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S20.06

Submission to Ministry of Business, Innovation & Employment on Better Protections for Contractors

Introduction

- 0.1. The National Council of Women of New Zealand, Te Kaunihera Wahine o Aotearoa (NCWNZ) is an umbrella group representing over 200 organisations affiliated at either national level or to one of our 15 branches. In addition, about 450 people are individual members. Collectively our reach is over 450,000 with many of our membership organisations representing all genders. NCWNZ's vision is a gender equal New Zealand and research shows we will be better off socially and economically if we are gender equal. Through research, discussion and action, NCWNZ in partnership with others, seeks to realise its vision of gender equality because it is a basic human right.
- 0.2. This submission has been prepared by the NCWNZ Employment Standing Committee.

1. Summary

- 1.1. *Naku te rourou nau te rourou ka ora ai te iwi.
With your basket and my basket, the people will live. This whakatauki refers to co-operation and the combination of resources to get ahead.*
- 1.2. NCWNZ is pleased to provide feedback on a range of possible options to address the vulnerability some contractors face in the workplace.
- 1.3. Our views are shaped by our commitment to the Convention on the Elimination of Discrimination Against Women (CEDAW) and the United Nations [UN] Sustainable Development Goals.
- 1.4. In particular, CEDAW Article 11 states:
 - 1 (c) *The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service*
 - (f) *The right to protection of health and to safety in working conditions, including the safeguarding of*

the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures: (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

- 1.5. The UN Sustainable Development Goal 8 aims to “Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.”

2. Responses to questions on “Specific Objectives, issues and challenges”

- 2.1. The observations and experience of many of our members and their whanau are that few workers who are contractors in New Zealand manage to achieve the full and secure work described above.
- 2.2. The contracting model advantages some businesses and some workers but the majority of women, Maori and Pacific workers who choose or a forced to work as contractors are disadvantaged. We agree they are vulnerable and think they should be protected by being ensured the status of employees under New Zealand law and that taxpayers should not be subsidising businesses who use the contracting model to avoid employment responsibilities towards their workers or subsidising workers who choose to be contractors to avoid paying their due taxes.
- 2.3. The contracting model benefits businesses by helping them avoid the risks and liabilities of an employer. These are transferred to the worker, or the government and the taxpayers. A good example is the current New Zealand forestry industry.

Currently the New Zealand forestry industry is facing a slowdown in the market. Our biggest market, China, has a glut of logs due to a tree disease in Europe. European forestry companies have cut down the infected trees and sold them to China. In addition, the normal Chinese New Year slowdown and the Corona virus have exacerbated the problem. New Zealand forestry companies have stopped harvesting trees and the contractors have stood down their mostly Maori workers. The cost of this risk has therefore been transferred in the short term to small contractors and their workers and their hapu, whanau, iwi. The cost will quickly also flow on to the New Zealand taxpayer in the form of unemployment benefits. Industry spokespeople are calling for government help for the small contractors.

These same forestry companies occasionally cause massive damage to property, land and waterways during heavy flooding. Branches and discarded trees (known as slash) which have been left after harvesting are swept down across farmland, onto beaches and into the sea causing devastation to farmers, property owners

and communities who bear the cost of this careless and unproductive forestry practice.

If these companies employed their workers as permanent employees, they could plan to make use of their labour in such downturns by cleaning up after harvest and regular maintenance such as pruning. The cost would be borne by the businesses who would then be more motivated to operate in a way which is genuinely more productive for the whole community instead of just the companies' bottom lines.

- 2.4. There are some employees who prefer to work as a contractor, earn a higher hourly rate and manage their own taxes. They are able to claim tax rebates which their employed colleagues are not. This is not of course tax evasion but rather tax avoidance which results in a lower tax take for New Zealand as a whole. Being a contractor works well for a small number of highly skilled sought-after workers who are in permanent demand. However most other workers who are forced into a contractor arrangement are not advantaged. Many are casual labour in a "grace and favour" situation with no income security and few rights. Some "contractors" working under the guise of running their own business are earning less per hour than the minimum wage.
- 2.5. The legislative entitlements which contractors miss out on include paid sick leave, parental leave, bereavement leave, as well as personal grievance process, KiwiSaver, bargaining process, equal pay and pay equity entitlements, health and safety representation and set, agreed hours of work. Also, they are unlikely to be able to secure additional bargained benefits such as long service leave, Employee Assistance Schemes, additional super, extra annual leave and professional development opportunities.
- 2.6. The contracting model is a business employing a small number of core permanent employees. The rest of the labour is provided by a much larger number of workers who are casual or contractors not employees. The business pays for their labour only and does not provide any of the above legislated entitlements. There is no incentive for the business to invest in these people or their communities.
- 2.7. Workers who are not core employees therefore find it difficult to get mortgages, buy houses and settle in a location with their families. Their lives can become much more precarious and eventually the government and taxpayer need to support them.
- 2.8. NCWNZ members believe women and their families need to live safe, secure lives with adequate access to quality health, schooling and housing. We cannot see NZ women and their families achieving this on casual contractor pay rates and conditions.
- 2.9. Employment case law makes clear that if the work is ongoing it should be reflected in a permanent employment agreement. The test of who is a contractor and who is an employee is also clear. This information should not only be clearly available for both workers and businesses but also followed up quickly and effectively by the Labour Inspectors. NZ businesses possibly need more educational

resources to support them to manage their employees effectively and enhance our national productivity.

3. Conclusion

- 3.1. In summary given NCWNZ 's commitment to CEDAW and the UN SDGs we believe there is a case for only a small number of contractors in New Zealand. Those who are considered vulnerable are probably not in fact contractors and should have ensured their right to the status of employee.



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