



NEW ZEALAND COUNCIL OF TRADE UNIONS
Te Kauae Kaimahi

Submission

of the

New Zealand Council of Trade Unions

Women's Council

to the

United Nations Committee

on the

Convention on the Elimination of All Forms of

Discrimination against Women

(CEDAW)

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1. Introduction

- 1.1. This submission on the Convention for the Elimination of Discrimination against Women (CEDAW) is made on behalf of the New Zealand Council of Trade Unions, Te Kaimahi Kauae (NZCTU), and prepared by the NZCTU Women's Council. The Women's Council is the NZCTU's constitutionally recognised structure for affiliates and women union members.
- 1.2. The NZCTU 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.
- 1.3. Women constitute over half of the NZCTU membership with 58 percent of union membership being female. Having 28 affiliates and over 320,000 members, makes the NZCTU one of the largest democratic organizations in New Zealand.
- 1.4. The NZCTU Women's Council focuses on issues of major concern to working women. The goals of the CTU Women's Council are the promotion of working women's issues, human and employment rights for women with a particular focus on pay and employment equity, paid parental leave, insecure work, collective organisation and representation of women workers and leadership development for women.
- 1.5. This submission responds on the 2012 report from the Committee on the Elimination of Discrimination against Women and its recommendations pertaining to Article 11 Employment¹.
- 1.6. The submission focusses on the continuing challenges in the implementation of CEDAW in New Zealand in the specific areas of work and employment. These are:
 - Equal pay/ pay equity
 - Paid parental leave
 - Collective bargaining
- 1.7. We also comment on two other critical women's employment issues:
 - Health and safety at work
 - Domestic violence and employment leave.

¹ <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-NZL-CO-7.pdf>

2. Equal Pay/ Pay Equity

2.1. We note the recommendations from the 2012 Committee on the Elimination of Discrimination against Women in their concluding observations following the seventh periodic New Zealand CEDAW Report:

32. The Committee recommends that State party:

- (a) *Enact appropriate legislation that guarantee the operationalization and implementation of the Principle of Equal Pay for Work of Equal Value in line with Article 11(d) of the Convention.*
- (b) *Effectively enforce the principle of Equal Pay for Work of Equal value through establishing specific measures and indicators, identifying time frames to redress pay inequality in different sectors and reviewing the accountabilities of public service chief executives for pay policies.*
- (c) *(f) Ensure that there is a monitoring institution for gender pay inequity with in the state Party's administration despite the closure of the Pay and Employment Equity Unit in the Department of Labour.*

2.2. There has been no significant progress in closing the gender pay gap. The following table shows the detail of average earnings by gender and ethnicity, from the Statistics New Zealand 2016 Income Survey.

All women	All men	Ratio	All Māori	All Pakeha	Ratio
\$26.05	\$30.15	86.4%	\$24.26	\$29.45	80.5%
	Women		Men		Average
Pakeha	\$27		\$31.85		84.77%
Māori	\$23.25		\$25.24		92.12%
Pacific	\$21.58		\$23.89		90.33%
Asian	\$24.21		\$26.73		90.57%

June 2016: Average hourly earnings by gender and ethnicity: Stats NZ Income Survey

2.3. The ethnic gender pay gap is even greater. The next table makes some comparisons between the different gender/ethnicity groups. The lowest paid groups are Māori and Pacific women.

	Pakeha women	Māori men	Pacific men	Asian men	Pakeha men	All men
Pakeha women		106.9 %	113.0 %	101.0 %	84.8 %	89.5 %
Māori women	86.1 %	91.2 %	92.1 %	87.0 %	73.0 %	77.1 %
Pacific women	79.9 %	85.5 %	90.3 %	80.7 %	67.8 %	71.6 %
Asian women	89.7 %	97.9 %	101.3 %	90.6 %	76. %	80.3 %

June 2016: Average hourly earnings by main ethnic groups: Stats NZ Income Survey

- 2.4. Women workers predominate in the aged care, residential and disability sectors. The pay rate for workers in these female dominated sector has been exceptionally low with women workers highly dependent on increases in the minimum wage level for pay increases.
- 2.5. The lack of enforcement of the right of equal pay to work of equal value results in not only low wages but poor employment conditions, gender based discrimination, lack of career and promotional opportunities. Low pay puts families under pressure and creates a new group of working poor. Women in low- paid jobs struggle to support their families, their children and themselves. A research study with aged care workers – predominantly women - found that over half of the workforce were primary wage earners responsible for supporting their families².
- 2.6. In non-female dominated work women are receiving substantially less than their male counter parts. Women in professional occupations miss out on employment opportunities such as career opportunities, promotion and face significant gender pay gaps.
- 2.7. Lower pay leads to less available income at retirement. Because women are the most likely not to work when family responsibilities require it, they are at least \$300-400,000 worse off at retirement.
- 2.8. The 2015 Remuneration Survey by Chartered Accountants Australia and New Zealand shows male accountants earned an average of \$45,573 more than their female counterparts. The survey showed that the pay gap emerged within five years of starting in the industry, kicking in strongly after eight years and peaking between

