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IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON
ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Initial reports submitted by States parties under
articles 16 and 17 of the Covenant

Addendum

NEW ZEALAND

[9 October 1990]

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INTRODUCTION

1. New Zealand ratified the International Covenant on Economic, Social and Cultural Rights on 28 December 1978 and it entered into force for New Zealand on 28 March 1979. (New Zealand also ratified the International Covenant on Civil and Political Rights at that time.)
2. This report is submitted in accordance with articles 16 and 17 of the Covenant and, being New Zealand's initial report, it relates to the measures adopted and the progress made in achieving the rights recognized in the Covenant from the time of its entry into force for New Zealand, until mid-1990.
3. Reports on the implementation of the Covenant with regard to the Cook Islands, Niue and Tokelau, which are also covered by New Zealand's ratification, will be submitted separately.
4. A description of the New Zealand legal structure is contained in the introduction to New Zealand's initial and second reports to the Human Rights Committee of the United Nations on its implementation of the International Covenant on Civil and Political Rights (CCPR/C/10/Add.6 and CCPR/C/37/Add.8), and is not repeated in detail here. In summary, New Zealand is a parliamentary democracy based on the Westminster model. Legislative power rests with Parliament, which consists of the Governor General (who acts on behalf of Her Majesty the Queen) and the 97-member elected House of Representatives. The role of the Governor General being essentially formal in nature, "Parliament" is for practical purposes synonymous with "House of Representatives". Elections are held every three years.
5. In New Zealand, the ordinary law (as opposed to a supreme or basic law such as that found in many jurisdictions) provides the foundation for the constitutional framework. The Constitution Act 1986 terminated the residual power of the United Kingdom Parliament to enact law for New Zealand and brought together in one enactment most of the statutory provisions of constitutional importance. New Zealand law consists of the common law (sometimes referred to as case law or judge-made law); statute law enacted by the New Zealand Parliament; a small number of United Kingdom statutes adopted in the main before 1840, e.g. the Magna Carta; and regulations, by-laws and other forms of subordinate legislation made under statutory authority. (The Imperial Laws Application Act 1988 specifies the extent to which inherited imperial laws are to have effect as part of the laws of New Zealand.)
6. In recent years there has been ongoing debate over a proposal to adopt a Bill of Rights for New Zealand. Parliament's Justice and Law Reform Select Committee, after considering public submissions on a White Paper, including a draft Bill of Rights, issued its report in 1988. The Committee considered that New Zealand was not yet ready for a fully-fledged Bill of Rights along the lines of the White Paper draft. It saw, however, substantial merit in the proposal for a Bill of Rights for New Zealand. A majority of the Committee recommended the introduction of a Bill of Rights in the form of an ordinary statute, that is, not a supreme law and not entrenched. After discussion of the issues involved, it was decided not to extend the terms of the proposed Bill to include social and economic rights. The enjoyment of these rights, it was felt, is already adequately protected under the wide range of specific laws by which the Government is committed to positive action for their

promotion. A draft Bill of Rights in the form of an ordinary statute was accordingly introduced into Parliament and passed in August 1990. The focus of the law is upon civil and political rights, in order to provide certain checks and balances on existing powers of the Executive.

7. Specific information on the matters covered by articles 1 to 5 of the Covenant is provided at appropriate points of the main report relating to articles 6 to 15. A more general outline of the basic conditions relevant to those introductory provisions of the Covenant may also be helpful by way of background.

8. New Zealand's recognition of the right of peoples to self determination (art. 1) is well documented, and has in particular been demonstrated in the discharging of its obligations under Articles 73 and 76 of the Charter of the United Nations. More detailed information on this aspect is also provided in New Zealand's initial report to the Human Rights Committee.

9. In the context of the rights recognized by the International Covenant on Economic, Social and Cultural Rights, it may be noted that the New Zealand legal tradition has not tended to adopt statements of "rights" as such: the provisions of the Covenant have not been directly incorporated into law. However, in accordance with the Government's commitment to the progressive implementation of the rights that it covers (art. 2.1), New Zealand is giving effect to the Covenant through the provisions of individual statutes and through the wide range of programmes developed by the Government to implement those laws. Information on such laws and programmes is contained in the body of this report, in accordance with the Guidelines for Reporting contained in document E/C.12/1987/2 of 24 December 1986.

10. Two pieces of legislation are fundamental to New Zealand's implementation of the Covenant, and in particular to its prohibition of discrimination as contained in article 2.2. These are the Human Rights Commission Act 1977 and the Race Relations Act 1971.

11. The Human Rights Commission Act has the purpose of promoting the advancement of human rights in New Zealand in accordance with both of the international human rights Covenants. The Act makes it unlawful to discriminate on grounds of colour, race, ethnic or national origin, sex, marital status, or religious or ethical belief. The fields covered involve unlawful discrimination in matters relating to the provision of employment, land, housing and other accommodation, and education; as well as access by the public to places, vehicles and facilities, and the provision of goods and services. There are special provisions relating to advertising and victimization. In order to provide for the investigation of alleged breaches, the Act established the New Zealand Human Rights Commission, which also has the general function of promoting, encouraging and coordinating activities in the field of human rights.

12. The Race Relations Act 1971 was enacted principally in order to bring New Zealand law fully into conformity with the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination, which New Zealand ratified later the same year. Though of more limited scope than the Human Rights Commission Act, this Act established effective procedures,

through the Office of the Race Relations Conciliator, for dealing with offences of discrimination on grounds of colour, race, or ethnic or national origin. In similar terms to the Human Rights Commission Act, discrimination is forbidden in the provision of employment, land, housing and other accommodation, and goods and services, as well as in public access to places, vehicles and facilities, and in advertising.

13. Both Acts place emphasis on the settlement of complaints of discrimination through a process of conciliation. Where this fails, cases may be referred to the Equal Opportunities Tribunal, which was established under the Human Rights Commission Act. Examples of cases dealt with under these Acts are given in the body of this report where they are relevant to New Zealand's implementation of the Covenant.

14. The provisions of these two Acts, like all New Zealand laws, apply to everyone within the jurisdiction of New Zealand. With regard to article 2.3, it may be noted that some of the provisions of New Zealand laws and programmes relevant to the rights set forth in the Covenant are restricted in the case of non-nationals, for example by residential qualifications in the case of social security benefits, or by work permits in the case of the right to work. Further information on this aspect is given at the appropriate points of the report.

15. New Zealand is also a State party to the Convention on the Elimination of All Forms of Discrimination against Women, and is committed to ensuring the equal right of women and men to the enjoyment of the rights set out in the Covenant, (art. 3). With the establishment of the Ministry of Women's Affairs in 1985, the Government has an effective means of ensuring a women's perspective in the formulation of policy, with special attention to the views of Maori women through Te Ohu Whakatupu, a branch of the Ministry.

16. As regards limitations on rights (art. 5), the two reservations entered by New Zealand at the time of ratification, relating to article 8 (as regards freedom of association to form and join trade unions) and article 10 (as regards paid maternity leave) do not detract from New Zealand's observance of the nature of the rights concerned in these articles.

Basic conditions prevailing in New Zealand

17. In order to clarify further the context in which the report is set, the following section outlines the economic, social and cultural conditions prevailing in New Zealand.

18. New Zealand is a developed country with a market economy based on the export of primary products. It is a member of the OECD. The population at the time of the last census (1986) was 3.3 million. New Zealand is fortunate in its temperate climate and abundance of domestically produced foods. By most measures, living standards are high, though economic difficulties over recent decades have led to a decline in per capita incomes (from one of the highest rates in the OECD to 18th place by the early 1980s), and many other indicators of social well-being have also deteriorated. For the year ended March 1989, GDP per capita was \$NZ 18,506 p.a.

19. Two main cultural streams make up New Zealand society: that of the Maori people whose roots and traditions go back a thousand years or more in New Zealand; and that of the European (predominantly British) settlers who have come to New Zealand over the last 150 years. The year 1990 is being marked with special significance both for its historical importance as the hundred and fiftieth anniversary of the signing of the Treaty of Waitangi - the founding document of New Zealand which provided a basis for partnership between the Maori people and the British Crown - and as a milestone in the evolution of its national identity.

