

# The Changing Nature of Work: Strengths and Shortcomings of New Zealand's Benefits and Protections for Workers in Non-Standard Employment

Prepared by  
**Laura Berntsen**

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Access to the anonymised data used in this study was provided by Stats NZ in accordance with security and confidentiality provisions of the Statistics Act 1975. Only people authorised by the Statistics Act 1975 are allowed to see data about a particular person, household, business or organisation; the results in this report have been confidentialised to protect these groups from identification. The results are based in part on tax data supplied by Inland Revenue to Stats NZ under the Tax Administration Act 1994. This tax data must be used only for statistical purposes, and no individual information may be published or disclosed in any other form, or provided to Inland Revenue for administrative or regulatory purposes.

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## ACKNOWLEDGMENTS

On July 9, 1942, my Grandfather, Raymond Norman Berntsen, set sail from San Francisco, California to Wellington as a Merchant Marine on the four masted "tall ship" the Pamir under the New Zealand flag. As a kid growing up, I remember his stories of New Zealand and his prominently displayed model replica of the ship at my Grandparents' home in California. On my first day in Wellington, 76 years later, I took a walk along the waterfront and saw a plaque dedicated to the Pamir and "the men who sailed in her". To be literally half a world from home, yet feel so connected to family was surreal (almost as surreal as discovering, two months later, that a photo of my then 21-year-old Grandfather was on display in the Museum of Wellington, City and Sea).

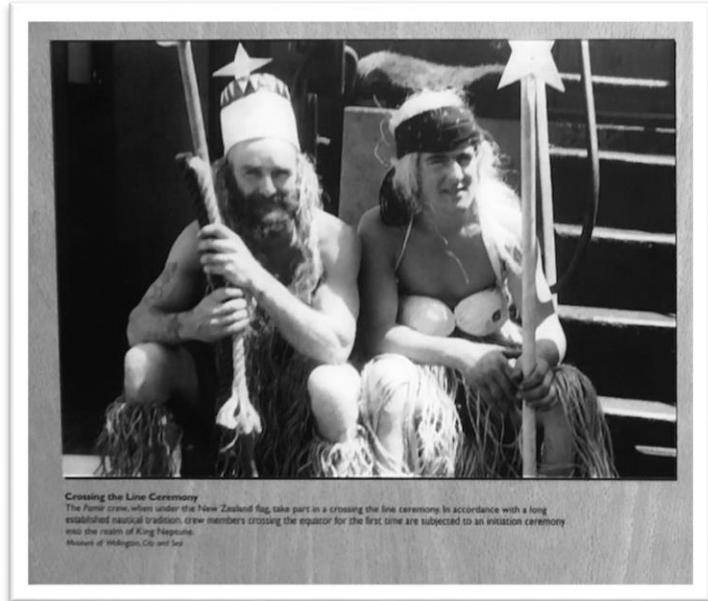


Photo of Raymond Norman Berntsen (right), 1942. Source: Wellington Museum, City and Sea.

I feel so fortunate to have called Wellington "home" for the past six months. This has been the opportunity and experience of a lifetime, and I am especially grateful to those who helped it become a reality. First, I would like to thank the incredible Axford/Fulbright Board and staff. They made sure we landed and took off safely in so many literal and figurative ways. Thank you as well to the people I've met in Wellington and across New Zealand who showed me the sights, opened their homes to me, and made me feel so welcome.

I cannot believe how lucky I was to be absorbed into the Treasury's Skills, Employment and Enterprise (SEE) Team. Thank you most of all to Elizabeth Gerard and Andrew Rutledge who gave me guidance and shared their expertise, and are simply incredible leaders and mentors. Thank you to the entire SEE Team (Amy Russell, Ashley Smith, Avril Gillan, Danielle Lucas, Geraldine Wilkins, Kate Williamson, Laura Maguire, Lauren Holloway, Liam Oldfield, Matt van Wijk, Rachael Wookey, Richard Baird, and Sam Grayling) for letting me tag along to their meetings and leech knowledge from them. Thank you to the incredible staff at the Treasury, the Ministry of Social Development, the Ministry of Business, Innovation and Employment, the Inland Revenue Department, Stats NZ, the Productivity Commission and the Department of Prime Minister and Cabinet who helped me along the way and provided invaluable feedback on my report. Thanks especially to Arati Waldegrave, Hugh Miller, Sarah Crichton, Gail Pacheco, Tim Maloney, Vicki Plater, Jess Thomas, Gayathiri Ganeshan and Carrie-Anne Lynch. Thank you also to Bill Rosenberg and Avalon Kent at the New Zealand Council of Trade Unions for being so generous with their time and feedback. Thank you to Gene Falk and Margot Crandall-Hollick with the United States Congressional Research Service, who went above and beyond their usual job descriptions, as usual, to answer my frequent questions and review drafts of this report.

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Laura Berntsen  
Wellington, July 2019

# EXECUTIVE SUMMARY

Across the globe, countries are grappling with the immense forces of technological change and globalisation. These disruptive forces, coupled with weakened labour institutions and changes in government regulations, have profoundly affected the nature of work and the way income is distributed globally and locally. This has led to fears over a breakdown of the traditional employer–employee model and increased use of “non-standard forms of employment”, which is a broad term encompassing anything that deviates from continuous, full-time employment. Non-standard employment includes part-time and on-call work, temporary work, seasonal work, fixed-term contracts and self-employment.

In many ways, New Zealand’s system of protections and benefits is well suited for managing some of the biggest challenges countries are confronting as they adjust to and plan for changes in the nature of work. This is particularly true in the case of New Zealand’s social protection system. Crucial benefits like health coverage, superannuation, parental leave, unemployment assistance and financial assistance for raising children and paying for childcare do not require a worker to have – or to have lost – traditional, full-time employment. New Zealand’s tax system gives employers no financial incentives to downgrade workers’ employment status in order to pay lower taxes. This is not to say that New Zealand’s health, welfare and tax systems are adequate; rather, it is to say that their structure, for the most part, does not afford or deny worker benefits or protections based on an individual’s ties to traditional full-time employment.

Despite these strengths, those in non-standard employment often face substantial challenges in achieving social and economic well-being, and the data available may mask even more significant challenges. On average, non-standard workers have lower earnings, which are declining relative to their counterparts in permanent employment contracts. They have lower collective bargaining coverage, giving them less say in how their worksites adopt technology and adapt to change. They have lower levels of access to affordable and ongoing education and training, benefits that are often employer-provided. In addition, they are often first to face displacement, which is involuntary job loss due to economic factors such as recessions or economic downturns (cyclical unemployment) or broader shifts in an industry, typically due to technological change (structural unemployment).<sup>1</sup>

The challenge facing New Zealand policymakers – both ministers and public officials – is how to best develop and implement policies that enhance economic and social security for non-standard workers while enabling the positive outcomes associated with non-standard employment (e.g., its ability to enhance productivity, flexibility and labour market participation). A significant obstacle in effectively achieving this goal is the inadequacy of the country’s economic and labour market data. As a result, policymakers and advisors are vulnerable to making ad hoc decisions to address perceived problems that do not exist while failing to address significant problems that go undetected.

I conclude that there are five key areas in need of a policy response from New Zealand lawmakers:

- The current financial support system for displaced workers functions as a system of last resort, but reforms under discussion risk disadvantaging non-standard workers.
- The systems to provide career services and education and training referrals focus on young people, and fail to reach much of the adult workforce.

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<sup>1</sup> Schmid, G., & Wagner, J. Managing Social Risks of Non-Standard Employment in Europe. *International Labour Organization. Conditions of Work and Employment Series No. 91*. p. 8. Retrieved from [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_584686.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_584686.pdf)

- There is no clear direction with respect to the purpose and short- and long-term goals of the welfare and employment services system.
- There are confusing and potentially conflicting laws related to access to collective bargaining, particularly for non-standard workers.
- The tax and data infrastructure pertaining to non-standard employment, and self-employment in particular, must be modernised.

The final section of the paper will present policy ideas to help ensure New Zealand's labour relations, social services and tax systems are responsive to the evolving nature of work.

The aim of this report is to provide the reader with a broad sense of the challenges confronting New Zealand's labour market and the tools available to strike an appropriate balance that ensures economic and social security for New Zealand's non-standard workers without being overly disruptive to the economy at large. Major issues like income inequality, immigration policy, adequacy of welfare benefit levels, poverty rates and the disproportionate negative outcomes faced by the Māori and Pasifika populations are beyond this paper's scope. Though clearly these topics are all inextricably linked, this paper focuses on non-standard workers overall.

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# I. INTRODUCTION

This paper attempts to answer three questions: How is the nature of work changing in New Zealand? How have these changes specifically affected workers in non-standard employment, or how might they affect them? What are the best ways for policymakers to ensure social and economic well-being for workers impacted by these changes? The underlying premise is that an adequate social contract should provide workers with: income support in old age and during times of unemployment (due to sickness, disability, the birth/adoption of a child and job loss), health care, access to a minimum wage (or equivalent for self-employed workers), access to career services and retraining, and the ability to organise for protections or benefits specific to their workplace or sector. These basic protections and benefits are not arbitrary; many of them are embedded in the Social Security Act of 1938, which was enacted to provide "a condition of social security unsurpassed in any other country in the world". The Social Security Act reflected the employment and family structure of the day – a structure dominated by male labour force participation in standard employment.

Social security systems must evolve to ensure they function for the modern-day workforce. Accordingly, it is critical that institutions and pathways exist to enable 21st-century workers – a workforce significantly different from that of 1938 – to act collectively. This paper will explore the topic of protections and benefits for non-standard workers through four tools used in New Zealand:

1. statutory benefits and protections based on employment status
2. the welfare and income support system
3. collective bargaining
4. education, training and career services

The report outlines a framework for how these protections and benefits can best be guaranteed for non-standard workers in a way that builds on New Zealand's existing welfare and labour market regulation systems and does not jeopardise areas in which New Zealand's labour market is performing well. For framing purposes, the following matrix lays out each of these benefits and their availability by employment status; highlighted boxes reflect areas in which New Zealand's existing regime should be improved.

**Table 1: Eligibility for Basic Worker Benefits by Employment Status**

Worker benefit	Full-time, permanent worker	Non-standard worker: fixed-term/temporary, seasonal, part-time, casual employee	Non-standard worker: genuine, secure self-employed <sup>2</sup>	Non-standard worker: precarious self-employment
Income in old age	Universal, state-provided	Universal, state-provided	Universal, state-provided	Universal, state-provided
Health care	Universal, state-provided	Universal, state-provided	Universal, state-provided	Universal, state-provided
Minimum wage	Yes	Yes, but may not be sufficient to meet income needs for those working limited hours	No, but these workers have the ability to set payment rates	No, and may not be able to set adequate payment rates
Sick leave	Yes	Yes, but depends on work history/hours	No, but this is reasonable	No
Parental leave	Yes, based on recent work/earnings	Yes, based on recent work/earnings	Yes, based on recent work/earnings	Yes, based on recent work/earnings
Income support during times of unemployment	Universal; means tested; provided by government; very low benefit levels	Universal; means tested; provided by government; very low benefit levels	Universal; means tested; provided by government; very low benefit levels	Universal; means tested; provided by government; very low benefit levels
Income support due to injury	Yes, ACC <sup>3</sup> ; government-funded; based on past income	Yes, ACC; government-funded; based on past income	Yes, ACC; government-funded; based on past income	Yes, ACC; government-funded; based on past income
Career services, education and training (including on-the-job training)	All residents are eligible for subsidised education and training and can access online career services. Access to on-the-job training and employer-subsidised programmes is at employers' discretion (these workers are most likely to receive employer-supported opportunities)	All residents are eligible for subsidised education and training and can access online career services. Access to on-the-job training and employer-subsidised programmes is at employers' discretion (these workers are unlikely to receive employer-supported opportunities).	All residents are eligible for subsidised education and training and can access online career services. These workers have no access to employer-supported opportunities.	All residents are eligible for subsidised education and training and can access online career services. These workers have no access to employer-supported opportunities.
Collective bargaining	Yes	Yes, but challenges due to low coverage	No and should not	No, but perhaps should be able to

<sup>2</sup> The term “genuine, secure self-employment” is somewhat arbitrary and inexact. It is meant to distinguish between self-employed workers who exercise a high level of control over their terms of work and are not in a precarious financial situation and those who have a high level of uncertainty in their long-term employment and income and have less control over their terms of work.

<sup>3</sup> The Accident Compensation Corporation.

## II. Setting the Stage: The World of Work, Macroeconomic Forces, and Why This All Matters

An immense amount of work and discussion is under way in New Zealand, and around the world, focused on how to prepare for, shape and respond to changes in the nature of work. From an international perspective, many analysts warn that advances in robotics, artificial intelligence and automation more broadly over the next few decades could lead to significant job loss or job polarisation, with workers falling into either high-wage, high-skilled roles or low-wage, low-skilled roles, and a decline in middle-skilled jobs with decent earnings. These forces may drive increasing income and wealth disparities. One need look no further than recent international elections and political discord to see the immense instability that results from workers feeling that their jobs, livelihoods and economic security are under threat.

Often-cited research out of Oxford University, which used an occupation-based approach, found that up to 35 per cent of employment in the United Kingdom and 47 per cent in the United States is at risk of technology-driven displacement over the next 20 years.<sup>4</sup> Taken to an extreme, analysis of these projections has led to conjecture over a jobless future. Other researchers, using a task-based approach, have reached the less dramatic conclusion that, across the OECD, just 9 per cent of jobs can be automated;<sup>5</sup> others predict just 5 per cent of occupations can be fully automated.<sup>6</sup> A recent analysis of the United States labour market over the last three decades showed that the ratio of jobs to workers has actually *increased* since 1980, but the types of jobs and necessary qualifications have changed significantly.<sup>7</sup>

Reflecting the OECD average, a predicted 9 per cent of current jobs in New Zealand are at high risk of automation (see Figure 1); a “high-risk” job is defined as one in which 70 per cent of tasks can be automated. In addition, the OECD predicts 26 per cent of jobs in New Zealand to be at risk of significant transformation that would require workers to adapt.<sup>8</sup>

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<sup>4</sup> Frey, C.B., & Osborne, M.A. (2013). *The Future of Employment: How Susceptible are Jobs to Computerisation*. Retrieved from [https://www.oxfordmartin.ox.ac.uk/downloads/academic/The\\_Future\\_of\\_Employment.pdf](https://www.oxfordmartin.ox.ac.uk/downloads/academic/The_Future_of_Employment.pdf)

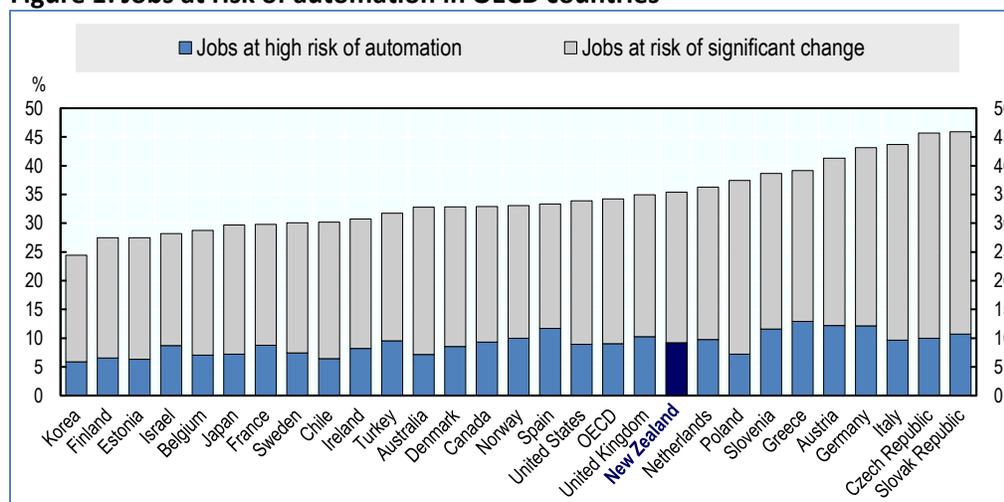
<sup>5</sup> Arntz, M., Gregory, T., & Zierahn, U. (2016). The Risk of Automation for Jobs in OECD Countries: A Comparative Analysis. *OECD Social, Employment and Migration Working Papers, No. 189*. Retrieved from <http://dx.doi.org/10.1787/5j1z9h56dva7-en>

<sup>6</sup> Manyika, J., Lund, S., Chui, M., Bughin, J., Woetzel, J., Batra, P., Ko, R., & Sanghvi, S. (2017). *Jobs Lost, Jobs Gained: Workforce Transitions in a Time of Automation*. Retrieved from <https://www.mckinsey.com/~media/mckinsey/featured%20insights/Future%20of%20Organizations/What%20the%20future%20of%20work%20will%20mean%20for%20jobs%20skills%20and%20wages/MGI-Jobs-Lost-Jobs-Gained-Report-December-6-2017.ashx>

<sup>7</sup> Muro, M., & Whiton, J. (2019). Automation Won't Bring an Apocalypse—But That Doesn't Mean it Will be Easy. *Brookings*. Retrieved from <https://www.brookings.edu/blog/the-avenue/2019/02/04/automation-wont-bring-an-apocalypse-but-that-doesnt-mean-it-will-be-easy/>

<sup>8</sup> OECD. (2017). *Back to Work: New Zealand: Improving the Re-Employment Prospects of Displaced Workers*. Retrieved from: [https://read.oecd-ilibrary.org/employment/back-to-work-new-zealand\\_9789264264434-en](https://read.oecd-ilibrary.org/employment/back-to-work-new-zealand_9789264264434-en)

**Figure 1: Jobs at risk of automation in OECD countries**



Source: OECD. *Back to Work: New Zealand*.

The Prime Minister’s Business Advisory Group partnered with the consulting firm McKinsey in early 2019 to produce a report entitled *A Future That Works: Harnessing Automation for a More Productive and Skilled New Zealand*.<sup>9</sup> The report explores three potential automation adoption scenarios – an early scenario, a mid-point scenario and a late scenario – and projects the expected increase in unemployment as a result of displacement. While the McKinsey report predicts an additional 200,000 net jobs will be created by 2030, it acknowledges there will be significant displacement and unemployment during the transition. According to the report’s predictions, there will be automation-induced destruction of 700,000 jobs, offset by the creation of 900,000 new jobs. The report’s underlying data is not available for review, and seems to apply a methodology that is not specific to New Zealand. Accordingly, its analysis should not be overly relied upon, though still provides useful considerations.

Economists often point to the First and Second Industrial Revolutions as evidence that technological advancements do not eliminate jobs; thus we should not be afraid of a jobless future. But that ignores the mass riots, thousands of strikes and unrest that accompanied those past periods of technological change.<sup>10</sup> By some predictions, labour force displacement in the coming decade could be two to three times as fast as that which occurred during past transformational periods of automation.<sup>11</sup> New Zealand’s income support and employment services systems for unemployed workers are already struggling to meet demand.<sup>12</sup> The impact of wider scale displacement will have massive effects on individual workers and families, even if economy-wide indicators are positive.

In short, change is already under way. But the speed and degree of future labour market changes are unknown. Those changes are unlikely to lead to a “jobless future”, but there will be significant shifts in the nature of work and near-term job disruption and displacement. Those with lower incomes and less

<sup>9</sup> Prime Minister’s Business Advisory Council & McKinsey & Company. (2019). *A Future That Works: Harnessing Automation for a More Productive and Skilled New Zealand*. Retrieved from <https://api.pmbac.co.nz/wp-content/uploads/2019/05/A-Future-That-Works-PMBAC-Report.pdf>

<sup>10</sup> Klein, C. (2019). The Original Luddites Raged Against the Machine of the Industrial Revolution. Retrieved from <https://www.history.com/news/industrial-revolution-luddites-workers> and The Second Industrial Revolution and Its Consequences. Retrieved from <https://faculty.ithaca.edu/mismith/docs/USsince1865/secondindustrial.pdf>

<sup>11</sup> Harris, K., Kimson, A., & Schwedel, A. (2018). Labor 2030: The Collision of Demographics, Automation and Inequality. *Bain & Company*. Retrieved from <https://www.bain.com/insights/labor-2030-the-collision-of-demographics-automation-and-inequality/>

<sup>12</sup> Blake-Persen, N. (2019, July 4). People queue from 2am outside Work and Income for help. *New Zealand Herald*. Retrieved from [https://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=12246774](https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12246774)

secure and non-standard forms of employment are likely to be disproportionately negatively impacted due to their lower earnings and difficulty accessing education and training.<sup>13</sup> Older workers, who represent a large share of the workforce, will also face particular challenges, as they may be less likely to receive on-the-job training and more likely to face discrimination in both hiring and training.<sup>14</sup> Moreover, often these workers may feel that retraining for a new job or career late in life is not practical or desirable. This report makes the case that systems geared at responding to the changing nature of work must prevent rising inequality, provide access to training and re-training, ensure sufficient transitional income support and recognise that workers at different stages of their careers will have different income and training needs and tradeoffs.

## Will a Growth in Technology, Automation and Productivity Help or Harm Non-Standard Workers?

Embracing technological change and automation to improve New Zealand's productivity has been put forward as a solution to improve wages and the economic well-being of New Zealand's workers, overall. But the extent to which this is true will also depend on New Zealand's policy landscape, and how policies treat different categories of workers. A 2017 piece written by the Director of Economics and Research at the New Zealand Productivity Commission captures key themes that deserve to be better understood and dissected. In it, he states:

But one area holding the economy back is our persistently weak labour productivity, which is a measure of the economy's ability to turn resources into goods and services. Between 1995 and 2014 labour productivity growth in New Zealand was the fourth lowest across OECD countries.

This is important for a number of reasons. First, productivity is a major income driver: for example, the wages of New Zealand workers increase more rapidly when labour productivity growth is strong. So with weak productivity growth, many jobs created by New Zealand's strong labour market are low value-add and do not pay very well.

...

Improving productivity is the most important public policy issue for lifting living standards and fostering inclusive, sustainable economic growth in New Zealand.

...

Even if policy is set just right to ensure that the productivity benefits of the fourth industrial revolution are large and widely spread, a social safety net will still need to catch people who fall through the cracks and equip them to bounce back. Accordingly,

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<sup>13</sup> Schmid & Wagner. Managing Social Risks of Non-Standard Employment in Europe, p. 8 and OECD. (2019). *The Future of Work: OECD Employment Outlook 2019*. Retrieved from <http://www.oecd.org/employment/employment-outlook-2019-highlight-en.pdf>

<sup>14</sup> McGregor, J., & Gray, L. (2002). Stereotypes and Older Workers: the New Zealand Experience. *Social Policy Journal of New Zealand*, 18, 163–177. Retrieved from <https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/journals-and-magazines/social-policy-journal/spj18/18-pages163-177.pdf>

policy must ensure that social support and services function effectively to deal with the side effects of rapid technological change.<sup>15</sup>

Low productivity in New Zealand has long been a cause for concern, influencing decisions around labour market interventions in the country. While New Zealand's productivity *growth* is comparable to the OECD average, the country's overall productivity lags behind much of the OECD, and sits at about 80 per cent of the OECD average. However, gross domestic product (GDP) per capita in New Zealand is improving at a faster rate due to the high share of New Zealanders participating in the labour market. Research out of Victoria University concludes that New Zealanders work about 10 per cent more hours than the OECD average, while producing 20 per cent less per hour.<sup>16</sup>

The McKinsey report discussed earlier also focuses on how automation and enhanced productivity will benefit the economic well-being of New Zealanders. The analysis suggested the "early adoption" scenario could boost productivity by 2.5 per cent between 2016 and 2030, resulting in GDP growth of 4.3 per cent, and that "this will boost economic and social outcomes ... and give each person additional income of \$25,000 to \$83,000 in aggregate over that period (equivalent to \$2,500 to \$8,300 per annum)."<sup>17</sup> The report does not fully discuss the policy options that would lead to this equitable distribution of income, nor was it intended to. But it is important to recognise that an equitable distribution of productivity would not happen automatically, but would require significant policy interventions.

