



NEW ZEALAND COUNCIL OF TRADE UNIONS

*Te Kauae Kaimahi*

**Submission of the  
New Zealand Council of Trade Unions  
Te Kauae Kaimahi**

to the

**Productivity Commission**

on

**Draft reports 3, 4 and 5 in its inquiry into  
Technological Change, Disruption and the Future  
of Work**

**P O Box 6645**

**Wellington**

**17 February 2020**

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### 1. Introduction

- 1.1. This submission is made on behalf of the 27 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With over 310,000 members, the CTU is one of the largest democratic organisations in New Zealand.
- 1.2. The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga) the Māori arm of Te Kauae Kaimahi (CTU) which represents approximately 60,000 Māori workers.
- 1.3. This submission should be read in conjunction with our submission on the issues paper and our submission on Draft Reports 1 and 2.

### 2. Draft Report 3: Training New Zealand's workforce

- 2.1. We are very disappointed that this Report puts aside options such as those in Appendix B with the aim of moving towards a culture of learning in our workplaces in which working people, supported by employers and the state, can expect that they will continue to learn throughout their working lives. This requires that they are able to take time for the education and training, that financial cost is not a barrier, and that there are relevant courses, provided in a convenient way.
- 2.2. This requires a package of measures, and as the Appendix observes, one element such as training leave is unlikely to be taken up unless other elements are in place such as financial assistance for course costs and recognition in workers' pay of increased qualifications and skills. However for many working people, paid training leave is a necessary component of making education and training feasible.

- 2.3. The Appendix finds individual learning accounts to assist with course costs problematic and subject to abuse. We would have liked to see thorough canvassing of other options such as extending standard subsidised and fees-free tuition to ensure it is available throughout a person's working life.
- 2.4. It is also worth analysing the employer's role: for example would a levy system assist employers in giving employees leave and encourage them to do so? Could it be extended to the self employed?
- 2.5. It is also important to consider the employer's active role in training. The employer may be the most appropriate provider of training where it is specific to that employer, such as a specialised piece of equipment or software development environment.
- 2.6. We disagree with the Report's view (p.5) that there is not much benefit in distinguishing between "general" and "firm-specific" skills. It is an important distinction, even if the boundary is blurred. Firm-specific skills must be provided by the firm itself; tertiary institutions cannot reasonably be expected to provide courses for every aspect of every firm's skill needs. This reinforces the need for firms to take an active role in their employees' development.
- 2.7. The Report reviews the evidence that vocational skills are poorly rewarded in New Zealand (Box 2.1). This is another symptom of New Zealand's weak wage-setting system. It needs to be fixed or people will be reluctant to make the effort needed for education and training to increase their skills; those who acquire qualifications will be encouraged to seek work in other countries. Sector-based collective bargaining in which the parties agree pay scales that recognise skills and qualifications is a well-recognised method for achieving this.
- 2.8. The Commission looks to the Nordic countries as a model for New Zealand. One important aspect of their approach to enhancing productivity and continually adapting to the skill needs this creates is what McLaughlin (2013) describes as "continuous vocational training" in Denmark. Similarly, according to Bredgaard and Daemmrigh (2012, p. 7), who are quoted in Draft Report 1, "continuing vocational training, or lifelong learning, plays an important role in Danish flexicurity. In international comparisons, Denmark's expenditures and share of training participants is among the highest in the world." In their view "...Danish trade unions ultimately were key to securing the balance between flexibility and security by supporting vocational training..." (p.8).

2.9. McLaughlin says continuous vocational training is “a key component of building a sustainable ‘high road’ strategy”. He describes how it is achieved through collective bargaining, including a fundamental role for unions in advocating for training and its recognition in pay scales. This is in a context where

Denmark has a tripartite system with the social partners involved at national, industry and local levels in the development and review of training policy, colleges and courses. Their close involvement ensures that the training offered is reviewed and modernized to meet the changing needs of industry, and that there is feedback between delivery, design and policy formulation. This creates confidence in the certification of training, which in turn facilitates worker mobility and labour market flexibility.

