

COUNTRY BASELINE UNDER THE ILO DECLARATION ANNUAL REVIEW

New Zealand - 2023

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

REPORTING

Fulfilment of Government's reporting obligations

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, c) The competent authorities?

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

Social partners were forwarded a copy of the Government's report and invited to comment.

OBSERVATIONS BY THE SOCIAL PARTNERS

Employers' organizations

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

Yes

Workers' organizations

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

Yes

EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT

Ratification

Ratification intention

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

Likely

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

Eventual ratification is more likely than unlikely given commitments contained in the recently settled (but not yet ratified) Free Trade Agreement between New Zealand and the European Union. This Agreement specifies that the parties "shall make continued and sustained efforts to ratify the fundamental ILO Conventions if they have not yet done so." However, currently there are issues concerning the inconsistency between New Zealand's approach to lawful and protected strike action, and the approach taken by the Committee of Experts and the Committee on Freedom of Association that, under the Convention, sympathy strikes and strikes on social and economic policy matters should be lawful and protected from penalty. These issues will need to be worked through and resolved.

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

Policy Work to Better Protect Vulnerable Contractors as noted in previous reports, work to explore options for providing better regulatory protections to contractors (who are not covered by employee-specific rights, including the right to bargain collectively) began in 2019, including public consultation in late 2019 and early 2020. Following the consultation, a tripartite working group was tasked with examining the feedback received and reporting back with recommendations. The main theme of the tripartite working group's recommendations is that the Government should work to improve the legal distinction between employees and independent contractors, so that fewer workers are

	misclassified as independent contractors. The tripartite working group also stated that work on other options for improving contractors' bargaining power (for example, by extending work-related rights to some contractors, such as the right to bargain collectively) should take place after a clearer position had been reached on the employee / contractor boundary. Options to clarify the contractor / employee boundary have been the subject of policy development, however in March 2023 the Government announced that consultation on a potential new test, to determine who is a contractor and who is an employee, was being deferred. Policy work has been placed on hold and is expected to resume after all appeals of the recent Employment Court ruling about the employment status of Uber drivers (mentioned above) are heard. Further information on the tripartite recommendations is contained in the Tripartite working group report: https://www.mbie.govt.nz/assets/tripartite-working-group-on-better-protections-for-contractors-december-2021.pdf
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Judicial decisions

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.d.	E tū Inc v Rasier Operations BV [2022] NZEmpC 192 Employment Court – Declaration of employment status – Uber drivers The issue was whether the four plaintiff Uber drivers were “employees” under s 6 of the Employment Relations Act 2000 (see: https://www.legislation.govt.nz/act/public/2000/0024/latest/DLM58619.html). The plaintiffs sought declarations of employment status. Each plaintiff driver gave evidence that in practice they acted as employees of Uber. The Court found that the “real nature of the relationship” between Uber and the plaintiff drivers was one of employment for reasons listed in the online summary of the case. A summary is provided on this page (second case): https://www.employment.govt.nz/about/employment-law/cases-of-interest/october-2022/ For the reasons listed, the Court concluded that each of the plaintiff drivers were in an employment relationship when driving for Uber (para 82). The Court noted that the declarations made in respect of the four plaintiff drivers did not automatically extend to all Uber drivers. Employment status will continue to be determined on a case-by-case basis (para 95). The full court judgement for this case can be found online here: https://www.employmentcourt.govt.nz/assets/EMPC-230-2021-E-Tu-Anor-v-Rasier-Operations-BV-Ors-Judgment.1.pdf Rasier Operations BV v E Tū Inc [2023] NZCA 216 Court of Appeal – Leave to appeal – Question of law – Meaning of “employee” – Uber drivers The issue was whether the Court of Appeal should give Rasier Operations BV leave to appeal the Employment Court decision described above which found that four Uber drivers were employees. The Court of Appeal allowed the appeal on the questions of law as summarised

	online (see the first case on this page): https://www.employment.govt.nz/about/employment-law/cases-of-interest/april-2/ The full court judgement for this case can be found online: https://www.courtsofnz.govt.nz/assets/cases/2023/2023-NZCA-216.pdf
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.	As noted in previous reporting, the social partners meet with Government on a regular basis to discuss topical matters of interest and are represented on several groups that have been convened to examine and provide recommendations on relevant policy issues. These have included the Fair Pay Agreements system, the Holidays Act Taskforce, Better Protections for Contractors and the Screen Industry Workers system. In the latter case, the Screen Industry Workers Act 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 were included in designing the detail of the Act.