New Zealand, like all countries, must be cautious in balancing economic growth and productivity growth in a way that is equitable. Per capita GDP growth in New Zealand has not correlated with an equitable increase in income across the distribution. Rather, as Figure 2 shows, the disposable income of wealthy New Zealanders has grown faster than per capita GDP, while the income of the poor has grown at a significantly slower rate.

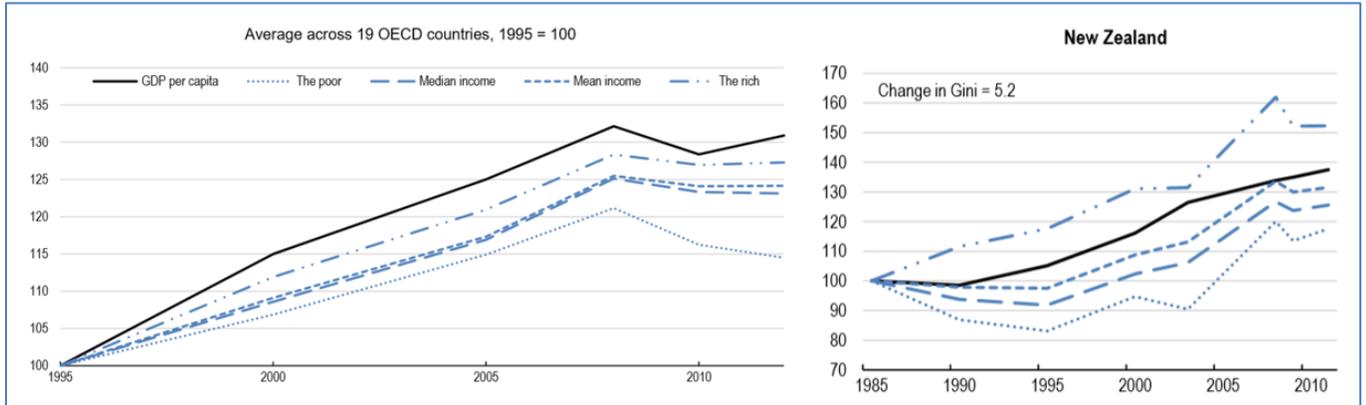
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<sup>15</sup> Conway, P. Productivity and Changing Technology. (2017). *Policy Quarterly*, 13(3). Retrieved from [https://www.victoria.ac.nz/\\_data/assets/pdf\\_file/0003/1175142/Conway.pdf](https://www.victoria.ac.nz/_data/assets/pdf_file/0003/1175142/Conway.pdf)

<sup>16</sup> Nolan, P., Fraser, H., & Conway, P. (2018). Moving on From New Zealand's Productivity Paradox. *Policy Quarterly*, 14(3). Retrieved from [https://www.victoria.ac.nz/\\_data/assets/pdf\\_file/0003/1686135/Nolan-et-al.pdf](https://www.victoria.ac.nz/_data/assets/pdf_file/0003/1686135/Nolan-et-al.pdf)

<sup>17</sup> Prime Minister's Business Advisory Council & McKinsey & Company. *A Future That Works*.

**Figure 2: Developments in GDP per capita and in household disposable incomes across the distribution: New Zealand and 19 OECD countries**



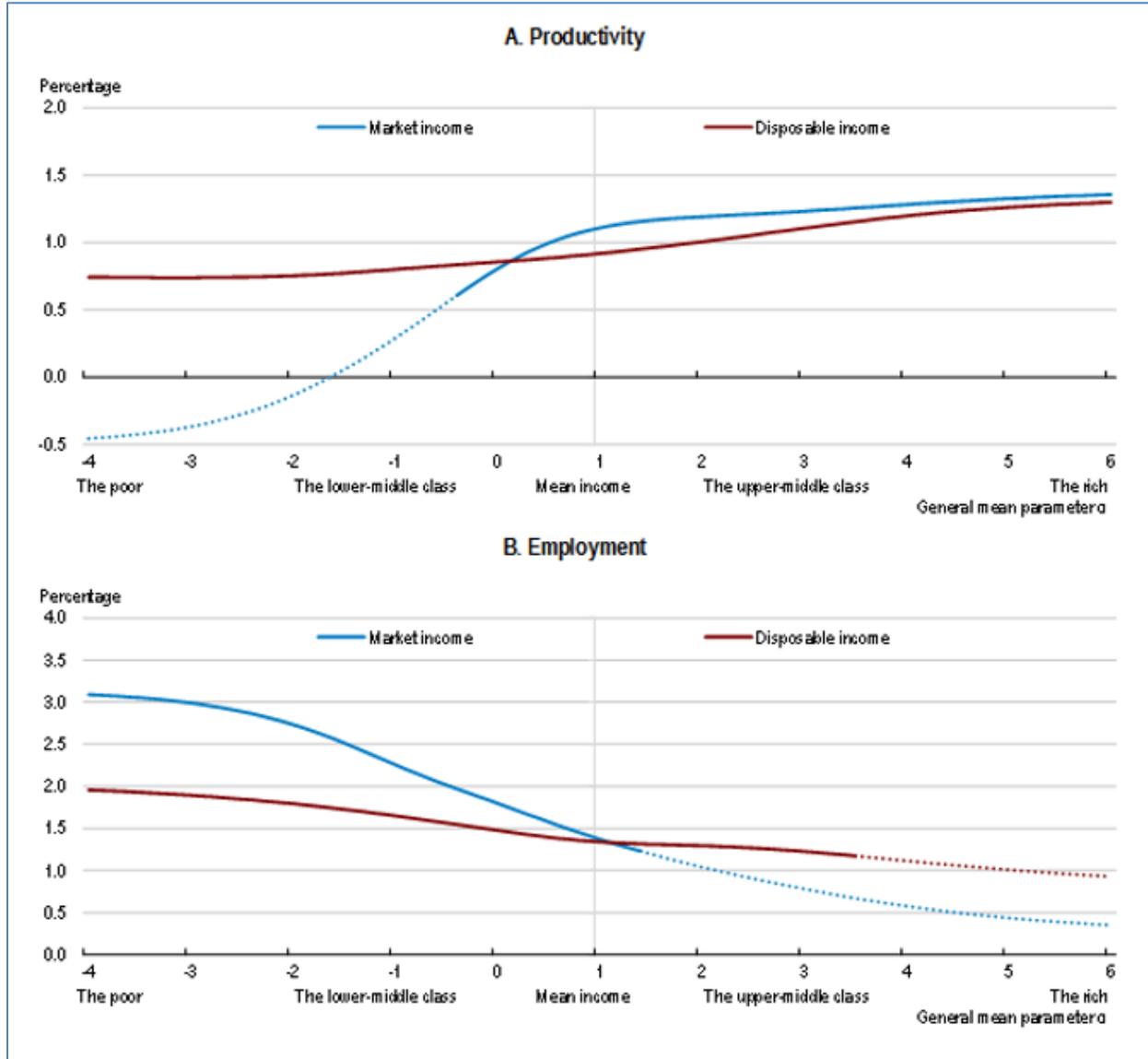
Note: Countries included are Australian, Canada, Denmark, Finland, France, Germany, Greece, Hungary, Israel, Japan, Mexico, Netherlands, New Zealand, Norway, Sweden, Turkey, United Kingdom and United States. GDP per capita and household disposable incomes are measured in constant prices by applying the GDP deflator and the consumer price index, respectively. Income groups are measured by different orders of the general mean: the poor ( $\alpha=-4$ ), median income ( $\alpha=0$ ), and the rich ( $\alpha=6$ ). Some data points have been interpolated or use the value from the closest available year.

Source: Hermansen, M., Ruiz, N., & Causa, O. (2016). *The distribution of the growth dividends 2016*. OECD Economics Department Working Papers No. 1343. Retrieved from <https://www.oecd-ilibrary.org/docserver/7c8c6cc1-en.pdf?expires=1560226755&id=id&accname=guest&checksum=50BFB945971416A51C27A182E9EA4876>

Relatedly, in 2016, OECD researchers sought to better understand the link between economic growth and inequality across the income distribution and distinguishing between labour productivity-driven growth and employment-driven growth (which is growth that comes from more workers entering the labour force and/or more overall hours worked). The researchers found that, at the OECD level, employment-driven growth has an equalising effect on inequality, while productivity-driven growth contributes to rising inequality.<sup>18</sup> While employment-driven growth is not sustainable given some residents will always, appropriately, be left out of the labour force, it is important for policymakers to think about how to drive similarly equitable productivity growth.

<sup>18</sup> Causa, O., Hermansen, M. & Ruiz, N. (2017). Does growth lead to inequality? It depends. *OECD Ecoscope*. Retrieved from <https://oecdecoscope.blog/2017/01/10/does-growth-lead-to-inequality-it-depends/>

**Figure 3: The distribution of growth dividends: impact on household income of a 1 per cent increase in productivity or employment**



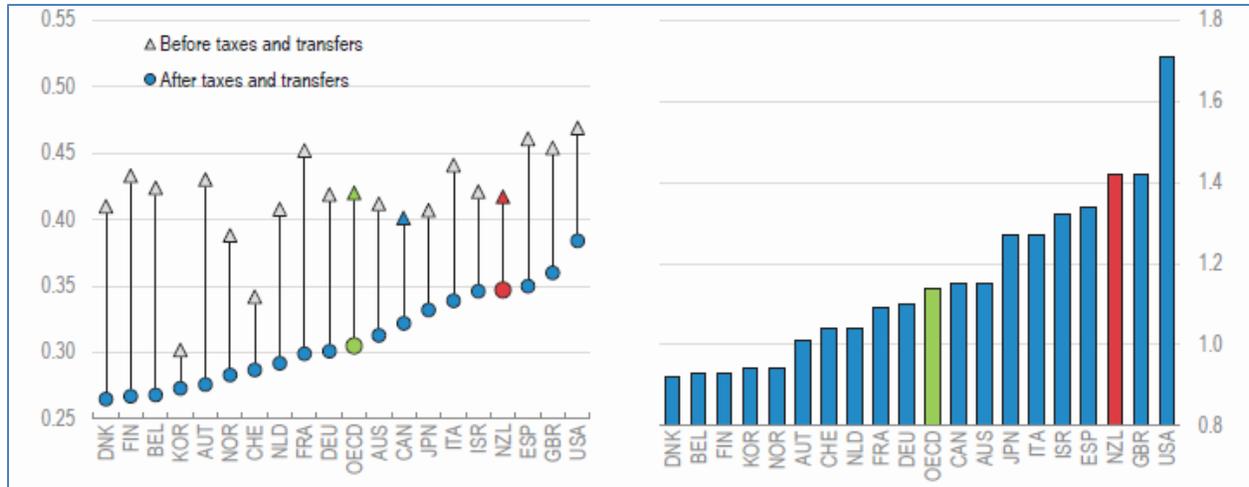
In a note on how to read this figure, the author states, “A 1% increase in labour productivity is estimated to increase mean household market incomes by around 1%, on average across OECD countries across the last decade (Panel A). For poor and lower-middle class households (captured by a general mean of market incomes emphasising lower incomes relatively more, see Hermansen et al. (2016) for details), an insignificant effect (indicated by the dotted lines) is estimated for market incomes, while the effect is significant and slightly above one for the upper-middle class to rich households. By benefitting only the more affluent households, labour productivity growth is thus found to increase market income inequality. For household disposable incomes, i.e. after taxes and transfers, labour productivity growth also benefits the least affluent households, but relatively less than the more affluent households. By contrast, a 1% increase in employment is found to increase both household market and disposable incomes by 2-3% among lower-middle class and poor households (Panel B), while having no significant effect on the most affluent households. Hence, employment growth is found to reduce income inequality.”

Source: Causa, Hermansen & Ruiz. Does growth lead to inequality? It depends.

Redistributional policies, which use government transfer mechanisms like the tax and welfare systems to redistribute income, are one way to ensure that productivity gains are shared by the population at large. New Zealand’s inequality remains above the OECD average, which reflects lower than average redistributional policies (see Figure 4). As New Zealand policymakers consider the narrative surrounding

the perceived benefits of productivity and technology, it is critical they consider the distributional impacts, especially for non-standard workers.

**Figure 4: Income inequality measured by Gini coefficient (left) and Palma ratio (right) in various OECD countries, 2016, or latest available year<sup>19</sup>**



Source: OECD. (2019). *OECD Economic Surveys: New Zealand 2019*. Retrieved from <https://www.oecd-ilibrary.org/docserver/b0b94dbd-en.pdf?expires=1561955393&id=id&acname=ocid56017414&checksum=D4FB9E33E656372FEDA4B596723CD7F2>

<sup>19</sup> The Gini coefficient represents the income distribution of residents. Zero represents perfect equality and one represents maximal inequality among values. Palma ratio is the ratio of the income of the top 10 per cent to the income of the bottom 40 per cent. The source of country data in this figure is the OECD's Income Distribution Database: see <http://www.oecd.org/els/soc/income-distribution-database.htm>

### III. Worker Classifications in New Zealand

New Zealand has a binary employment system under which an individual worker is either a paid employee or self-employed. Employees are guaranteed certain benefits from their employers, who are also responsible for deducting taxes and levies from employees' paychecks. Employees are also granted the right to organise and bargain collectively as a means of improving their benefits and protections. Self-employed individuals, including independent contractors, do not typically have the protections and benefits of employees, and are generally understood not to have the right to organise and bargain collectively.

#### Employees

There are no statutory quasi-employee classifications in New Zealand, as exist in some other countries. However, within the overall umbrella of "employee" there are subcategories that may trigger different employer obligations, and there is significant fluidity between categories, meaning work arrangements – even between the same employee and employer – can change over time, often without formal notice. Subcategories (which may be overlapping) for those classified as employees include:

- **Permanent employees:** Permanent employees, whether full- or part-time, have the full set of employment rights and responsibilities. Full-time work is typically considered to be 35–40 hours per week, but official statistics in New Zealand use a cutoff point of 30 hours per week.<sup>20</sup>
- **Casual employees:** There is no definition for "casual employee", but such workers are understood to have no guaranteed hours of work, no regular pattern of work and no ongoing expectation of employment. The employer does not have to offer work to the employee, and the employee does not have to accept work if offered.
- **Fixed-term employees:** A fixed-term or temporary employee has an employment contract that will end on a specified date or when a particular event occurs. There must be a genuine, reasonable reason for the fixed-term nature of the contract.
- **Seasonal employees:** Seasonal employment is typically a type of fixed-term or casual employment. It is commonly used in agriculture industries.<sup>21</sup>

#### Self-Employed Workers

There are multiple terms, and subcategories, for workers who are not classified as employees; these terms are often used in combination, or overlap. For example, an Uber driver or individual finding odd jobs using Task Rabbit could be self-employed, an independent contractor and a platform gig worker. While there is no statutory difference between these categories in employment law, there are differences in terms of the characteristics of those people that fall into these categories, as well as the nature of the work. Depending on the nature of the work, these workers may also receive distinct treatment under tax law. The following terms are often used for describing types of self-employed workers:

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<sup>20</sup> Stats NZ. (n.d.) Hours Worked in Employment. Retrieved from <http://archive.stats.govt.nz/methods/classifications-and-standards/classification-related-stats-standards/hours-worked-in-employment/definition.aspx>

<sup>21</sup> Employment New Zealand. (n.d.) Types of employee. Retrieved from <https://www.employment.govt.nz/starting-employment/who-is-an-employee/types-of-employee/>

- **Self-employed individual:** An individual who owns his or her own business but does not have employees.
- **Independent contractor:** A person (or person incorporated as a business entity) who contracts to perform work for – or provide services to – another entity as a non-employee. Some may own their own business.
- **Dependent contractor:** This term has no universal definition, but is generally understood to mean a nominally self-employed contractor who is economically reliant on one or two firms, contracts or platforms. Some may own their own business.
- **Gig worker:** This term has no universal definition; it may encompass employees, contractors and individuals who own their own business. A gig worker is typically understood to be someone who performs a specific task or services that are time-limited.
- **Platform worker:** A platform worker is generally understood to be someone who is allocated, assigned or bids on work through a digital labour platform or app. Workers may own their own business, be employees of the digital labour platform or be independent contractors.
- **False self-employed or misclassified worker:** These are workers who should have the benefits and protections of a contract of employment, but instead have been misclassified as self-employed contractors.

Just as there is diversity in the types of self-employment, there is also diversity in workers’ incentives for taking up self-employment. For some, such work may temporarily supplement earnings from standard employment; for some it may help them gain a new skill. Others may engage in such work out of an absence of other viable options. Each reason requires different policy considerations.

Self-employed workers, including contractors, may exercise control over the operation of their business. Determining whether a worker is an employee or a contractor generally depends on the “real nature of the relationship” between employer and worker and not solely the label assigned to it. There is no statutory definition or test to determine this relationship; however, the courts have developed four legal tests:

- **The intention test:** this refers to how the parties intended the relationship. Intention is relevant, but this alone does not determine the true nature of the relationship.
- **The control vs independence test:** this refers to the control of the employer or the independence of the worker over the worker’s work content, hours and method.
- **The integration test:** this refers to whether the work performed by the worker is fundamental to the employer’s business, and whether they are a ‘part and parcel’ of the organisation.
- **The fundamental/economic reality test:** this involves looking at the total circumstances of the work relationship to determine its economic reality (e.g., whether the worker pays their own income tax and Goods and Services Tax (GST), takes on financial risk and works for multiple entities).<sup>22</sup>

## Non-Standard Employment

There is no formal definition of non-standard employment, but the term is generally understood to refer to anything that deviates from work that is full-time, indefinite and characterised by a contract for

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<sup>22</sup> Employment New Zealand. (n.d.). Contractor versus employee. Retrieved from: <https://www.employment.govt.nz/starting-employment/who-is-an-employee/difference-between-a-self-employed-contractor-and-an-employee/>

services between an employee and an employer. Both employees and the self-employed can work in non-standard employment. For the purposes of this report, non-standard employment includes:

1. temporary employment (fixed-term contracts, project/task-based contracts, seasonal work, casual, on-call and daily work)
2. part-time employment
3. multi-party employment relationships (also known as labour hire, dispatch, brokerage, temp agency work and subcontracted labour)
4. self-employment (including everything from genuine self-employment to sham or misclassification self-employment).

It is worth noting that not all types of non-standard employment should be considered to be precarious or concerning from a worker-protection point of view. Precarious and non-standard work are not synonymous. “Non-standard” refers to the contractual form, whereas “precarious” typically refers to jobs that lack job security and generally entail lower minimum rates for piece work, wages or salaries; limited social protection; and few benefits. For example, a highly compensated tech consultant whose work is in significant demand would be considered to be engaged in non-standard work, but not precarious work, but this might not apply to all IT workers in non-standard employment.

## IV. How Many Non-Standard Workers Are There, and How Are They Faring?

This section will explore trends and data related to the changing nature of employment relationships and the social and economic security of workers in non-standard employment relationships. While the data show that the share of workers in non-standard work arrangements is not increasing, workers in non-standard employment typically earn less, and a significant portion would prefer permanent, ongoing work.<sup>23</sup> The data further show that incomes among self-employed and temporary workers are declining relative to incomes of permanent employees.<sup>24</sup>

### Number of Workers by Employment Type

#### Survey Data on Employment Types

According to available official statistics, the share of workers in various types of employment arrangements has remained steady over recent years in New Zealand (Figure 5). While 2016 showed a significant increase in the number of both “employers” and “self-employed not employing others”, this statistic is at least partially attributable to wording changes in the Household Labour Force Survey. Beginning in 2016, Stats NZ reworded this question to account for perceived unintentional underreporting of self-employment. Stats NZ also tracks the number of employees falling under the umbrella categories of permanent, temporary agency, seasonal and fixed-term employees (see Figure 7), and survey data show that the share of workers in these categories has only changed minimally in recent years.<sup>25</sup>

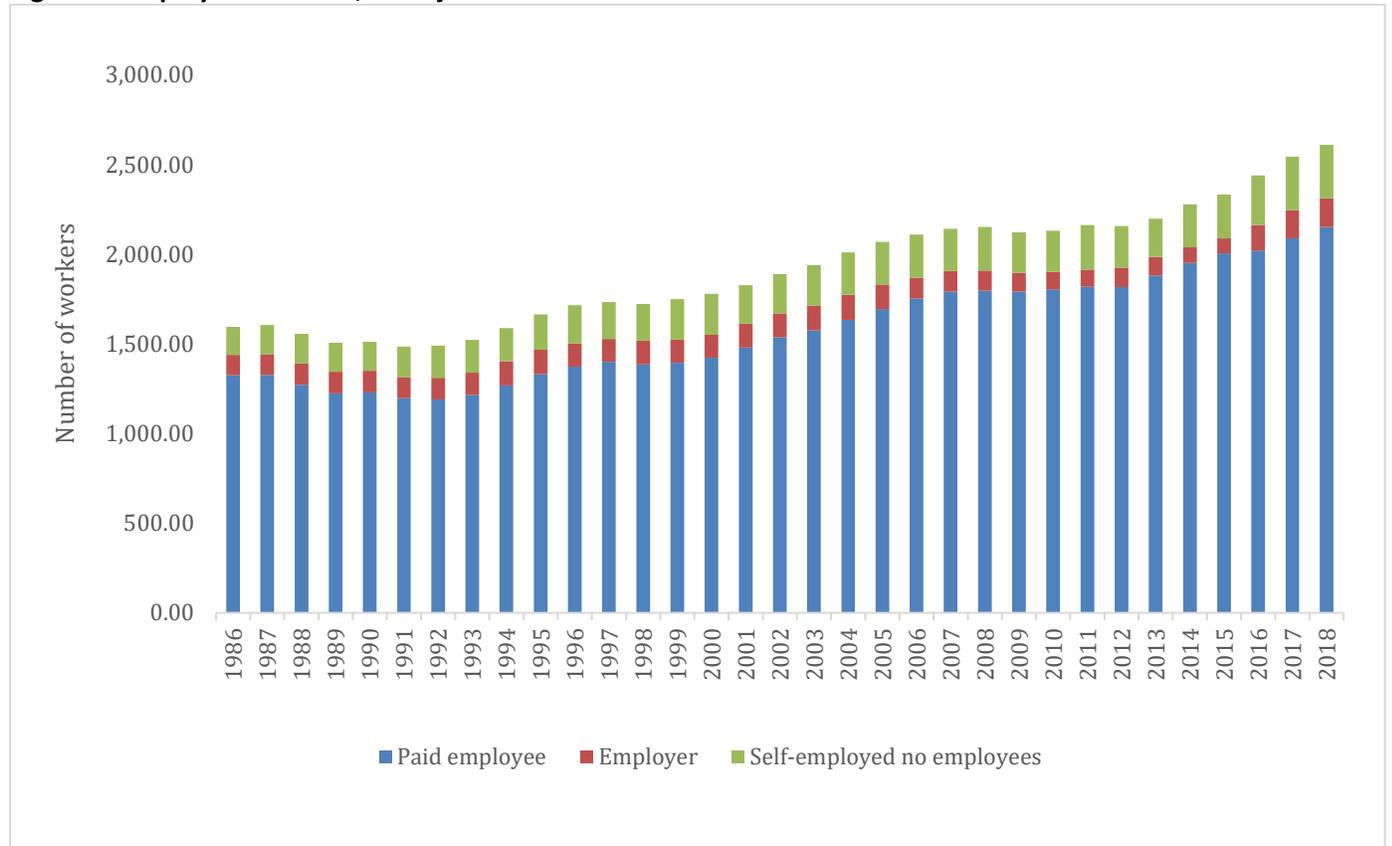
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<sup>23</sup> Stats NZ. (2018). *Survey of Working Life, 2018*. Retrieved from <https://www.stats.govt.nz/information-releases/labour-market-statistics-working-life-december-2018-quarter>; Stats NZ. (2016). Employment relationships – permanent and temporary workers: December 2016 quarter. Retrieved from <https://www.stats.govt.nz/reports/employment-relationships-permanent-and-temporary-workers-december-2016-quarter>; Stats NZ. (2013). *Survey of Working Life 2012*. Retrieved from [http://archive.stats.govt.nz/browse\\_for\\_stats/income-and-work/employment\\_and\\_unemployment/SurveyofWorkingLife\\_HOTPDdec12qtr.aspx](http://archive.stats.govt.nz/browse_for_stats/income-and-work/employment_and_unemployment/SurveyofWorkingLife_HOTPDdec12qtr.aspx)

