



NEW ZEALAND COUNCIL OF TRADE UNIONS
Te Kauae Kaimahi

**Submission of the
New Zealand Council of Trade Unions
Te Kauae Kaimahi**

to the

**Justice and Electoral
Select Committee**

on the

**Human Rights
Amendment Bill**

**P O Box 6645
Wellington
December 2013**

Summary of recommendations:

- The CTU supports the full identification of the functions of the Human Rights Commission ('the HRC') in legislation and the addition of the promotion and protection of human rights for persons with disabilities as a primary function of the HRC.
- The retention of specialist human rights Commissioners in statute is essential for maintaining a credible human rights record and providing human rights leadership internationally. The CTU strongly opposes the disestablishment of the two designated Equal Employment Opportunities and Race Relations Commissioners in the Human Rights Act 1993 ('the Act').
- We recommend that a new Section be added outlining the functions of the Disability Rights Commissioner in the Act.
- We recommend a new specialist Commissioner be appointed to work on economic, social and cultural rights and that economic, social and cultural rights be identified in the functions of the HRC and that the functions of this Commissioner be a new Section in the Act
- We urge that the Select Committee seeks cross-party consensus on these changes. The Human Rights Act 1993 is an essential important part of our constitutional framework and changed should have the full support of Parliament.
- The Bill potentially decreases the Commissioner hours in the HRC. We recommend that there are no less than five FTE Commissioners and that there is no maximum FTE cap to allow the HRC to determine the adequate number of Commissioners to fully discharge its functions under the Act.
- We recommend that the autonomy and independence of the specialist Commissioners is retained and that changes to make them subject to the direction of the Chief Commissioner do not proceed on the basis that this would reduce the status and the effectiveness of the Commissioners in their areas of expertise.

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1. Introduction

- 1.1. This submission is made on behalf of the 37 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With over 330,000 members, the CTU is one of the largest democratic organisations in New Zealand.
- 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.
- 1.3. Human rights are the bedrock of civilised society. The free exercise of basic human rights, particularly the right of freedom of association, is essential to the function of trade unions.
- 1.4. Basic work rights are recognised as essential human rights in the Universal Declaration of Human Rights in Article 23:
 - (1) *Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.*
 - (2) *Everyone, without any discrimination, has the right to equal pay for equal work.*
 - (3) *Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.*
 - (4) *Everyone has the right to form and to join trade unions for the protection of his interests.¹*
- 1.5. The CTU has very strong linkages and relationships with human rights institutions both in New Zealand and internationally. As the most representative body of workers the CTU represents New Zealand at the International Labour Organisation (ILO).
- 1.6. We work collaboratively on many human rights projects and common interest issues with the New Zealand Human Rights Commission (HRC) and have done so for more than two decades.

¹ Universal Declaration of Human Rights: <http://www.un.org/en/documents/udhr/>

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- 1.7. The CTU holds the work of the HRC in very high regard and we have worked very closely with various commissioners: the Chief Commissioner, the Equal Employment Opportunities (EEO) Commissioner, the Race Relations Commissioner and more latterly the Disability Rights Commissioner.
- 1.8. This Bill introduces some changes which are positive such as reviewing the functions of the Commission. But the provisions in the Bill which weaken our national human rights institution are a major concern and threat.
- 1.9. Dis-establishing two key designated human rights positions and not creating a Disability Rights Commissioner in the statute will reduce the HRC's strategic approach and will result in the loss of specialist knowledge and focus on race relations, equal employment opportunities and disability.
- 1.10. There are many reasons to be proud of our human rights record and how we have advanced human and civil rights in New Zealand and on the international stage. The retention of specialist human rights Commissioners in statute is important in maintaining this record.

2. The basis for change

- 2.1. The only identification of the issues are the three problems identified in the Regulatory Impact Statement (RIS):
 - *The inefficiency and lack of effectiveness of the part-time Commissioner positions*
 - *The inflexibility resulting from the way specified Commissioner roles are provided for in the Act (governance arrangements),and*
 - *The sometime unclear and incomplete description of the functions of the Commission².*
- 2.2. The explanatory note to the Bill states that “no major substantial change of the specialised Commissioner role is intended and in practice these Commissioners can operate as usual”(page 3). It is disingenuous for the Regulatory Impact Statement (RIS) to suggest that this Bill will not make substantial changes to the functions and role and performance of the HRC.

