

## COUNTRY BASELINE UNDER THE ILO DECLARATION ANNUAL REVIEW

New Zealand - 2021

### *FREEDOM OF ASSOCIATION AND THE EFFECTIVE RECOGNITION OF THE RIGHT TO COLLECTIVE BARGAINING*

#### REPORTING

##### Fulfilment of Government's reporting obligations

87 Fulfilment of Government's reporting obligations

Yes

##### Involvement of Employers' and Workers' organizations in the reporting process

91. When preparing its report, did the Government consult? [10.1]

a) The most representative employers organizations, b) The most representative workers organizations?

94. Please describe the consultation process(es). [10.2]

The representative organisations are consulted on the content of the Government's draft reports.

#### OBSERVATIONS BY THE SOCIAL PARTNERS

##### Employers' organizations

95. Did employers organizations comment on the report? [11a]

Yes

97. Please provide URL(s) to the responses and comments of the employers and workers organizations to the above questions, if you have received them

New Zealand has forwarded these comments to the ILO

## Workers' organizations

96. Did workers organizations comment on the report? [11b]

Yes

97. Please provide URL(s) to the responses and comments of the employers and workers organizations to the above questions, if you have received them

New Zealand has forwarded these comments to the ILO

## EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT

### Ratification

#### Ratification status

87-98 Ratification status

**C 87: not ratified**  
**C 98: ratified**

#### Ratification intention

6. What are the prospects for ratification of Convention No. 87?

Unlikely

8. What, if any, are the impediments to the ratification of Convention No. 87 and/or Convention No. 98?

The New Zealand Government maintains its previously stated position on Convention No. 87. There is no change since the last report with respect to the inconsistency between New Zealand's legislation (which provides for lawful strike action on collective bargaining and health and safety grounds only) and the Committee of Experts' and Committee on Freedom of Association's interpretation of the Convention, which holds that sympathy strikes and strikes on social and economic policy matters should be lawful and protected from penalty.

### Recognition of the principle and right (prospect(s), means of action, basic legal provisions)

## Policy-Legislation and/or Regulations

**9. Have there been changes in law and practice in your country as regards freedom of association and the effective recognition of the right to collective bargaining?**

Yes

**10.e.**

Please see the Government's previous report. The Government accepted the Film Industry Working Group's recommendations in June 2019, and introduced legislation (the Screen Industry Workers Bill) to give effect to the Film Industry Working Group's recommendations. The Screen Industry Workers Bill (the Bill) is currently awaiting its second reading. The Bill can be found here: <https://www.legislation.govt.nz/bill/government/2020/0219/latest/LMS230343.html>

Development of a Fair Pay Agreement system (in progress) In 2018, the Government agreed in principle to establish a system so that employers and workers could bargain for Fair Pay Agreements (FPAs). FPAs will outline occupation and industry-specific minimum employment standards, such as wages, ordinary hours or overtime. They will be agreed through bargaining between unions and employer representatives, and will then become legal requirements in that sector. A working group comprised of employer representatives, union representatives, academics and community representatives was established to make recommendations on the design of a sector-level bargaining system. The working group submitted its recommendations in December 2018. In October and November 2019, the Ministry of Business, Innovation and Employment (MBIE) consulted the public on the design features of an FPA system (based on the recommendations of the working group). On 19 April 2021 Cabinet approved the key features of the FPA system and for drafting

to commence on a Bill to give effect to these policy decisions. The key features of the proposed FPA system are:

- a union(s) will be able to initiate FPA bargaining if they meet a threshold of 10% or 1,000 workers in the specified industry or occupation, or a public interest test based on specified criteria
- employees will be represented by unions. Further work is required on the eligibility requirements for employer representatives
- the occupation or industry to be covered by an FPA would be defined and negotiated by the bargaining sides
- all FPAs will need to include terms for 'mandatory to agree' topics. In addition, bargaining sides will be required to discuss specified 'mandatory to discuss' topics, but can decide whether or not to include them in the FPA
- where bargaining sides come to an agreement on the terms of an FPA, it would then need to be ratified by both the employee and employer sides, with a majority of those who vote
- industrial action will not be permitted within the FPA system
- if parties cannot agree the terms of an FPA, they can access the standard employment dispute resolution system
- if parties are still unable to agree, the Employment Relations Authority will be able to fix the terms of the FPA if it is satisfied that:
  - o the bargaining sides have first tried to resolve the difficulties by mediation or by other processes recommended by the Employment Relations Authority; and
  - o either:
    - ♣ all other reasonable alternatives for settling the dispute have been exhausted; or
    - ♣ a reasonable period has elapsed within which the bargaining sides have used their best endeavours to identify and use reasonable alternatives to negotiate and conclude a Fair Pay Agreement
- following a first failed attempt to ratify an FPA, the parties can return to bargaining. Following the second failed attempt, the FPA will be referred to the Employment Relations Authority to fix the terms of the FPA, and
- once in force, an FPA will apply to all

employers and employees within coverage. The Government is now drafting a Bill to establish the FPA system, with an intention to introduce legislation to Parliament in late 2021 – early 2022.