<sup>24</sup> Stats NZ. (2019). Earnings from wages and salaries and self-employment, by sex, age groups and ethnic groups. Retrieved from <http://nzdotstat.stats.govt.nz/wbos/Index.aspx?DataSetCode=TABLECODE7473#>

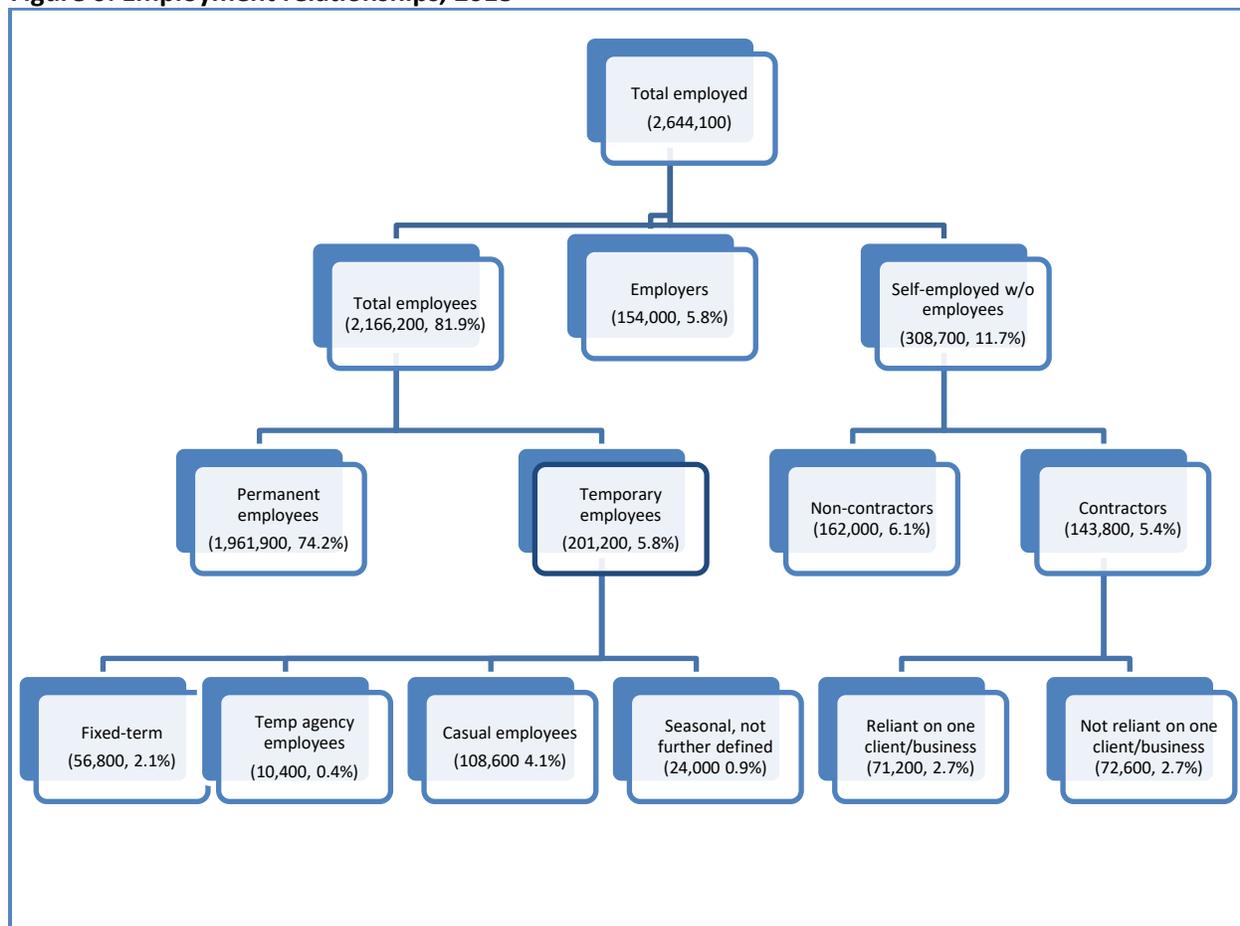
<sup>25</sup> Stats NZ. (2018). *Survey of Working Life, 2018*; Statistics NZ. (2017). *Employment relationships – permanent and temporary workers. December 2016 quarter*. Retrieved from <https://www.stats.govt.nz/assets/Reports/Employment-relationships-permanent-and-temporary-workers-December-2016-quarter/employment-relationships-permanent-temporary-workers-december-2016-quarter.pdf>; Stats NZ. (2013). *Survey of Working Life. December 2012 quarter*. Retrieved from <http://archive.stats.govt.nz/~media/Statistics/Browse%20for%20stats/SurveyOfWorkingLife/HOTPDdec12qtr/SurveyofWorkingLifeDec12qtrHO TP.pdf>

**Figure 5: Employment status, main job**



Source: Stats NZ (2019). Persons Employed by Sex by Employment Status (Annual-Dec)

**Figure 6: Employment relationships, 2018**



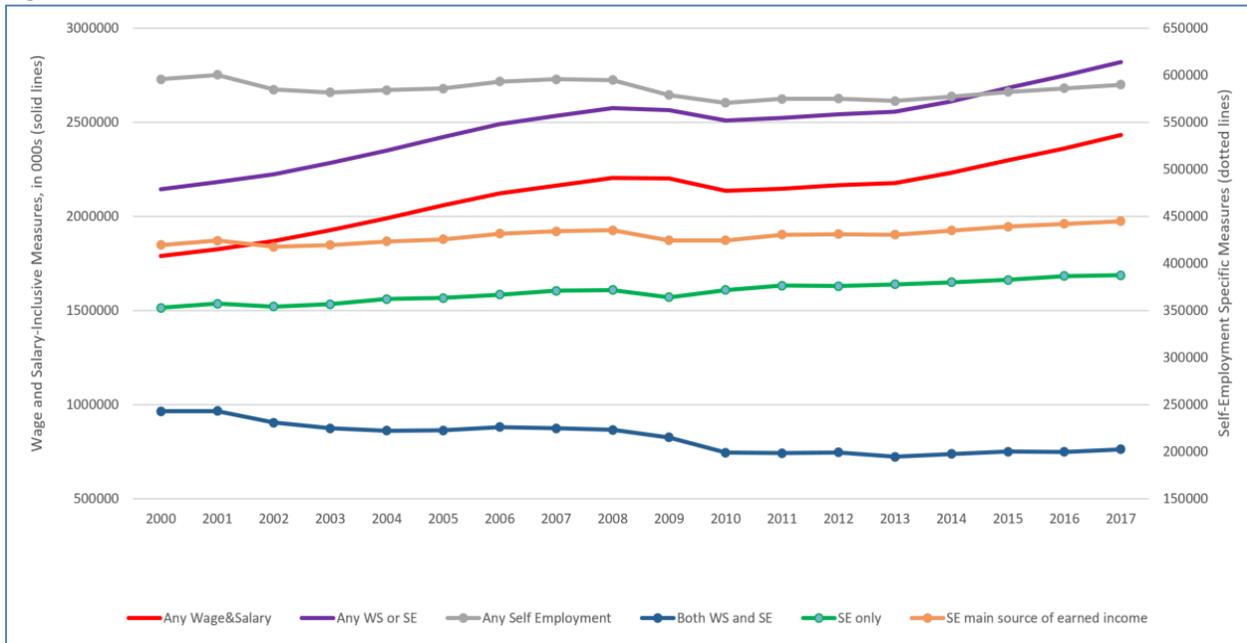
Source: Stats NZ. (2018). *Survey of Working Life*. Retrieved from <https://www.stats.govt.nz/reports/survey-of-working-life-2018>

## Administrative Tax Data on Employment Types

Administrative data from the Inland Revenue Department (IRD) cannot capture data on subcategories of “employees” but can help paint a picture of changes in numbers and earnings of the self-employed compared to wage and salary employees. These data tell a similar story as survey data with respect to self-employment (see Figure 7). The administrative data show a higher number of people with both self-employment income and wage and salary income than survey data, because administrative data reflect those with such income over the course of an entire year, while the survey data only consider employment status in the survey week. The IRD data show that the proportion of workers with income from self-employment declined from around 27 per cent to 21 per cent between 2000 and 2017, and the proportion for whom self-employment is the main source of earned income declined from 20 to 16 per cent over the same period.<sup>26</sup> A subsequent section includes a discussion of these data sources and why they may be unreliable, particularly with respect to the monitoring of independent and dependent contracting.

<sup>26</sup> Percentage estimates based on the data included in Figure 7. These not official statistics; they have been created for research purposes from Stats NZ’s IDI.

**Figure 7: New Zealand workers' sources of income, 2000–2017**



Source: Analysis of the Integrated Data Infrastructure (IDI), which is managed by Statistics New Zealand. The results in this graph are not official statistics; they have been created for research purposes from the IDI in accordance with security and confidentiality provisions of the Statistics Act 1975.

## Earnings by Employment Type

Surveys over the past several years have used different terms when collecting data on the earnings of non-standard workers, making it somewhat challenging to compare changes over time. However, the limited data available – from both surveys and administrative tax data – suggest that the general trend is a decline in earnings for non-standard workers relative to permanent employees (see Table 2). This is true for both non-standard workers classified as employees as well as the self-employed. While permanent employees' median weekly and hourly earnings have slowly, but steadily, increased since 2012, the earnings of casual employees have declined.

**Table 2: Median earnings by employment type, as available**

Employee type	Median hourly earnings 2012 (\$)	Median weekly earnings 2012	Median hourly earnings 2016	Median weekly earnings 2016	Median hourly earnings 2018	Median weekly earnings 2018
Permanent employee	22.88	901	24.00	964	26	1,055
Casual employee			16.67	340	17	324
Temporary employee	17.00	487				
Temporary agency employee			20.62	740	24*	863*
Fixed-term employee			24.66	840	24*	863*
Seasonal employee			18.50	640		
Self-employed, zero employees, contractor					25	767
Self-employed, zero employees, non-contractor					16	441

\*Temporary agency and fixed-term employee categories were combined in the publicly available 2018 survey data, but were disaggregated in the collection.

Source: Stats NZ. (2018). *Survey of Working Life, 2018*; Stats NZ. (2017). *Employment relationships – permanent and temporary workers. December 2016 quarter*. Retrieved from <https://www.stats.govt.nz/assets/Reports/Employment-relationships-permanent-and-temporary-workers-December-2016-quarter/employment-relationships-permanent-temporary-workers-december-2016-quarter.pdf>; Stats NZ. (2013). *Survey of Working Life. December 2012 quarter*.

Survey data also show that self-employed workers report significantly lower median incomes and lower hourly earnings than those working for wages or salaries. As Figure 8 shows, the median weekly earnings level of those in self-employment has increased at a much lower rate than that of those in wage and salary employment over the past two decades. In 1998, self-employed workers had higher weekly median earnings than employees working for wages and salaries, (\$529 and \$518, respectively);<sup>27</sup> today, self-employed workers make significantly less than their counterparts working for wages and salaries (\$729 and \$997, respectively). Survey data suggest that self-employed workers also faced much more significant earnings losses during the Global Financial Crisis, and have yet to recover from these suppressed earnings (see Figure 8).

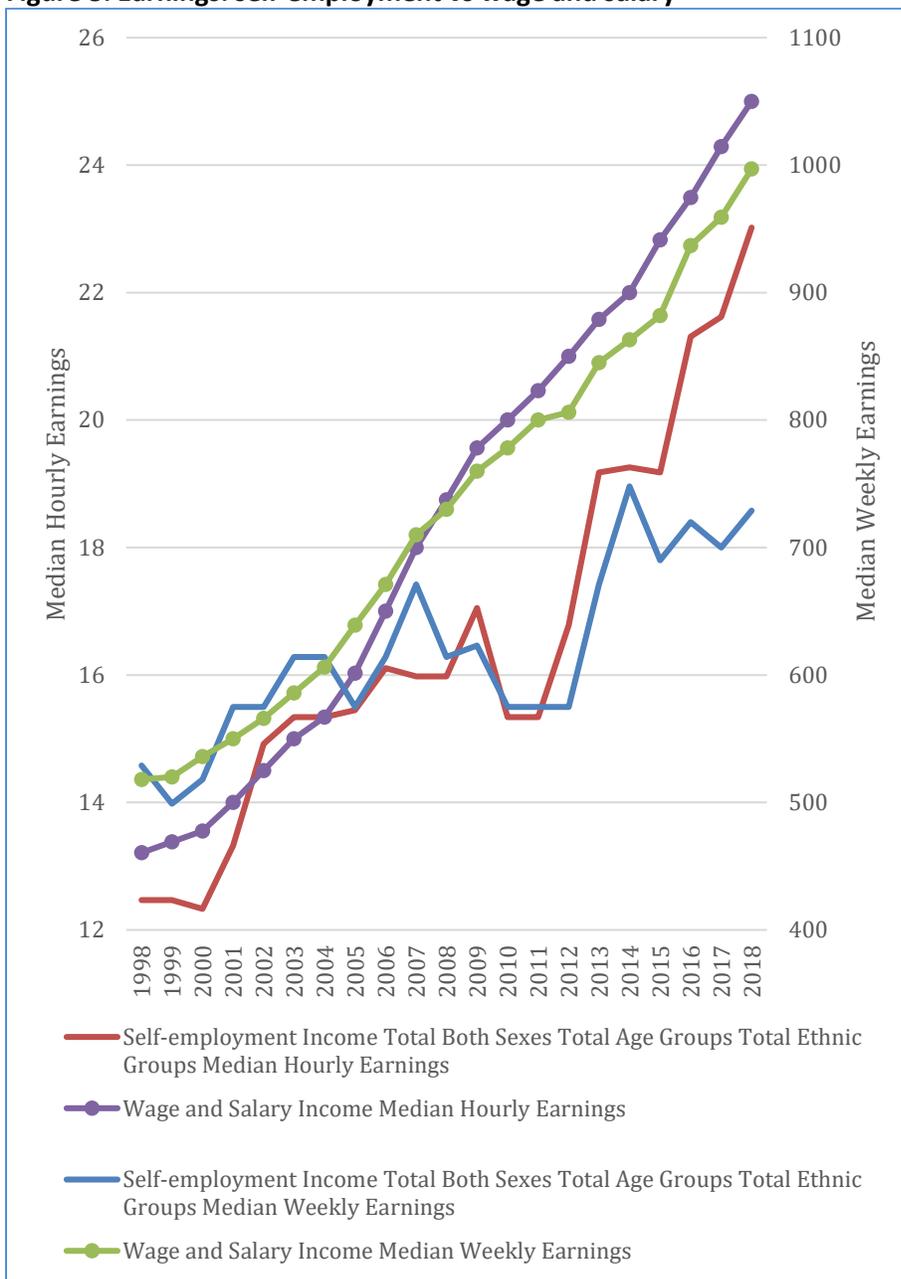
Median earnings data mask more troubling trends across the income distribution. Research conducted by the New Zealand Council of Trade Unions found that an estimated 41 per cent of self-employed workers earned less than minimum hourly wage in 2015, and 51 per cent were earning under the living wage, which is considered to be the income necessary to provide workers and their families with the basic necessities of life.<sup>28</sup> The research showed that self-employed workers falling into the bottom 30 per cent of earnings had falling earning rates in real terms between 1998 and 2015.<sup>29</sup>

<sup>27</sup> Stats NZ. (2019). Earnings from wages and salaries and self-employment, by sex, age groups and ethnic groups.

<sup>28</sup> New Zealand Council of Trade Unions. (2015). *Submission to the Minimum Wage Review 2015*. Retrieved from <https://www.union.org.nz/wp-content/uploads/2017/10/151019-Minimum-Wage-Review.pdf>

<sup>29</sup> New Zealand Council of Trade Unions. (2017). *Shrinking Portions to Low and Middle-income Earners: Inequality in Wages & Self-Employment 1998–2015*. Retrieved from <http://www.union.org.nz/wp-content/uploads/2017/08/Inequality-Wages-Self-Employment-1998-2015.pdf>

**Figure 8: Earnings: self-employment vs wage and salary**



Source: Stats NZ. Earnings from wages and salaries and self-employment, by sex, age groups and ethnic groups.

## Data on Independent Contractors

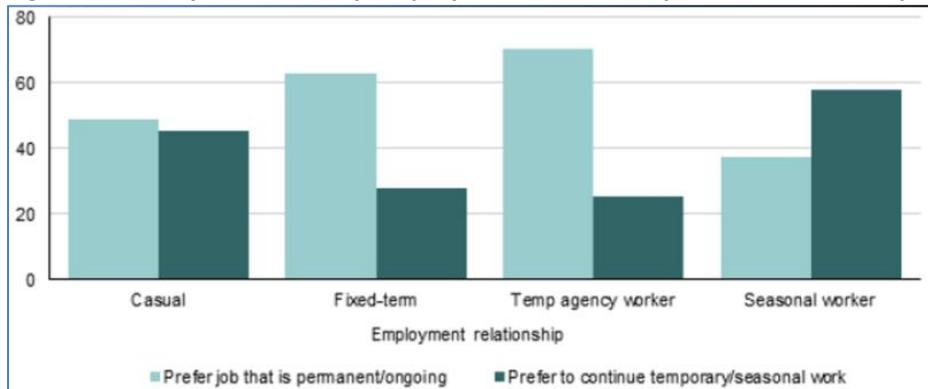
In 2018, for the first time, Stats NZ’s Survey of Working Life included a series of questions to help create a better understanding of independent contracting in New Zealand. As there is no legal definition of “independent contractor”, the survey relied on people’s own view of their employment status. The survey found just under 144,000 workers (5.4 per cent of the total workforce) reported that their main job was contracting. Half reported that they relied on one client or business for most or all of their work, suggesting some level of economic dependency. Contractors tended to earn a similar amount to

employees on an hourly basis (both had median hourly earnings of \$25), but significantly less on a weekly basis, which is at least partly attributable to working fewer hours (averages of 34 and 37 hours, respectively). Self-employed non-contractors worked fewer hours (an average of 31) and had lower hourly earnings (a median of \$16 per hour).<sup>30</sup>

## Employment Preferences, and Income of Those in Non-Standard Work

Even if there have not been significant changes in the share of workers in the broad categories of employment relationships in New Zealand,<sup>31</sup> the challenges specific to workers in non-standard employment have increased, and likely will continue to do so as the nature of work changes. Over half of temporary agency and fixed-term workers have consistently reported that they would prefer permanent and ongoing employment. This expressed preference for permanent work has been greater in periods when New Zealand has experienced higher rates of unemployment, which may suggest that workers are pushed into non-standard employment arrangements when the economy weakens. For example, survey data from 2012, when New Zealand’s unemployment rate was 6.4 per cent, show a significantly stronger preference for permanent employment than comparable survey data from 2016 and 2018, when the unemployment rates were 5.2 and 4.3 per cent, respectively.<sup>32</sup>

**Figure 9: Work preference, by employment relationship, December 2012 quarter**



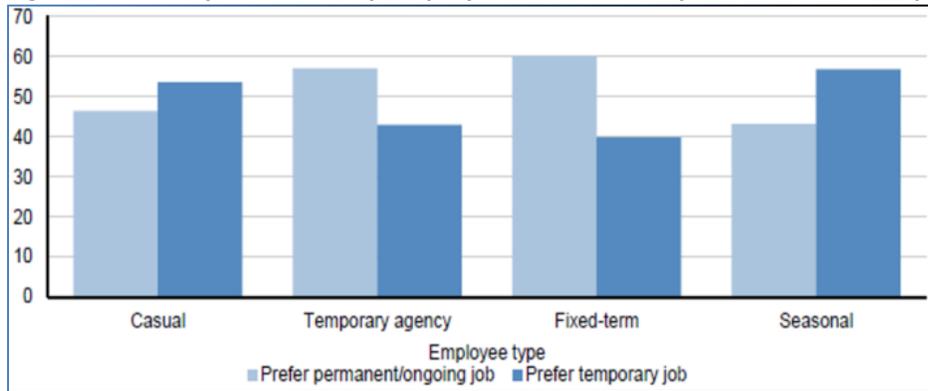
Source: Stats NZ. (2013). *Survey of Working Life 2012*.

<sup>30</sup> Stats NZ. (2018). *Survey of Working Life, 2018*.

<sup>31</sup> This position should not be taken as indisputable, as it is possible that the existing data relied upon in making this conclusion is not representative of the reality facing many New Zealand workers. A subsequent section explores this topic.

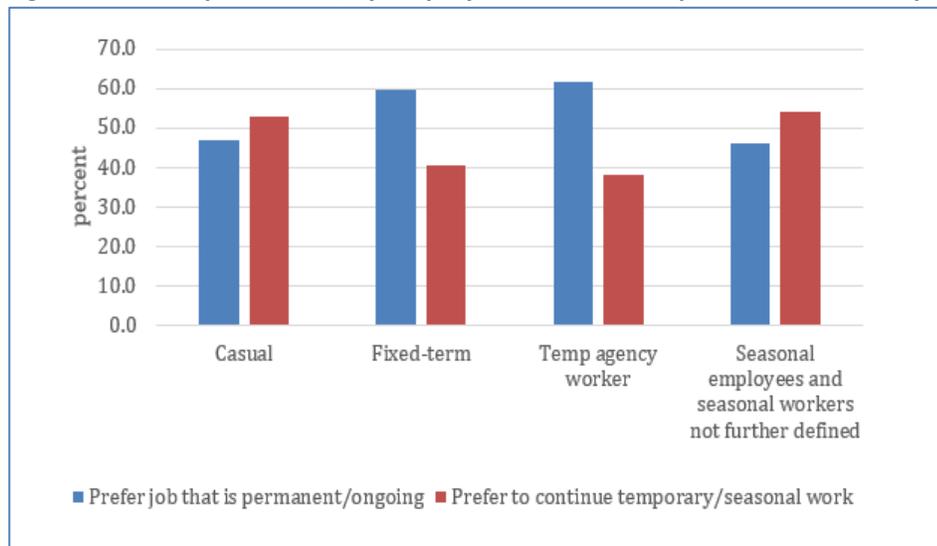
<sup>32</sup> Stats NZ. (2019). Unemployment Rate. Retrieved from <https://www.stats.govt.nz/indicators/unemployment-rate>

**Figure 10: Work preference, by employment relationship, December 2016 quarter**



Source: Stats NZ. (2016). Employment relationships – permanent and temporary workers: December 2016 quarter.