² Regulatory Impact Statement Human Rights Amendment Act:
<http://www.justice.govt.nz/publications/global-publications/r/regulatory-impact-statement-human-rights-amendment-bill>

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- 2.3. There is no adequate rationale presented in the explanatory note or the RIS for the disestablishment of the EEO and Race Relations Commissioners in the statute. The explanatory note of the Bill states that changing specialised Commissioners to Human Rights Commissioners will reflect that “first and foremost the Commissioners are members of the Commission and operate at all times on behalf of the Commission”.³ There is no justification made for that statement. It is our experience, and we are an organisation who works closely with the HRC, that the Race Relations and EEO Commissioners do act, and have always acted, as members of the Commission and are perceived from all stakeholders as doing so.
- 2.4. The explanatory note to the Bill states that the Bill establishes a position of Disability Rights Commissioner. Though there is currently a Disability Rights Commissioner this position was established only as an interim position. The current Bill only appoints a Commissioner to lead the work in the area of disability. This is not the same as having a designated Disability Rights Commissioner.

3. Change Process

- 3.1. Any changes to the Human Rights Act should have cross-party support before proceeding as the Human Rights Act is part of the New Zealand constitutional framework. It is an established convention that changes to constitutional matters should be bi-partisan. Accordingly, we submit that changes to this Act must have the support of all the major political parties.
- 3.2. A bi-partisan approach and cross-party support should have been a priority. It is disappointing and concerning that this has not occurred before the Bill’s first reading.
- 3.3. This Bill has had an unusual and protracted process and was first introduced in 2011. The Government has been in no rush to pass this legislation. Nor has the Government used that period to undertake consultation with human rights stakeholders to consult and canvass their reactions to these proposals.
- 3.4. Such consultation should have included conversations with the CTU as one of the New Zealand representatives to the International Labour Organisation and a guardian of New Zealanders’ human rights at work.

³ Ibid

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- 3.5. Important changes should have been widely canvassed with groups who will be affected such as Māori, Pasifika, ethnic groups, disabled people and women.
- 3.6. It is inadequate to provide the Select Committee process as the only forum for public discussion and debate on these proposed changes. By the time bills get to Select Committees political lines are usually drawn and the ability to make substantial changes is limited. We urge that this not be the case with this Bill and that the Select Committee make it a priority to ensure that changes are made to satisfy all major political parties and ensure the full support of Parliament before changes are voted upon.

4. Other Provisions

- 4.1. The CTU supports fuller identification of the functions of the HRC in legislation and the amendment of the legislation to add disability as a primary area of responsibility. The CTU also supports and advocates for the establishment of a new specific HRC function that of “the promotion of economic, social and cultural rights”. This would become Section 5(1) (f).
- 4.2. If changes are made to the functions of the Commission then we also recommend that the United Nations (UN) conventions to which New Zealand is a signatory are all specified, given the requirement for national institutions to report independently to their monitoring bodies on all the UN conventions a State party has ratified. We advocate that the Act specify the Conventions below:
 - The International Covenant on Civil and Political Rights
 - The International Covenant on Economic, Social and Cultural Rights
 - The Convention on the Elimination of All Forms of Discrimination against Women
 - The Convention on the Elimination of All Forms of Racial Discrimination
 - The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
 - The Convention on the Rights of the Child
 - The Convention on the Rights of Persons with Disabilities.
- 4.3. Treaties that are not ratified by New Zealand should also be referred to as we have international obligations under these treaties even if not ratified.

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- 4.4. The Bill disestablishes two designated positions in repealing Sections 16 and 17 of the Human Rights Act which outline the functions of these two roles. We strongly oppose this.
- 4.5. We recommend that a new Section be added outlining the functions of the Disability Rights Commissioner in the statute.
- 4.6. We recommend that another new Section be added outlining the functions of an Economic, Social and Cultural Rights Commissioner.
- 4.7. The Bill proposes changes to section 15 which require the Chief Commissioner to act jointly with the Race Relations Commission and the EEO Commissioner on matters arising in the course of their activities and replaces this in a new proposed Section 16 which defines functions of Commissioners to lead work in priority areas.
- 4.8. It adds in a new requirement Section 16(2) that the exercise by a Commission of the functions stated in subsection 1 is subject to direction given by the Chief Commissioner in the exercise of his or her responsibilities under Section 15 (b), (c), and (d).
- 4.9. This is a significant change from the speciality role as well as the collegial approach that HRC Commissioners have taken and a dilution of the role of all other HRC Commissioners other than the Chief Commissioner. The legislation strengthens the role in legislation of the Chief Commissioner but reduces the status of the other commissioners. The move makes for a much more hierarchically based structure and has significant implications which will be to the detriment of human rights in New Zealand. The CTU opposes this change.
- 4.10. The Chief Commissioner has a critical leadership role as he or she should have. The functions of the Chief Commissioner as articulated are supported but they are, and should be different, to that of designated specialist Commissioners.
- 4.11. At the time the Bill was considered by Cabinet the HRC advised that that the disestablishment of the Race Relations Commissioner and EEO Commissioners would be perceived by communities as lessening the roles and altering the special character and visibility of these roles.
- 4.12. The retention of these designated positions is critical given the precarious state of human rights in New Zealand for many people: Māori, Pasifika, migrants, women and the growing inequality which is impinging on human rights. The removal of

these positions weakens the projection that these positions provide for areas which need more urgent attention – not less.

