



**SUBMISSION**

**to the**

**Transport and Industrial Relations Select Committee**

**on the**

**EMPLOYMENT STANDARDS LEGISLATION BILL**

## ABOUT PPTA

1. PPTA represents over 17,000 secondary teachers, principals, and manual and technology teachers in New Zealand; this is the majority of teachers engaged in secondary education – approximately 90% of eligible teachers choose to join PPTA.
2. Under our constitution, all PPTA activity is guided by the following objectives:
  - (a) To advance the cause of education generally and of all phases of secondary and technical education in particular;
  - (b) To uphold and maintain the just claims of its members individually and collectively; and
  - (c) To affirm and advance Te Tiriti O Waitangi.
3. PPTA is not affiliated to a political party and our members individually support a broad spectrum of political parties in Parliament. However, PPTA have consistently promoted policies that promote progressive economics, social policy and employment relations policy.
4. PPTA is an affiliate member of the New Zealand Council of Trade Unions (“**CTU**”) and the National Council of Women of New Zealand (“**NCWNZ**”).

## EMPLOYMENT STANDARDS LEGISLATION BILL

### Introduction

5. This submission sets out the PPTA’s submission on the Employment Standards Legislation Bill (“**the Bill**”) and is informed by members’ concerns about insecure work and commitment to extending paid parental leave (“**PPL**”).
6. The Bill contains a mix of proposals that impact on vulnerable workers; some positive (in extending paid parental leave and enforcement of minimum enforcement standards) and some with an incredibly negative impact (in relation to zero hour contracts).
7. There should not be a trade-off between the rights of these workers, particularly in respect of the “zero hour contract” provisions, which (despite assertions to the contrary) appear to codify worst practice in respect of hours of work.
8. PPTA supports the submissions that the CTU and NCWNZ have made on the Bill. We also recommend that Select Committee members read the CTU’s report [\*Under Pressure\*](#)<sup>1</sup> on insecure work in New Zealand. This report provides

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<sup>1</sup> <http://union.org.nz/sites/union.org.nz/files/Under-Pressure-Detailed-Report-Final.pdf> (last accessed 30/09/2015).

a valuable insight into the causes and effects of insecure work. This [article](#)<sup>2</sup> published earlier this year from academic and inequality commentator, Max Rashbrooke, may also be of interest.

## **Paid Parental Leave**

### ***Who is eligible?***

9. At a high level, PPTA supports the proposals in the Bill to extend paid parental leave to:
  - more workers who are in seasonal or casualised work, and those who have recently changed jobs; and
  - workers who are the “primary caregivers”, rather than limiting it to the current definition of birth mother, partner / spouse of the birth mother or adoptive parent.
10. Such an approach recognises the changing nature of New Zealand families and care arrangements for children and brings the law closer in line with the policy underpinning the United Nations Convention on the Rights of the Child (“**UNCROC**”) and the Care of Children Act 2004 (“**COCA**”), i.e. the best interests of the child.
11. However, there are still workers who are not covered by this change who would remain excluded from the paid parental leave scheme. Detailed comments and concerns on these proposals are outlined below.
12. Clause 51 of the Bill sets out who is eligible to receive paid parental leave and extends it to the new categories outlined below. This clause states:

*Replace section 71CA(1) with:*

*(1) In this Part, **eligible employee** means a person who—*

- (a) is the primary carer in respect of a child who is not more than 5 years of age; and*
- (b) will have been employed as an employee for at least an average of 10 hours per week over any 26 of the 52 weeks immediately preceding —*
  - (i) the expected date of delivery of the child (in the case of a child to be born to the employee or to the employee’s spouse or partner); or*
  - (ii) the first date on which either the employee or the employee’s spouse or partner becomes the primary carer in respect of the child (in any other case).*

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<sup>2</sup> <http://briefingpapers.co.nz/2015/03/insecure-work/> (last accessed 30/09/2015).