**Figure 11: Work preference, by employment relationship, December 2018 quarter**



Source: Stats NZ. (2018). *Survey of Working Life, 2018*.

When it comes to the self-employed, the 2018 Survey of Working Life shows a strong preference for such work over work as an employee. It also shows that the vast majority of those who identify as self-employed have a significant amount of workplace autonomy and control over how their work is done. These responses span those who identify as contractors and non-contractors.<sup>33</sup> However, given that 2018 was the first year in which these questions were asked, it is impossible to track this trend over time, or the extent to which responses vary with the economic climate. It is also worth noting that these responses only account for a worker’s primary job, and were self-identified. Thus, self-employment done for supplementary income was not accounted for; nor was work in which the worker identified as being in an employment relationship, when in reality they could have been classified (or misclassified) as a contractor.

<sup>33</sup> Stats NZ. (2018). *Survey of Working Life, 2018*.

## V. Tools Available to Ensure Economic and Social Security for Workers

This paper focuses on three central tools that policymakers and workers have to promote the economic and social security of New Zealand's workforce: statutory protections based on employment status; the ability to bargain collectively; and welfare and unemployment benefits. It also considers the role of education, training and career services as an informal, fourth "tool". For simplicity, this report categorises summaries and recommendations into these four tools; however, the tools are interrelated. For example, labour unions can fight to advance enterprise-specific protections, but also to enact national statutory protections; income transfers through the welfare or tax system can supplement the earnings of workers while they are employed as well as unemployed.

### A. Tool One: Statutory Benefits and Protections Based on Employment Status

One commonly used method of ensuring workers are protected is for governments to mandate statutory minimum protections for those in an employment relationship. Under current law, most of these protections are the obligation of the employer, and provided in exchange for employees' compliance with the conditions of their employment contract. Self-employed workers, on the other hand, are expected to be able to negotiate their own contract terms with autonomy, and absorb the risks and rewards of their independent business efforts.

#### Protections and Benefits Associated with Employment in New Zealand

Workers classified as employees fall under the purview of New Zealand's main industrial statute, the Employment Relations Act 2000 (ER Act), and are guaranteed "minimum code" entitlements if they meet the necessary employment history. These minimum entitlements are as follows:

- four weeks' annual paid holidays and 11 statutory public holidays
- a minimum wage (currently \$17.70 per hour)
- coverage under the Wages Protection Act 1983 that requires employers to make payments in money and limits their ability to make deductions, agreed or otherwise, from wages
- payment of time and a half for working on public holidays
- five days' paid sick leave per annum after the first six months of employment
- rest and meal breaks (rest breaks must be paid).

A 2016 amendment to the ER Act prohibited any employment agreement that does not provide guaranteed hours but obligates employees to make themselves available for work. The law requires employers and employees to record any agreed hours in the employment agreement. If employers seek to require employees' availability beyond the agreed hours, they must provide an availability provision in the employment agreement setting out reasonable compensation. If an employment agreement does

not provide guaranteed hours, the employee may refuse any work offered, and is protected from employer retaliation for doing so.<sup>34</sup>

A variety of other laws ensure employees are provided with additional benefits and protections, including that:

- retirement savings (KiwiSaver) contributions are automatically deducted from employee paychecks; employers are required to contribute 3 per cent of employees' pay for this purpose.
- the employer must deduct and file income tax (pay-as-you-earn tax or PAYE) on employees' behalf.

## Regulating Self-Employed Workers

Separate but related to the employment relations system is New Zealand's competition system, which is primarily governed by the Commerce Act 1986 and regulates all entities supplying or acquiring goods or services. According to the Ministry of Business, Innovation and Employment (MBIE), the objective of the competition regulatory system is to promote competition, or outcomes consistent with competition, in markets in New Zealand for the long-term benefit of consumers. The system is made up of three main components:

1. **Competition law:** based around the Commerce Act 1986, which protects the process of competition or, if competition is limited, provides for regulation for outcomes consistent with competition.
2. **Competition policy:** the advocacy and advice processes whereby officials with competition assessment expertise seek to promote competition to inform wider government policies and practice (e.g., competition impacts in regulatory impact assessments).
3. **Competition institutions:** the institutional arrangements through which competition law and policy is given effect. In particular, the Commerce Commission, an independent Crown entity, administers and enforces the Commerce Act 1986 and is monitored by the MBIE.<sup>35</sup>

The competition system effectively prevents enterprises from banding together to fix (i.e., drive up) prices. Specifically, the Commerce Act prohibits agreements that would substantially lessen competition or contain a "cartel provision", which is defined to include price-fixing. It is generally understood that individuals working as independent contractors, as small enterprises, are regulated under the Commerce Act. Consistent with international labour standards and obligations, the Commerce Act includes a number of exemptions, including for agreements relating to employees' wages, salaries or working conditions, and thus ensures that those classified as employees can organise and bargain collectively through the relevant mechanisms in the ER Act, discussed below.

When workers are either misclassified or otherwise pushed into independent contractor status, not only do they lose the benefits and protections associated with formal employment, they also lose the ability to bargain collectively for better remuneration and working conditions because competition law prohibits it. However, the Commerce Commission has the authority to authorise an anti-competitive

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<sup>34</sup> Employment New Zealand. (2016). Hours of Work Law Changes 2016. Retrieved from <https://www.employment.govt.nz/about/employment-law/employment-law-changes/hours-of-work-law-changes-2016/>

<sup>35</sup> Ministry of Business, Innovation and Employment. (n.d.). Competition Regulatory System. Retrieved from <https://www.mbie.govt.nz/cross-government-functions/regulatory-stewardship/regulatory-systems/competition-regulatory-system/>

agreement where the Commission is satisfied that the benefits to the public outweigh the harm of the agreement.<sup>36</sup>

## Enforcement Structure and Authorities

Workers can challenge the nature of their working relationship (i.e., whether they are an employee or a contractor). This is determined by either the Employment Relations Authority or the Employment Court on a case-by-case basis.<sup>37</sup> The ability to challenge one's employment status is meant to ensure employment protections are not undermined by misclassifying employees as contractors.

In addition, the Labour Inspectorate's office within the MBIE consists of labour inspectors and the Labour Standards Early Resolution (LSERT) team. Inspectors monitor, investigate and enforce employment laws, while LSERT serves a triage function, helping determine which cases warrant what level of investigation and attention. In addition to the investigative functions of the Labour Inspectorate, the office is meant to assist employers in understanding and complying with employment laws.<sup>38</sup>

## Shortcomings of Statutory and Employment-Based System of Protections and Benefits for Non-Standard Workers

There are a few core problems with relying on a system of statutory employment-based benefits and protections. This is not to say that there should not be such a system; it is simply to say that this system has shortcomings and thus must be used in conjunction with other systems.

### Exclusion of Non-Covered Workers

The key shortcoming of a national, employment-based system of protections and benefits is that it does not cover those workers who do not meet the necessary thresholds or classifications for coverage. For example, employees in New Zealand do not become eligible for parental leave or paid sick leave until they have been employed for six months and meet certain hours-per-week requirements. Unemployed workers, as well as those classified, or misclassified, as contractors, are not guaranteed nationally mandated benefits whatsoever. Accordingly, the greater the obligations placed on employers to provide benefits to their employees, the more an employer may see a benefit in shifting to contracting out, or automating, where possible, their workforce needs.

This is not to say that there is no benefit to employers of having obligations to their workers. Employers who provide their workers with long-term job security and attractive compensation and benefits can benefit from worker loyalty, lower turnover and enhanced employee performance and productivity. But

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<sup>36</sup> Commerce Commission of New Zealand. Agreements that substantially lessen competition. <https://comcom.govt.nz/business/avoiding-anti-competitive-behaviour/agreements-that-substantially-lessen-competition>

<sup>37</sup> Employment New Zealand. (n.d.). Employment Relations Authority. Retrieved from <https://www.employment.govt.nz/resolving-problems/escalation-unresolved-problems/employment-relations-authority/>; Employment New Zealand (n.d.). Employment Court. <https://www.employment.govt.nz/resolving-problems/escalation-unresolved-problems/employment-court/> and Employment Court of New Zealand. (n.d.) Employment Court. Retrieved from <https://www.employmentcourt.govt.nz/>

<sup>38</sup> Employment New Zealand. (n.d.) Labour Inspectorate. Retrieved from <https://www.employment.govt.nz/resolving-problems/steps-to-resolve/labour-inspectorate/>

systems that use employment status and duration to assign benefits categorically leave those workers who do not meet the necessary minimums without coverage.

### Focus on Minimum Standards and Non-Responsiveness to Sector-, Occupation- or Enterprise-Specific Needs

A reliance on national, employment-based benefits and protections also poses challenges when it comes to sector-, occupation- or enterprise-specific needs. National, employment-based structures ascribe minimum benefits and protections such as minimum wage, minimum paid leave and minimum health and safety protections. Workers involved in more dangerous sectors require more stringent safety protections; workers in occupations that require higher levels of education and training should command higher than minimum-wage compensation; workers in sectors characterised by high turnover and employment uncertainty may need more individualised redundancy compensation for income-smoothing purposes. Other complementary systems can help promote protections and benefits that are more customised to the specific nature of certain types of work.

### Slow Responsiveness to Changing Needs, Especially Related to Technology and Automation

Lastly, a system that relies on nationally determined, employment-based benefits can be slow to catch up with worker needs, especially related to technology and automation. A system of statutory minimum protections, by definition, relies on lawmakers to enact new statutes to keep pace with changing demands. This process can be slow-moving, and relies on national-level negotiations and the input of multiple stakeholders. Any resulting changes may be more of a lowest-common denominator response, rather than something representative of modern-day needs. Workers whose jobs are associated with significant technological adoption are left especially vulnerable.

As Valerio De Stefano, professor of labour law at the University of Leuven, points out:

Technological tools and digitalised supervision systems are increasingly used to manage the workforce in modern workplaces. Workers' surveillance is, of course, nothing new; business historians such as David Landes (1969) have long reported that concentration of workers in factories started occurring before mechanisation, to monitor and direct the workforce better than what was possible in processes based on dispersed homework. Fordist- Taylorist business models were also based on extensive monitoring of workers.

Information technology and artificial intelligence, however, allow in principle the carrying out of monitoring and surveillance of workers activities to extents unthinkable in the past, as well as the gathering and processing of an enormous amount of data on these activities. More and more workers, for instance, use wearable work

instruments that enable registering of their movements and location minute by minute, also measuring their work pace as well as breaks.

...

The way these management systems operate is almost never transparent, as companies do not share the methods through which ratings and customers' feedbacks over the workers' activities are gathered and processed. Management by the rating is also spreading ever more beyond platform work, with apps that allow processing patrons' and restaurants' feedbacks over individual waiters.<sup>39</sup>

While there is clearly a role for national standards when it comes to the impact of technology and automation on individual workers and their privacy, the frameworks must be adaptable. National standards, however, can be complemented with collective agreements at the enterprise and even sector level. As Professor De Stefano summarizes, "Collective agreements could address the use of digital technology, data collection and algorithms that direct and discipline the workforce, ensuring transparency, social sustainability and compliance with these practices with regulation."<sup>40</sup>

## B. Tool Two: Collective Bargaining, Unions and Organising for Benefits and Protections

New Zealand labour law derives from two sources: statutes enacted by Parliament that outline both employees' minimum entitlements and pathways to collective action, and common law, which is the product of courts and tribunals.

In addition to laying out the specific protections and benefits associated with employment, the ER Act contains provisions on freedom of association, unions, collective bargaining, collective agreements, individual employment agreements, strikes and lockouts, personal grievances, disputes, enforcement of employment agreements, the Mediation Service, the Employment Court, the Employment Relations Authority and labour inspectors.

### Collective Bargaining in Practice

A primary objective of the ER Act is to encourage collective bargaining. The law creates an obligation for unions and employers to bargain in good faith, and a recent amendment to the law restored an obligation to conclude an agreement unless there is genuine reason, based on reasonable grounds, not to. Collective bargaining commences when either a union or employer (or collective of either) issues a notice to the other party stating that they are initiating bargaining. Employers may only initiate

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<sup>39</sup> De Stefano, V. (2018). "Negotiating the algorithm": Automation, artificial intelligence and labour protection. *International Labour Office Employment Policy Department, Employment Working Paper No. 246*. Retrieved from [https://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/---emp\\_policy/documents/publication/wcms\\_634157.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_policy/documents/publication/wcms_634157.pdf)

<sup>40</sup> Ibid.

collective bargaining if the work to be covered was part of a current or past collective agreement. Negotiated terms may include anything, as long as it is not in conflict with the law. The scope could include anything from the ability of employers to monitor staff emails to how decisions about hiring and layoffs are made, or how sick leave is accrued. At a minimum, collective employment agreements must include a coverage clause detailing which types of employees and jobs are to be covered by the agreement and the wage and salary rates of covered workers. Agreements may last for no more than three years.

Both employers and employees are given the right to participate in strikes or lockouts in order to support their bargaining claims, but may only engage in such activity when they are not party to a collective agreement (i.e., an existing agreement has expired, or none existed).<sup>41</sup>

## Collective Bargaining Coverage

According to recent data, New Zealand's collective bargaining coverage rate for all employees is between 15 and 16 per cent, and around 18 or 19 per cent of employees are members of unions.<sup>42</sup> There has been a precipitous decline in the share of employees covered by collective agreements across OECD countries since 1985, but an even steeper decline in New Zealand (see Figure 12). Among all employees, only 19 per cent were members of unions in September 2016, and union membership was much lower among temporary employees. Casual employees had the lowest unionisation rate, at only 8 per cent. 15 per cent of fixed-term workers were members of unions.<sup>43</sup>

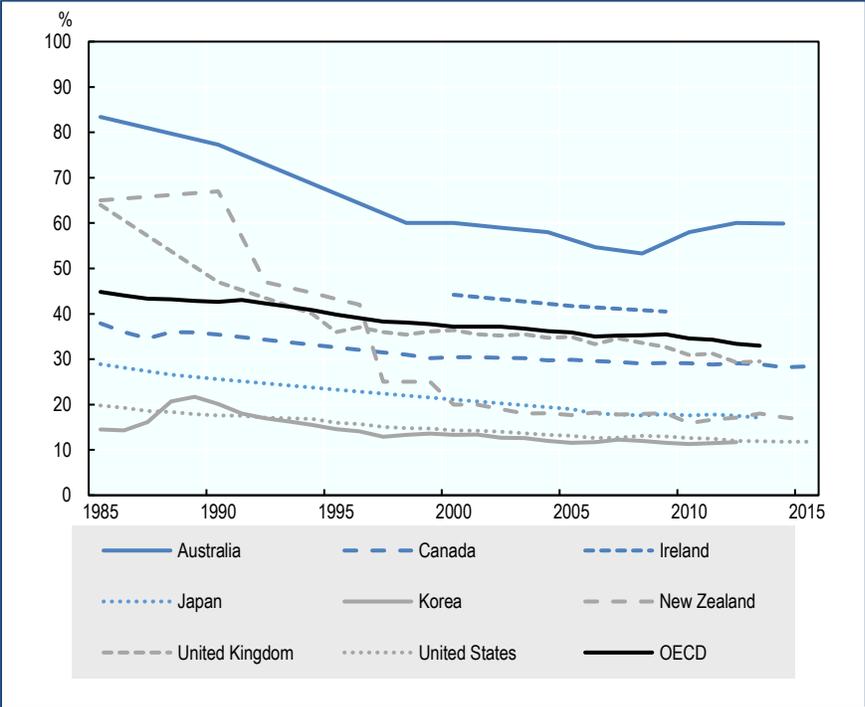
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<sup>41</sup> Employment New Zealand. (n.d.) Collective bargaining. Retrieved from <https://www.employment.govt.nz/starting-employment/unions-and-bargaining/collective-agreements/collective-bargaining/>

<sup>42</sup> Rosenberg, B. (2018). Insecure Work in New Zealand – Labour History Project. *LHP Bulletin*, 71. Retrieved from <http://www.lhp.org.nz/index.php/insecure-work-in-new-zealand/> and OECD. (2017). *OECD Employment Outlook 2017*. Retrieved from [https://www.oecd-ilibrary.org/docserver/empl\\_outlook-2017-en.pdf?expires=1563326569&id=id&accname=ocid56017414&checksum=9CA4EC3D7A7ED85808B79B4ABAF5B6D2](https://www.oecd-ilibrary.org/docserver/empl_outlook-2017-en.pdf?expires=1563326569&id=id&accname=ocid56017414&checksum=9CA4EC3D7A7ED85808B79B4ABAF5B6D2)

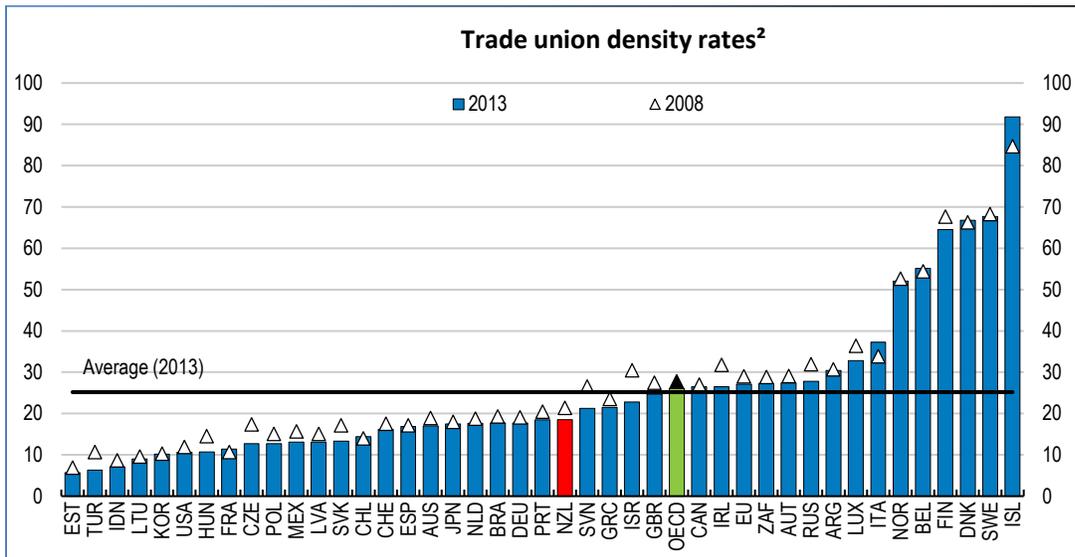
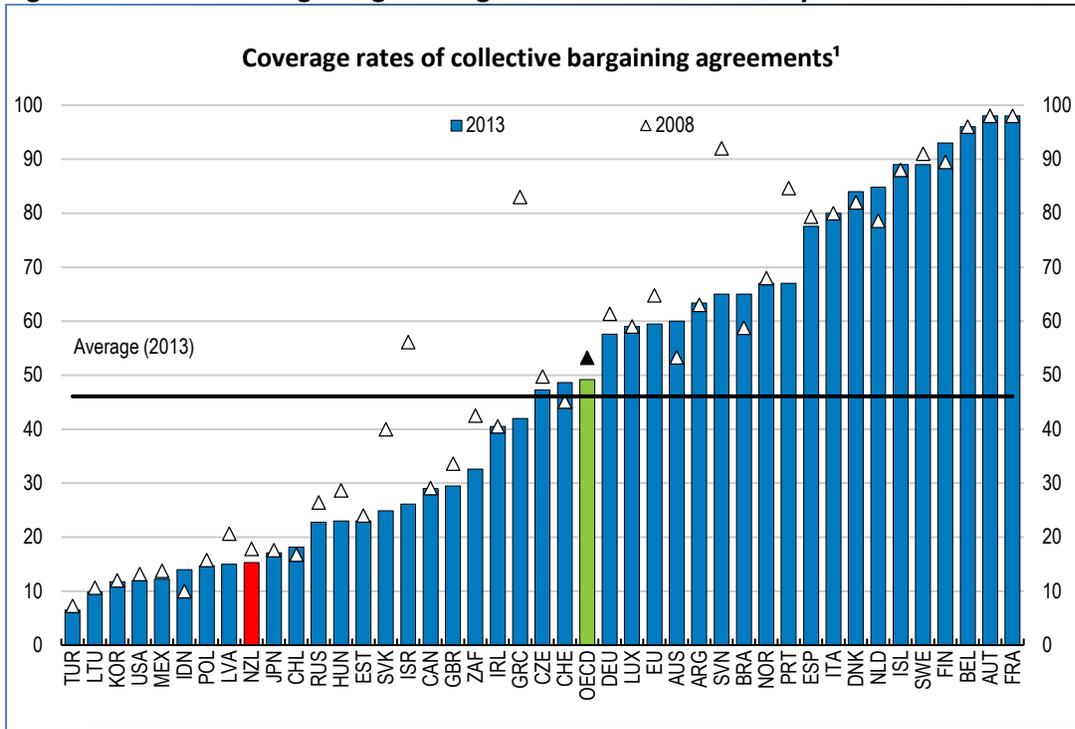
<sup>43</sup> Ibid.

**Figure 12: Percentage of employees covered by collective agreements in selected OECD countries, 1985–2015**



Source: OECD. (2017). *OECD Employment Outlook 2017*.

**Figure 13: Collective Bargaining Coverage and Trade Union Density**



1. The coverage rate is measured as the percentage of workers who are covered by collective bargaining agreements, regardless of whether or not they belong to a trade union. For 2013, data refer to 2014 for Finland and Portugal; 2012 for Australia, Estonia, France, Indonesia, Israel, Korea, Lithuania, Luxembourg, Mexico, Poland and South Africa; 2011 for New Zealand; 2010 for Italy; 2009 for Ireland. For 2008, data refer to 2010 for Argentina; 2009 for Brazil, Chile, Denmark, Estonia, Hungary, Ireland, Latvia, Mexico, Norway, the Russian Federation and Switzerland; 2007 for New Zealand, Poland and Sweden; 2005 for Italy; 2000 for Israel.

2. The union density rate is the percentage of workers belonging to a trade union. The rates refer to wage and salary workers. The last available year is 2015 for Canada, Iceland, Ireland, Japan, Mexico, South Africa, the United Kingdom and the United States; 2014 for Brazil, Chile, Korea, New Zealand; 2013 for Switzerland; 2012 for Hungary, Indonesia, Israel, Latvia, Lithuania, Luxembourg, Poland and Portugal.

Source: OECD. (2017). *Economic Policy Reforms: Going for Growth*. Retrieved from <https://www.oecd-ilibrary.org/docserver/growth-2017-en.pdf?expires=1563233516&id=id&accname=ocid56017414&checksum=D90A8C7E1919DCC4CDAE8B4C23B77AB8>

## Shortcomings of the Collective Bargaining Structure for Those in Non-Standard Employment, and Why Solutions Under Discussion are Problematic

Given the declining union coverage levels and particular concerns over low-wage workers and non-standard workers in sectors that are difficult to organise (or excluded from organising entirely, in the case of independent contractors), the current Government has taken a number of steps to try to facilitate collective action. As explained earlier in this paper, workers not classified as employees are generally understood to be unable to organise and bargain collectively; however, this position is not universally accepted, and a leading critic of it is the ILO. There is an inherent tension between antitrust laws and conventions and labour/industrial relations laws and conventions. This tension is being brought to the fore in New Zealand through two separate but related efforts: the Government's responses to the Film Industry Working Group and the Fair Pay Agreements Working Group.