² https://www.aut.ac.nz/data/assets/pdf_file/0004/542155/NZ-Aged-Care-Workforce-Survey-report.pdf

men and women who have 21 years or more experience. The Institute of Professional Engineers New Zealand Remuneration Survey 2015 shows the median salary of male engineers was 22 per cent higher than that of their female counterparts³. The gender pay gap found in non-female dominated occupations is attributed to discrimination.

- 2.9. The gender pay gap in the Public Service was 13.5 percent at 30 June 2016, and the gender pay gap has been slow to narrow⁴. The New Zealand Public Service Association (PSA) filed an equal pay claim covering all public service workers against the State Services Commission (SSC) in 2015. The case is on hold while the PSA and other state sector unions work with SSC to develop a set of principles to be used by State Sector agencies to end workplace inequalities and address issues that contribute to the gender pay gap in the State Sector. The PSA has reserved the right to proceed with their claim if necessary.
- 2.10. In 2012 the Service and Food Workers Union (now E tū) initiated a case on behalf of Kristine Bartlett, a caregiver, claiming equal pay for work of equal value under the Equal Pay Act 1972. This case, which went as far as the Supreme Court, upheld the decision that Bartlett's wage of \$14.46 (just 71 cents above the minimum wage) was based on undervaluation of this female-dominated caring work and was in breach of the Equal Pay Act 1972.
- 2.11. The decisive Court rulings from this case, *Service and Food Workers Union Inc and Kristine Robyn Bartlett v Terranova Homes and Care Ltd 2013* resulted in the Government establishing a Joint Working Group (JWG) in 2015 to develop Pay Equity Principles for the Equal Pay Act 1972. The JWG comprised of unions, employers and government representatives and was tasked to develop principles for the implementation of equal pay for work of equal value.
- 2.12. Following the legal success of the *Kristine Bartlett v Terranova Homes and Care Ltd* case a number of NZCTU unions lodged equal pay/ pay equity claims under the Equal Pay Act 1972. With a raft of new equal claims being taken, upholding that the Equal Pay Act 1972 does require equal pay for work of equal value, the Government approached unions and the NZCTU to negotiate on behalf of the 55,000 workers in the aged care, home care and disability sectors rather than continue fighting through lengthy legal processes.
- 2.13. The Government's action in establishing a JWG to establish principles for the Equal Pay Act was generally supported, other than concerns from civil society groups about their exclusion. The Principles that were developed by the JWG outlined steps that workers and unions can take in raising and resolving an equal pay claim where the work is predominantly performed by women. The Principles include factors which may point to the undervaluation of the work such as the history of the work, and the labelling of the work as "women's work".

³ <https://www.ipenz.nz/home/news-and-publications/news-article/remuneration-survey-2015-salary-increases-and-gender-pay-gaps>

⁴ State Services Commission (2016) Human Resource Capability in the New Zealand State Sector, p. 30, http://www.ssc.govt.nz/sites/all/files/HRCReport-2016_0.pdf

2.14. NZCTU Equal Pay / Pay Equity Recommendations:

- Equal Pay Principles as agreed by the Joint Working Group are established in Equal Pay / Pay Equity legislation
- That the government provides adequate funding to settle the cases of other underfunded workers in female-dominated work sectors where the pay is based on historical undervaluation
- That there are available and adequate resources from Government agencies for workers to take and settle equal pay cases with employers
- Enforcement of measures to achieve pay equity where the work is not female-dominated but where there are still significant gender pay gaps due to discrimination
- Pay transparency mechanisms to ensure that specific information about pay rates and schedules is accessible and available to address pay inequalities
- Mechanisms in the state sector to make the state a model employer in respect of equal pay, such as Letters of Expectations to Crown agencies, Chief Executive performance agreements, good employer obligations in the State Sector Act 1988, and the delegated authority to negotiate collective agreements in the Public Service.