20. New Zealand society is still based on a commitment to community ideals. This has its roots both in Maori traditions of a cooperative and sharing society, in which great value is placed on tribal and extended family links; and in the community structures of the 19th century European settlers, for whom cooperation, sharing, and Christianity were essential aspects of daily life. Other non-European immigrant groups who formed part of the evolving society (for example Chinese and Indians, and people from neighbouring Pacific Island countries), also retained a strong attachment to family and community values as part of their own culture. Such characteristics were reflected in pioneering social welfare legislation, which has been further elaborated in a comprehensive social welfare system designed to ensure an adequate standard of living for all New Zealanders. Nevertheless, the strength of community values has been placed under pressure by urbanization and, more recently, by rapid social and economic changes.

21. Economic and social policies are designed to take account of certain characteristics of the New Zealand population. One of the most important is its growing ethnic diversity. While persons of European descent still make up the largest proportion of the population, this is decreasing. The 1986 Census recorded that people of European descent comprised about 81 per cent of the population, with those of Maori descent comprising about 12 per cent, Pacific Island Polynesian descent 4 per cent, and other ethnic descent, 3 per cent. While the Maori rate of growth has been slowing down, this proportion of the total population is still expected to increase. New Zealand's Pacific Island Polynesian population grew by about 30 per cent between 1981 and 1986 due to net immigration. Migration patterns are also likely to increase the proportion of the population of Asian descent.

22. New Zealand's population is highly urbanized. Auckland, in the north of the North Island, is New Zealand's largest city (and the world's largest Pacific Island Polynesian city). Twenty-five per cent of the population live in the Auckland area and nearly 75 per cent live in the North Island. During the period under review, the migration of rural dwellers to the cities has largely ceased. While the population remains mobile, migration is now mainly between urban centres, or in some cases away from cities to rural areas.

23. At present, the majority of the population (62 per cent) are people of working age, i.e. between 15 and 59 years of age. A steady rise in the proportion of the population in the younger working ages, 20 to 44 years old, reflects the maturing of the post-World War II "baby boomers". People under 15 comprise a decreasing proportion of the population overall, notwithstanding a current rise in the birth rate which appears to be a short-term trend. Those over 60 constitute an increasing proportion with a marked increase in the number of people aged 75 and older. The ageing of the population is thus a significant factor for economic and social planning.

24. Nearly 90 per cent of New Zealanders still live in family households, but fewer of these are nuclear family households. There has been a marked increase in the number of one parent families, divorces and remarriages, and de facto unions. In addition, there is now greater recognition of the importance of extended family ties, especially for Maori and Polynesian people.

Recent developments

25. In the years since 1984, important economic and social reforms have been undertaken. The economy has been extensively deregulated, including the abolition of agricultural subsidies, relaxation of import controls and reduction of tariff barriers. Budget deficits have been reduced, as has the level of inflation (to around 5 per cent in 1990). Major public sector reforms have been introduced to increase efficiency, for example through the corporatization (under the State Owned Enterprises Act 1986) of certain large government departments engaged in commercial activities; through management reforms in government departments (under the State Sector Act 1988); and through measures to ensure greater accountability for expenditure within government services.

26. The process of reform is continuing. Information on the changes which have occurred in areas such as labour relations, health, education, and social welfare is provided under the relevant articles of the report. It should be noted that in some cases where reforms are not yet fully implemented or where they are still very recent, it is not possible to assess their full impact. The Government has made it clear that the ultimate purpose of the reforms is the enhancement of living standards for all New Zealanders, on the basis of sustained economic growth. Many reforms are aimed at ensuring more equitable enjoyment of economic and social rights for all individuals and groups. In many respects, reforms have had the effect of reducing government intervention and promoting community involvement in decision-making.

27. Consultation between Government and the community on the reform programme has been an important part of the process. For example, the Government convened an Economic Summit Conference at Parliament in 1984, bringing together leaders from commerce, industry, the trade union movement and community groups. Discussions centred on the policies necessary to achieve improved economic growth, more jobs and greater social justice. The Conference pledged support for a cooperative approach to dealing with New Zealand's economic difficulties. Among other things, it urged the Government to pursue a consistent policy framework encompassing all interrelated elements of the economy.

28. In the social policy area, the Government in 1986 established the Royal Commission on Social Policy. The Royal Commission was charged with assessing how New Zealand measured up as a fair and just society, and with recommending improvements where society was falling short. Its report "Towards a Fair and Just Society" was presented in June 1988, and was based on over 6,000 submissions from individuals and groups, as well as research papers and other specially commissioned work. The following excerpt from the report lists four points which the Commissioners assessed should govern social policy for the next decade:

"1. If we are to succeed as a society, New Zealand must do much better in two central areas. One is race relations and particularly the position of the Maori. The other is the role of women.

2. The importance of work, both paid and unpaid, to the well-being of all New Zealanders is crucial. The primary instrument for achieving a fair and just society must be economic and social policies designed to provide wide employment opportunities.

3. Major change is needed in the way the State and the institutions of the State carry out their responsibilities. There is a need for more effective individual and community participation with power, responsibility and resources moving closer to communities.

4. Economic and social policy are necessarily linked as interdependent means of achieving the same goal of social well-being. They should be designed jointly and their economic and social impacts should be regularly monitored and assessed."

29. The Royal Commission report has contributed substantially to discussions on subsequent reforms in all important fields. Many specific recommendations are reflected in policy developments, of which more detail is given in the main body of this report.

The Treaty of Waitangi

30. As noted above, the Treaty of Waitangi is New Zealand's founding document. During the period under review, the Treaty has gained an increasingly important place in the development of New Zealand law, and in all aspects of economic and social policy. Maori people have long maintained that the Treaty of Waitangi provides the basis for a harmonious bicultural society. A process whereby the principles of the Treaty are being incorporated into the New Zealand legal system has been gathering momentum since the passage of the Treaty of Waitangi Tribunal Amendment Act 1985. The Treaty is specifically recognized in a number of recent statutes of which important examples are the State Owned Enterprises Act 1986 and the Education Act 1989.

31. The New Zealand Government outlined its position on the Treaty in 1989 in a document entitled "Principles for Crown Action on the Treaty of Waitangi". The Prime Minister noted, in releasing the document, that the Treaty of Waitangi has the potential to be New Zealand's most powerful unifying symbol. The paper sets out five principles, consistent with the Treaty, which are aimed at helping the Government to make decisions about matters related to it. These are the principles of kawanatanga, (recognizing the right of the Crown to make laws and its obligation to govern in accordance with constitutional process); rangatiratanga (guaranteeing to Maori tribes the control and enjoyment of those resources and taonga, or prized possessions, which they wish to retain); equality; cooperation; and redress.

32. More detailed information on the Treaty of Waitangi is contained in New Zealand's Eighth & Ninth (Consolidated) Periodic Report to the Committee on the Elimination of Racial Discrimination (UN Document CERD/C/184/Add.5) and in New Zealand's earlier reports to that Committee.

I. ARTICLE 6: THE RIGHT TO WORK

A. Principal laws

33. The principal laws concerned with the right to work include:

- (a) The Labour Department Act 1954 (until 1989);
- (b) The Disabled Persons Promotion Act 1960;
- (c) The Race Relations Act 1971;
- (d) The Human Rights Commission Act 1977;
- (e) The Apprenticeship Act 1983;
- (f) The Labour Relations Act 1987;
- (g) The State Sector Act 1988;
- (h) The Immigration Act 1987;
- (i) The ACCESS Training Scheme Act 1988.

34. The following reports to the International Labour Organisation (ILO) have also been made:

- (a) 1986: Article 22 report on ILO Convention No. 122, Employment Policy, 1964;
- (b) 1986: Article 22 reports on ILO Conventions No. 111, Discrimination (Employment and Occupation), 1958; No. 29, Forced Labour, 1930; No. 105, Abolition of Forced Labour, 1957;
- (c) 1989: Article 22 report on ILO Convention No. 88, Employment Service;
- (d) 1989: Article 22 report on ILO Convention No. 44, Unemployment Provision, 1934.