### The Hobbit Law and Film Industry Working Group

In 2010, the Government, then led by the National Party, enacted the Employment Relations (Film Production Work) Amendment Act 2010, known colloquially as the "Hobbit Law", which categorically determined all film industry workers to be independent contractors unless party to a written employment agreement. Prior to the law, employment classifications were based on the "real nature of the relationship", and workers had the ability to petition to employment relations authorities if they believed themselves to be misclassified. The law was a response to an employment dispute involving the actors' union, New Zealand Actors Equity (NZAE), and *The Hobbit* film production. The dispute arose after NZAE attempted to negotiate a collective agreement with the film's producers after seeing contract terms the workers determined failed to meet international, voluntary industry standards. It was perceived that this effort destabilised the film industry and jeopardised the filming of *The Hobbit* in New Zealand. This uncertainty was especially concerning because it followed in the wake of a 2005 ruling by the Supreme Court that a model maker involved in filming of *the Lord of the Rings* trilogy was an employee, not a contractor.<sup>44</sup>

Warner Brothers, which owned the production of *The Hobbit*, argued that uncertainty concerning worker classifications and collective bargaining led them to reconsider filming in New Zealand and consider other contending countries, including the Czech Republic, Ireland, Scotland, Canada and Australia.<sup>45</sup> The "Hobbit Law" was the Government's response to its fear of the loss of these particular films and of the potential economic impact to the industry and its workers overall.

Having run on a platform of repealing the Hobbit Law, the current Labour-led Government established a Film Industry Working Group (FIWG) comprised of industry representatives and charged with advancing recommendations on how to best reform the law to enable workers to bargain collectively. The FIWG released its report in late 2018; its key recommendations are as follows:

- Retain the carve-out from the ER Act for film production workers, thus maintaining the default positions of film industry workers as independent contractors.
- Broaden the carve-out to be inclusive of all workers engaged with entities involved in "screen" production work, not just film.

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<sup>44</sup> The "Hobbit Law": Exploring Non-standard Employment. (2011). *New Zealand Journal of Employment Relations*, 36(3). Retrieved from <https://www.nzjournal.org/NZJER36%283%29.pdf>

<sup>45</sup> Tyson, A.F. (2011). A Synopsis of The Hobbit Dispute. *New Zealand Journal of Employment Relations*, 36(3), 5–13. Retrieved from <https://www.nzjournal.org/NZJER36%283%29.pdf>

- Recognise the unique nature of the screen industry in any new labour relations system pertaining to it.
- Require all screen production workers to be engaged consistently with four basic principles: good faith; protection from bullying, discrimination and harassment; fair and reasonable termination of contracts; and fair rate of pay.
- Enable collective bargaining in relation to the remuneration and conditions of work for screen production worker sub-industries, but prohibit industrial action.
- Establish a framework for resolving disputes in the screen industry (outside collective bargaining) with a three-tier process: mediation, arbitration, then litigation, if needed, to enforce any agreements reached through mediation or arbitration.<sup>46</sup>

### Fair Pay Agreements Working Group

Around the time of the establishment of the FIWG, the Labour-led Government also established a Fair Pay Agreements Working Group (FPAWG). This was a response to another platform element from the Labour Party to create sector-wide collective bargaining with terms binding to all workers and employers in a sector, in contrast to the current legal framework, which is centered around firm level collective bargaining. Fair pay agreements are meant to address a power imbalance between workers and employers that is not being corrected by the existing collective bargaining system, which results in poor outcomes, particularly for lower-paid workers. The FPAWG recommended the following with respect to design of a new framework:

- Workers and their union representatives could initiate bargaining with a minimum threshold of 1000 or 10 per cent of workers in the sector or occupation, whichever is lower.
- A “public interest” trigger should be included if there are harmful labour market conditions in the sector or occupation.
- Agreements would cover all workers in a sector – not just employees.
- Parties should nominate a representative organisation to bargain on their behalf that should also represent non-members.
- When disputes arise during bargaining, parties should go to mediation, and, if unsuccessful, should be able to apply to the Employment Relations Authority have the matter determined.
- If parties reach agreement, conclusion should require ratification by a simple majority of both employers and workers.
- If the terms of the agreement are determined by the Employment Relations Authority, ratification would not be required.<sup>47</sup>

### Conflicting Recommendations, Responses and Interaction with International Obligations

Taken in tandem, these recommendations create complexity when it comes to understanding the collective bargaining abilities of independent contractors and the future of collective bargaining in New Zealand. If independent contractors are given a pathway to bargain collectively (through fair pay agreements or the process recommended by the FIWG), it becomes increasingly challenging to maintain

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<sup>46</sup>Film Industry Working Group. (2018). *New Zealand’s screen industry: Great work, great workers. Recommendations of the Film Industry Working Group to the Government*. Retrieved from <https://www.mbie.govt.nz/assets/4c8ac9afb6/recommendations-of-film-industry-working-group-to-government.pdf>

<sup>47</sup>Fair Pay Agreement Working Group. (2018). *Fair Pay Agreements: Supporting workers and firms to drive productivity growth and share the benefits*. Retrieved from <https://www.mbie.govt.nz/assets/695e21c9c3/working-group-report.pdf>

the position that independent contractors are categorically prohibited from bargaining collectively. However, if the government decides to exempt independent contractors from fair pay agreements, it will create an incentive for employers to classify workers as such. This downward classification would threaten the ability of these workers to access wage and leave entitlements and other protections and benefits limited to employees.

Relatedly, the recommendations of the FIWG, in particular, pose challenges when it comes to New Zealand's adherence to its obligations as a member of the ILO. As an ILO member, New Zealand is bound by Convention No. 98, which recognises the right of workers to organise and bargain collectively. In the ILO context, the word "worker" is used in a broad sense, and the principle of freedom of association has a universal application that covers workers and employers "without distinction whatsoever".<sup>48</sup> In 1998, the ILO's Committee of Freedom of Association, one of the two bodies set up to oversee the application of ILO standards, underscored this position, and requested the Polish Government to take the necessary measures to ensure all workers, including the self-employed, enjoyed the right to establish and join organisations of their own choosing.<sup>49</sup> While there is no explicit convention related to the right for workers to engage in industrial action (also known as strikes or lock-outs), the Committee of Freedom of Association and the Committee of Experts on the Application of Conventions and Recommendations (the ILO's other supervisory body) have frequently and consistently stated that workers have a fundamental right to strike.<sup>50</sup>

Also relevant is the ILO's Employment Relationship Recommendation 2006 (No. 198), which states that the determination of the existence of an employment relationship "should be guided primarily by the facts relating to the performance of work and the remuneration of the worker, notwithstanding how the relationship is characterised in any contrary arrangement, contractual or otherwise, that may have been agreed between the parties." It goes on to say that member countries should consider a broad range of indicators for determining employment relationships, with "a legal presumption that an employment relationship exists where one or more relevant indicators is present."<sup>51</sup> While these are recommendations and not binding conventions, they further illuminate the ILO's view that the nature of the work should guide the determination of an employment relationship, with such a relationship essentially being the default. To the contrary, New Zealand has established a system under which an entire sector of workers in a sector is deemed not to be employees, the nature of their work being irrelevant.<sup>52</sup>

In forming the FPAWG, the Government set parameters that took industrial action off the table as recourse; however, in the case of the FIWG, the working group members themselves recommended such a prohibition. In the context of the FPAWG, such a prohibition would not be a significant challenge, given workers would still have access to this recourse through enterprise-level bargaining. However, it ignores the very likely reality that the current and proposed situation of film industry workers runs counter to ILO recommendations, because these workers' classifications are not based on the facts and

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<sup>48</sup> International Labour Organization. (n.d.). Compilation of decisions of the Committee on Freedom of Association. Retrieved from [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:70002:0::NO::P70002\\_HIER\\_ELEMENT\\_ID:P70002\\_HIER\\_LEVEL:3943847,1](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:70002:0::NO::P70002_HIER_ELEMENT_ID:P70002_HIER_LEVEL:3943847,1)

<sup>49</sup> International Labour Organization. (2012). *Definitive Report – Report No 363, March 2012. Case No 2888 (Poland) – Complaint date: 28-JUL-11*. Retrieved from [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50002:0::NO::P50002\\_COMPLAINT\\_TEXT\\_ID:3057194](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50002:0::NO::P50002_COMPLAINT_TEXT_ID:3057194)

<sup>50</sup> International Labour Organization. (2016). *Individual Case (CAS) – Discussion: 2016, Publication: 105th ILC session (2016). Right to Organise and Collective Bargaining Convention, 1949 (No. 98) – Ireland (Ratification: 1955)*. Retrieved from [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID:3284597](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3284597)

<sup>51</sup> International Labour Organization. (2006). *R198 – Employment Relationship Recommendation, 2006 (No. 198)*. Retrieved from [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312535](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312535)

<sup>52</sup> Ibid.

circumstances of their employment relationship, and the legislation precludes them from industrial action.

Other countries have shown that there are ways to allow workers to organise in a way that attempts to strike a balance between commerce and labour laws without barring industrial action, or threatening the economic viability of industries. Recent steps, or considerations, in Ireland and Australia can serve as models for New Zealand's efforts to address the need for film industry workers to organise collectively. To an extent, these efforts could also address some of the aims of fair pay agreements.

The Australian Competition and Consumer Act 2010 generally requires businesses to act independently of competitors. However, the Australian Competition and Consumer Commission (ACCC) can grant independent contractors an exception if it is satisfied that the public benefit from the arrangement outweighs the public detriment. Independent contractors can receive immunity either through explicit authorisation from the ACCC or through notification with the ACCC given the opportunity to object.<sup>53</sup> The Australian Government also created an *Essential Handbook* for independent contractors and their hirers, and hosts an online tool for workers to use to help them understand whether they are – or should be considered – a contractor or employee, and includes links to resources for helping such workers challenge their employment status.<sup>54</sup> Australia is also undertaking a public consultation process regarding the creation of a class exemption for collective bargaining by small businesses, including independent contractors. Such an exemption would allow eligible entities to engage in collective bargaining without ACCC permission.

Irish law includes exemptions from competition law for three professions: voice-over actors, session musicians and freelance journalists, allowing them to bargain collectively. In addition, the law creates a pathway for “fully dependent self-employed” and “false self-employed” to bargain collectively. Contractors considered to be “fully dependent” must derive most of their income from a maximum of two sources. A trade union must apply for the exemption on the workers' behalf and prove there will be “no or minimal economic effect on the market in which the class of self-employed worker concerned operates.”<sup>55</sup>

Replicating these efforts in New Zealand would avoid the creation of entirely new categories of workers or continuing to allow large-scale carve-outs. Such carve-outs or new classifications risk depriving workers who would otherwise be classified as employees of the benefits they might otherwise enjoy.

## C. Tool Three: The Welfare and Income Support System

There are several benefits and protections in New Zealand that are not tied to formal, standard employment or an employment history. This report focuses on access to income support during periods of unemployment, but will briefly list other benefits that are not reliant or dependent on employment status.

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<sup>53</sup> Australian Government Department of Industry, Innovation and Science. (2016). *Independent Contractors: The Essential Handbook*. Retrieved from <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwj5m5e5-fHiAhUUeisKHfgQDDgQFjAAegQIBBAC&url=https%3A%2F%2Fwww.business.gov.au%2F~%2Fmedia%2FBusiness%2FIndependent-contractors%2FIndependent-contractors-the-essential-handbook-pdf.pdf%3Fla%3Den&usg=AOvVaw2Xp6uS0YRvxfcmLsivvoYd>

<sup>54</sup> Australian Government. (2019). Independent contractors decision tool. Retrieved from <https://www.business.gov.au/People/Contractors/Employee-or-contractor/Independent-contractors-decision-tool>

<sup>55</sup> International Federation of Musicians. (2017). Ireland: Right to collective bargaining restored for freelancers. Retrieved from <https://www.fim-musicians.org/ireland-right-to-cba-restored-for-freelancers/>

While some of these benefits require a work history or current or former labour market attachment, workers may meet these standards through self-employment. Other benefits require no labour market attachment whatsoever, but may be limited in other ways (e.g., residency requirements, income and asset tests, age thresholds, child-rearing or childcare responsibilities, partner income considerations, work search or in-work requirements). Benefits or supports that are based on current or past earnings and not means-tested include:

- no-fault accident coverage (for income replacement) through the Accident Compensation Corporation (ACC)
- paid parental leave.

Benefits or supports that are not tied to employment or past earnings include:

- access to a free public health system (not means-tested)
- superannuation (not means-tested)
- jobseeker support and income support for the unemployed, sick and disabled, and parents raising young children.<sup>56</sup>

## Income Support After Job Loss/During Times of Unemployment

Unlike most OECD countries, New Zealand does not have a social insurance system that provides income replacement for laid-off workers through taxes or levies paid by workers, employers or a combination thereof. Social insurance typically replaces a share of a worker's former income from wages or salary, known as the "replacement rate". New Zealand employees who are made redundant may receive a redundancy payment from their employers if such a payment was part of the employment contract, but such payments are not required at the national level. Redundancy payments are almost exclusively available for workers in formal, long-term employment relationships. They are, almost by definition, unavailable to independent contractors, workers on fixed-term contracts, and casual and seasonal workers.

The primary government income support scheme for unemployed workers is Jobseeker Support, which may be characterised as a social assistance or welfare programme. Jobseeker Support is one of several targeted income support benefits, which include the Accommodation Supplement; the Working for Families tax credits, income support and childcare subsidies; and payments through ACC for those unable to work due to an accident.<sup>57</sup> Jobseeker Support is available to unemployed, or underemployed, workers regardless of their reason for unemployment, and is run through the Office of Work and Income at the Ministry of Social Development (MSD). To be eligible for Jobseeker Support an individual must be searching for work, but unlike under many social insurance schemes for unemployment around the world, the beneficiary need not have "paid into" the system through past payroll levies, need not meet work history criteria and need not have been laid off. Benefit levels are means-tested based on household income, not past earnings. Accordingly, unemployed workers who have working partners are often ineligible.

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<sup>56</sup> Some welfare and income support programmes are tied to current employment, such as in-work tax credits; however, there is a broad system of benefits run through the MSD that are not.

<sup>57</sup> Immigration New Zealand. (n.d.). Financial Assistance. Retrieved from <https://www.newzealandnow.govt.nz/living-in-nz/money-tax/financial-assistance>

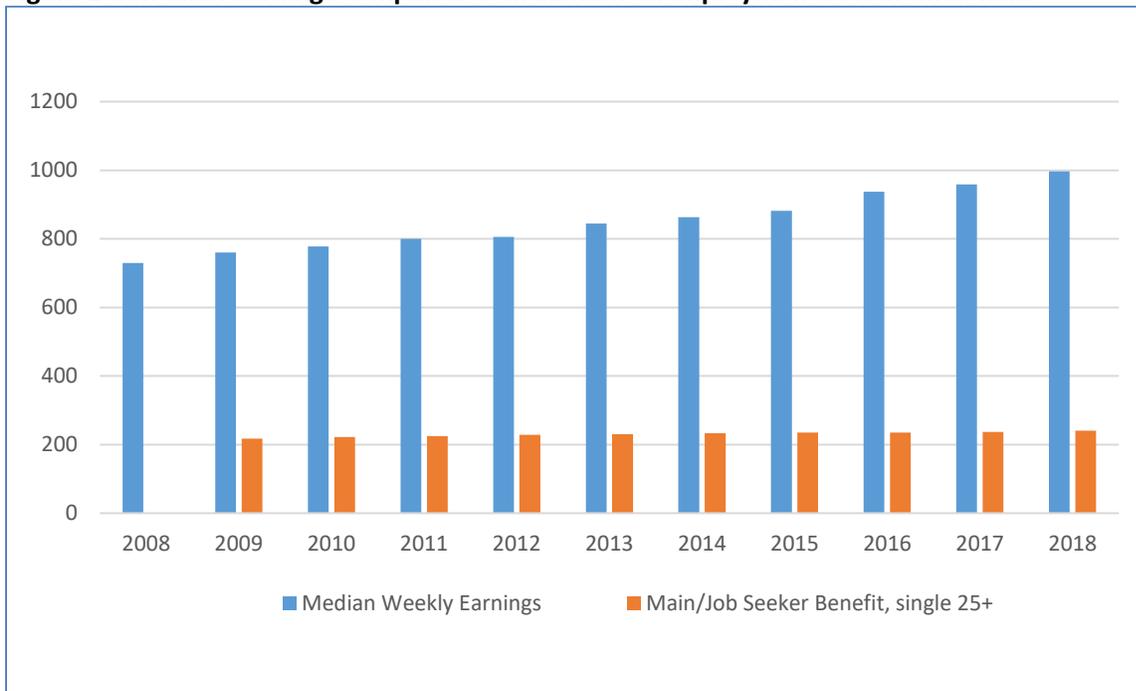
New Zealand's unemployment benefits have a low wage replacement rate, and are low relative to median income. As of 2019, the maximum net weekly benefits for unemployed adult, single workers were just \$219 per week, representing just over 20 per cent of median weekly income. Maximum weekly benefits for a family with children were \$391. Figure 14 shows current weekly benefit levels for a range of family types, and Figure 16 shows how benefit levels for a single, adult worker have compared to median income over the past 10 years.

**Figure 14: Jobseeker support levels and income phase-outs (April 2019)**

Category	Net weekly benefit	Gross weekly income cut-out point
Single, 18 - 19 years, at home	\$145.98	\$289.00
Single, 18 - 19 years, away from home	\$182.47	\$341.00
Single, 20 - 24 years	\$182.47	\$341.00
Single, 25+ years	\$218.98	\$393.00
Single, and receiving Domestic Purposes Benefit woman alone or Widows Benefit woman alone, before 15 July 2013	\$228.07	\$483.00
Married, civil union or de facto couple (without children)	\$364.94	\$602.00
Married, civil union or de facto couple (with children)	\$391.00	\$639.00
Married, civil union or de facto couple, with non-qualified partner (with children) or Married, civil union or de facto couple, with partner on New Zealand Superannuation or Veterans Pension (with children)	\$208.53	\$676.00
Sole parent	\$339.69	\$643.00

Source: Work and Income. (2019). Jobseeker Support cut-out points (current). Retrieved from <https://www.workandincome.govt.nz/map/deskfile/main-benefits-cut-out-points/jobseeker-support-cut-out-points-current.html>

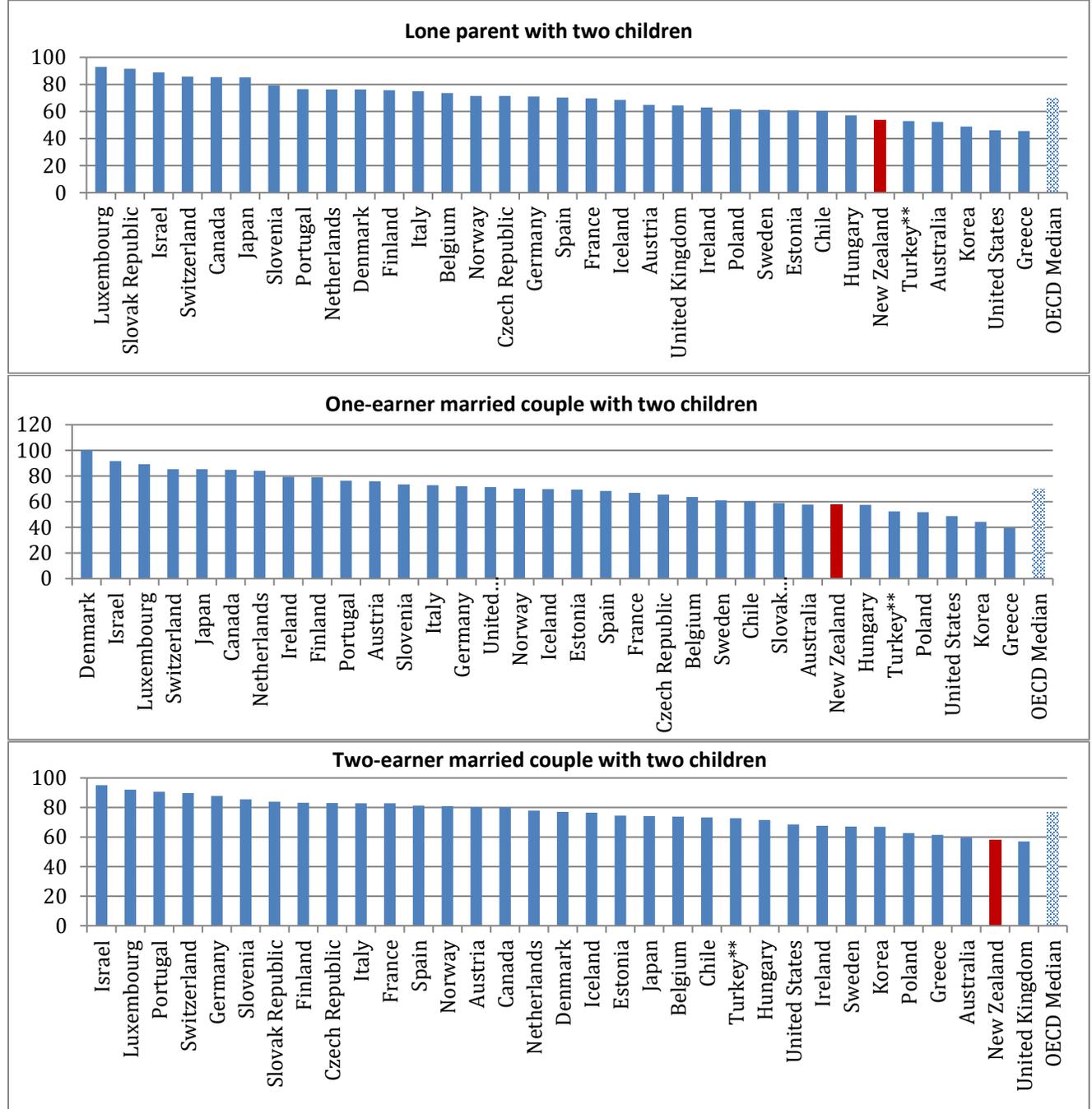
**Figure 15: Median earnings compared to maximum unemployment benefit in dollars**



Source: Author's calculations based on benefit rates available from the MSD and weekly earnings data from Stats NZ: Work and Income. (2019). Benefit rates. Retrieved from <https://www.workandincome.govt.nz/products/benefit-rates/index.html>; Stats NZ. (2018). Labour market statistics (income): June 2018 quarter. Retrieved from <https://www.stats.govt.nz/information-releases/labour-market-statistics-income-june-2018-quarter>

New Zealand's short-term income replacement rates for workers on unemployment benefits are also low compared to other OECD nations. Figure 16 shows how New Zealand's wage replacement rate compares to other OECD countries for a variety of family types. New Zealand is consistently in the bottom quarter. OECD calculations based on data from 2014 show slightly higher initial income replacement rates, though these are still near the bottom third of OECD countries. However, income replacement rates in New Zealand are relatively high for the long-term unemployed given benefits are not time-limited, as is often the case with unemployment benefits provided through other countries' social insurance systems (see Figure 17). This means unemployed workers in New Zealand are less likely to face a benefits "cliff" when their eligibility expires entirely, or they move onto lower-tier benefits.