Social partner involvement also results in complementarities with the wage bargaining system, overcoming many of the potential prisoner’s dilemmas. Through the sectoral collective agreements, unions have negotiated annual leave entitlements of up to two weeks per year for employees to undertake training of their choice relevant to their career development. They have also bargained for several employer training levies, to cover the cost of reviewing and developing training courses, and more recently to address the lower uptake of training among low-skilled workers. This ensures that the costs and risks associated with training are shared among all employers covered by the collective agreements, and the potential issues of poaching are largely overcome. In some agreements the certification system has been embedded in the sectoral pay scales. This now happens less frequently with increasing wage decentralization, but where it does still occur, wage outcomes can be closely aligned with training outcomes. This provides an added incentive for employees to undertake training.

2.10. As the Report’s Figure 2.2 shows, international surveys suggest there is a high rate of work-related education and training in New Zealand. This is inconsistent with evidence of skill gaps, lack of incentive for training, and the weak state of industry training generally with declining participation in provider-based tertiary education (Figure 2.6). It raises questions about the methodology. For example

2.10.1. In workplaces where formal or extensive education and training is unusual, difficult to obtain and the exception, the *expectations* of employees (and perhaps managers) is likely to be low. They may regard any transfer of knowledge, such as induction to the job or basic instruction on how to use a piece of equipment or execute a process, as education and training whereas their counterparts in a country like Denmark where formal education and training is the expectation, might consider these as simply part of normal workplace communication.

2.10.2. The high proportion of this education and training that is classified as “non-formal” needs further investigation. This is not to suggest that non-formal education and training is necessarily a bad thing: the northern European countries also have high levels, and it is a key part of apprenticeships. The critical issue is its quality. For example, as discussed in the previous paragraph, is it very firm and task specific, not necessarily increasing the worker’s transferable skills and knowledge, or does it equip them for significant change?

2.10.3. The Report says that “Non-formal learning” as defined in these surveys “includes learning from others (eg, co-workers or supervisors) and learning-by-doing from tasks performed on the job”. Its high incidence could reflect a *lack* of training of workers when they come to a job, therefore requiring more help from their co-workers or supervisors than in other countries.

2.11. In Finding 2.1, the Report concludes that “New Zealand workers have high rates of participation in work-related education and training, compared to workers in other OECD countries.” We **submit** that the *quality* of the education and training taking place in our workplaces is a crucial issue on which the Commission should seek better information.

*Employment status of work-based trainees*

2.12. We are very concerned at recommendation R3.1 that work-based trainees such as apprentices should not have to be employees. While we understand the view that training should be open to the self-employed, the recommendation has grave dangers. The restriction is there for a sound reason: that employee protections are vital for trainees, and allowing employers to move their trainees to a self-employed/contractor/labour only relationship is fraught with risk for the trainees.

2.13. Work-based trainees, and particularly young trainees, are in a particularly vulnerable relationship to the firm training them. If the relationship breaks down then they are at risk of losing not only their employment but their prospects for a qualification. They will therefore be doubly reluctant to take action against poor behaviour by the training firm and are thereby open to exploitation.

2.14. A breakdown can come for a variety of reasons, including employment-related issues and training-related issues. Alkema, McDonald and Murray (2016), undertook a study for Ako Aotearoa – The National Centre for Tertiary Teaching, aimed at understanding why trainee completion rates are low. They interviewed 114 trainees

who had not completed their qualification and found that reasons for non-completion included personal factors and insufficient support from the relevant ITO, but also many under the control of the employer. These included lack of employer support for training, lack of help from their employer, not getting on with the boss, workplace culture, high workloads and low pay. The study's literature review reported that other researchers have found bullying and trainees feeling like cheap labour. In addition, an employer may go out of business.