Introduction

35. The right to work is recognized in New Zealand as a vital factor in social and economic well-being. The shattering effects of widespread joblessness during the 1930s Depression formed the foundations for the modern welfare State that has evolved in New Zealand since then. The Royal Commission on Social Policy spoke of work as "central to the well-being of New Zealanders. How work is distributed, the conditions under which it is performed and the significance attached to it have an impact on every other aspect of social policy."

36. Thus although there is no statutory guarantee of the right to immediate work for everyone, the promotion of employment has for decades been a central element in the economic and social policies of New Zealand Governments, reflected for example in section 8 (2) of the Reserve Bank Act 1973

(repealed 1989). This stated that "the monetary policy of the Government ... shall be directed to the maintenance and promotion of economic and social welfare in New Zealand, having regard to the desirability of promoting the highest level of production and trade and full employment ..." Individual aspects of the right to work are safeguarded in a variety of legislation, described in the following sections.

37. Restrictions are placed upon the right of people who are not New Zealand citizens to undertake employment in New Zealand. Specifically, the Immigration Act 1987 (section 5) sets out the requirements for undertaking employment for non-citizens. Those who hold a residence permit, a work permit, or any other type of temporary permit authorizing employment in accordance with the Act, as well as those who are exempt under the Act from the requirement to hold a permit, may take on employment. Section 11 of the Act sets out the terms for exemption from the requirement to hold a permit (for example, diplomats, members of the armed forces of another country in certain circumstances, crew of foreign aircraft or fishing vessels, etc).

B. Employment

1. The right of everyone to gain a living by work freely chosen or accepted: freedom from compulsion, etc.

38. Forced or compulsory labour as an institution has never existed in New Zealand and is therefore not specifically referred to in its general law. New Zealand is a party to the Slavery Convention 1926, the 1953 Protocol amending that Convention, and the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery 1956. New Zealand is also a party to ILO Conventions No. 29 concerning forced or compulsory labour, 1930, and No. 105 for the Abolition of Forced Labour, 1957. Compulsory military service was abolished in 1973.

39. Education being compulsory until the age of 15, the minimum age for workers is 15, in practical terms. Section 30 of the Education Act 1989 proscribes the employment of anyone under 15 within school hours or in any circumstances which interfere with the person's schooling. A fine of up to \$1,000 may be imposed for offences under this section. There are some occupations, such as newspaper or milk delivery, in which children may work (within the scope of these restrictions).

40. There is no compulsory retirement age, though for workers in most parts of the public service, retirement is mandatory at 60. In the private sector, many awards stipulate the retirement age.

41. There is no restriction of freedom of choice of employment, subject to the availability of jobs, and Government policy of recent years has been aimed at increasing the flexibility and autonomy of the labour market.

42. Discrimination in respect of access to employment is illegal in New Zealand. Section 5 of the Race Relations Act 1971 covers the employment area in detail, prohibiting discrimination on the grounds of colour, race, ethnic or national origins with regard to hiring, firing, terms of employment, conditions of work and opportunities for training and promotion of any person. It is also unlawful to publish or display any advertisement or notice which indicates an intention to breach the non-discrimination provisions of the Act.

43. The Human Rights Commission Act 1977 (section 15) extends the grounds listed under the Race Relations Act, on which discrimination in employment matters is illegal, to include sex, marital status or religious or ethical belief. The only situations in which preferential treatment in access to jobs is permissible under the Act (section 15) are:

(a) On grounds of sex:

- (i) For reasons of authenticity, e.g. modelling, theatrical performance;
- (ii) To preserve standards of privacy, e.g. clothes fitter;
- (iii) In domestic employment in a private household;
- (iv) Where the employee is required to live in and it is not regarded as reasonable to require the employer to provide separate accommodation for both sexes;
- (v) Where the position requires a married couple.

(b) On grounds of religious or ethical belief:

- (i) Under section 65 of the Private Schools Integration Act 1975;
- (ii) Where the sole or principal duties are akin to that of a priest or teacher in a private school; or consist of acting as a social worker on behalf of an organization whose members comprise adherents of that belief;
- (iii) Where special circumstances govern the manner in which the duties of the position are required to be carried out which make it reasonable to require that those duties be carried out in that manner.

44. Any breach of the Acts may be the subject of an investigation by the Race Relations Conciliator or the Human Rights Commission respectively. Complaints are dealt with in the first instance by conciliation procedures provided through the two offices; if no agreement is reached, the matter may be referred to the Proceedings Commissioner (a member of the Human Rights Commission) and from there to the Equal Opportunities Tribunal. Further background to the workings of the Equal Opportunities Tribunal is provided in New Zealand's first and second reports under the International Covenant on Civil and Political Rights.

45. Employment-related complaints have consistently dominated the case-load of the Human Rights Commission since its establishment. Copies of the most recent annual reports of the Human Rights Commission incorporating that of the Race Relations Conciliator are attached. During 1988/89, 90 complaints relating to discrimination in the area of employment were investigated, of which 80 specifically concerned sex discrimination. Details of specific cases is contained under article 7.

46. While both the Race Relations Act and Human Rights Commission Acts prohibit negative discrimination in employment, they also make provision for positive discrimination in the operation of affirmative action programmes approved by the Human Rights Commission, designed to help particular groups to achieve an equal place in the community. Further detail of programmes to combat discrimination in access to employment, as provided for in these laws, may be found in New Zealand's periodic reports to the Committee on the Elimination of Racial Discrimination (CERD), and the Committee on the Elimination of Discrimination against Women (CEDAW).

47. Under the personnel provisions of the State Sector Act 1988, heads of Government departments are required to fulfil the terms of being a good employer. This includes recognition of the aims and aspirations of the Maori people, the employment requirements of the Maori people, and the need for greater involvement of the Maori people in the Public Service. Sections 56 and 58 of the Act require each head of a department to operate an equal employment opportunities programme. Further detail on these programmes is contained under article 7.

48. Under the Disabled Persons Employment Promotion Act 1960, which is designed to make better provision for the employment of disabled persons, sheltered workshops set up for the employment of disabled persons may be granted exemptions from the terms of industrial awards or agreements, after consultation with relevant unions and national organizations of employers and workers.

49. The Labour Department Act 1954, which provided a statutory framework for many of the department's activities, was repealed in October 1989, following consideration by the Legislative Advisory Committee of the need for special legislation setting up Government departments. In anticipation of the repeal, Cabinet in July 1989 endorsed a directive setting out the general and specific functions of the Labour Department, as detailed in sections of the report below.

50. New Zealand became party to ILO Convention No. 111 on Discrimination in respect of Employment and Occupation (1958) in 1983, and the Convention entered into force on 3 June 1984.

2. Policies and techniques to achieve steady economic, social and cultural development and full and productive employment

51. During the period under review, the New Zealand economy has undergone a series of major changes. In the early 1980s, economic policy was characterized by regulation, subsidization of productive enterprises, import protection and the development of large-scale industrial projects. In recent years the Government's approach to employment promotion has been based on the premise that growth in the number of jobs is better achieved through a responsive and growing economy than through the creation of subsidized jobs. The promotion of economic growth has thus been the primary goal of policy in this area.

52. Policies such as reducing inflation and controlling the balance-of-payments deficit are recognized as having important long-term implications for full employment. While the removal of inefficiencies and subsidies has been a

factor in a sharp increase in unemployment numbers over the past five years, the commitment to maximizing employment opportunities in the changing economic and social climate of the approaching twenty-first century remains of fundamental importance.

53. With major aspects of the economic restructuring completed, the Government in May 1990 announced its commitment to a policy of returning New Zealand to full employment by 1995. Information on the specific measures being adopted to achieve this goal is given in later sections of this article.