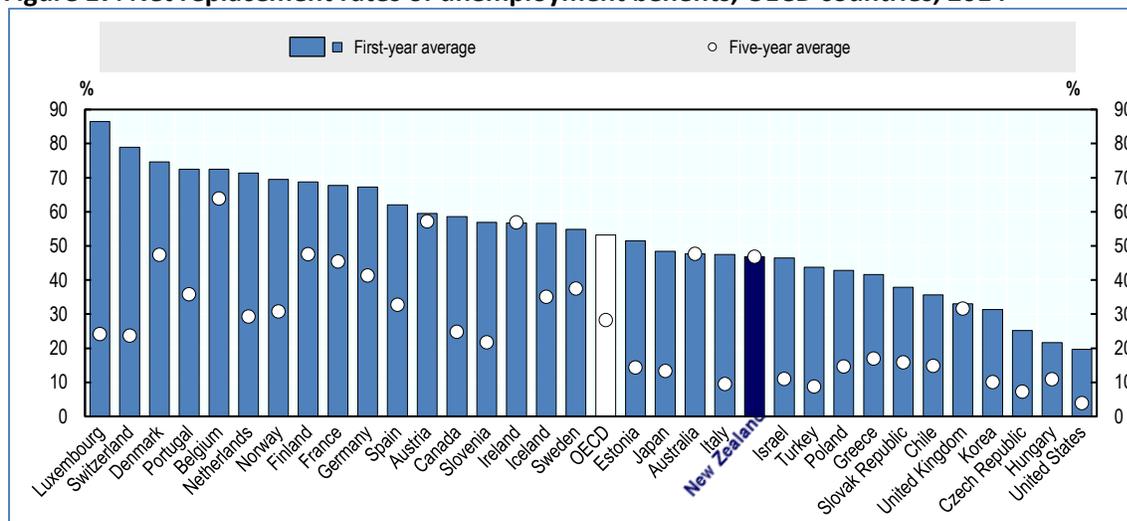
Figure 16: Net replacement rates in 2015 for three family types previously earning 100 per cent of average worker: initial phase of unemployment<sup>58</sup>



Source: Calculations of Bill Rosenberg using the OECD's Net Replacement Rates in Unemployment: see <https://stats.oecd.org/Index.aspx?DataSetCode=NRR>. \*\* for Turkey denotes that the earnings of the average worker are not available and calculations are instead based on an alternative calculation.

<sup>58</sup> Initial phase of unemployment but following any waiting period. Any income taxes payable on unemployment benefits are determined in relation to annualised benefit values, even if the maximum benefit duration is shorter than 12 months. For married couples, the percentage of average wages relates to the previous earnings of the "unemployed" spouse only; the second spouse is assumed to be "inactive" with no earnings and no recent employment history in a one-earner couple and to have full-time earnings equal to 67 per cent of average wages in a two-earner couple.

**Figure 17: Net replacement rates of unemployment benefits, OECD countries, 2014**

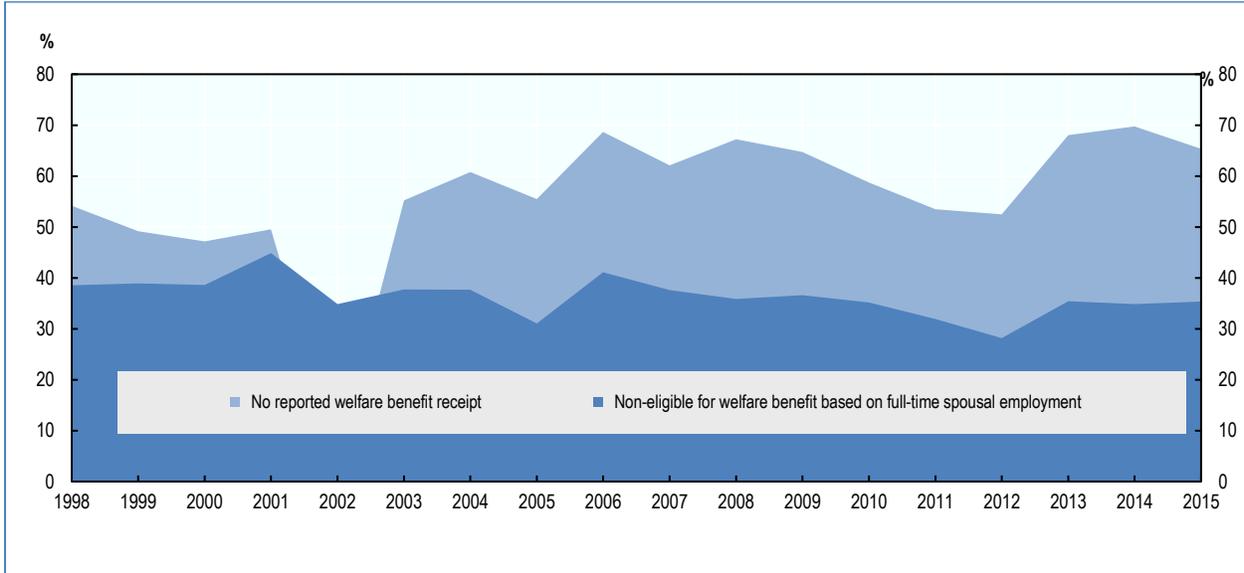


Note: The net replacement rate (NRR) is the ratio of net income out of work to net income while in work. Calculations consider cash income (excluding, for instance, employer contributions to health or pension insurance for workers and in-kind transfers for the unemployed) as well as income taxes and mandatory social security contributions paid by employees. Social assistance and housing-related benefits potentially available as income top-ups for low-income families are not included. Family benefits are included, while entitlements to severance payments are excluded. NRRs are calculated for a 40-year-old worker with an uninterrupted employment record since age 22. They are averages over four different stylised family types (single parents and one-earner couples, with and without children) and two earnings levels on the lost job (67 per cent and 100 per cent of average full-time wages). Due to benefit ceilings, NRRs are in most countries lower for individuals with above-average earnings. For Finland, the NRR for 2014 also includes an increased unemployment benefit payable for the first 90 days; until 2013, this increased benefit was payable only for the first 20 days, and as of 2015, the payment period was reduced again. Source: OECD. *Back to Work: New Zealand*.

In addition to low benefit *levels*, the *coverage* of unemployment benefits in New Zealand is also declining. The share of displaced workers who *do not* receive government income support in New Zealand has increased from around half to two-thirds in the past 15 years. According to the OECD, spousal employment explains about half of benefit non-receipt for displaced workers (see Figure 18).<sup>59</sup> According to data from the ILO, New Zealand’s share of unemployed workers who receive unemployment benefits is also low relative to other countries (Figure 19).

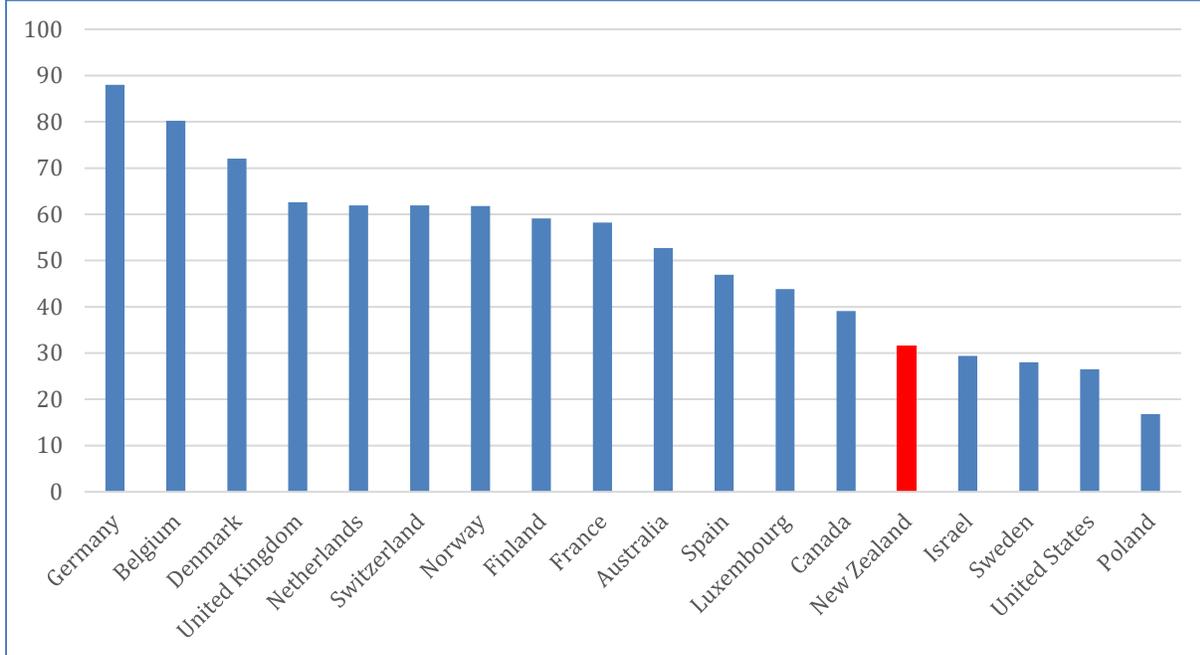
<sup>59</sup> Source: OECD. *Back to Work: New Zealand*.

**Figure 18: Welfare coverage among New Zealand workers aged 20–64 laid off/dismissed/made redundant from their previous job in the past five years and not employed in the reference week, June quarters 1998–2015**



Source: OECD. *Back to Work: New Zealand*.

**Figure 19: Share of unemployed receiving regular periodic social security unemployment benefits, selected countries, 2012**



Source: International Labour Organization. (n.d.) Share of unemployed receiving regular periodic social security unemployment benefits by sex (%) [https://www.ilo.org/ilostat/faces/wcnav\\_defaultSelection?\\_adf.ctrl-state=9hurh9688\\_4&\\_afLoop=144301369248886&\\_afWindowMode=0&\\_afWindowId=null](https://www.ilo.org/ilostat/faces/wcnav_defaultSelection?_adf.ctrl-state=9hurh9688_4&_afLoop=144301369248886&_afWindowMode=0&_afWindowId=null)

## Shortcomings of the Welfare and Income Support System for Those in Non-Standard Employment, and Why Solutions Under Discussion are Problematic

In many ways, New Zealand’s unemployment benefit and welfare systems are incredibly well suited for workers in non-standard employment. Many countries are grappling with the problem of expanding their social insurance to cover non-standard workers. New Zealand does not face this issue; its Jobseeker Support is not tied to past employment history or type of employment lost. The major shortcomings of the system are the low wage replacement levels, the fact that eligibility is based on family income and, relatedly, low coverage and take-up levels. These shortcomings are not specific to those in non-standard employment; however, proposed solutions to the challenges could create new problems for non-standard workers.

### Wage Scarring

New Zealand’s low and declining levels of unemployment benefits are likely to create financial pressure on unemployed people to take the first job available, rather than a job for which they are well suited. This is a potential contributing factor to a phenomenon known as wage-scarring, which is the negative long-term effect unemployment has on future labour market possibilities and productivity.

Relative to other OECD countries, New Zealand’s workforce faces higher wage losses as a result of displacement. According to research by Sylvia Dixon and David Maré in 2013, re-employed displaced workers in New Zealand faced a 12 per cent wage cut in the first year after displacement, an 11 per cent

reduction in the second year and a 7 per cent reduction in the third year.<sup>60</sup> According to OECD analysis of comparable data, post-displacement wage losses are negligible in Germany and the United Kingdom, and are just 6 per cent in the United States and Portugal.<sup>61</sup> Relative to a matched comparison group of similarly qualified workers, displaced workers in New Zealand suffer from a persistent negative impact on wages, reductions in working hours and less stable work arrangements (see Figure 20). Follow-up work shows the troubling reemployment prospects of displaced workers overall. Compared to workers who did not face involuntary job loss, displaced workers' employment rate was 20–25 per cent lower in the year following displacement, and was still 8–12 per cent lower five years later. Such workers' total income was 25–30 per cent lower in the first year and 13–22 per cent lower five years after displacement.<sup>62</sup> Relative to the OECD average, displaced New Zealand workers spend less time finding new jobs, but those jobs typically pay less than their past employment.

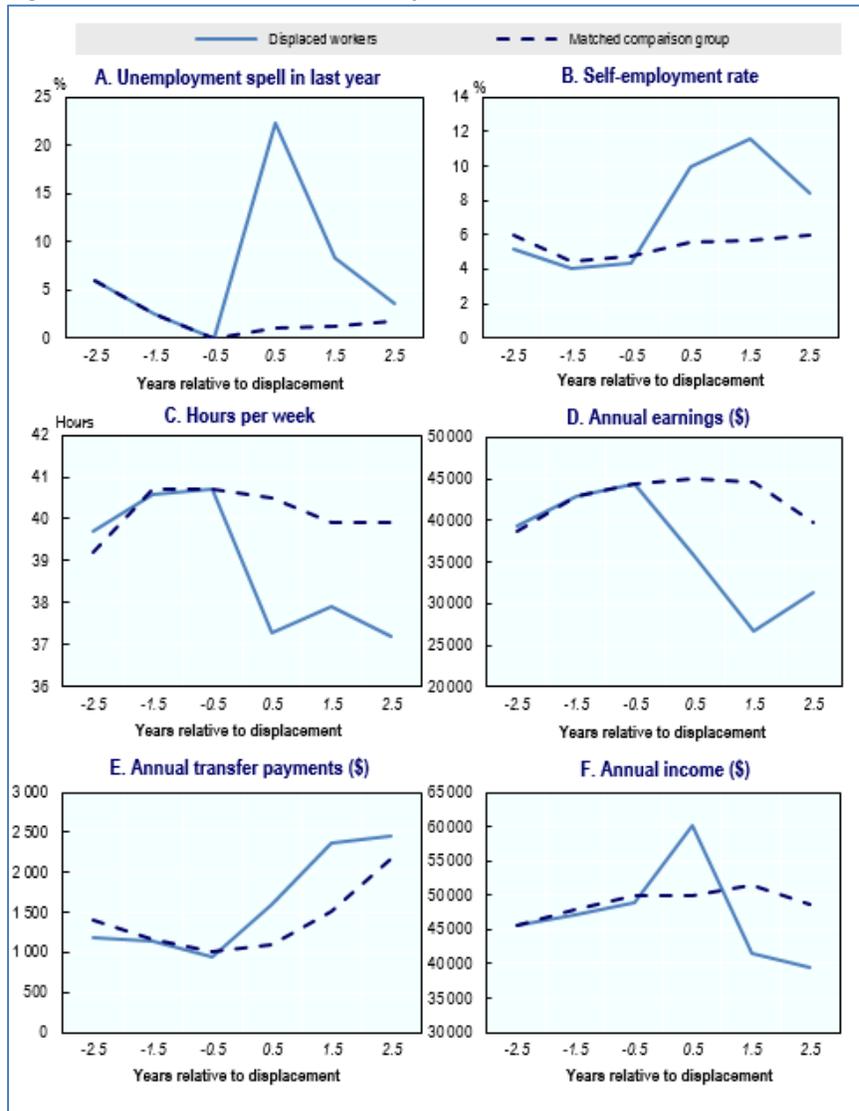
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<sup>60</sup> Dixon, S., & Maré, D. (2013). *The Costs of Involuntary Job Loss: Impacts on Workers' Employment and Earnings*. Motu Working Paper 13-03, cited in OECD. *Back to Work: New Zealand*.

<sup>61</sup> OECD. *Back to Work: New Zealand*.

<sup>62</sup> Hyslop, D., & Townsend, W. (2017). *The Longer Term Impacts of Job Displacement on Labour Market Outcomes*. Motu Working Paper 17-12. Retrieved from <https://motu.nz/our-work/population-and-labour/individual-and-group-outcomes/the-longer-term-impacts-of-job-displacement-on-labour-market-outcomes/>

**Figure 20: Mean outcomes for displaced workers and the matched comparison group**



Note: “Unemployment spell” measures the percentage of people who reported an unemployment spell in the previous 12 months. Earnings and income are expressed in March 2007 dollar values. The measures of hours per week are restricted to people with waged or salaried employment and positive earnings. In contrast, the measures of annual income and annual transfer payments include people with zero incomes.

Source: OECD. *Back to Work: New Zealand*.

### Low Take-up Rate Associated with Stigma and General Practice

Since Jobseeker Support benefits are delivered through Work and Income and eligibility is not tied to past contributions, they are considered to be part of the “welfare” system. In New Zealand, the welfare system is highly stigmatised, a view exacerbated in recent years due to stronger work obligations, sanctioning policies and a “work first” approach to quickly move individuals off benefits, at the cost of longer-term planning. In interviews, conversations and literature, there is a repeated refrain that this “work-first” approach leads displaced workers who do not consider themselves to be “traditional” benefit recipients to avoid Work and Income offices.

Anecdotally, workers who have attempted to access Work and Income's income supports or career services have said they were quickly dissuaded due to a prevailing sense that staff did not know how to work with them and a lack of useful resources. Some recounted being referred to a mandatory "Work for You" seminar which had the effect, intentionally or not, of leading these individuals not to seek Work and Income services or income supports. Stigma and dissuasion may contribute to the remaining 30 per cent gap, shown in Figure 18, between the number of displaced workers and the number of such individuals who receive benefits.<sup>63</sup>

## Concerns Over Proposed Solutions

A significant amount of literature and discussion raises the relative merits of a true social insurance system to provide unemployment benefits for displaced workers in New Zealand. One of the most commonly cited references in this discussion is the OECD's recent report *Back to Work: New Zealand*. A key observation in the paper is that it "sees particular advantages in replacing the currently voluntary redundancy payments with a mandatory redundancy insurance scheme based on a payroll-based levy combined with active labour market assistance." It explains that such a system may be justified "in order to shift part of the costs of economic restructuring from workers to employers."<sup>64</sup> This approach raises two concerns:

- 1. It introduces the potential to create incentives to misclassify workers.** The establishment of a new benefit supported by a payroll levy on employers, by its very nature, creates an incentive for the payer of the levy to try to avoid any new costs. Depending on the type of employment subject to a levy, an employer may avoid payment by relying on more non-standard workers (either through changing the nature of full-time workers' employment contract to casual, short-term or part-time or shifting more workers to contractor status). Given most non-standard workers have lower wages, such a shift would not only jeopardise their access to these unemployment benefits, but would also lead to a higher share of workers in lower-wage, precarious employment overall. The OECD report acknowledges that such a system could create problems with respect to changes in the nature of work, stating, "there may be need for a more flexible system of redundancy compensation, especially given the changing nature of work and the emergence of new forms of work organisation – as for instance the 'platform' or 'gig' economy' which is largely based on non-standard work arrangements and independent work." It goes on to say that, "[i]deally, the levy would not differ across employment contract types so that workers with fixed-term and casual contracts are fully covered if employment durations warrant it." A levy that is triggered based on employment duration may lead businesses to move to shorter-term employment contracts. Moreover, it is unclear how such a structure could cover the self-employed or independent contractors because, by definition, a self-employed independent contractor would be his or her own "employer".
- 2. It could exacerbate the stigma and the underperforming/underfunded delivery system associated with Jobseeker Support and "welfare" by creating a two-tiered system.** The establishment of a new "earned" benefit would create a false and unnecessary distinction between those who are deserving of income support (the social insurance population) and those who are less deserving (the "welfare" population). If the experience of other countries is any indicator, women and people of colour will be disproportionately served by the stigmatised

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<sup>63</sup> OECD, *Back to Work New Zealand*.

<sup>64</sup> OECD, *Back to Work New Zealand*.

and less generous welfare system, while men and those of European descent will disproportionately benefit from a more generous social insurance system. This is because women and people of colour are more likely to work in non-standard and part-time employment, which often precludes them from accessing social insurance schemes. The goal of the current Government is “for everyone to be earning, learning, caring or volunteering, so that everyone has an opportunity to contribute in some way, and to reduce social isolation.”<sup>65</sup> The best way to accomplish this goal is by building systems that value each of these contributions equally, rather than drawing arbitrary lines between them.

## D. “Tool” Four: Education, Training and Career Services

While not a “tool” in the more traditional sense, providing workers with an ability to pursue and afford lifelong learning, education and skills improvements is a clear way to improve their economic and social well-being. New Zealanders change jobs often; of employees Stats NZ surveyed in 2018, roughly half had been in their current job for fewer than three years.<sup>66</sup> This means many workers cannot count on their employers as their sole or even primary source of ongoing education, training and skills development.

Tertiary education in New Zealand is provided by universities, institutes of technology and polytechnics (ITPs), private training establishments (PTEs), industry training organisations (ITOs) and wānanga (which are tertiary institutions that provide education specifically in a Māori cultural context). Domestic students have to pay tuition, which is government-subsidised. Students may take out government-subsidised zero-interest loans to pay for their portion of the fees. Weekly stipends can be drawn from a loan for living expenses, and full-time students may also apply for need-based student allowances that do not need to be paid back. Moreover, senior secondary school, known as Level 1 and 2 under the New Zealand Qualifications Framework, is free to adult learners who do not yet hold that qualification level. As of 2018, the first year of tertiary education or training became fees-free for eligible first-time learners.<sup>67</sup>

### Shortcomings of New Zealand’s Lifelong Learning and Career Services Systems for Those in Non-Standard Employment

A recent OECD report summarised the issue of education and training for non-standard workers, saying, “those most in need of training to find or keep a job are least likely to train.”<sup>68</sup> Recent survey data in New Zealand show this to be true. The 2018 Survey of Working Life found that in the 12 months prior to the survey, 49 per cent of temporary employees had completed training, compared to 62 per cent of permanent employees. Of the employees who had completed training in the last 12 months, three-quarters had done on-the-job training, just over half had done a course or study paid for by their employer and 7 per cent had done a course they had paid for themselves.<sup>69</sup>

<sup>65</sup> Prime Minister Jacinda Ardern. (2018, April 18). Progressive and inclusive growth – sharing the benefits. Address to the Friedrich Ebert Foundation. Retrieved from <https://www.beehive.govt.nz/speech/progressive-and-inclusive-growth-sharing-benefits>

<sup>66</sup> Stats NZ. (2018). *Survey of Working Life, 2018*.