- 2.15. Alkema et al summarise (p.5): "When the employer, system and trainee factors are considered, this study found the employer factor made a slightly larger contribution to non-completion than did system or trainee factors. The employer factor includes reasons such as: not getting the right sort of training and support, less than optimal workplace environments, and job loss."
- 2.16. If trainees raise any of these concerns, or other work-related concerns, they may put not only their job but their future – their qualification – at risk if it leads to a breakdown of their employment relationship. As an employee, they have protection against unfair dismissal. As a contractor or self-employed person, they have no such protection. While it may be possible to build some protections into a training contract as the Commission suggests, such protections are unlikely to be complete and will be difficult to enforce because they would be subject to the normal court system rather than the employment relations system. In any case, a training firm could simply stop offering work to the trainee claiming it is unrelated to the training problem.
- 2.17. In addition, not being an employee means the trainee, who typically is low paid, would not be entitled to the minimum wage and yet be loaded with the costs and administration of GST, ACC levies, providing their own tools and unpaid sick leave, with no provision for holidays or other minimum labour standards. They would be unable to benefit from collective bargaining. The trainee would have to learn to run a business at the same time as learning a trade.
- 2.18. This is not to say that all employers are bad employers or poor trainers, nor that they would all take advantage of such a change in trainee status. But as Alkema and others have demonstrated, and we know from our own experience, poor behaviour does happen and is not infrequent, and there are many well-established cases of employers forcing contractor status on their employees (often unlawfully). It would run a high risk to leave misuse of the change in employment status to trust,

particularly given how high the stakes are for both trainees and an industry training system already concerned about quality and desperate for more trainees.

- 2.19. A further aspect is that the trainer-trainee relationship is an ongoing, long term one. Much of the learning is informal instruction as the trainee undertakes a task, taking advantage of the many such opportunities in a work environment. It is difficult to see how that would fit with a self-employed person's pattern of work for multiple clients unless they work predominantly for the firm that is training them. If the latter is the case then it is likely that the relationship is close to being, or being in reality, one of an employee.
- 2.20. The solution to providing training opportunities to the self-employed lies in designing new training schemes that suit the circumstances of the self-employed (for example, expecting a much higher degree of self-guided learning) which do not place other trainees and apprentices at risk.

#### *New immigrants*

- 2.21. Recommendation 3.2 states:

In implementing its reforms of the vocational education and training system, the Government should ensure that people legally entitled to work in New Zealand will be eligible for both work-based and provider-based vocational education and training that is connected to their work, regardless of their visa status or length of residency.

- 2.22. We agree with this recommendation. It should include access to workplace literacy and numeracy training. There would be details to work out around eligibility and funding, but access to training could lead to better employment outcomes, access to more secure visa status for migrants, and higher productivity overall.

#### *Funding and objectives of tertiary providers*

- 2.23. Finding 3.7 states:

The lack of significant funding reallocation between tertiary providers over time has led to inertia and conservatism. It has dampened incentives for providers to innovate and to be responsive to student and employer needs. It is important that the proposed unified funding system does not result in more inertia and conservatism.

2.24. We do not accept that unstable and competitive funding promotes innovation in any sense that is positive for learning outcomes. As we submitted on the Education (Vocational Education and Training Reform) Amendment Bill:

- 7.1 The CTU supports the effect of the Bill to introduce a unified model of funding for vocational education.
- 7.2 Funding of vocational education should promote equitable access and ease of transition between on-job and off-job forms of training, guided by the needs and preferences of learners. This will require the funding system to avoid perverse incentives, such as education providers being penalised for non-completion when a student leaves a course to take up full-time employment.
- 7.3 Funding arrangements should promote cooperative and complementary relationships between different organisations in the system, including WDCs and NZIST.

2.25. Longer term funding enables providers to take a longer term view such as investment in development of courses and qualifications, and development of longer qualifications, and in innovation with a longer term payoff.