3. Paid Parental Leave/ Parental Leave

3.1. We note the recommendations from the 2012 CEDAW Committee:

32. The Committee recommends that State party:

(c) Introduce appropriate legal measures to ensure parental leave, including paid parental leave for men as well as paid leave for seasonal or fixed-term workers with multiple employment relationships, and consider the ratification of ILO Convention 156 concerning workers with family obligations;

3.2. Changes to the Parental Leave and Employment Protection Act 1987 were enacted in 2016 to improve access to paid parental leave (PPL) for seasonal, casual and fixed term workers and to link the entitlement to employment rather than a single employer. These changes were to enable more women, men and families to gain access to paid parental leave.

3.3. A current concern however is ensuring that seasonal, casual and temporary workers have adequate knowledge of parental leave entitlements. Research shows that temporary and casual workers have less awareness of their employment rights⁵ and the technical analysis by the Government when the changes were introduced referred to the risk of people being confused about their rights and responsibilities.

⁵ Dixon, S (2009) A profile of temporary workers and their employment outcomes. Department of Labour, Wellington.

- 3.4. New Zealand lags behind comparable countries in relation to the length of paid parental leave. The length of PPL was increased from 14 weeks to 18 weeks in 2016. But a Bill to introduce it to 26 weeks was defeated by one vote in its final hearing. An increase of PPL has strong public support with polls showing very high levels of support from respondents to extend paid parental leave to 26 weeks.
- 3.5. New Zealand lags behind in other parental leave provisions. There is no paid paternity leave provision for men/ partners in our current parental legislation. An evaluation in 2006 found that most fathers take some sort of leave around the birth or adoption of a child but very few fathers take unpaid leave and are instead using annual leave at the time of the birth/ adoption of their child.
- 3.6. Another significant issue is the low level of PPL payments which reinforce gender inequality. Currently the maximum payment is \$516.85, before tax, compared to the maximum weekly minimum wage of \$590. The PPL payment is now 87percent of the minimum wage which does not meet the requirements of ILO Convention, C 183 Maternity Protection 2000.
- 3.7. There is no progress in ratification of either ILO Convention 156 workers with family responsibilities or ILO Convention 183 Maternity Protection Convention.
- 3.8. The last comprehensive evaluation of PPL was in 2006. There have been many changes both in the legislation and changes in the labour workforce and changes in society since then. There is an urgent need for up to date research and evaluation on whether the current scheme is meeting the objective of the Employment Protection and Parental Leave Act and meeting the current needs of babies, children and working mothers, fathers and partners.
- 3.9. **NZCTU Paid Parental Leave Recommendations:**
- Increase paid parental leave to 26 weeks leave
 - The legal right to a month's paid parental leave for men/ fathers/ partners
 - An awareness campaign and resources targeted at casual and temporary employee to ensure that they are aware of paid parental employment rights
 - An increase of the PPL payment to meet the minimum ILO standard
 - A comprehensive evaluation of paid parental leave in New Zealand including a gender equality analysis and the impacts and issues in returning to work
 - Ratification of ILO Convention C 183 Maternity Protection 183 and the ratification of ILO Convention 156 concerning workers with family obligations.

4. Collective Bargaining and Employment Law Framework

- 4.1. We note the recommendations from the 2012 CEDAW Committee:

32. The Committee recommends that State party:

(e) Carry out an independent evaluation of the gendered impact of the reform of collective bargaining and ensure that it does not negatively affect women employment and trade union rights.

4.2. Further Employment Law Changes in 2015

- 4.3. The last report to CEDAW reported on changes to employment law that weakened collective bargaining frameworks. We are disappointed to report that there has been no evaluation of the gendered impact of the changes to collective bargaining or an assessment of the impacts on women in employment and their trade union rights and protections as was recommended in the 2012 report.
- 4.4. Further regressive changes have been made that reduce workers' rights to fair employment law and protection. Changes in 2015 included removing the automatic entitlement for rest breaks and meal breaks and allowing these to be negotiated: enabling employers to leave collective bargaining by removing the "duty to conclude" bargaining; allowing employees to opt of multi-employer collective bargaining, offering new agreements to new employers and removing them from the protection of the 30 day rule which provides that employees are covered by the collective employment agreement (CEA) in the first 30 days of employment if there is a CEA in place.
- 4.5. Given that women are 58 percent of women workers, and have high union density in women-dominated occupations, further employment changes that weaken collective bargaining and reduce employment protections have serious and detrimental impacts on women workers.
- 4.6. Women are more likely to be in more insecure forms of work given their higher prevalence in part-time and temporary work. Women make up 58 percent of temporary employees. There are differences in the gender balance between the different types of temporary workers with women making up almost 7 in every 10 people in fixed-term jobs and 6 in 10 casual workers⁶.
- 4.7. There is also a very big difference between the employment protections that employees have compared to contractors that leave contracted workers very vulnerable. This was commented on in the NZCTU detailed *Under Pressure* report⁷:

"Workers outside of the protections of the employment relationship are most vulnerable of all. They are not entitled to receive the so-called 'minimum code' statutory protections such as holidays and other types of paid leave, minimum wages or equal pay".