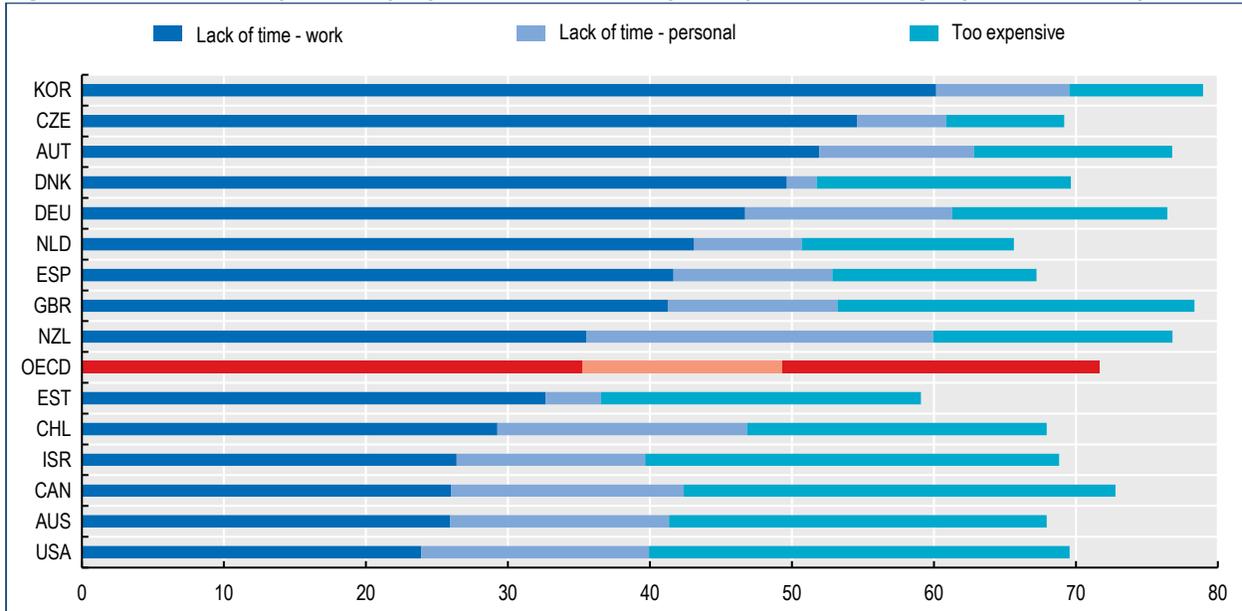
<sup>67</sup> Tertiary Education Commission. (2018). *Fees-free info sheet: Zero or low fee courses, programmes and training schemes*. Retrieved from <https://www.tec.govt.nz/assets/Forms-templates-and-guides/cba79f9c04/Fees-free-info-sheet-Zero-or-low-fee-courses-programmes-and-training-schemes.pdf>

<sup>68</sup> OECD. (2019). Getting Skills Right: Future-Ready Adult Learning Systems. Retrieved from <http://www.oecd.org/els/emp/skills-and-work/adult-learning/Policy-Brief-Future-ready-adult-learning-2019-EN.pdf>

<sup>69</sup> Stats NZ. (2018). *Survey of Working Life, 2018*.

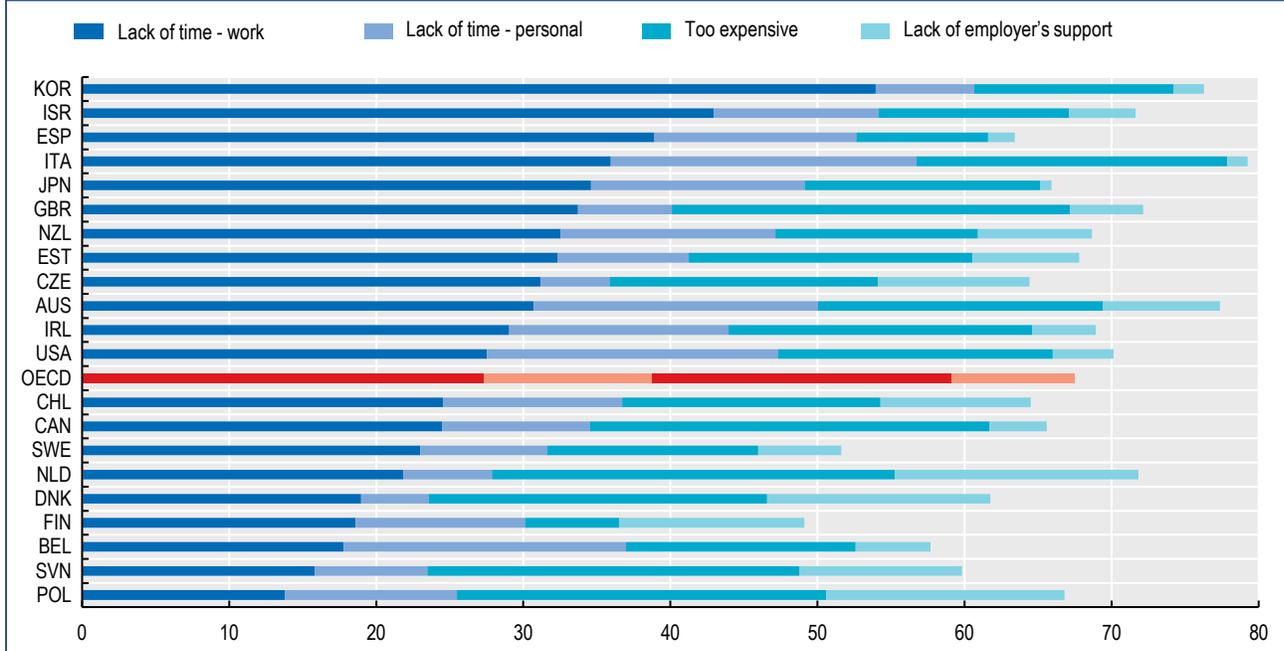
Both temporary workers and self-employed workers cite a lack of time as the primary reason they do not participate in training (see Figures 21 and 22). While cost is cited as a barrier, it does not seem to be the primary barrier. This suggests that more must be done to help workers in non-standard employment connect with education and training systems and find supplementary ways to provide on-the-job training or enable individuals to afford to take time off to pursue training.

**Figure 21: Reasons why self-employed workers do not participate in training, by OECD country**



Note: In this and the following figure, “Lack of time – work” refers to a lack of time due to “being too busy at work”. “Lack of time – personal” refers to a lack of time due to child care or other family responsibilities. The original source for the survey data in both figures is the Survey of Adult Skills (PIAAC) (2012, 2015) which is available at: <http://www.oecd.org/skills/piaac/>.  
 Source: OECD. (2019). *The Future of Work*.

**Figure 22: Reasons for not training among temporary workers who did not train but would have liked to**



Source: OECD. (2019). *The Future of Work*.

Since workers in less standard employment relationships are less likely to receive employer-sponsored education and training, they are disproportionately reliant on public systems for education, training and career services.<sup>70</sup> This is also the case with self-employed workers and independent contractors, yet these workers are ineligible for training by industry training organisations, which are limited to employees. Despite being disproportionately in need of public systems, non-standard workers have no clear place to turn for career services and for information, guidance and referrals to ongoing education, training and reemployment programmes. To the limited extent public employment and career services are provided to underemployed or displaced workers in New Zealand, they fall between a confusing array of local administrative entities and oversight agencies. MSD is the largest funder of such services, as Table 3 shows. There is no real accountability with respect to the provision or adequacy of such services for non-benefit recipients.

<sup>70</sup> OECD. (2019). *The Future of Work*.

**Table 3: Eligibility for public employment services for non-standard workers, and accountable agencies**

Population	Case management and soft-skills development services	Information about study and career options and labour market information	Career counselling through a one-on-one conversation with an expert	Employment assistance interventions	Formal tertiary education and training
Jobseeker Support beneficiaries	MSD, via Work and Income, provides these services.  <u>Agency accountability: MSD</u>	The Tertiary Education Commission (TEC) publishes information and tools online for access by the general public. The Careers New Zealand website is the most prominent. Some labour market information on occupational outlooks, etc is Available from the MBIE website.  <u>Agency accountability: TEC and MBIE</u>	MSD provides this to a limited extent through case management, but the focus is on employment. TEC does not provide this any more (Careers New Zealand used to).  <u>Agency accountability: MSD</u>	MSD, via Work and Income, provides or purchases these services.  <u>Agency accountability: MSD</u>	It is difficult for these individuals to pursue this because of work search and work requirements. Alternative grants/loans are available for students.  <u>Agency accountability: MSD</u>
Adult non-beneficiaries who are unemployed, underemployed, or changing career	There is unclear and seemingly arbitrary provision of these services. Some Work and Income staff may provide them.  <u>Agency accountability: None</u>	TEC publishes information and tools online for access by the general public. The Careers New Zealand website is the most prominent. Some labour market information on occupational outlooks, etc is available from the MBIE website.  <u>Agency accountability: TEC and MBIE</u>	TEC does not provide this anymore (Careers New Zealand used to).  Government expects these individuals to arrange this for themselves.  <u>Agency accountability: None</u>	Government expects these individuals to arrange this for themselves. MSD has a limited number of programmes that are not tied to benefit receipt; these are not utilised or well understood.  <u>Agency accountability: None</u>	Government expects these individuals to arrange this for themselves. Grants and loans are available for students.  <u>Agency accountability: None</u>

### Work and Income’s Overly Narrow Mission and Mandate

As the chart above demonstrates, the provision and adequacy of education and training referrals and career services for Jobseeker Support beneficiaries is lacking. In 1998, the New Zealand government created the Department of Work and Income, which was a merger of the previous Department of Income Support, the New Zealand Employment Service, the Community Employment Group and Local Employment Co-ordination.<sup>71</sup> This was consistent with the system’s general prioritisation of moving welfare recipients into work – an approach that was expanded upon, with new specifications, in 2013 with the adoption of the “investment approach”. The investment approach uses actuarial modeling to aid frontline staff in deciding which services should be targeted at which clients. Under this approach, more casework time and resources are meant to be targeted toward benefit recipients who are projected to spend a greater share of their lives on benefit, and fewer toward those who are anticipated to quickly move off a benefit.

<sup>71</sup> Ministry of Social Development. (n.d.). Historical Timeline. Retrieved from <https://www.msd.govt.nz/about-msd-and-our-work/about-msd/history/index.html>

A greater focus on testing and evaluating appropriate and effective mechanisms to combine career services, job placement services and the exploration of education and training goals could lead to greater long-term income security for beneficiaries. A work-first focus leaves beneficiaries vulnerable to cycling on and off a benefit in between low-wage jobs. It also exacerbates existing inequities related to training access for non-standard workers, obliging these workers to rely on their own research and self-financing in this regard. Lastly, a work-first approach gives government less control over building and training the workforce of the future and ensuring displaced workers are trained in areas of job growth.

The outcome for MSD clients during the Global Financial Crisis (GFC) demonstrates another shortcoming of Work and Income's absence of services for non-beneficiaries (and lack of another system to serve them). In interviews with both frontline workers at Work and Income and policy staff at MSD for the purposes of this report, recurring commentary focused on the challenges MSD faced during the GFC, and related concerns that the agency is ill prepared to handle another economic downturn. During the GFC, Work and Income offices began seeing two populations with which they had little prior experience serving: highly educated young people and middle managers. Because MSD protocols focused on targeting casework and services to those clients with the highest needs and who were most likely to remain on a benefit, these new populations were largely left without casework support or other services aside from the provision of income support. As the economy picked up, many of these beneficiaries did not return to work as expected, and instead remained on a benefit.<sup>72</sup> This experience suggests that MSD needs more resources and a stronger mandate to engage and serve those facing displacement.<sup>73</sup>

### Inadequate Staff Resources for Employment, Training and Career Services

As a consequence of both the merger between employment and welfare offices and increasing demands on staff time, there is now a lack of staff able to help connect unemployed workers with employment services or referrals to education or training. MSD analysis shows that as staff levels have been falling, demand for extra income support has been increasing, because beneficiaries are experiencing declining benefit levels relative to the cost of housing. This increase in demand has required Work and Income staff to shift their time toward income support and away from the provision of case management providing career and employment services. Administration of Hardship Grants and Supplementary Assistance now comprises over 40 per cent of case management time. Whereas in 2014, employment-focused case managers engaged proactively with 50 per cent of their clients every month to support them into employment, the equivalent current figure is only 19 per cent. This rate has fallen by an average of one percentage point per month.<sup>74</sup>

### Limited Tools for or Focus on Employment, Training and Career Services

Benefit recipients must meet work and work-search obligations, which limits their ability to pursue longer-term education or training. While more severe than New Zealand's work and work-search requirements, welfare funding in the United States also limits participants' ability to pursue education and training. A recent analysis of different states' welfare programs concluded that, "Over the long

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<sup>72</sup> Ministry of Social Development & The Treasury. New Zealand Actuarial valuation of the Benefit System for Working-age Adults as at 30 June 2012. Retrieved from <https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/evaluation/valuation-reports/valuation-benefit-system-working-age-adults-30-june-2012.pdf>

<sup>73</sup> Interviews with MSD staff, 3 March and 4 April 2019.

<sup>74</sup> Welfare Expert Advisory Group. (2019). *Whakamana Tāngata: Restoring Dignity to Social Security in New Zealand*. <http://www.weag.govt.nz/assets/documents/WEAG-report/aed960c3ce/WEAG-Report.pdf>

term, the most successful programs supported efforts to boost the education and skills of those subject to work requirements, rather than simply requiring them to search for work or find a job.”<sup>75</sup> This suggests that a greater investment in helping connect benefit recipients to education and training is necessary. It also makes the case against distinguishing between a “work-first welfare” system and a separate income support and employment services system for those with labour-market attachment who need reskilling. Both the traditional “welfare” population and displaced workers can benefit from ongoing education and training which suggests that an open system providing these services for both populations is preferable.

In addition to staff resource constraints when it comes to providing career counselling and referrals, there are also constraints in terms of the technological tools available to help perform this function. Some staff may understand and use websites like Careers New Zealand, which has a career exploration tool and describes available education and training and how to go about applying for them.<sup>76</sup> However, it is certainly not uniform practice for staff to use these services with their clients – not simply because of resource constraints, but because administering benefits then moving recipients into work are the focus of the system. Work and Income’s “Job Vacancies” site demonstrates the focus of the system and the type of work it expects beneficiaries to pursue (see Figure 23). It is not a system geared toward career ladders and advancement. Nor does any standard website either host or aggregate job postings. Such a tool could be useful not only for workers and those tasked with providing career services, but also to track broad trends in jobs growth and worker skill needs.

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<sup>75</sup>Pavetti, L. (2016). Work Requirements Don’t Cut Poverty, Evidence Shows. Retrieved from <https://www.cbpp.org/research/poverty-and-inequality/work-requirements-dont-cut-poverty-evidence-shows>

<sup>76</sup> See <https://www.careers.govt.nz>

Figure 23: Work and Income job listings, Wellington area, June 2019

Job Title	Date Added	Job Category	Urban Area
<a href="#">Parking Enforcement Officer</a>	28 Jun 2019	<a href="#">Protective Service Occupations</a>	Wellington, Wellington
<a href="#">Restaurant Supervisor</a>	28 Jun 2019	<a href="#">Management Occupations</a>	Wellington, Wellington
<a href="#">Barista</a>	28 Jun 2019	<a href="#">Food Preparation and Serving-Related Occupations</a>	Wellington, Wellington
<a href="#">Mail Delivery Postal Service</a>	27 Jun 2019	<a href="#">Postal Service Clerks, Postal Service Mail Carriers</a>	Wellington, Wellington
<a href="#">Barista</a>	27 Jun 2019	<a href="#">Food Preparation and Serving-Related Occupations</a>	Wellington, Wellington
<a href="#">Delivery Driver</a>	26 Jun 2019	<a href="#">Transportation and Material Moving Occupations</a>	Wellington, Wellington
<a href="#">Grocery Supervisor</a>	26 Jun 2019	<a href="#">Sales and Related Occupations</a>	Wellington, Wellington
<a href="#">Rest Home Caregiver</a>	26 Jun 2019	<a href="#">Personal Care and Service Occupations</a>	Wellington, Wellington
<a href="#">Waiter/Waitress</a>	26 Jun 2019	<a href="#">Food Preparation and Serving-Related Occupations</a>	Wellington, Wellington
<a href="#">Civil Construction Worker</a>	26 Jun 2019	<a href="#">Construction and Extraction Occupations</a>	Wellington, Wellington
<a href="#">Retail Supervisor</a>	25 Jun 2019	<a href="#">Sales and Related Occupations</a>	Wellington, Wellington
<a href="#">Commercial Painter</a>	25 Jun 2019	<a href="#">Construction and Extraction Occupations</a>	Wellington, Wellington
<a href="#">Demolition Yard Worker</a>	25 Jun 2019	<a href="#">Construction and Extraction Occupations</a>	Wellington, Wellington
<a href="#">Plasterer's Assistant</a>	25 Jun 2019	<a href="#">Construction and Extraction Occupations</a>	Wellington, Wellington
<a href="#">Retail Supervisor</a>	24 Jun 2019	<a href="#">Sales and Related Occupations</a>	Wellington, Wellington
<a href="#">Barista</a>	24 Jun 2019	<a href="#">Food Preparation and Serving-Related Occupations</a>	Wellington, Wellington
<a href="#">Front of House Reception</a>	23 Jun 2019	<a href="#">Office and Administrative Support Occupations</a>	Wellington, Wellington
<a href="#">Sushi Maker</a>	24 Jun 2019	<a href="#">Food Preparation and Serving-Related Occupations</a>	Wellington, Wellington
<a href="#">Builder's Labourer Construction</a>	21 Jun 2019	<a href="#">Construction and Extraction Occupations</a>	Wellington, Wellington
<a href="#">Retail Supervisor</a>	21 Jun 2019	<a href="#">Sales and Related Occupations</a>	Wellington, Wellington
<a href="#">Retail Supervisor</a>	21 Jun 2019	<a href="#">Sales and Related Occupations</a>	Wellington, Wellington
<a href="#">Rest Home Caregiver</a>	21 Jun 2019	<a href="#">Personal Care and Service Occupations</a>	Wellington, Wellington
<a href="#">Fast Food Supervisor</a>	21 Jun 2019	<a href="#">Management Occupations</a>	Wellington, Wellington
<a href="#">Pest Control Worker</a>	20 Jun 2019	<a href="#">Building and Grounds Cleaning and Maintenance Occupations</a>	Wellington, Wellington
<a href="#">Painter's Labourer</a>	19 Jun 2019	<a href="#">Construction and Extraction Occupations</a>	Wellington, Wellington

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Source: Work and Income. (2019). Find a Job: vacancies website. Retrieved from <http://job-bank.workandincome.govt.nz/find-a-job/results.aspx?Page=1>

### No Consensus on Desired Outcomes or What Works to Deliver Desired Outcomes

While there seems to be a general consensus that the investment approach has significant limitations, there is no clear direction on how to improve it, or the objectives of the Work and Income system overall. As a consequence of the lack of direction at the government and MSD levels, Work and Income staff are left using programme referral tools that do not fit the current Government's stated priorities because they are based around delivering the outcome of reducing long-term welfare costs to government.

There is an immense amount of work under way to improve the MSD system and deliver a broader array of services that focus on clients' well-being. Some of these efforts include: coordination with the Social Investment Agency on measuring well-being, welfare overhaul as prescribed by the Welfare Expert Advisory Group, enhancing caseworkers' decision-making tools through Analytics to the Frontline and improving/expanding the investment approach. While these efforts are needed and well intentioned, their sheer breadth, complexity and ambitiousness (the difficulty of reforming the entirety of the system) has an unintended consequence of an all-or-nothing approach. The result so far has been little or no formal movement in changing the purposes, measurements or stated outcomes of the systems. Relatedly, given the residual focus on government liability as the core measurement of the Work and Income system, most employment interventions continue to be analysed with a focus on this limited metric.

## VI. New Zealand’s Tax and Data Infrastructures

This report did not set out to explore the strengths and limitations of New Zealand’s tax and data structures. However, during its preparation, the relevance of each quickly became apparent. The topic does not fit cleanly into any of the sections above, so this separate section addresses it.

Stats NZ’s IDI provides a robust system with which to analyse data. However, New Zealand’s data landscape poses significant challenges, particularly related to timeliness, accuracy and potential underreporting. Furthermore, these data shortcomings overlap with, and potentially mask, broader challenges associated with the administration of New Zealand’s tax system. The challenges encompass both administrative and survey data.

### Administrative Data

Administrative data are typically more comprehensive and timely than survey data. The primary source of administrative data on employment and income trends in New Zealand is tax records held at the IRD. However, the manner in which data on income – and self-employment income in particular – is collected entails several limitations when it comes to the system’s ability to provide useful data:

- IRD does not have data on employment relationships (e.g., whether a person is a casual, part-time, full-time or seasonal employee).
- IRD’s income data do not include hours worked.
- IRD cannot generate comprehensive information across all types of self-employment.
- IRD has difficulty distinguishing income from labour from other forms of self-employment income.
- IRD reporting does not include how many sources a self-employed individuals rely on for their income.
- Most self-employed workers report income information and file taxes on their own behalf: a practice shown to be associated with significant underreporting and lower tax compliance.<sup>77</sup>

These limitations severely inhibit policymakers from gaining a more complete picture of the risks, benefits and trends associated with non-standard employment in New Zealand. Examples of unanswerable questions based on IRD data include the following:

- How many dependent contractors are there in New Zealand (how many contractors rely on just one source of income)?
- Do these workers make a living wage?
- What share of self-employment income comes from labour income in comparison to non-labour income, and is this changing over time?
- How many New Zealanders are in the “gig economy” (i.e., receive income from platforms such as Uber, Task Rabbit or Mechanical Turk)?
- Do these gig workers make a living wage?
- Is gig work the main source of income for these workers?
- What share of these gig workers report their income and pay taxes to IRD?

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<sup>77</sup>The exception to this is a subset of contractors in specific sectors with historic tax non-compliance whose payers withhold taxes on their behalf and report to IRD.

Beyond being problematic from a data analysis perspective, IRD’s tax filing system for self-employed workers may be associated with significant revenue loss in the form of forgone owed taxes, known as the “tax gap”. A recent study by IRD and Victoria University estimated that the self-employed sector, on average, underreported 20 per cent of its income.<sup>78</sup> Past studies on the tax gap in the United States have found that sole proprietors underreported their net income by 57 per cent.<sup>79</sup> The growth of online platform companies is contributing to self-employment tax underreporting. This is likely to be attributable, at least in part, to the fact that many workers in the gig economy may be unaware of their exact employment status and filing obligations.

The United States, France and Estonia have all taken steps to enhance tax compliance for self-employed gig workers. In the United States, entities paying (or processing payments for) the self-employed are now required to report those payments to the United States Internal Revenue Service (IRS).<sup>80</sup> In France, platforms – whether headquartered in the country or overseas – must provide users with a description of their tax obligations in relation to each transaction as well as an annual statement of gross income.<sup>81</sup> Effective this year, these platforms must also report similar information directly to tax authorities. In Estonia, passenger transport platforms like Uber share information on the financial transactions between customers and drivers, enabling tax authorities to prefill drivers’ tax forms.<sup>82</sup> The IRS estimates that 63 percent of income is misreported when not subject to reporting requirements.<sup>83</sup> In addition to improving tax compliance, these tax monitoring and enforcement tools enable these countries to more quickly answer and respond to questions related to the trends and economic well-being of their independent contractors and gig workers.

In New Zealand, there is no broad requirement that payments to self-employed workers be disclosed to IRD, and only a confusing and seemingly arbitrary subset of sectors are subject to tax withholding, known as schedular withholding.<sup>84</sup> Notably, a significant share of self-employment contract work is not subject to schedular withholding. For work that is not subject to schedular withholding, it is the responsibility of the individual receiving the payment to calculate, file and pay their own tax, as well as meet ACC and GST obligations. This is the complete opposite of approaches known to increase tax compliance, under which platforms, processors or payers also have an obligation to report to the tax authority.