2.26. Our tertiary education system has always had multiple goals, including social, cultural, economic, regional, learning, research and dissemination of knowledge including its critic and conscience role. We do not accept that this is negative or that it necessarily constrains innovation and responsiveness (Report p.27). On the contrary it encourages institutions to constantly review their activities in these lights.

### **3. Draft Report 4: Educating New Zealand's future workforce**

3.1. On the whole, we welcome the fact that this draft Report confirms the concerns that teacher unions have expressed over several years. For example it highlights insufficient resourcing and insufficient provision of professional learning and development for teachers, heavy workloads, and excessive emphasis on students attaining qualifications at the expense of the broader objectives of the curriculum.

3.2. The fall in student achievement in New Zealand reported in international surveys (section 2.1) needs to be considered over a period of years and in its social and economic context rather than in the results of individual surveys. To the extent that it does reflect reality, it is consistent with research showing that high levels of income inequality lead to poorer educational outcomes (Wilkinson & Pickett, 2010) and that



in turn leads to poorer economic growth (Cingano, 2014). This emphasises the importance of the benefits (and costs) of changes in technology and other impacts on future work being distributed fairly: policies should ensure that they reduce, and certainly not increase, current high levels of inequality.

3.3. The importance of quality early childhood education is emphasised in this section. There are growing concerns that this is at risk due to insufficient qualified ECE teachers being employed. This is a result of years of underfunding and weak quality standards for the proportion of qualified teachers. The widespread presence of for-profit ECE centres creates additional tensions between profitability and quality. (See for example Gerritsen, 2018.)

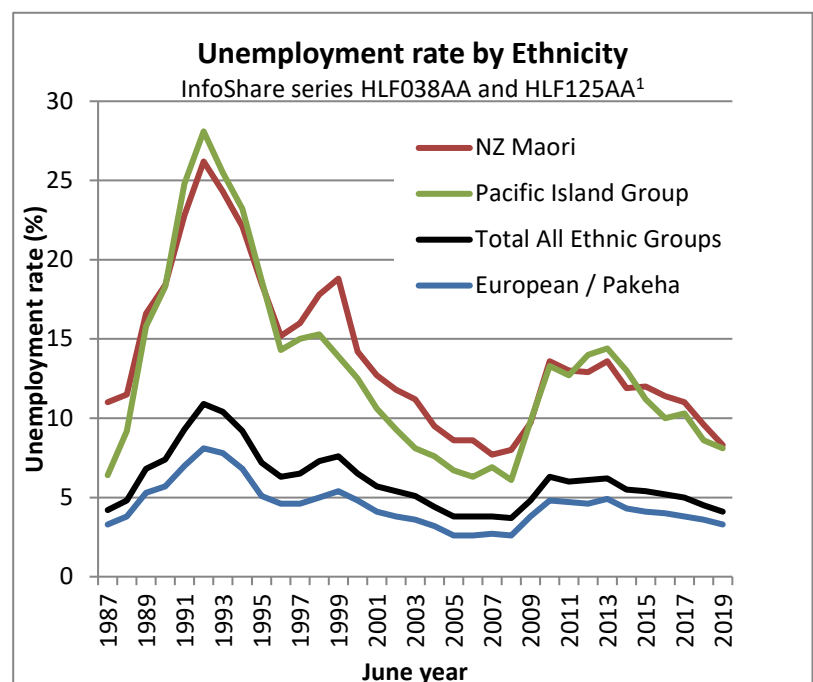
#### 4. Draft Report 5: Technology adoption by firms

4.1. We first comment on some of the observations in early parts of the Report.

4.2. In section 1.1 the Report states:

Over the past few decades there has been substantial change to both the workforce and to firms' demand for labour; and New Zealand has adapted to that change without consequences that might qualify as "disruption". There is no reason to expect that technological change in the next decade or so will not be within the capacity of New Zealand's well-functioning labour market to absorb.