## Exercise of the principle and right

### At national level (enterprise, sector/ industry) and international level

#### 12.1. Please specify and indicate the involvement of social partners.

Social partners meet with Government on a regular basis to discuss topical matters of interest. They are also represented in a number of groups that have been convened to examine and provide recommendations on relevant policy issues, including but not limited to:

- Screen Industry Workers Bill, which reflects recommendations made by the Film Industry Working Group, of which social partners were members. Since the Film Industry Working Group made its recommendations to the Government, social partners have been included in designing the detail of the Bill.
- Holidays Act Tripartite Taskforce, which reported back in October 2019 with recommendations for clearer and more transparent rules for providing entitlements to, and payments for holidays and leave. Government accepted these recommendations in February 2021.
- Fair Pay Agreements Working Group 2018, which provided advice on the scope and design of a system of bargaining to set minimum terms and conditions of employment across industries or occupation.
- Better protections for contractors to consider the development of a statutory regime to ensure that workers who are engaged as contractors have access to appropriate legal protections.
- Review of Temporary Migrant Exploitation Consultation Group which identified a range of changes that are currently being implemented to address exploitation of temporary migrant workers that can occur on a continuum from

	<p>breaches of employment standards through to serious forms of labour exploitation. • Plan of Action against Forced Labour, People Trafficking and Slavery 2020-2025 Reference Group which will provide ongoing oversight to support the implementation of the Plan of Action. • Regional Skills Leadership Groups - 15 independent Groups were established by Government in June 2020, to help manage changing skills and workforce needs and support the recovery of labour markets disrupted by COVID-19. Regional industry employer and worker representatives contribute their local expertise and knowledge. • Social Unemployment Insurance Tripartite Project Team. This team are jointly designing a Social Unemployment Insurance scheme that would support workers to retain a proportion of their income for a period after they lose their jobs. The Social Insurance Tripartite Working Group have been jointly consulting targeted stakeholders on what the right settings could be, with wider public consultation planned for later this year. In 2021 the Government allocated NZ\$250,000 per annum for three years to be available to each of NZCTU and BusinessNZ, to support the Fair Pay Agreements system, and the Screen Industry Workers Bill if they wish. The funding is to be used to raise awareness (including upskilling), assist in coordinating bargaining representatives, and support bargaining parties.</p>
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**Information/ Data collection and dissemination**

<p><b>12. If yes, please specify:</b></p>	<p>b) Information/data compilation, e) Other related activities</p>
<p><b>12.e. Please specify other</b></p>	<p>Please refer to the responses provided above, regarding the ongoing work on Fair Pay Agreements and collective bargaining in the Screen Industry, which are intended to</p>

	promote freedom of association and collective bargaining.
<b>Monitoring, enforcement and sanctions mechanisms</b>	
	New Zealand's 2019 report noted that the Labour Inspectorate staff had increased by eight labour inspectors and standards officers, bringing its warranted staff count to 71 from its 2018 numbers. A recent increase in funding to address migrant exploitation has seen the number of warranted Labour Inspectors increase further to 78.61 FTE.
<b>Promotional activities</b>	
<b>13. Have any initiatives resulted in successful examples or good practice in promoting freedom of association and the effective recognition of the right to collective bargaining?</b>	Yes
<b>13.1. Please Specify</b>	Please refer to the responses provided above, regarding the amendments to the employment relations system and the ongoing work on FPAs and collective bargaining in the screen industry, which are intended to promote freedom of association and collective bargaining.
<b>Special initiatives/Progress</b>	
<b>13. Have any initiatives resulted in successful examples or good practice in promoting freedom of association and the effective recognition of the right to collective bargaining?</b>	Yes
	As noted in previous baseline reports, the New Zealand Government considers that the current legislative framework enables the effective realisation of freedom of association and the collective bargaining of

terms and conditions of employment where sought by the parties. The recent amendments to the Employment Relations Act 2000 strengthen this framework. All employees have the right to join a union and the right to collectively bargain through their union. The Employment Relations Act 2000 contains detailed provisions and mechanisms to promote a process of orderly collective bargaining that recognises the interests of employees and employers and is conducted in good faith. However, given that in practice: most bargaining is conducted individually between employer and employee; most employees are not union members; and most collective bargaining occurs at the level of the enterprise, unions may experience difficulties in recruiting and organising members across industries. The Government's work on Fair Pay Agreements is intended to enhance access to collective bargaining, including at industry or occupation-level.

## TECHNICAL COOPERATION

### Request

**17. What are the technical cooperation needs in your country to promote freedom of association and the effective recognition of the right to collective bargaining?**

l) None