5. The number of commissioners and their roles

- 5.1. We recognise that the Bill explicitly refers to race relations, equal employment opportunities and disability as primary functions of the HRC but this is not the same as having Commissioners in these areas with specific responsibility and who are appointed to this role.
- 5.2. The objectives of the changes are to strengthen the HRC's performance by increasing its efficiency and effectiveness. We contend that this Bill will do the reverse - that is, it will weaken the framework for human rights in this country and that the effectiveness of the HRC in the three designated areas will be diminished by the disestablishment of specialist Commissioners.
- 5.3. We submit that it is imperative to retain Human Rights Commissioners in specialist roles and that the removal of these specialist positions will be retrogressive for equal employment opportunities and race relations in New Zealand and will not progress disability rights.
- 5.4. The disestablishment of specialist Commissioners would fundamentally affect the performance of the HRC in these specialist areas of national importance.
- 5.5. The Bill does not, as is claimed, establish a Disability Commissioner. Instead what the Bill does is that it establishes that a Commissioner would have responsibility for disability rights. This is not the same as having a designated Disability Rights Commissioner.
- 5.6. The current full time equivalent (FTE) positions including that of the Chief Commissioner are 4.5 FTE. Under the current legislation there is a full-time Chief Commissioner, two full time Commissioners and up to 5 other part-time Commissioners who work the equivalent of 0.3 of a FTE position. We understand that currently the Disability Rights Commissioner occupies three of the part time positions to ensure that this new priority area was adequately resourced.
- 5.7. In respect of the total number of Commissioners, the Bill proposes not less than four and no more than five Commissioners. This may be seen as staying at the current FTE level. But given a new specialist area of disability rights has been added as a human rights priority area, this is therefore is a reduction in the Commissioner

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resources available to the pre-existing areas of responsibility. We submit that adding another specialist area to the function of the HRC requires additional Commissioner hours added to the total FTE count.

- 5.8. We note that in the RIS the HRC recommended that the full time Commissioners be increased from three to four full-time, and the job size and number of part-time Commissioners currently set at five part-time positions change to two part-time positions of 0.5 FTE.
- 5.9. We recommend that the total Commissioner contingent should be no less than five FTE, as supported by the HRC in the RIS. This would be an increase to provide for the new and additional areas of disability as a priority but would also allow for new areas of human rights to be covered.
- 5.10. The RIS advocates that a change from part-time to more full-time Commissioners is required on the basis of the positions requiring people to be in full-time roles. It is appreciated that too many people having very small part-time FTE positions may have some efficiency issues for the HRC. We suggest an approach that some positions are recognised as needing the equivalent of full-time employment but these positions could be filled by Commissioners working part-time to a FTE level consistent with the expectations of the role. This would allow for part-time positions which are important for women who are more likely to have to balance family caring responsibilities.
- 5.11. The RIS and Bill state that these changes will provide more flexibility to enable new human rights activities for the HRC to respond to new human rights issues. But we know through our own experience that Commissioners work across areas other than their own specialist area. For example, the last EEO Commissioner undertook extensive work in the areas of both disability and children's employment.
- 5.12. Sufficient flexibility is already there. The steps proposed in the name of flexibility come at the risk of loss of specialist expertise.
- 5.13. The RIS acknowledges this openly by saying that a potential disadvantage is that people with specialist skills might be deterred from applying for a Human Rights Commissioner position and that advertising of such a position might only attract generalist human rights experts. We concur with this.

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- 5.14. But even more importantly, a person or organisation calling on the assistance of the Commission in a specific area must have confidence that the Commissioner they are referred to has specialist knowledge and experience in that area. Each area is complex, often sensitive, and deeply affected by New Zealand's economic, social and political history and current context. While there are commonalities to all human rights areas, there are also specifics unique to each one. It will be difficult for people to feel confident with Commissioners who do not already have a deep existing knowledge of these complexities and specifics. We do not want to find the Commission in a position where its Commissioners constantly have to learn and relearn what we could take for granted that a specialist Commissioner would know.
- 5.15. Regrettably during the last year the HRC has been weakened as if in anticipation that this Bill will pass through Select Committee. We are very concerned that structural changes are occurring at the HRC currently. Restructuring of the Commission has disestablished almost all specialist staff positions in the HRC that are dedicated to race relations and equal employment opportunities.
- 5.16. We also note that outcomes relating to the Te Tiriti o Waitangi, race relations and equal employment opportunities have been removed from the most recent HRC statement of intent.