13. Despite the changes proposed in the Bill, it is important to recognise that there will still be parents who will miss out on this essential financial support from the government and statutory protection of their employment while they spend time with their newborn or adopted children. Examples of exclusions include those who are:
- New to paid employment in New Zealand after studying, or working overseas;
  - Casualised workers who do not meet the minimum hours and months' tests;
  - Part-time workers who are working under the statutory threshold for minimum hours;
  - Adopting or otherwise taking primary responsibility for the care of a child over the age of five years.
14. These exclusions will negatively impact on a person's ability to take time off work and, in turn, contributes to negative outcomes for the child concerned. For these workers, the only legal protection for parental leave would be the flexible work provisions, for the purposes of caring for a child. However, this is merely the right to request leave not to receive it and there is no payment attached.
15. Such an exclusionary approach is not in the best interests of the child.
16. Article 3 of UNCROC, of which New Zealand is a ratifying party, includes the following relevant provisions:
- "Article 3**
1. ***In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.***
  2. ***States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.***
17. In addition, Article 19 states the following relevant provision:
2. ***For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.***
18. UNCROC imposes positive duties on the executive and parliament to ensure that it is acting in the best interests of the child. This means that children's interests should be at the forefront of any policy-making or legal changes that will impact on children.

19. These sentiments are reflected in the principles underpinning the Care of Children Act 2004; for example, section 5 of that Act includes the following relevant provisions:

*“The principles relating to a child's welfare and best interests are that—*

*...*

*(b) a child's care, development, and upbringing should be primarily the responsibility of his or her parents and guardians:*

*...*

*(e) a child should continue to have a relationship with both of his or her parents, and that a child's relationship with his or her family group, whānau, hapū, or iwi should be preserved and strengthened:*

*(f) a child's identity (including, without limitation, his or her culture, language, and religious denomination and practice) should be preserved and strengthened.*

20. In addition, section 4 of that Act states that “the welfare and best interests of a child in his or her particular circumstances must be the first and paramount consideration” in proceedings and decisions relating to the guardianship and day-to-day care of a child.
21. Like UNCROC and COCA, a child’s-rights based approach should be used when legislating for paid parental leave provisions.
22. This means extending the PPL scheme, in an appropriate form, to all parents with new children. Families should not have to choose between spending time with their children in their early months of life or when they are new to joining their family and need settling in time, and financial demands. We need to support these parents and families to provide their children with the best start and a safe and supportive home. Where a child is over the age of five years and attending school, paid parental leave could be tailored to the hours that the child is in the care of the parent or guardian (i.e. not at school).
23. In addition, parents or guardians in this situation should have job security to those tailored hours through leave entitlements. These could be tailored to the hours that the child is in the care of the parent or guardian (i.e. not at school), but the law should provide the leave as a right, rather than relying on the flexible work provisions in the Employment Relations Act 2000, which are at the whim of the employer. Children in these transition situations are vulnerable and it is an important social investment.

### ***Length of time of paid parental leave***

24. Clause 65 of the Bill states the proposed maximum period of paid parental leave as follows:

*“Replace section 71L with:*

#### ***71L End of parental leave payment***

*(1) A parental leave payment is payable to a person for a period that ends on the earlier of—*

*(a) 18 weeks after the date on which parental leave payments began in accordance with section 71K; or*

*(b) the date on which he or she returns to work as an employee or a self-employed person; or*

*(c) the date on which the person ceases to have care of the child in respect of whom the parental leave payments are payable.*

*(2) Subsections (1)(b) and (c) do not apply, and parental leave payments continue to be payable until the date specified in subsection (1)(a), if the person receiving the parental leave payments is the biological mother of the child to whom the payments relate and—*

*(a) she has a miscarriage or ceases to have the care of the child; or*

*(b) the child dies.*

*(3) This section is subject to section 71EA (effect of transfer of entitlement to spouse or partner).”*

25. We welcome the government’s changed position to extend paid parental leave up to 16 weeks from 1 April 2015, and up to 18 weeks from 1 April 2016, but this does not go far enough.
26. Like the majority of New Zealanders, PPTA continues to strongly support increasing paid parental leave to 26 weeks and notes that this is the recommendation of the World Health Organisation, to promote breast-feeding and the health of the baby. It is also an important bonding time between new parents and their children.
27. 26 weeks should be available to all new parents, not just those who have multiple births.