4.3. Perhaps it is true that New Zealand has adapted to technological change without "disruption" (though in some industries, such as the containerisation of ports, workers experienced very significant disruption) but that cannot be said of all substantial change in New Zealand. The radical policy changes beginning



in 1984 led to unemployment peaking at 11.2 percent in 1991 with Māori

unemployment reaching 26.2 percent and Pacific Peoples' unemployment 28.1 percent (see the graph on the previous page). Unemployment did not get back to 1987 levels (themselves historically high given unemployment well under 2 percent from the 1950s until the early 1980s (Chapple, 1994)) until 2004, and among Pacific peoples until 2006<sup>1</sup>. That is severe disruption and even then does not show the impacts on regions and provincial centres, some of which were very severe and took decades to recover from – or they have not recovered at all.

4.4. A study by Stillman, Le, Gibson, Hyslop and Maré (2012) found that

controlling for changes in household composition, demographics, qualifications, and employment rates does not explain the increase in poverty that occurred in the 1980s. Taken in conjunction with previous work by Gibson and Harris (1996), Dalziel (2002) and Stillman et al. (2011), these results suggest that the structural reforms undertaken in the 1980s led to permanent changes in the distribution of resources across households in New Zealand, in particular a reduction in resources for the poorest households.

4.5. The Commission itself has documented high skill mismatching. We know that people who lose their jobs suffer greater ongoing income loss than many other OECD countries and poor subsequent employment outcomes (e.g. Hyslop, 2019; Hyslop & Townsend, 2017; OECD, 2017). Wage levels and their share in domestic income are low compared to other OECD countries; real wages have failed to keep up with productivity; and vocational skills are poorly rewarded. It is difficult to understand why the Commission regards this is a “well functioning labour market”.

4.6. This should be a major motivator for all of us to ensure that future changes, whether due to technology or for other reasons, do not have such lasting damaging effects and that we address the failings of employment and industrial relations in New Zealand before such changes occur.

4.7. We are interested to read that the Commission is analysing current income replacement rates in New Zealand (Box 1.2). We would not accept however that a 50% income replacement rate is even close to an adequate level. It would not prevent people from being afraid of change. In addition it will be important to reflect the reality that many households (and 72% of couples with dependent children in

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<sup>1</sup> HLF038AA is a discontinued series running to 2008, using a prioritised definition of ethnicity. We have continued it from 2009 with current series HLF125AA which uses a total response definition of ethnicity (and is only available from 2009) so the two do not exactly match. However our observations of the trends all relate to the period before 2009 so any discontinuity does not reduce their validity.

Sept 2019, according to the Household Labour Force Survey) require two incomes to make ends meet. This is likely to become even more common with rapidly rising housing costs. Current social welfare rules make most laid off workers ineligible for assistance if they are living with a partner who is also working, potentially halving the household's income (or worse), regardless of benefit levels. This is in contrast to ACC income replacement payments (weekly compensation) which are an individual entitlement regardless of household income.

- 4.8. We are pleased to see the Commission addressing management capability in section 2.2 and Findings 2.1 and 2.2. We agree that management ability is an important factor. We point out however that the ability of managers to release the full ability of people working for a firm by welcoming their participation in decision making and problem solving, making use of their knowledge of the work they do, is particularly crucial and frequently lacking. The High Performance, High Engagement models adopted by Air New Zealand and KiwiRail have produced significant productivity gains and improved relationships, with union involvement particularly important because it gives workers some assurance that undertakings will be kept and they will share in the benefits of the higher productivity.
- 4.9. On page 16, the report again discusses employment protection legislation. We have discussed this at some length in our submissions on both the Issues paper and Draft Reports 1 and 2. Other than observing that the Commission is again relying on outdated OECD thinking from its Employment Outlook 2013, we note that even on the basis of the data presented there (OECD, 2013, p. 81, Chapter 2, Figure 2.2), New Zealand's level of "procedural inconvenience" is below the OECD average and below that of Norway, Finland, Denmark and Sweden – all the northern European countries which the Commission finds are useful models of flexibility and employment security. Further, the procedural inconvenience relates to individual dismissals. It is mass dismissals that are the most relevant to the ability of firms to change their technology or production processes. Finally, New Zealand's processes for individuals (Personal Grievance) are in place to ensure fairness of treatment. They do not prevent dismissal for good reason, which can include restructuring or closure of part of a business. We would strongly object to any suggestion that these protections against unfair dismissal should be weakened. In all, New Zealand's protections against dismissal are the lowest in the OECD (OECD, 2017, p. 53).