6. Equal Employment Opportunities Commissioner

- 6.1. The role of the EEO Commissioner is to eliminate workplace discrimination on the basis of age, sex, gender and disability. The EEO Commissioner is a specialist position and cannot be left to be appointed on a generalist base.
- 6.2. In 2012 the EEO Commissioner reported on behalf of the HRC to the United Nations on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). In the concluding observations, the CEDAW Committee specifically welcomed the presence and contribution of the New Zealand Human Rights Commission to its work.
- 6.3. Though the Committee remarked on some progress in equal employment opportunities, they recognised that progress is very patchy. The Committee noted that challenges continue to impede the full implementation of the Convention in the State party, including: the recourse to gender neutral language with respect to gender based violence, including domestic violence; pay inequality and pay equity; the status of vulnerable groups of women, including women with disabilities and

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minority women; the impact of the 2011 earthquake on women; the impact of policy changes such as the financial cuts in legal aid schemes; adequacy of targets and benchmarks to advance women's rights; and the insufficient dissemination and promotion of the Convention.⁴

- 6.4. The Committee urged the State party to focus on those areas in its implementation activities and to report on actions taken and results achieved in its next periodic report. It called upon the State party to submit its concluding observations to all relevant ministries, to the Parliament, and to the judiciary, so as to ensure their full implementation.
- 6.5. Continuing this work requires a person with specialist knowledge of the UN conventions, these recommendations and related ones, and New Zealand's legal, industrial, social and political environment. Such knowledge cannot be picked up in a few months or even years.
- 6.6. One of our particular concerns is that one of the major the responsibilities of the EEO Commissioner is in the area of pay equity. This is a highly specialised area. The previous EEO Commissioner played an important role in the work undertaken to reduce the gender pay gap in the state sector at the time of the Pay and Employment Equity Taskforce and subsequent pay and employment equity work.
- 6.7. The position of EEO Commissioner is one of the most important statutory roles in legislation from the point of view of the union movement. The EEO Commissioner has made major contributions to the advancement of women in New Zealand. Major pieces of work have included the New Zealand Census of Women's Participation, National Conversations at Work, Tracking Equality at Work, the role of the Commission on the Pay and Employment Equity Taskforce, , the National Employment Opportunities Network and most recently, an inquiry into aged residential care and the production of a report "*Caring Counts*" - which the EEO Commissioner undertook using special powers in the Act to investigate the underpayment and undervaluation of women working in aged residential care.
- 6.8. The Census of Women's Participation undertaken biennially is a specialised and valued role of the EEO Commissioner. The CTU have participated in this census

⁴ Concluding Observations CEDAW 2012: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/455/30/PDF/N1245530.pdf?OpenElement>

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and gender audit four times and greatly value the collection and analysis of this data.

- 6.9. We note the Tertiary Education Union's submission on this Bill describing the effect of the EEO Commissioner in developing a women's leadership course in universities and that, without the support of the EEO Commissioner, they doubt the initiative would have survived, let alone continued and expanded. The status of the EEO Commissioner enhanced the credibility of the recommendations when the initiative was proposed and ensured the recommendations were taken seriously by the New Zealand Vice-Chancellors.
- 6.10. The work of the EEO Commissioner has been, and is essential for raising awareness of the relationship between gender inequity, pay inequality and human rights. The EEO Commissioner has a powerful influence through the designation of that responsibility and the title attached to the role.
- 6.11. We urge the Select Committee to retain this Specialist Commissioner in legislation.

7. Race Relations Commissioner

- 7.1. As with the EEO Commissioner designation, the Bill also removes the designation of the Race Relations Commissioner and the role of the person leading the race relations portfolio is also subject to the direction of the Chief Human Rights Commissioner.
- 7.2. The loss of a designated Race Relations Commissioner will reduce the status of this role in Māori, Pacific and ethnic communities. Making the role subject to the direction of the Chief Human Rights Commissioner reduces the independence and autonomy of the position.
- 7.3. The position of Race Relations Commissioner is uniquely important. It is a specialised position and the person appointed to the position should demonstrably be a person who has the expertise in the area rather than the area be delegated following appointment as a Human Rights Commissioner. As with the EEO Commissioner, this position needs to be filled by a Commissioner who is appointed on the basis of his or her knowledge of the complexities and specifics of race relations and who has established relationships and expertise in the field of race relations.