## INSECURE WORK AND ZERO HOUR CONTRACTS

### Context

28. Insecure work is a big problem in New Zealand. Key statistics from the CTU<sup>3</sup> indicate that:
- At least 30% of New Zealand's workers – over 635,000 people – are in insecure work (they estimate that there may be up to 50% of the population in insecure work);
  - 95,000 workers have no usual work time, 61,000 workers have no written employment agreement;
  - 573,000 workers earn less than the Living Wage; and
  - Almost a quarter of a million Kiwi workers say they have experienced discrimination, harassment or bullying at work.
29. Through our case work supporting secondary teachers, we know that there is some evidence that immigrant teachers and teachers with non-European names may be discriminated against when applying for a job, in terms of the type of employment agreement (more likely to be casualised, short-term contracts) and the employment conditions that they are offered. New and emerging teachers (i.e. those in their first ten years of teaching), who are predominantly young people, are more likely to be employed on a fixed-term contract or struggle to find work. The former New Zealand Teachers Council also reported this to be the case for provisionally-registered teachers (i.e. those in their first two years).
- “Most teachers (83 per cent) received a formal letter of appointment to their first teaching position. Less than half (47 per cent) of the teachers were appointed to permanent positions for their initial appointments but this had increased to two-thirds by the time of their current employment. For first time positions, 59 per cent of secondary teachers [had] a permanent position compared with 39 per cent of primary teachers.”<sup>4</sup>
30. We also know of cases where relievers are effectively given work on a probationary basis – at the complete discretion of the principal.
31. Insecure work and the unjustified use of fixed term agreements in schools was identified as a pay and employment equity issue in the tripartite review and 2008 report – agreed to by the Ministry of Education, trade unions (PPTA and NZEI) representing members working in the schooling sector, and the New

<sup>3</sup> <http://union.org.nz/underpressure> (last accessed 1 October 2015).

<sup>4</sup> Cameron, M., Dingle, R. and Brooking, K. *Learning to Teach: A Survey of Provisionally Registered Teachers in Aotearoa New Zealand* (New Zealand Council for Educational Research - A study commissioned by the New Zealand Teachers Council), pg. 36.

Zealand School Trustees Association (representing member Boards of Trustees). This year we published additional guidance for PPTA members on the law relating to fixed term agreements and continue to represent and support members who are subject to this form of insecure work.

32. We are not aware of any work that has been progressed by the Ministry of Education to challenge the unjustified use of this form of employment agreement.
33. This is problematic, given that women, people with disabilities, younger teachers, and ethnic minorities / new immigrants are more likely to be discriminated against through being subject to this type of insecure work, causing financial and social insecurity for these teachers. This becomes a significant EEO issue and is inconsistent with the good employer obligations under the State Sector Act 1988 and the terms of the secondary teachers' collective agreement.

#### ***Zero Hour Contracts***

34. The current law and enforcement is insufficient to protect these vulnerable workers. This will be made worse by the proposals in the Bill, in particular, the proposals to:
  - Further restrict the ability for a person to take secondary employment; and
  - Enable an employment agreement to have zero hours, regardless of the reasonableness of such a clause, and that compensation can be “any amount”.
35. These are unconscionable laws, that promote worst practice in employment agreements and will further entrench the inequality gap in our society. We oppose these changes.

#### **Oral presentation**

36. We would like to appear before the Committee in support of our submission.