54. The Department of Labour has the responsibility to promote full employment and to provide a complete employment service. Information on employment promotion programmes run by the department is set out below. In 1984, a separate portfolio was created for a Minister of Employment, to give a sharper focus to policies in this area, as distinct from the broader Labour portfolio in which they had previously been included.

55. The Ministry of Women's Affairs, established in 1985 to assist the Government to improve the status of women in all spheres of life, provides policy advice on employment issues aimed at eliminating inequality between men and women. A special focus on the disadvantages of Maori women is gained through the work of Te Ohu Whakatupu within the Ministry. The National Advisory Council on the Employment of Women, which includes representatives of employers and unions, was set up in 1967 to advise the Minister on the full range of issues related to the employment of women. As noted above, a significant number of cases investigated by the Human Rights Commission concerned sex-based discrimination. Information on measures to guarantee women's equal right to employment is also contained in the New Zealand report to CEDAW.

56. Unemployment is a particularly acute problem for Maori. Information on employment and training schemes to address the problem is contained in later sections. A number of other developments have important employment implications for Maori people over the longer term. For example, the adoption of the Maori Fisheries Act 1990 represented an important step towards stronger economic development for the Maori people. The Act allows for the transfer of 10 per cent of fishing quota over four years to the newly established Maori Fisheries Commission for allocation, and the recognition of the taiapure (local fisheries). Its main objectives are to make better provision for Maori fishing rights secured under the Treaty of Waitangi and to facilitate the entry of Maoris into commercial fishing.

57. Originally known as the Maori Enterprises Development Scheme, the MANA Enterprises Scheme assists Maori individuals, organizations and communities to create long-term employment opportunities through the development of viable, unsubsidized Maori enterprises: grants, loans and loan guarantees are available for enterprises which aim to strengthen the Maori economic base. MANA Enterprises is administered by Te Tira Ahu Iwi (the Iwi Transition Agency). Funds are distributed through a network of tribal and regional authorities.

58. The Pacific Island Employment Development Scheme aims to strengthen the economic base of New Zealand's Pacific Island community and to improve

employment opportunities for Pacific Island workers by assisting them to develop skills and establish business enterprises. Grants and loans are disbursed by the Pacific Island Employment Development Board.

59. Reference may also be made to New Zealand reports to Committee on the Elimination of Racial Discrimination for detail on other programmes to promote Maori and Pacific Islanders' economic development.

60. The Community Employment Development Unit was established in 1990 to assist local communities with economic renewal strategies. Techniques include a series of programmes aimed at enabling communities to develop their local economic strengths with a view to creating jobs and strengthening local services. The Unit provides small amounts of seed money for projects, but its main focus is to provide skills and administrative back up for community initiatives.

61. The Ministry of Commerce administers the Regional Development Investigation Grant, which helps people or businesses throughout New Zealand to investigate new business ideas. Under this scheme, assistance may be given with the costs of investigating the technical and commercial aspects of a new project. Up to 50 per cent of approved investigation costs may be paid, up to a maximum of \$50,000 per project.

3. Organization of the labour market, manpower planning procedures, the collection and analysis of employment statistics and the organization of an employment service

Organization of the labour market

62. Optimal organization of the employment market has grown in importance during the period under review. The Department of Labour has the broad mission to facilitate improvements in efficiency, effectiveness and equity in the labour market. Its general functions are prescribed by the Government as:

- (a) Promoting a fair labour market;
- (b) Promoting a state of labour relations favourable to a fair labour market;
- (c) Advising, assisting and informing the Government and the public about the labour market.

Collection and analysis of employment statistics

63. In New Zealand there are a number of statistical surveys or administrative systems which collect information on employment and/or unemployment. The main ones, conducted by the Department of Statistics, are the Quarterly Household Labour Force Survey, the five-yearly Census of Population and Dwellings, the Quarterly Employment Survey (conducted by the Department of Labour until 1989), and the annual Business Directory Update; as well as the Department of Labour's Jobseeker Register. These collections refer to different populations and employ different survey frames. This can sometimes result in different findings between one survey and another.

64. The Household Labour Force Survey was launched in 1985, based on a sample of about 12,000 households. In April 1990, the sample was doubled to 24,000 households per quarter, and the survey was enhanced to produce monthly statistics on the unemployment rate, as well as quarterly statistics on regional unemployment. Following ILO guidelines, the Household Labour Force Survey (and the 1986 Census) count part-time workers, whereas previous methods of defining the labour force had excluded them. The definition of part-time is "less than 30 hours per week". Both methods also count in the labour force all those who work for one hour or more for pay or profit. The Household Labour Force Survey provides an internationally recognized measure of unemployment in New Zealand. It counts as unemployed only those persons who were available to start work in the previous week, and had actively sought work in the past month, or were already waiting to start a job within the following four weeks.

65. The Quarterly Employment Survey was begun in 1980 by the Department of Labour and has since 1989 been conducted by the Department of Statistics. The survey is designed to determine the number of jobs in various industries on the basis of employers' responses to inquiries.

66. The focus of the Department of Labour's Jobseeker Register is as a client register, for those using the services of the New Zealand Employment Service (see below). Publication of the Register was discontinued in April 1990. The Department of Labour produces other labour force related statistics on matters such as the number of job vacancies reported to it.

67. The five-yearly Census of Population and Dwellings has the broadest definition of unemployment, counting everyone aged 15 years who said they were unemployed and seeking full or part-time work in the previous four weeks.

68. In 1989 the Statistics Department published the report of the Review Committee on Labour and Employment Statistics. The Committee examined the differences between the various systems for collecting data on employed and unemployed in New Zealand. They agreed that the Household Labour Force Survey should continue to be promoted as a rigorous and reliable internationally comparable measure of unemployment in New Zealand.

69. The Department of Statistics and the Ministry of Women's Affairs are currently examining possible ways of extending the national accounts to include measurement of the production and reproduction that occurs in the household through unpaid work. The Departments plan to introduce a pilot time-use study before the end of 1990, on the basis of which it is proposed to conduct a national survey in 1991. The results will assist in the measurement of the amount of unpaid work done in the home and community.

Employment Service

70. The Department of Labour provides a free public employment service (the New Zealand Employment Service or NZES), which focuses on improving the match between jobseekers and employers, and on placing jobseekers into work with the least possible delay. Special attention is given to assisting disadvantaged groups or individual jobseekers into employment. Until 1988, the Service also had responsibility for vocational guidance services, which are in the process

of being transferred to the Ministry of Education. (Further details on vocational guidance is contained in later sections). The Service provides a vacancy listing and jobseeker referral system to employers, maintains a register of unemployed, and provides occupational and job vacancy information as well as referral and placement assistance to jobseekers.

71. The NZES is represented by a General Manager's Office and six area offices throughout the country. These areas are further divided into over 70 full-time employment centres, with a further 65 operating part-time or seasonally. The number of employment centres is kept under review, taking account of the geographic distribution of jobseekers in the national labour market.

72. Responsibility for the operation of centres lies with Area General Managers in tune with the needs of the local labour market, to ensure maximum resource efficiency. The NZES has achieved an increasingly successful placement rate over recent years. Approximately 74 per cent of the vacancies notified to the Service for 1988/89 were filled, compared to 66 per cent for the two preceding years, and in 1989/90 targets were again exceeded with 70,000 placements (compared to a target of 68,000).

4. Technical and vocational guidance and training programmes

73. The administration of technical and vocational guidance and training programmes in New Zealand is in the midst of restructuring which will result in a new emphasis on the broader educational nature of these activities, as compared with the more specifically job-related focus of the past. For further background to the rationale for New Zealand's education reforms, reference should also be made to article 13 (Right to Education). The following section first describes the main features of arrangements in place up to the time of writing, before discussing the new structures which are in the process of being established.

Present situation

74. Responsibility for most programmes in this area currently rests with the Training Support Service of the Department of Labour. The Training Support Service has the overall goal of enhancing links between the education sector and the labour market, especially in:

- (a) Helping disadvantaged people gain access to training; and
- (b) Helping people gain the skills that will assist them to make their way in the labour market.

