Fixing as representative of best practice in this area.

5. Conclusion

- 5.1. The CTU has put forward this submission to be read in conjunction with our 2013 submission, making a clear case for a significant increase in the minimum wage for the review in 2014.
- 5.2. The CTU is very concerned that the present combination of employment law changes, welfare, fiscal and economic policies is compounding New Zealand's problems of unfair distribution of income and narrow, low value economic development.
- 5.3. We submit that it is essential that the full review of the minimum wage next year considers a much broader range of factors and impacts.
- 5.4. We look forward to the opportunity to further discuss the contents of this submission.

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