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SUBMISSION TO THE EMPLOYMENT AND WORKFORCE SELECT COMMITTEE ON THE FAIR PAY AGREEMENTS BILL

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Thank you for the opportunity to submit on the Fair Pay Agreements Bill. We wish to appear before the Select Committee to speak to this submission.

1. About CCNZ and its members

- 1.1 CCNZ members carry out most of the country's civil infrastructure construction and maintenance work. We estimate the civil construction sector carries out more than \$12 billion of work annually and employs more than 40,000 workers. Typical employees range from labourers to tradespeople to engineers.
- 1.2 We represent more than 450 contracting businesses, ranging from large civil construction and infrastructure companies employing thousands of staff to very small contractors and family businesses. We also represent more than 260 businesses that provide equipment and services to support civil construction. The principal clients our members work for are central and local government agencies.
- 1.3 The civil construction industry is facing a significant shortage of workers and skills. Eighty-two per cent of our members say they would recruit today if there were people with the right skills available.

2. Introduction

- 2.1 In presenting his legislative statement on the Fair Pay Agreements Bill to the House on 5 April 2022, Workplace Relations Minister, Michael Woods, made a number of statements that, in our view, cannot be supported by fact and logic, and are more likely to offend the vast majority of businesses who are good employers and who care about their employees.
- 2.2 The Minister cautions about debate being based on misinformation and scaremongering, and yet his comments and those of his colleagues are generalisations and assumptions that cannot be substantiated, including:
 - For 30 years, the critical work and contribution of Kiwis performing some of the most essential work in our country has been systematically undervalued.
 - Our employment relations system has embedded low pay and conditions in a race to the bottom in many sectors.
 - The system that has incentivised competition based on low labour costs.

- The labour reforms brought in under the Employment Contracts Act have not improved labour productivity, a sharing of wealth, nor an improvement in living standards
- Fair pay agreements are about creating a new, modern, sector-based bargaining system that supports fair, safe, and productive workplaces.
- Fair pay agreements will incentivise competition based on the quality of goods and services offered, investment in skills and training, and R & D innovation.
- The labour market has largely failed.
- Fair pay agreements will rebuild the social contract, value work, and create stability and security.
- The legislation will improve life for working New Zealanders and move the country forward.

2.3 All of these illustrate an apparent lack of understanding of how New Zealand's modern labour market works and fail to recognise and acknowledge the positive contribution that employers have made to improving the health, wealth, and wellbeing of workers in this country.

2.4 The New Zealand Initiative report, *Work in Progress: Why Fair Pay Agreements Would be Bad for Labour* provides quantitative data that clearly demonstrate that the generalisations made by the Minister (above) cannot be substantiated. In particular:

- Employees share of income has been increasing since the 1990s
- Wage inequality of middle-income New Zealand has declined since 1990
- Average real wages have risen faster than inflation across all income deciles
- New Zealand's apparent lack of productivity stems from the 1970s; in more recent decades labour productivity growth and real wage growth are largely aligned

2.5 The government's own advisers, the Treasury, when commenting on the Cabinet Paper proposing the establishment of the Fair Pay Agreements Working Group and its proposed terms of reference, said "The paper does not, however, identify empirical evidence indicating that imbalances in bargaining power are causing the highlighted wages and productivity concerns. Nor does the paper make a strong case that a system of industry- or occupation-level bargaining would be the most effective policy response to address these concerns... The paper does not refer to an evidence base for these potential impacts. Initial work by officials from the Ministry of Business, Innovation and Employment (MBIE) has not identified an occupation or industry in which the proposed system would address the highlighted wage and productivity concerns".

2.6 We think it appropriate that Government listens to its advisers.

2.7 Are all employers exemplary – of course not. But, instead of judging all employers by the lowest common denominator, government and its agencies should focus on penalising and removing the bad employers and rewarding and incentivising the "99%" of businesses who are good employers.