75. The three main branches of the Service's programme are ACCESS operations, Apprenticeship Support and the Career Education Service.

ACCESS

76. The principal training programme of the New Zealand Government is the ACCESS Scheme. The ACCESS Training Scheme Act 1988 established Regional Employment and ACCESS Councils (REACs), made up of representatives from

employer, union and community groups, to oversee employment and labour market skills training at local level. ACCESS uses a broad spectrum of individuals and organizations as training providers alongside the mainstream teaching institutions. Decisions about ACCESS training are made by the 21 REACs, each accountable directly to the Minister of Employment and serviced by the Department of Labour. The REAC Charter sets out the Government's objectives for each REAC and the rules and guidelines which govern its operations.

77. The Training Benefit is paid to ACCESS trainees through the Department of Social Welfare. Rates are as follows (1990): for single people (20 years and over), \$143.57; single (16 and 17 years), \$86.14; single (18 and 19 years), \$114.86; and for a married couple, \$223.22.

78. ACCESS courses are open to any New Zealand citizen or permanent resident seeking full-time employment who is not working more than 15 hours per week. Special exemption may be given to under 15-year-olds to leave school in order to attend an ACCESS course in some cases. Where appropriate, ACCESS courses may be run in prisons (but prisoners are not eligible for training allowances).

79. The Maori ACCESS programme was introduced in 1987, along similar lines to the main scheme. To date the scheme has trained nearly 7,000 people, of whom more than 55 per cent have moved either into the workforce or into higher levels of training. In July 1989, 3,019 trainees were employed on schemes under this programme.

80. The purpose of ACCESS is to assist people who are at a disadvantage in the labour market to acquire skills that will increase their chances of employment. Included in this category are women entering non-traditional training and Maori and Pacific Island people.

81. As a means of achieving this aim, funding is provided according to a targeted system. Targeting factors have been identified as indicators of labour market disadvantage for individual trainees. Ten targeting factors are listed in the REAC Charter. Prospective trainees within the target group include, for instance, those who have no formal school qualifications or less than three years at secondary school; those with a literacy or language problem; women training in a non-traditional occupation; or those registered as unemployed for periods above four weeks.

82. REACs also encourage participation from Maori and Pacific Island training providers as a further means of attracting trainees from these groups. The REAC Charter makes provision for flexibility and cultural sensitivity in dealings with Maori and Pacific Island people. The Maori Perspective Unit and the Pacific Island Advisory Unit in the Department of Labour also assist REACs to avoid cultural misunderstandings which might reduce the effectiveness of ACCESS training initiatives.

83. The budget allocation for ACCESS training in the 1988/89 financial year was \$254.99 million. The money was used to finance a total of 63,442 training places. A large majority (85 per cent) succeeded in achieving the objectives of the course, i.e. they significantly enhanced their work readiness.

Apprenticeships

84. One of the chief purposes of the Apprenticeship Act 1983 is to maximize the number of apprenticeship contracts entered into and successfully completed. The Department of Labour operates an Apprenticeship Group with 18 local offices working in association with local level apprenticeship committees. At the national level, 36 New Zealand Apprenticeship Committees establish terms and conditions of apprenticeship contracts and training programmes designed to meet the skill needs of industry in the best way. In the 1988/89 year, 5,611 new apprenticeship contracts were entered into, including 225 for women entering non-traditional trades.
85. The Labour Department's Apprenticeship Group assists apprentices whose continued employment is threatened as a result of retrenchment and business closures, by arranging transfers to other employers or alternative continuity of training.
86. Apprenticeship training accounts for a significant proportion of the work of polytechnics. Examination prescriptions are set by the New Zealand Trades Certification Board which conducts assessments and examinations during apprenticeship, and usually an advanced trade certificate examination to be taken near the end of the apprenticeship.
87. Apprentices in almost all trades must spend at least three years in part-time vocational study. However, the long established pattern where apprentices attend evening theory classes and short block or day release courses for practical training is changing. The apprenticeship system is moving towards a system of competency-based assessments of skill.
88. In addition to the national trade and technician courses, polytechnics teach a large number of courses such as national certificate, national diploma and polytechnic diploma courses. These have been developed nationally to meet the separate vocational needs in areas such as business studies, electronic data processing, journalism and industrial and commercial design. Polytechnics also teach separate examination syllabuses for independent organizations such as the New Zealand Society of Accountants, New Zealand Institute of Management, and the Real Estate Institute of New Zealand. A wide range of courses have also been organized regionally to meet local demands.
89. The New Zealand Technical Correspondence Institute (TCI) was established in 1946 and provides instruction in many subjects not available elsewhere, and also teaches most subjects taught by other polytechnics. Entry to the polytechnic is open.
90. This is the largest distance education institute in New Zealand, with a roll of over 36,000 students and 500 full-time staff members. Over 900 subjects are available from hairdressing, plumbing and agriculture to airline pilots' licences and the National Diploma in Accountancy. Almost 20 per cent of all apprentices who sit the Trades Certification Board examinations study with the TCI. The remainder of its students enrol for a wide variety of professional and industrial qualifications. These include Advanced Vocational Awards examinations in engineering, building, commerce and sciences.

Career Education Service

91. Acting as a consultant to educational institutions and groups, the Labour Department also operates a Career Education Service to help promote, develop and maintain a high quality transition education, vocational guidance and counselling service for students. Programmes include the training of career advisers in secondary schools, and the development of teaching modules, networking with community groups, maintaining career information systems, and advising District Advisory Committees on Transition Education.

92. The Vocational Training Council Act 1982 remains in force, though in practice its functions have been transferred to other bodies as part of the general reforms in this area. The responsibilities of the Council included advice on training; support to industry training boards (including the disbursement of industry training grants); training needs analysis and consultancy training services to industry. A number of these functions will now be transferred to the National Education Qualifications Agency (NEQA), and the Education and Training Support Agency, two new agencies which are described in more detail below.

Current reforms

93. Reforms being undertaken in this area fulfil part of the purpose of the comprehensive reform of New Zealand's education system, which is discussed in more detail under article 13. Briefly, it has become necessary to bring the development and training of New Zealand's workforce for the future into line with the realities of an economy which has since the 1970s undergone dramatic changes. The economy of the 1950s and 1960s was able to provide full employment in New Zealand, including a large sector of unskilled labour. Changes in international trading relationships, new technology, and economic recession have put an end to that situation. New Zealand has had to come to terms with large numbers of job losses while undergoing essential economic restructuring, and to realize that a prerequisite for rebuilding full employment is to raise the level of skills and training of the workforce, particularly among young people.

94. Recognizing that a fragmented administrative structure has in the past impeded the consistent development and effectiveness of labour market training, the Government in its new Learning for Life programme (for which legislation is currently before Parliament in the Education Amendment Bill) is placing policy development in these and all other areas of post compulsory education and training under the aegis of the Ministry of Education. This is aimed at enhancing the Government's ability to plan and respond to developments in education and training. In addition to its responsibilities for universities, polytechnics, colleges of education, and non-formal education and training, the Ministry of Education will from mid-1990 oversee policy in the ACCESS programme, the apprenticeship system, and on-the-job training. To maintain the necessary focus on labour market issues in policy development, the Ministry's Policy Division will include a labour market policy unit.

95. As a matter of principle, the Government has stated that distinctions between education and training should be avoided. Thus education at a university, training at a polytechnic, on-the-job training in the workplace, and non-formal education at a rural location are seen to have equal value in their personal, social and economic worth.

96. As with other aspects of education reforms, equity goals and ensuring maximum accessibility of programmes to all are central to policies in the vocational training area. Legislation has been framed accordingly.

New agencies

97. The National Education Qualifications Authority is a new body to coordinate national secondary school educational qualifications, national vocational qualifications and national advanced academic qualifications. It will oversee the setting and regular review of standards and encourage institutions to design courses so that people can more easily move between courses and institutions.