⁶ Ongley, P. Lum, R. Lynch, CA. Lu, E (2013) *A snapshot of New Zealand's temporary workers: Results from the 2012 Survey of Working Life*, Statistics New Zealand, Wellington

⁷ *Under Pressure: Insecure Work In New Zealand A Detailed Report* New Zealand Council of Trade Unions, 2013

- 4.8. New Zealand is similar to other OECD countries in that men are more likely to be in the higher-paid end of non-standard employment whilst women predominate in the lower-paid end.
- 4.9. While women's participation in the labour force has steadily grown, job growth has been concentrated in jobs with part-time hours and in the low paid retail, hospitality and the service sectors.
- 4.10. Changes were brought in 2015 extending the right to request flexible working hours to all employees. Flexible working provisions and entitlements are particularly important to women workers who have a higher share of domestic responsibilities and child care. Despite the extension of the right to request to all employees there are significant restrictions relating to the uptake and the provision of flexible working hours. A review of the Flexible Working Hours arrangements⁸ found that awareness of this legal right is not high and has declined and that almost all requests for flexible work arrangements took place without any recourse to the legal provisions.
- 4.11. The fundamental problem with the flexible work request provisions is they are, in effect, a procedural right only and provide only the right to request leave and not the right to access leave.
- 4.12. **NZCTU Collective Bargaining and Employment Law Recommendations:**
- Strengthen the right to flexible working hours to enable women to access them rather than only have the legal right to request; adding a reasonableness test for the employer's decision to refuse a request and widening the grounds of challenge
 - Restore statutory meal breaks in employment legislation
 - Improve employment protections for workers who are in insecure employment and contractors
 - Investigate whether the 2015 changes to collective bargaining and employment law have had a disadvantageous impact on New Zealand women workers.

5. Women and Workplace Health and Safety

- 5.1. Despite the improvements made in the Health and Safety at Work Act 2015, New Zealand fails to meet the health and safety needs of many women workers, especially in relation to chronic health conditions and mental illness.
- 5.2. A report into the health and safety needs of women workers⁹ reports that New Zealand is poorly served by regulation, monitoring and research regarding gradual process injuries, occupational disease and psychosocial harm and that female-dominated industries tend to be poorly understood and regulated. The reason is

⁸ Department of Labour. (2011). Review of Part 6AA: Flexible Working Arrangements. Wellington, N.Z.: Department of Labour.

⁹ Duncan, D (2015) Regulating to better meet the needs of Women's Workers, Presentation to Labour and Employment Conference, Wellington

cited that New Zealand health and safety and accident compensation laws are still primarily designed for the 'accidents' that occurred in 20th century factories - mines and workshops - and not for the health consequences of poor job design, bullying or stress.

- 5.3. In addition the work-related health problems most likely to affect women are the least likely to receive Accident Compensation Commission (ACC) insurance cover (or are completely excluded from cover) and the least likely to receive regulator attention. This results in a problem of data not being collected. This lack of statistical information renders many of the work-related health problems of women invisible to policy makers and enforcement agencies and reinforces the perception that women's work is safer.
- 5.4. The Ministry of Business Innovation and Employment and WorkSafe, as the regulator agencies could play a stronger role in providing guidance and regulations around what is a growing critical workplace issue and concerns - gender based violence and harassment.
- 5.5. **NZCTU Health and Safety Recommendations:**
 - WorkSafe and ACC be directed to investigate and address gendered occupational employment issues in New Zealand workplaces
 - Legislative and policy changes to ensure New Zealand's health and safety and accident compensation laws are able to meet the needs of women workers
 - Guidance and regulations from the health and safety regulator to manage the risks and effects of gender-based violence and harassment.

6. Domestic Violence and Employment Leave

- 6.1. As in other jurisdictions, women in New Zealand are at higher risk of domestic violence. A study in 2004 ¹⁰ reported that approximately 1 in 3 ever-partnered women reported that they had experienced at least one act of physical and/or sexual violence by an intimate partner; and the experience of physical and/or sexual violence by a current or previous intimate partner within the previous 12 months was reported by approximately 5 percent of respondents.
- 6.2. The statistics show a rising rates of domestic violence incidents are being reported. NZ Police recorded 110, 114 family violence investigations in 2015 – up 85 from 101, 981 in 2014. In 2013 there were 95,101 family violence investigations (Ministry of Social Development, 2017). The New Zealand Police record a family violence investigation on average every five and a half minutes. 76 percent of family violence

¹⁰ Fanslow, J, & Robinson, E. (2004). Violence against Women in New Zealand: prevalence and health consequences. *New Zealand Medical Journal*, (Vol 117 No 1206).

incidents are not reported to the Police. 76 percent of recorded assaults against women are committed by an offender that is identified as family.