2.8 There are several things that the government can do to address this, including:

- Providing sufficient funding to the Labour Inspectorate and/or additional powers to fast-track enforcement to ensure that they can be a more effective deterrent.
- Providing procurement rules and conditions that incentivise a lift in wages as a contractual requirement. Government procurement practices can be an enabler of a low wage environment. The FPA makes it a matter between employers and unions, but in many cases it is government themselves who need to take responsibility.

3. CCNZ position

3.1 CCNZ opposes the introduction of the Fair Pay Agreements Bill, given that the basis upon which the Bill is formulated is:

- Unfair to workers and employers
- Unworkable in practice
- Appears to breach international law
- Likely to damage New Zealand's already fragile economy

4. The Bill is unfair to workers and employers

4.1 The success of the free labour market has been the ability for workers to negotiate terms and conditions of employment that are "personalised" to them. This may include specific training and development needs, recognition of specific family circumstances, personalised key performance indicators with tailored compensation and incentives to match, flexibility, and the like.

4.2 It has also allowed employers to tailor solutions that make commercial sense to the business, aligning contribution and advancement with reward and compensation. Small employers cannot rely on scale and must operate on terms that are commercially sensible and viable.

4.3 The Working Group expressed the view that collective bargaining "would have the potential to increase aggregate productivity by setting higher wage floors and better conditions; forcing unproductive firms to exit; and lifting overall productivity of the sector."

4.4 Small business doesn't equate to failing businesses. According to the MFAT website, small and medium-sized enterprises (SMEs) make a significant contribution to the New Zealand economy, accounting for 97% of all New Zealand businesses, employing more than 630,000 people or 29% of all New Zealand employees, and generating 28% of New Zealand gross domestic product. Small businesses often operate on fine margins as they seek to grow or diversify their business through reinvesting what surplus capital they can access. Every dollar spent is important to them. A small to medium business cannot pay increased costs unless they can correspondingly improve productivity and output. Wages are paid for by the productive value of an employees' work, so increased costs beyond the value produced by employees can necessitate employers restructuring or taking on additional debt.



- 4.5 Reduced competition does not result in improved productivity or sustainable economic growth.
- 4.6 The threshold proposed under the Bill for a union to initiate a negotiation is if the lower of 1,000 workers or 10% of workers in an industry or occupation favour commencing negotiations. The quid pro quo to that is that the remaining 90% of workers may potentially be perfectly happy with the basis upon which their terms and conditions of employment are determined and want no part in negotiations that may alter this balance. That such a small proportion of a workforce can initiate such action is in itself grossly disproportionate and unfair.
- 4.7 Even if employees saw some merit in negotiating collectively, the Bill prescribes that this can only happen through a union. What if those employees didn't want to negotiate through a union, but rather use some alternative employee bargainer? According to MBIE figures, at 1 March 2020, only about 16% of New Zealand's workforce is covered by a union, so it is completely anomalous to prescribe that only a union can initiate a negotiation.
- 4.8 Similarly, employers are being compulsorily forced to place the responsibility for determining what are fair and reasonable employment terms and conditions in the hands of an organisation (as yet unknown) who may know nothing about them, their operating environment, their current relationship with their employees, any unique characteristics about their market and region, etc.
- 4.9 Both situations are neither rational nor fair.
- 4.10 With respect to the impact of increasing wages on tax thresholds and abatement criteria, we support Business NZs submission on these matters

5. The Bill is unworkable

- 5.1 The Bill is incredibly complex, and with complexity comes intended and unintended consequences.
- 5.2 The matters referred to above with respect to employee and employer bargainers in themselves render this Bill unworkable.
- 5.3 However, defining an "industry" or "occupation" is complex in itself.
- 5.4 How do you define "industry"? If you just consider "construction" that is a very wide and general term which encompasses many different and diverse component parts. We understand that there are over 140 industry associations which touch construction and infrastructure in some way. So, simply defining an industry will be fraught with complexity.
- 5.5 Likewise, defining an occupational group is similarly fraught. It may seem straight forward to consider "cleaners" or "truck drivers", for example. But these occupational groups span a variety of operating environments (public sector versus private sector for example). They can operate in different regions, industries, markets, and with other significant areas of



differentiation. There can be no “one size fits all” as each area of business which employs “cleaners”, for example, will be very different.