## Survey Data

Survey data, on the other hand, can answer questions that administrative data alone cannot answer. In fact, surveys, correctly formulated and administered, can answer any question survey generators develop. However, surveys have limitations, including cost, timeliness, selection bias, accuracy,

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<sup>78</sup> Tax Working Group Official Advice Information. (2018). *Tax policy report: Estimating the underreporting of income in the self-employed sector*. Retrieved from <https://taxworkinggroup.govt.nz/sites/default/files/2018-08/report-estimating-under-reporting-income.pdf>

<sup>79</sup> U.S. Government Accountability Office (2007). *Tax Gap: A Strategy for Reducing the Gap Should Include Options for Addressing Sole Proprietor Noncompliance*. Retrieved from <https://www.gao.gov/assets/270/265403.html>

<sup>80</sup> United States Treasury Inspector General for Tax Administration. (2019). *Billions of Dollars in Non-Payroll Tax Withholding Discrepancies Are Not Being Addressed*. Retrieved from <https://www.treasury.gov/tigta/auditreports/2019reports/201940028fr.pdf>

<sup>81</sup> HM Revenue & Customs. (2018). *The role of online platforms in ensuring tax compliance by their users*. Retrieved from [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/687363/The\\_role\\_of\\_online\\_platforms\\_in\\_ensuring\\_tax\\_compliance\\_by\\_their\\_users.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/687363/The_role_of_online_platforms_in_ensuring_tax_compliance_by_their_users.pdf)

<sup>82</sup> OECD. (2019). *Policy Responses to New Forms of Work*. Retrieved from <https://doi.org/10.1787/0763f1b7-en>

<sup>83</sup> U.S. Internal Revenue Service (2016). *Federal Tax Compliance Research: Tax Gap Estimates for Tax Years 2008–2010*. Publication 1415. Retrieved from <https://www.irs.gov/pub/irs-soi/p1415.pdf>

<sup>84</sup> Income Tax Act 2007. Retrieved from <http://www.legislation.govt.nz/act/public/2007/0097/latest/DLM1523257.html>

comparability over time and a limited ability to capture longitudinal data. With respect to employment and work arrangements specifically, New Zealand's survey data is subject to a number of these limitations, as the following examples indicate.

- **Timeliness:** The Survey of Working Life had a six-year gap between productions. For a survey providing key indicators on employment relationships and worker well-being, this data lag is inadequate.
- **Accuracy:** Until 2016, the methodology used in the Household Labour Force Survey may have undercounted the share of self-employed.
- **Comparability over time:** Due to concerns over whether survey respondents understand questions (and associated accuracy) several New Zealand survey questions have been added, subtracted or modified over time.
- **Small sample sizes for sub-groups:** Due to small sample size, it would not be practical to look at the percentage of contractors identified in the Survey of Working Life 2018 who are reliant on one client or business for all or most of their work and who also have limited workplace autonomy.
- **Survey fatigue:** Due to New Zealand's small population size, there is a high likelihood of individuals being selected for multiple surveys, which can lead to survey fatigue and therefore low response rates.
- **Longitudinal data:** In order to determine the effectiveness of specific policies or interventions, it is helpful to understand the impact on a targeted population over time. Because surveys only reach a small portion of the population, it can be incredibly difficult and expensive to track the same population over time.

## VII. Recommendations

This report has provided a broad sense of the challenges confronting New Zealand's labour market and the tools available to ensure economic and social security for New Zealand's non-standard workers. In doing so, the report used the lens of industrial relations, employment standards and welfare and unemployment income supports. The report identified five specific challenges that are directly relevant to non-standard employment:

- The current financial support system for displaced workers functions as a system of last resort, but reforms under discussion risk disadvantaging non-standard workers.
- The systems to provide career services and education and training referrals focus on young people, and fail to reach much of the adult workforce
- There is no clear direction with respect to the purpose and short- and long-term goals of the welfare and employment services system.
- There are confusing and potentially conflicting laws related to access to collective bargaining, particularly for non-standard workers.
- The tax and data infrastructure pertaining to non-standard employment, and self-employment in particular, must be modernised.

While the enactment of new laws is the responsibility of ministers who form the government of the day, the responsibility for developing and implementing policies is the responsibility of ministries and departments. The recommendations that follow acknowledge that.

This section presents a group of three sets of recommendations which, taken together, address the five challenges described above:

- recommendations for improving the income support and employment services systems to better support non-standard workers
- recommendations for improving the collective bargaining structure to benefit non-standard workers
- recommendations for improving the tax administration system (and associated administrative data) for self-employed workers.

### Recommendations for Improving the Income Support and Employment Services Systems to Better Support Non-Standard Workers

New Zealand is unprepared for worker displacement, whether due to a recession, technological change or globalisation more broadly. This is largely because no entity has the authority, capacity or mandate to serve displaced workers. The MSD seems best suited to take on the role of providing income support and employment and career services for all workers struggling with unemployment or underemployment, but enabling it to do so adequately will require a significant expansion in the ministry's focus, mandate, capacity and array of services.

Despite not having a clear system for serving displaced workers explicitly, New Zealand's underlying eligibility infrastructure is relatively well positioned when it comes to meeting the challenges associated with non-standard employment specifically, given most major income and social supports are not

contingent on current or past traditional employment. Rather than build new income and employment services programmes to meet the income, education and training needs of non-standard workers or displaced workers specifically, New Zealand should endeavour to improve services and delivery mechanisms that are universal and provide interventions before people need income support.

The objective of this system should be that it:

- provides adequate income support to unemployed workers, regardless of type of former employment relationships
- provides effective career services and referrals to education, training and career pathways for all unemployed, underemployed or transitioning workers, regardless of benefit receipt
- promotes and measures long-term employment and economic well-being goals and evaluates the extent to which provided services are effective.

It is useful to think of the overall needs of current and future workers and system beneficiaries based on which agency or ministry is best suited to be accountable, and how to best pilot new interventions to ensure any changes brought to scale are effective. The following chart shows a potential operational structure and related pilots.

**Table 4: Worker needs, most suitable agency to address them and possible pilots**

	Income support	Case management and soft-skills development services	Information about study and career options and labour market information	One-on-one career counselling	Employment assistance interventions	Formal/classroom education and training
Description	Weekly cash benefit for those experiencing unemployment.	Individualised services to help an individual navigate the income and employment assistance system and prepare for work or other referrals.	Accurate information about possible areas of training and study, labour market information about areas of employment growth, and job postings.	Casework focused on helping a client identify their goals, understand labour market needs, find appropriate and available education, training, and employment opportunities and funding supports as needed.	Discrete employment interventions with the goal of helping people prepare, find, move into or sustain employment. Examples include wage subsidies, job placement services, and training directly related to employment.	Education and training provided through universities, ITPs, PTEs, ITOs and wānanga. Formal education leads to a recognised by the New Zealand Qualifications Authority
Agency	MSD.	MSD.	This must be a joint effort. TEC has online tools, and MBIE publishes labour market forecasting; integration between the two could be strengthened	MSD (in person), but reliant upon information provided by TEC, ideally in collaboration with MBIE.	Employers in partnership with MSD (and TEC to the extent already applicable).	Existing tertiary providers, in partnership with employers as appropriate.
Pilots	-Provision of time-limited income support regardless of household income -Provision of time-limited income support regardless of household income, based on annual past earnings -Provision of income support without work search obligations for pursuit of education/training.	-Provision of services to individuals not on a benefit -Provision of services to populations in cell three to the left.	-Strengthening of labour market information through enhanced job market postings (pilot could be related to standardising jobs postings)	-Provision of services to individuals not on a benefit -Provision of services to populations in cell three to the left.	-Provision of services to individuals not on a benefit -Provision of services to populations in cell four to the left.	Leave decision-making on this to the tertiary sector

Building a system that meets these objectives in a cost-effective way will require rigorous experimentation and evaluation, which is not common practice in New Zealand and difficult given the size of the country. Promising changes, however, seem to be under way.

In the most recent report on the cost-effectiveness of MSD employment assistance, outcome metrics were expanded to include impacts on time in employment, net income, qualification level achieved and time in corrections services.<sup>85</sup> This expansion should be embraced, given greater specificity and buy-in, and be expanded to include proactive, experimentally designed evaluations of strategically selected interventions and the impact of those interventions on populations beyond those MSD historically serves. Table 4 above provides some initial ideas for pilots. Evaluations should also include impacts over a longer time scale, as some services and interventions – especially those related to education and training – show results multiple years later. The MSD report, however, also demonstrates one challenge of evaluating programmes retroactively: the difficulty of finding comparison groups.<sup>86</sup> It is for this reason that policymakers should take caution when considering rolling out universally available programmes or initiatives that have not first been evaluated in some form and shown to be beneficial to the target population.

This is consistent with a recent recommendation from the OECD to “Evaluate the large number of ongoing pilots and experiments in this policy space rigorously and independently and roll out successful pilots nationally, ensuring that services of comparable nature and quality are available in all regions.”<sup>87</sup> It is also consistent with a recommendation from the McKinsey and Business Advisory Council report to “launch pilots of new social welfare concepts.”<sup>88</sup>

## Recommendations for Improving the Collective Bargaining Structure to Benefit Non-Standard Workers

The enactment of the Hobbit Law greatly complicated the broader industrial relations framework in New Zealand, not because the law itself is complex, but because it created industry-specific anomalies that did not depend on the specific nature of the relevant jobs. The cleanest, simplest path forward from the industrial relations reform and ILO compliance perspectives would be to allow for the repeal of the law in favour of a more universal framework with less arbitrary parameters. However, there is relatively little support or advocacy for this option given concerns it would again insert uncertainty in the film industry. It could also lead to film industry workers’ employment status and security potentially oscillating back and forth as governments change. The question is how to best reform the law in a way that balances the preceding priorities but also ensures the law fits in with the broader industrial relations landscape in New Zealand.

Contractors in New Zealand already have a pathway to collective bargaining that has commonalities with the Australian or, to a lesser extent, Irish model, described above. The Commerce Commission has the authority to approve exemptions from the Commerce Act if they are in the public interest. In

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<sup>85</sup> De Boer, M., & Ku, B. (2019). *Cost-effectiveness of MSD employment assistance: Summary report for 2016/2017 financial year*. Retrieved from <https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/research/employment-assistance-effectiveness/effectiveness-report-07022019.pdf>

<sup>86</sup> Ibid. See list of interventions on pp. 29–31, for example.

<sup>87</sup> OECD. (2018). *Mental Health and Work: New Zealand*. Retrieved from <https://doi.org/10.1787/9789264307315-en>

<sup>88</sup> Prime Minister’s Business Advisory Council & McKinsey & Company. *A Future That Works*.

addition, the applicant for an exemption must pay a fee of \$36,800.<sup>89</sup> However, there have been few applications for an allowance for collective bargaining under public interest grounds. To date, the Commerce Commission has only granted one authorisation to permit “anti-competitive agreements” for the Waikato-Bay of Plenty Chicken Growers Association.<sup>90</sup>

If this existing process is a viable mechanism for collective bargaining, along the lines of the Australian and Irish models, more should be done to explain the process, and provide assistance to those wishing to pursue it. Moreover, if the existing Commerce Commission exemption allowance could serve as a mechanism for vulnerable self-employed workers to bargain collectively, cost should not be a major deterrent. In Australia, the application fee is just \$7,500 AUD (\$7,900 NZD).<sup>91</sup> Also in Australia, the ACCC has the authority to waive the fee if it would be unduly onerous to the applicant. Given the limited number of applications in New Zealand, there is degree of uncertainty surrounding how likely the Commerce Commission would be to authorise a particular application, and thus risk associated with application. MBIE, in conjunction with other stakeholders, should work to ease access and generate a greater understanding of this pathway for collective bargaining for independent contractors.

The Government could build on the exemption process and utilise it in consolidating and modifying the recommendations of the FIWG and FPAWG into one proposal. Key features of a joint proposal could include:

1. repealing the classification of film industry workers as independent contractors
2. establishing a definition of “dependent contractor” based on economic reliance on a maximum of two income sources/contracts/platforms, and considering categorically granting such workers an exception from the Commerce Act
3. authorising a fair pay agreement demonstration project with an initial tranche of legislatively mandated sectors and occupations, and requiring that the Commerce Commission and Employment Relations Authority approve the triggering of negotiations and the negotiated product
4. including the film industry as one of the first such sectors, and encompassing workers regardless of employment relationship
5. if successful, allowing a trigger for additional sectors and occupations.

Such a system could also help in addressing industry-specific pay and conditions, as well as promoting the role of collective bargaining in non-economic matters. Some argue that expanding collective bargaining coverage in New Zealand is not necessary because, on a non-partisan basis, governments have consistently voted to increase the minimum wage, and to expand holiday pay and programmes like paid leave. This argument ignores the critical local and enterprise-specific aspects of collective bargaining, as well as its impact on issues beyond minimum compensation.

Employees and independent contractors alike are increasingly managed by and through data, and often through algorithms. Unions and social dialogue can play a role in determining the terms of technological adoption, the types of technology used, and especially the privacy and surveillance implications of the

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<sup>89</sup> Commerce Commission of New Zealand. (n.d.) Authorizing anti-competitive transactions that will likely benefit New Zealand. Retrieved from <https://comcom.govt.nz/business/merging-or-acquiring-a-company/authorising-anti-competitive-transactions-that-will-likely-benefit-new-zealand>

<sup>90</sup> Commerce Commission New Zealand. (n.d.) Case register: Waikato-Bay of Plenty Chicken Growers Association Incorporated (on behalf of its members). Retrieved from <https://comcom.govt.nz/case-register/case-register-entries/waikato-bay-of-plenty-chicken-growers-association-incorporated-on-behalf-of-its-members>

<sup>91</sup> Australian Competition & Consumer Commission. (n.d.). Fees & forms. Retrieved from <https://www.accc.gov.au/business/exemptions/fees-forms>

collection of worker data. It is often impractical and inefficient to leave the critical questions of workplace-specific safety, automation, artificial intelligence and surveillance technologies to national legislation. While fair pay agreements are not the perfect solution because they do not reach the individual enterprise level, at a minimum, they could give way to sector-specific protections and give more non-standard workers an ability to negotiate conditions.

If fair pay agreement legislation moves forward in any form, it should provide coverage of self-employed workers in the negotiating sectors. If self-employed workers are excluded, employers may view it as less expensive or less burdensome to contract with them in lieu of employees (or misclassify their employees as contractors), leaving workers worse off. Relative to other OECD countries, in New Zealand there are few reasons for employers to move employment relationships to independent contracting relationships, or to misclassify workers. Excluding independent contractors from fair pay agreements could change the calculation for some employers.

## Recommendations for Improving the Tax Administration System (and Associated Administrative Data) for Self-Employed Workers

The Government could reform the tax collection system in a way that simplifies, rather than adds burden to, the current filing system for self-employed workers. Placing more obligations on contract payers and third party platforms and payment processors to report to IRD would increase tax compliance, and improve the data used to determine the nature of independent contracting in New Zealand.

The Government could also consider replacing the current, arbitrary list of entities subject to automatic tax withholding with a system based on income and payment levels. Placing the reporting – or even withholding – obligation on contract payers would further the goal of decreasing employer incentives to move employees to independent contractor status.

## Recommendations Specific to IRD

The IRD should enhance the tax (and related data) system for self-employed workers, with a focus on expanding reporting and/or withholding by entities that make or process payments to independent contractors. There are four mechanisms policymakers could consider, which may be implemented separately or together, depending on the level of support.

- Modify the reporting and storing of IR3 (individual tax return) data so that tax filers specify the type of non-wage/non-salary earnings they are reporting and separately report both income and expenses.
- Require credit card companies, third-party payment processors (e.g., PayPal) or platforms like Uber to annually report the value of payments made to individuals or businesses to both IRD and to the payment recipient. A model for this is the United States' IRS Form 1099-K, *Payment Card and Third Party Network Transactions*, which credit card companies and third-party processors like PayPal and Amazon use to report the payment transactions they process for

retailers or other third parties.<sup>92</sup> Use of a model already in operation overseas would ensure companies are accustomed to the process, thus not adding new or complex burden to these entities. The threshold triggering an information return could be set at the same value used in the United States (currently \$20,000 in sales and more than 200 individual transactions, but lowering the thresholds is under consideration to further improve tax compliance).

- Require any business or entity making substantial payments to an individual (independent contractor) or business to annually report the total value of such payments to both IRD and the payment recipient. This could be modelled after IRS Form 1099-MISC, *Miscellaneous Income*, which requires payers to report the total value of all payments to an individual or business if such payments total over \$600 annually and to list the reason for the payment (e.g., rent, services, prizes or awards).<sup>93</sup>
- Consider requiring any business or entity making substantial payments to an individual (independent contractor) or business to withhold, and transmit to IRD, taxes on the recipients' behalf. This could replace the existing schedular withholding system, with the tax rate set on the lower end of the continuum (15 per cent, for example). Payment recipients would receive an end-of-year statement detailing total payments and withholdings, and be responsible for ensuring payment for their total tax liability in the event they have underpaid, or claiming a refund if they have overpaid.

In addition, IRD, in collaboration with Stats NZ or other relevant departments and ministries, should produce annual statistics on trends related to independent and dependent contracting. The implementation of the first of the three recommendations above would enable annual reporting on metrics such as:

- the number of workers with any self-employment earnings from labour
- the number of workers with self-employment earnings as their primary source of income
- the number of workers with any self-employment earnings
- the average income from self-employment
- the average aggregate income of workers with any self-employment income
- changes over time in the actual number of self-employed workers
- the number of self-employed workers who rely on one contract/payer for their income
- the number of workers engaged with specific platforms (e.g., Uber, Task Rabbit and Mechanical Turk); the average income of such workers; and the share of such workers who pay taxes to the IRD.

## Recommendations Specific to MSD

Given the immense undertaking of reforming the current welfare system, much less determining how to best provide income assistance and education and training services to those not currently served, there should be multi-stage approach at MSD. MSD is unable to provide employment services interventions and counselling to many beneficiaries on its current caseload. Therefore, simply adding a new mandate to MSD's current responsibilities risks exacerbating existing problems and adding to the existing stigma

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<sup>92</sup> Erb, K. P. (2016, February 24). Understanding Your Tax Forms 2016: 1099-K, Payment Card and Third Party Network Transactions. *Forbes*. Retrieved from <https://www.forbes.com/sites/kellyphillipserb/2016/02/24/understanding-your-tax-forms-2016-1099-k-payment-card-and-third-party-network-transactions/#5de6e0924005>

<sup>93</sup> Internal Revenue Service. (n.d.). About Form 1099-MISC, Miscellaneous Income. Retrieved from <https://www.irs.gov/forms-pubs/about-form-1099-misc>

associated with Work and Income. Any new services or benefits should be piloted, evaluated and rolled out sequentially, to ensure they are adequate, effective and fully resourced. This report makes the following short- and long-term recommendations.

## Short term

- Select and measure core outcomes. Develop no more than 10 core outcome measures for benefit recipients and non-recipients that can be easily reported using the existing data infrastructure. Begin measuring outcomes for service recipients on a risk-adjusted basis. Examples of potential metrics include:
  - share of beneficiaries participating in employment/education/caretaking/volunteer activities 6/12/24 months after receipt of initial services/supports
  - earnings by source 6/12/24 months after receipt of initial services/supports
  - for those referred to education/training, credential attainment 6/12/24/36 months after receipt of initial services/supports
  - child-specific measures like poverty, age-appropriate education progression and timely health visits/health indicators at specific time intervals.
- Work with MBIE and the Treasury on an active labour market policy (ALMP) research/pilot agenda. Specific pilots should include:
  - collocation of open-access career services and education/training referrals at Work and Income offices
  - provisions of automatic, temporary income support and case management for unemployed workers, regardless of household income
  - dual provision of income assistance and education or training subsidies.
- Establish and communicate to frontline Work and Income staff protocols related to services available to those not on a benefit.
- Improve job bank and career services tools (with TEC and MBIE). Create an accurate, user-friendly tool describing available education and training opportunities, eligibility, financial assistance available and associated population-specific employment and earnings outcomes. Train staff on use of this tool.

## Long term

- Based on pilots, determine the best way to provide time-limited, immediate, partial income replacement to workers with a recent earnings history (whether through employment or self-employment), regardless of family income. The maximum duration of such benefits could be tied to either local or national unemployment rates, with longer durations of benefits in times of job scarcity.
- Provide Work and Income staff with training necessary to provide client-focused services using reliable and accurate tools. Aim (and provide funding) for a staff-to-client ratio that enables genuine provision of the following services:
  - for benefit recipients: targeted case management services, career services and referrals to education and training
  - regardless of benefit receipt: career services and referrals to education and training.

## Recommendations Specific to MBIE

MBIE plays a central role in New Zealand's industrial relations system, and therefore should lead reform in that area. However, given its role in labour markets, MBIE should also take on a lead support role in MSD's work determining and evaluating effective active labour market policies. Specifically, MSD should take the following steps:

- Work with MSD and the Treasury on an ALMP research/pilot agenda. Specific pilots should include:
  - collocation of open-access career services and education/training referrals at Work and Income offices
  - impacts of automatic, temporary income support and case management for workers facing job loss, regardless of household income.
  - dual provision of income assistance and education or training subsidies.
- With TEC and MSD, consider a requirement that all employers submit job vacancies in a uniform format, to be published on central website. This could be a useful consumer and data analytics tool for making labour market projections and enhancing education and training programmes based on demand data. Alternative options include:
  - creating an optional central job posting website with uniform formatting standards to be piloted and expanded if it is effective
  - using tools/contractors that enable the aggregation of all existing job postings into one central location.
- Clarify, publicise and facilitate access to the Commerce Act's exemption allowing anti-competitive agreements and mergers under the public interest exception (with the Commerce Commission).
- With respect to fair pay agreements and the Hobbit Law:
  - Repeal the mandatory classification of film industry workers as independent contractors.
  - Establish a definition of "dependent contractor" based on economic reliance on a maximum of two income sources/contracts/platforms. Consider categorically granting such workers an exception from the Commerce Act.
  - Authorise a fair pay agreement demonstration project with an initial tranche of legislatively mandated sectors and occupations and a requirement that the Commerce Commission and Employment Relations Authority approve the triggering of negotiations and the negotiated product.
  - Include the film industry as one of the first sectors, and encompass workers regardless of employment relationship.
  - If successful, allow a trigger for additional sectors and occupations.

## VIII. Conclusion

There is an immense amount of work under way in New Zealand aimed at helping understand and improve the country's resiliency to labour market changes in a way that protects workers' well-being and benefits the economy overall. This paper focused on non-standard workers in particular, and attempted to answer three questions: How is the nature of work changing in New Zealand? How have these changes specifically affected workers in non-standard employment, or how might they affect them? What are the best ways for policymakers to ensure social and economic well-being for workers impacted by these changes?

New Zealand's underlying structure for providing protections and benefits is well suited for managing some of the biggest challenges countries around the world are confronting as they adjust to and plan for changes in the nature of work. Many critical benefits, from health care to unemployment benefits, do not require a worker to have – or to have lost – traditional, full-time employment. However, despite the system's strengths, those in non-standard employment in New Zealand often face substantial challenges and disadvantage in terms of achieving social and economic well-being. Moreover, the existing data infrastructure in New Zealand does not allow for policymakers or the public to answer very basic questions about the security of non-standard employment, or changes to the general nature of that type of work.

The underlying premise of this report is that an adequate social contract should provide all workers with income support in old age and during times of unemployment, health care, access to a minimum wage (or equivalent for self-employed workers), access to career services and retraining and the ability to organise for protections or benefits specific to their workplace or sector.

New Zealand has the ability to be at the forefront of the world when it comes to future-proofing its system of worker protections and benefits, and should act to ensure its workers and its economy are braced for changes that are both within and outside of the country's control.

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