4.10. We briefly comment on some of the suggestions in section 4.1 (“Protect and extend business-environment dynamism”).

4.10.1. Maintaining an open economy (p.23) needs to be balanced with maintaining an environment which allows the growth of new firms which can be damaged by excessive competition in their early stages. The example is given of the Kiwifruit industry in Box 4.2; like dairy it has benefited by being allowed to form a monopoly structure in the earlier stages of its development, and retain some ongoing privileges that enable it to compete internationally from a strong domestic base. The acknowledgement is made on p.27 that “Some of New Zealand’s more innovative firms have benefited from supportive institutions, policies, public co-investments in complementary assets, and other forms of government assistance”. Some of that support has been in other forms of protection from international competition in their early stages and has created a number of now-successful firms (see our submission on draft reports 1 and 2).

4.10.2. While we are open to the principle of “protecting workers, not jobs or firms” (p.23), it demands strong support for workers who do lose their jobs, including ACC-like income replacement, a full range of active labour market policies, strengthened work-based education and training available throughout people’s working lives, collective agreements to ensure workers do benefit from the change, and tripartite arrangements of government, unions and business representatives to coordinate and oversee the system. If working people find they have lost their remaining job security but support for them when they lose their jobs is weak and the replacement jobs on offer are low value, they will oppose change.

4.10.3. We welcome the support given to industry policy even though it is cautious (“Targeted interventions come with risks and challenges”, p.25). Such policies would bring us into line with the U.K. and many successful European countries. Others, like the US, run de facto industry support policies through programmes such as small business support, defence spending and support for “green” energy and other technologies. On the whole we think the Commission is too cautious. It is vital that we rebalance the economy, both to ensure a flow of new *good* jobs replace those that are lost, and to raise New Zealand’s productivity. On the assertion that “Governments should not prioritise lifting the performance of weak firms”, we point out that firstly, it needs to be determined whether weakness is structural (in which case it is sensible to consider whether the

structural causes can be remedied at reasonable economic and social cost) or temporary. If it is decided that the industry is in an irremediable structural decline then there is still a government role to assist people working in the industry to transition from the industry with minimal personal cost. In the case where climate change is the driver this is known as a Just Transition, but the same principles can be applied to other changes.

- 4.11. Finally, we agree that regulatory settings need review in light of widespread use of digital technologies, including competition (p.29) and consumer data rights (p.30). This is increasingly urgent. As previously submitted, there are many issues raised by use of digital technologies that also need attention that impact on rights of working people to be free from discrimination and on their privacy. We are surprised the Commission has not given them more attention given the objectives of the inquiry. However we do not agree that New Zealand's dominant form of regulation, described on p.28 as a "focus on achieving desired outcomes", also known as "light-handed", has been a success. Examples of failure of this type of regulation include leaky buildings (and ongoing serious quality problems in the building industry), high rates of harm in the workplace, and the finance sector crash in the 2000s. As to whether regulation "reduces economic dynamism" (p.30), this is often exaggerated. Firms can find opportunities that are consistent with regulation. To the extent that the risk exists, addressing it is partly a matter of design, but it is also partly a matter of priorities: economic outcomes need to be weighed against social outcomes, environmental outcomes, and human rights (such as protection of privacy and against discrimination).

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