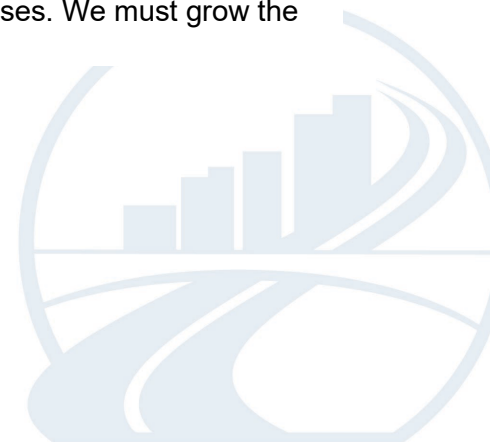
- 5.6 Finding a single employer bargainer with a thorough understanding of an industry or an occupational group, and who can reasonably and fairly represent the interest of those employers, is simply not possible nor practical. In any event, very few industry associations/representative organisations have the experience and competency of large-scale employment negotiations to make any meaningful contribution to the process. MBIE and the Employment Relations Authority are less qualified to do so.
- 5.7 Civil Contractors NZ will not be taking on that role.

6. The Bill appears to breach international law

- 6.1 Business NZ provides a comprehensive analysis of where they believe that the proposed Bill is inconsistent with New Zealand’s international legal obligations, particularly the Right to Organise and Collective Bargaining Convention 1949 (C98) which is based on the premise of free and voluntary negotiation. The matter is with the International Labour Organisation (ILO) for their review and advice.
- 6.2 We can add nothing further to this particular discussion but support Business NZ’s submission on this and their approach to the ILO to seek clarity on the legal status of the Bill.

7. The Bill will damage New Zealand’s Fragile Economy

- 7.1 The New Zealand economy is teetering. As a nation reliant on exports, we now face a global trading situation underpinned by a rise in protectionism which has been exacerbated by COVID restrictions and most recently the Russian invasion of Ukraine.
- 7.2 We are facing the highest inflation in over 30 years, massive global logistics disruption, and a critical skill shortage which will be made worse with a net outflow of kiwis and migrants overseas, particularly to Australia, as the borders open.
- 7.3 Add to that a huge debt mountain that our next generation will inherit and that must be repaid in an environment of rising global interest rates, and the outlook is concerning.
- 7.4 Businesses have done it tough for the past few years, and our industry is no exception.
- 7.5 New Zealand must remain globally competitive, but that is becoming increasingly difficult with the additional burdens that government is placing on businesses. We must grow the economy in an affordable way.



8. Current labour market for civil construction

- 8.1 Civil construction businesses are struggling under the burden of a critical labour shortage, material shortages and price escalation, supply chain disruption, fuel price escalation, and general inflation. Government labour reforms have added to this burden with minimum wage increases (which have a domino effect right across all wages), an extra public holiday, 5 days extra sick leave, a proposed income insurance scheme which will severely impact employers, and now proposed FPAs. This has left many small businesses questioning whether they have a future.
- 8.2 A critical skill shortage in our sector has seen wages trend considerably higher as businesses compete for a scarce resource. While this is good (to an extent) for employees, it is placing huge pressures on businesses, especially those who are locked into longer term, fixed price contracts such as government maintenance contracts.
- 8.3 These wage rates are not sustainable, and eventually force businesses to look for alternative ways to deliver projects including the adoption of new and emerging technologies which will inevitably lead to fewer jobs.
- 8.4 As the supply of resources improves through immigration or education/training, businesses are locked into these artificially high levels of wages, so this is a long-term problem.

9. Conclusion

- 9.1 CCNZ opposes the Bill and recommends that it not proceed.
- 9.2 We urge the Committee to rethink the approach, to better and authentically engage with employers and employees, and to agree a way to address areas where there is clearly poor behaviour, and reward and incentivise areas where there is good behaviour.
- 9.3 Thank you for the opportunity to make this submission.



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