98. Taking over functions hitherto carried out within the Department of Labour, the Education and Training Support Agency will administer and service the apprenticeship and ACCESS systems and work with the Apprenticeship Committees to promote apprenticeship training. It will also support and service Regional Employment and ACCESS Councils in their role of facilitating ACCESS training within their regions. The Agency is to be a free-standing organization working under a special arrangement with the Ministry of Education.

99. Another new agency under the Ministry of Education is the Career Development and Transition Education Service which will provide occupational education and training information; training and consultancy for careers; guidance and transition advisers; and career counselling. It will also operate "Quest", a data base on vocational and careers information. This service will replace the Career Education Service of the Department of Labour.

5. Protection against arbitrary termination of employment

100. Procedures for the termination of employment in the private sector are most commonly registered under the Labour Relations Act 1987, providing for collective negotiated agreements between employers and unions, and the State Sector Act 1988, relating to workers in the public service.

101. New Zealand law operates to redress wrongful dismissals, rather than to restrict and regulate the act of dismissal. Most forms of employment in New Zealand are covered by awards or industrial agreements. (Further detail on this matter is set out in the report under articles 7 and 8.) It is mandatory under section 209 of the Labour Relations Act 1987 for all awards to cover personal grievances. This provision was carried over, with an extended definition of "personal grievance", from the Industrial Relations Act 1973. First in the list of definitions of a personal grievance is unjustifiable dismissal. Standard procedure, when the employer and worker are unable to resolve the issue, is to consult the union, obtain written statements from both parties; and set up a Personal Grievance Committee through the Mediation

Service of the Department of Labour. If there is still failure to reach agreement, the matter can be resolved by the Labour Court. The primary remedy for proven unjustifiable dismissal or other personal grievance as provided for in the Act is reinstatement. Although access to the personal grievance procedures is a benefit of union membership and award coverage, non-union workers may under certain circumstances apply directly to the Labour Court for the hearing of a personal grievance.

102. Most awards and industrial agreements contain termination of employment clauses. While recognizing the employer's ultimate right to dismiss a person from their employment, such clauses usually set out a minimum number of days' notice to be given to a worker. The period of notice varies but is generally one pay period (typically one week). Employers are required in terms of the Labour Relations Act to provide within 14 days a written statement of the reasons for a dismissal if this is requested by the worker or worker's union.

103. Where the dismissal (or other personal grievance) stems from discrimination on the basis of colour, race, ethnic or national origins, sex, marital status, religious or ethical belief, or union activities, a worker may lodge a complaint under the Human Rights Commission Act 1977 or the Race Relations Act 1971. The Labour Relations Act offers this provision as an alternative to the personal grievance procedures set out above.

104. The Parental Leave and Employment Protection Act 1987 provides protection against sanctions, or dismissal on the grounds of pregnancy or parental leave. Grounds for dismissal from the public service are set out in the individual employment agreements of Government departments, along lines of the regulations that governed such matters under the former Public Service Act (e.g. dismissal for gross misconduct). Grounds for dismissal may also be set out in the contracts of senior public servants and members of the Senior Executive Service.

6. Protection against unemployment

105. As noted under section 3 above, the New Zealand Employment Service of the Department of Labour provides a range of programmes to maximize employment and to assist jobseekers, particularly those who are most disadvantaged in the labour market. The training assistance and vocational guidance programmes described in section 4 also have those goals.

106. In addition, the Social Security Act 1964 provides for income maintenance to unemployed persons. Like other benefits in the social welfare area, the unemployment benefit is financed from general taxation. Unemployment benefits are payable to persons 16 years and over, who are unemployed, are able to work, and who have made reasonable efforts to find work. For those aged between 16 and 20 years who are not in paid employment (whether tertiary students, trainees, or unemployed), the benefit is called the Youth Allowance. From December 1990, the age of eligibility for an unemployment benefit will be raised to 18, as a means of encouraging young people to stay in formal education and training programmes. For the same reason, school-leavers who are unable to find a job must wait six months before receiving the benefit. Further detail on unemployment benefit is provided in the report under article 9 (Right to Social Security).

107. There is no statutory entitlement to redundancy compensation for workers who have been made redundant. Settlements are negotiated with employers by the workers themselves or by a union as each situation arises.

Programmes to assist unemployed jobseekers

108. The Job Opportunities Scheme is the main employment assistance programme. The main option provided under the Scheme is a 6-month partial wage subsidy to employers who employ a jobseeker registered as unemployed for at least 15 weeks. The scheme was revised in 1988 to refocus assistance on the more disadvantaged jobseekers and to make the scheme more flexible and responsive to both jobseekers and employers. The scheme is to be replaced in July 1990 with the Job Plus Scheme. Under the new scheme, Employment Centre staff will be given more discretion in negotiating appropriate subsidy levels for disadvantaged jobseekers.

109. To encourage the mobility of jobseekers, and in recognition of differences in regional unemployment rates, the Department of Social Welfare may pay up to \$1,000 to qualified registered unemployed jobseekers to help them investigate job opportunities, housing, schooling and other matters at a new location. A mobility grant of \$2,000 is also available to qualifying jobseekers who are moving to take up a confirmed job offer, where a change of accommodation is involved.

110. The Local Employment and Enterprise Development Scheme (LEEDS) is administered by the Department of Labour to assist the operation of Employment Resource Centres or Enterprise Agencies established by communities with the aim of fostering local enterprise initiatives and business skills, particularly among those lacking business experience and the unemployed. Grants of \$150,000 payable over three years are available to eligible organizations.

111. The Group Employment Liaison Service works with groups of disadvantaged, socially alienated unemployed people to help them liaise with Government departments to make better use of employment and training programmes. The Department of Labour has established a network of field-workers to provide this service. Most participants are long-term unemployed jobseekers who undertake activity with the Service on a voluntary basis while continuing to receive income assistance through the Department of Social Welfare.

112. RESTART is a pilot programme which provides a subsidy of \$346 per worker per week to community organizations, local authorities, educational authorities and Government departments. Projects must be of between 4 and 12 months' duration and cause no displacement of the employer's regular workforce. Eligible participants must be over 20 years of age and have been registered as unemployed for 9 months or more.

113. The New Zealand Conservation Corps has the goal of providing young people with opportunities for personal development and skill acquisition through participation in conservation activities of lasting benefit to the community. The programme is designed for people aged 16 to 23 years who wish to participate voluntarily in conservation-related activities. Participants are paid a training allowance equivalent to that paid to ACCESS trainees.

114. The Ministry of Commerce administers the New Business Investigation Grant (NBIG) scheme as part of its Business Development Programme. NBIG helps registered unemployed people and people who have been made redundant to explore ideas for setting up new businesses. The grant may meet 80 per cent of approved investigation costs for new business proposals, up to a maximum of \$20,000 per project.

115. The Department of Internal Affairs funds and operates the Small Cooperative Enterprises Scheme, which provides advisory and financial assistance to disadvantaged people who are unemployed and wish to set up small-scale cooperative businesses. Finance is available in the form of grants and loans for feasibility studies, working capital, equipment and the purchase of specialist skills.

C. Statistical and other information: difficulties affecting the realization of the right to work

116. Tables containing an employment summary for the period 1976-1986, and, separately, for the period March 1987 to March 1990, are included as tables 1 and 2.

117. A disturbing feature of the radical economic restructuring undertaken in New Zealand over the past six years has been a sharp rise in unemployment, to unprecedented levels. The process of deregulation, removal of subsidies and market protection, and public sector reform has inevitably involved a difficult transition in which loss of jobs has been a noticeable feature. Certain sectors, for example manufacturing, construction and, to a lesser extent, forestry and agriculture have been particularly affected in this way.

118. Taking account of the gains made through the reforms, however, in particular, much lower inflation rates, increased productivity and efficiency, and reduced foreign debt levels, New Zealand's economy is now more resilient, and better placed to sustain policies for social and cultural development. Moreover, some job losses in previously inefficient industries will be offset by growth in sectors such as tourism, horticulture, and service industries.

119. In other words, while the short-term consequences of reform have included unacceptably high levels of unemployment, prospects for employment in the longer term are good, on the basis of a stronger, more efficient economy.