- 7.4. The disestablishment of the Race Relations Commissioner role would be a breach of the assurances given by the Government in 2002 to Māori, Pacific and ethnic communities that the merger of the Office of the Race Relations Conciliator with the Human Rights Commission would be preserved by the establishment of the Race Relations Commissioner in the HRC.
- 7.5. We concur with other organisations that reducing and mainstreaming these functions and outcomes will reduce the effectiveness not only of the person leading this work but also of the HRC in carrying out the functions of the Commission.

8. Disability Rights Commissioner

- 8.1. The New Zealand Government provided international leadership on the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and signed this Convention in 2008. Since then disability rights has become a much more prominent human rights area across all New Zealand society.
- 8.2. Signing this Convention places new responsibilities and new expectations on New Zealand. Article 33 of the Convention requires States to, among other matters, *maintain, strengthen, designate, establish within the State party, a framework including one or more independent mechanisms as appropriate to promote, protect and monitor implementation of the present Convention.*⁵
- 8.3. Disability issues are one of the three areas where the HRC receives the most complaints. The inclusion of disability as a priority area of responsibility for the HRC and the establishment of a Disability Rights Commissioner is therefore necessary and welcomed. It is necessary not only for compliance with the Convention but also to respond to the expectations of disabled persons in New Zealand for full implementation of their human rights. Of course, inclusion of this responsibility is meaningless if it is not accompanied by adequate resources to carry it out.
- 8.4. There are many areas to work on and one of the first is the lack of data collected in New Zealand on persons with disabilities. The lack of employment data is one such example. Clearly though there are significant areas needing work to combat discrimination and disadvantage, exemplified by people with disabilities facing significantly higher unemployment rates and difficulty in finding jobs.

⁵ <http://www.converge.org.nz/pma/E-C.12-NZL-CO-3.pdf>

- 8.5. The provisions in the Bill to promote and protect the full and equal enjoyment of human rights by person with disabilities require that there is a Disability Rights Commissioner and we have advocated a new Section be added to the Bill.

9. Economic, Social and Cultural Rights Commissioner

- 9.1. Reports from several Committees monitoring our compliance on international treaties show that a greater focus on human rights is needed. The latest set of concluding observations by the Committee on Economic Social and Cultural Rights (2012) observed that *“the Committee is concerned that, notwithstanding existing legislation providing for some elements of economic, social and cultural rights, the provisions of the Covenant have not been fully incorporated into the domestic legal order (art. 2, para. 1). The Committee urged:*

“the State party to take the necessary measures, in the context of the on-going constitutional review process, to give the Covenant full effect in its domestic legal order. The Committee also calls on the State party to ensure that redress for violations of the Covenant rights can be sought through the State party’s varied recourse mechanisms. The Committee requests that the State party provide in its next periodic report information on court cases where the provisions of the Covenant have not only been invoked but also applied”.

- 9.2. The Committee went on to say “that it is concerned that economic, social and cultural rights are not recognised in the (New Zealand) Bill of Rights adopted by the State party in 1990 and is concerned that the legislative and policy-making processes do not allow for a review of the compatibility of draft laws, regulations and policies with the rights enshrined in the Covenant (art. 2, para. 1)”.⁶ It recommended:

⁶ Ibid

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The Committee urges the State party to incorporate economic, social and cultural rights into the 1990 Bill of Rights. The Committee also calls upon the State party to take steps so that the competent authorities review draft laws, regulations and policies to ensure their compatibility with the provisions of the Covenant. The Committee recommends that the State party make additional efforts to raise awareness of economic, social and cultural rights among parliamentarians and policy-makers.

- 9.3. It is for this reason we recommend the establishment of a new specialist Commissioner to work in the areas of economic, social and cultural rights. This should be identified in the functions of the HRC and the functions of the new Commissioner should be outlined in a new Section in the Act.

10. Conclusion

- 10.1. While outlining the functions and the priority areas for the HRC in legislation is a positive move, this positive move is outweighed completely by the other proposals in this Bill which will weaken the effectiveness and strength of the HRC and disestablish specialist Commissioner positions.
- 10.2. The removal of specialist Commissioners and having Commissioners appointed on a generalist basis and reducing their powers and status will result in lesser effectiveness in speciality human rights areas.
- 10.3. New Zealand has an excellent record of human rights nationally and internationally. It is critical to protect, maintain and enhance the functioning of our national human rights institution.
- 10.4. This Bill requires a radical re-think with genuine consultation and engagement with all human rights stakeholders, all major political parties and advice from international human rights experts.