- 6.3. The NZCTU Women's Council has led and supported measures to reduce the very high levels of domestic violence in this country and has raised the issue of domestic violence at a national union level resulting in domestic violence now being recognised as a core union and NZCTU concern.
- 6.4. The NZCTU are working with civil society groups to use employment law and the new health and safety legislation as a tool and lever to reduce domestic violence and to support in the workplace victims of domestic violence. Using employment law is a supportive way to respond to this deep social concern and issue.
- 6.5. Many of the people experiencing domestic violence are in employment. By supporting women to remain in paid employment, workplaces can through secure employment and support assist women on their pathway out of violence. Keeping a job can be critical to prevent a woman becoming economically trapped in a violent relationship and is a key pathway to leaving a violent relationship¹¹.
- 6.6. Optional and voluntary policies which depends on managerial discretion are not sufficient to make widespread change, or to reach enough working women. Several NZCTU affiliates have introduced domestic violence provisions into their collective employment agreements.
- 6.7. As well as provisions in collective employment agreements, more systemic approaches across all sectors are needed to reduce domestic violence rates in New Zealand and to protect New Zealand women in the workplace and ensure they are maintaining employment. Supportive workplaces are a critical component of that approach.
- 6.8. **NZCTU Domestic Violence and Employment Leave Recommendations:**
 - Enabling victims of domestic violence access to flexible working arrangements
 - Allow victims of domestic violence to take up to 10 days leave a year related to reasons of being a victim of domestic violence
 - Additional resources and training for recognizing and managing domestic violence in the workplace
 - Adding being a victim of domestic violence as a prohibited ground of discrimination in the Human Rights Act.

¹¹ Patton, S. (2003). *Pathways: How Women Leave Violent Men*. Government of Tasmania, Australia.

7. Conclusion

- 7.1. The NZCTU Women's Council thanks the Committee on the Elimination of discrimination against Women. We know that the New Zealand Government made a report to the Committee in 2016 and we were forwarded a copy of that Report for comment. We enjoy strong relationships with Non-Government Organisations who have also contributed shadow reports to the CEDAW Committee.

8. Postscript on Equal Pay/ Pay Equity: Post 2016

- 8.1. The Government announced in May 2017 that it would settle the Care and Support Worker case with a \$2.3 Billion pay-out. This was widely applauded. Care and support workers received pay increases from between 15 and 50 percent dependent on their qualifications and experience.
- 8.2. The Principles developed by the Joint Working Group in 2015 were only for female-dominated work and did not apply to sectors where men and women with the same qualifications are doing the same or substantially similar work. Another Working Group to develop principles for where there is mixed gender work was established in 2017.
- 8.3. This success of the *Kristine Bartlett v Terranova Homes and Care Ltd* case has resulted in a review of the Equal Pay Act 1972 and the Government has responded with new equal pay and pay equity legislation to replace the 1972 Act (The Employment (Pay Equity & Equal Pay) Bill 2017). While the 1972 legislation did need some updating, the proposal to repeal the Act is concerning. Having established that the Act did provide for equal pay for work of equal value the NZCTU is anxious and concerned that new legislation looks to make it harder, not easier, to pursue more equal pay cases.
- 8.4. In May 2017 the Government released a draft Bill to replace the 1972 Equal Pay Act. The Bill introduced into Parliament in July 2017 failed to make the changes that unions and equal pay experts and academics said were needed to make the Bill workable and fair and to achieve equal pay/ pay equity.
- 8.5. The proposed legislation creates onerous requirements to initiate pay equity claims as well contains a requirement to pass a merit test for an equal pay claim to proceed. A significant concern for the NZCTU is that the proposed legislation introduces a hierarchy of comparators so that workers and unions have to find comparators in the same workplace that is taking the equal pay claim. Unions refute this is good practice and say that workers should be able to select the most appropriate comparator for their particular role, regardless of the employer. This new step would be at odds with the existing Equal Pay Act, the Court of Appeal judgements, will impede taking equal pay cases, is impractical and is time-consuming and expensive.
- 8.6. The NZCTU has stated that while an update of the equal pay law could be justified needed, amended or new legislation should be consistent with the Principles agreed by the Joint Working Group and must not be inferior to the provisions in the existing Equal Pay Act 1972. Otherwise the status quo should remain.