120. In addition to the loss of jobs from certain sectors, shortage of skills in others is a constraint to full employment. As in other developed countries, there has been a shift from manufacturing and primary sector jobs to service sector jobs, a shift from manual to non-manual work, and a growth in the use of new technologies, especially information technology. These, and other factors, suggest that many jobs will require higher skill levels. Demographic factors and the current low education levels of the New Zealand workforce also indicate that there will be a need for retraining to meet skill needs in the new environment. Policies to encourage young people to stay at school or seek further training are aimed at reducing the numbers of unskilled jobseekers and raising the level of skills of the labour market over time.

Table 1

Employment summary 1976-1986

Males

	Labour force		Total	Not in the labour force	Working age population	Labour force participation rate (%)	Unemployment rate (%)
	Employed	Unemployed					
1976 <u>1/</u>	850 706	14 392	865 098	222 802	1 087 900	79.5	1.7
1981	862 140	34 479	896 619	233 721	1 130 340	79.3	3.8
1986	890 334	48 279	938 613	271 779	1 210 392	77.6	5.1
<u>Females</u>							
1976 <u>1/</u>	395 290	11 945	407 235	706 043	1 113 278	36.6	2.9
1981	525 093	25 773	550 866	615 501	1 166 367	47.2	4.7
1986	609 087	60 915	670 002	587 910	1 257 912	53.3	9.1
<u>Total</u>							
1976 <u>1/</u>	1 245 996	26 337	1 272 333	928 845	2 201 178	57.8	2.1
1981	1 387 230	60 252	1 447 482	849 222	2 296 704	63.0	4.2
1986	1 499 421	109 191	1 608 612	859 689	2 468 301	65.2	6.8

Source: New Zealand Census of Population and Dwellings 1976, 1981, 1986, Department of Statistics.

1/ Persons in the labour force working less than 20 hours a week, and persons looking for less than 20 hours work a week are included in the "Not in the labour force" category for 1976 data.

Table 2

Employment summary March 1987 - March 1990

Males

	Labour force		Total	Not in the labour force	Working age population	Labour force participation rate (%)	Unemployment rate (%)
	Employed	Unemployed					
	(000)						
1987	909.3	34.9	944.2	252.4	1 196.6	78.9	3.7
1988	881.2	45.3	926.6	278.6	1 205.2	76.9	4.9
1989	843.2	68.5	911.7	298.4	1 210.1	75.3	7.5
1990	836.6	66.9	903.5	315.9	1 219.4	74.1	7.4
				<u>Females</u>			
1987	648.8	32.1	680.8	568.2	1 249.0	54.5	4.7
1988	647.3	35.5	682.6	575.9	1 258.5	54.2	5.2
1989	622.2	47.8	670.0	595.1	1 265.1	53.0	7.1
1990	634.7	48.8	683.5	592.9	1 276.5	53.5	7.1
			<u>Total</u>				
1987	1 558.1	66.9	1 625.0	820.6	2 445.6	66.4	4.1
1988	1 528.5	80.6	1 609.2	854.5	2 463.7	65.3	5.0
1989	1 465.5	116.3	1 581.7	893.4	2 475.5	63.9	7.4
1990	1 471.3	115.7	1 587.0	908.9	2 495.9	63.6	7.3

Source: Key Statistics, June 1990, Department of Statistics.

121. The burden of unemployment is unevenly spread throughout the country. Those most affected are people under 25, women, Maori and Polynesian people. While the broad purpose of current economic policies is deregulation including greater flexibility in the labour market, policies to tackle the unemployment problem specifically target those most disadvantaged in finding work.

122. The lack of a consistent statistical data base has been a constraint to policy development, to some extent. As noted above, different methodologies tend to give different results. In view of the disproportionately high incidence of unemployment among Maori compared with non-Maori, for instance, there is a need in some areas of planning for data collected on a standardized ethnic basis. The initiation in 1985 of the Quarterly Household Labour Force Survey was an important advance in giving New Zealand a reliable and consistent source of employment and unemployment data, particularly for establishing trends, but has been limited in sample size. From April 1990, the sample size has been doubled to 24,000 households, enabling monthly estimates of the numbers of unemployed, employed, and those not in the workforce to be produced for New Zealand as a whole. Quarterly estimates will also be available for 14 local Government regions.

123. Indications are that the New Zealand employment scene is changing, probably permanently, to include increasing numbers of part-time workers, a more mobile workforce, and more long-term unemployed as a proportion of the register. Assimilating such changes and devising policies to recognize them is a challenge facing the whole society.

II. ARTICLE 7: THE RIGHT TO JUST AND FAVOURABLE CONDITIONS OF WORK

General

124. One of the objectives of New Zealand's first statutory mechanisms for labour relations, the Industrial Conciliation and Arbitration Act of 1894, was to develop a system for the negotiation of wages and working conditions for the majority of the workforce. Subsequent legislation covering the private sector has tended to follow these objectives.

125. The majority of workers in New Zealand have their wages and conditions set by negotiations, the results of which are bound in awards and agreements within the framework of the Labour Relations Act 1987 and the State Sector Act 1988. Certain other conditions are determined by statute. In some cases, statutes set minimum standards which must be incorporated in awards and agreements.

A. Remuneration

1. Principal laws

126. The principal laws concerned with remuneration include:

- (a) The Equal Pay Act 1972;
- (b) The Minimum Wage Act 1983;
- (c) The Employment Equity Act 1990.

127. The following reports to the ILO have also been made:

- (a) 1984: Article 22 report on ILO Conventions No. 26, Minimum Wage-Fixing Machinery, 1928, and No. 99, Minimum Wage-Fixing Machinery (Agriculture), 1951;
- (b) 1984: Article 22 report on ILO Convention No. 63, Statistics of Wages and Hours of Work, 1938;
- (c) 1985: Article 19 report on ILO recommendation No. 90, Equal Remuneration, 1951;
- (d) 1989: Article 22 report on ILO Convention No. 100, Equal Remuneration, 1951.

2. Wage-fixing methods

128. Since 1945, the national adult minimum wage has been determined by Orders in Council. The Minimum Wage Act 1945 (re-enacted in 1983) establishes the floor below which wages for workers cannot generally fall. The Minister of Labour is required under the Act to review minimum rates each year. The Minister also has power to fix minimum rates for workers of any specified age. The Act applies to male and female workers 20 years and over, and mainly protects the relatively small non-unionized sector (e.g., private domestic workers, gardeners). As at 1990, the minimum rate for adult workers is \$NZ 235 per week.

129. The early stages of the period under review saw a heightened level of Government intervention in wage fixing, as a response to the economic downturn following the oil shocks of the 1970s. The Remuneration Freeze Regulations 1982 and the Wage Freeze Regulations 1982, which remained in force until late 1984, had the effect of freezing the pay rates of most New Zealanders, although certain exemptions were permitted. Current Government policy is not to intervene in labour relations, including pay fixing.

130. For all intents and purposes, the legally enforceable minimum wage rate for the unionized sector is determined by national awards. Awards have the effect of automatically binding all workers and employers in the industries to which they relate. Under the Industrial Relations Act 1973, which was in force until its repeal by the Labour Relations Act 1987, awards were arrived at by the conciliation and arbitration system. Enforcement of awards was the responsibility of the Department of Labour.

131. Significant reforms of New Zealand's labour relations system through the Labour Relations Act 1987 and the State Sector Act 1988 have included changes to pay fixing methods. The Labour Relations Act 1987, adopted after a two year consultative process, consolidated all previous private sector industrial relations legislation. As part of a broad policy to reduce Government intervention in labour relations including the wage-fixing process, the Act has as one of its aims the encouragement of more effective unions and employer organizations; consequently the wage-fixing process is now held more fully in the hands of unions and employer organizations. Awards and agreements made under the Act either:

(a) Establish minimum wages and conditions for various jobs on a national (or district) basis, through awards; or

(b) Establish minimum wages and conditions for various jobs at the level of the individual enterprise, through agreements.

132. Awards and agreements are enforced by the parties to them, with scope to take penalty actions to the Labour Court, a new Court established under the Act. Other institutions under the 1987 legislation are the Mediation Service, in which mediators have the general function to assist employers and workers to achieve and maintain effective labour relations; and the Arbitration Commission, with jurisdiction inter alia to register awards and agreements, hear and determine disputes of interest, and assist in their settlement.

133. Under the Act, awards or agreements may permit employers, with the consent of the union, to pay less to a worker who cannot earn the minimum rate in the award or agreement. An under-rate payment may be granted only on the application of the worker concerned, and may only continue for six months.

134. Each year workers, unions and employers have the opportunity to renegotiate the wages and conditions in their specific industry or occupation. This process is known as the "wage round". Before each wage round, the Tripartite Wage Conference as provided for in the Labour Relations Act is held to allow representatives from Government, private and public sector unions to meet and exchange information on the economy and Government policies that will affect the wage round. The Labour Relations Act provides (section 128) that the Conference shall also be a forum for consultations about the interests of the low paid, and methods for their protection.

135. Over half a million workers in the private sector have their wages and conditions set by negotiations between unions and employers under the terms of the Labour Relations Act 1987. Outside the unionized sector, mainly in small enterprises, pay rates are fixed on the basis of arrangements⁶ made between individual workers and their employers. Statistics are not kept on the numbers or categories of workers whose wages are not set by collective bargaining.

136. The State Sector Act 1988 brought major reforms to State pay fixing, adopting the pay fixing provisions of the Labour Relations Act as the standard. Around 55,000 health sector workers, and 55,000 workers in the Public Service now have their pay determined under the terms of this Act, as well as those in the education sector and in State-owned enterprises, for which accurate statistics are not available at present. The State Owned Enterprises Act 1987, under which some areas of State activity were corporatized, included provision for enterprise bargaining to fix pay rates of their employees. In the Public Service, members of the Senior Executive Service created by the Act are excluded from award coverage under the Labour Relations Act and have their conditions of work including pay rates determined case by case by agreement with the Chief Executive of the Department concerned. The Senior Executive Service is limited to 500 members.

3. Components of remuneration

137. The Labour Relations Act provides primarily for the fixing of minimum rates. Agreements for additional remuneration are not covered in legislation. For example, additional remuneration (penal rates) for overtime (i.e. work over 40 hours per week), shift work, transport, meals, etc., is a matter for negotiation in documents between unions and employers. In certain regions, pay rates for some occupations may be substantially above award rates, reflecting such factors as high demand for labour or higher productivity. Informal house agreements may supplement award rates with extra service pay, merit award schemes, production bonuses, extra holidays, etc. These, too, are not registered or enforceable under the Labour Relations Act.

4. Evolution of levels of remuneration

138. Statistics showing real disposable income indexes and annual changes for full-time earners over the period 1982 to 1989 are included as table 3.

5. Equal Pay

139. In the public sector, provision for equal pay was made under the Government Service Equal Pay Act 1960, until universal application of the principle under the Equal Pay Act 1972, which stipulates that all workers doing the same or similar work must be paid the same. Instruments fixing pay levels may therefore not discriminate on the basis of sex. Though equal pay legislation has been in force for 18 years, there is still a clear difference between the average weekly wages for men and women. As at November 1989, total average weekly earnings for males were \$NZ 598.12, compared with \$NZ 443.42 per week for females. This is mainly due to women being employed in a narrow range of lower paid occupations. Reference may also be made here to Part 1 of New Zealand's initial report to the Committee on the Elimination of Discrimination against Women.

140. New legislation passed by Parliament in 1990 (the Employment Equity Act 1990) includes provision for any union or employer, or group of 20 women to

request the employment equity office (set up under the legislation) to assess the extent to which there is gender bias evident in the pay rates for that occupation. The assessment makes reference to at least two male occupations, one of which is from within the same or similar enterprise, and one of which must be of broadly similar skill and experience level. Unions are able to use these assessments as a basis for negotiating a pay equity claim within their normal document negotiations. If the parties cannot agree, the pay equity claim is determined by the Arbitration Commission.

Table 3

Real disposable income indexes and annual changes for full-time wage and salary earners by income group 1/ 2/ 3/
December 1982 - December 1989

	Lowest 20 per cent	Middle 20 per cent	Highest 20 per cent	All full-time wage and salary earners
Index numbers				
1982	964	973	1 069	1 008
1983	957	967	1 052	997
1984	924	924	999	953
1985	910	881	942	909
1986	951	943	1 015	970
1987	942	938	1 000	962
1988	957	964	1 090	1 006
1989	939	953	1 078	993
Annual percentage change				
1982	-4.6	-3.3	7.8	0.8
1983	-0.7	-0.6	-1.6	-1.1
1984	-3.4	-4.4	-5.0	-4.4
1985	-1.5	-4.7	-5.7	-4.6
1986	4.5	7.0	7.7	6.7
1987	-0.9	-0.5	-1.5	-0.8
1988	1.6	2.8	9.0	4.6
1989	-1.9	-1.1	-1.1	-1.3

Source: New Zealand yearbook 1985, 1988-89, Department of Statistics; Key statistics June 1990, Department of Statistics.

1/ To calculate these indexes gross incomes are first adjusted for income tax liability and then for inflation as measured by the Consumers Price Index. The series therefore measure quarterly changes in the after-tax purchasing power of gross incomes.

2/ Indexes and percentage changes for the periods June 1985 to March 1987 and June 1987 onwards are calculated on different databases and linked together to form a continuous series. The series continues to be expressed on the base: year ended March 1981 (= 1000). The indexes relate to the mid-point of the quarter.

3/ Persons working 30 or more hours per week for wages and/or salaries, and whose principal source of income is wages and/or salaries.

B. Safe and healthy working conditions

1. Principal laws

141. The principal laws concerned with working conditions include:

- (a) The Bush Workers Act 1945;
- (b) The Machinery Act 1950;
- (c) The Health Act 1956;
- (d) The Construction Act 1959;
- (e) The Shearers Act 1962;
- (f) The Dangerous Goods Act 1974;
- (g) The Agricultural Workers Act 1977;
- (h) The Factories and Commercial Premises Act 1981;
- (i) The Accident Compensation Act 1982;
- (j) The Regulations made under the above Acts.

142. The following reports to the ILO have also been:

- (a) 1984: Article 19 Reports on ILO Convention No. 129, Labour Inspection (Agriculture) 1969; recommendations No. 81, Labour Inspection 1947; No. 82, Labour Inspection (Mining and Transport) 1947; and No. 133, Labour Inspection (Agriculture) 1969.

2. Arrangements and procedures

143. Following a proposal from the Advisory Council for Occupational Health and Safety (ACOSH), the legislative and administrative framework for occupational health and safety in New Zealand has recently been reviewed. One outcome of the review has been the replacement of the Committee itself by a new mechanism, for which legislation has been prepared. Until its disestablishment in 1990, ACOSH comprised four members from the Council of Trade Unions, two from the Employers' Federation, one from the Manufacturers' Federation, and one from the State Services Commission. The Council was serviced by the Department of Labour, and met to develop policies for improving safety and health in the work environment. The new Commission replacing the Council has three members from the Council of Trade Unions, three from the Employers' Federation, and one from the Department of Labour.

144. Enforcement of workplace safety and health laws is carried out by the Occupational Safety and Health Service of the Department of Labour. The Service has four safety inspectorates (factories, bush inspectors, construction safety inspectors, explosives and dangerous goods inspectors) operating from five area offices and seventeen branch offices. Inspectors carry out monitoring and also audit employers' responsibilities to ensure a

safe working environment. If there are health aspects, assistance is sought from the local Area Health Board. The Service is also involved in the development and revision of individual Codes of Practice setting out performance standards for industry. For example, during 1988, Codes were issued covering the safe use of isocyanates, static storage tanks, and forest establishment and silviculture.

145. Under the Factories and Commercial Premises Act 1981, all factories must be registered annually with the Department of Labour. A fee is payable, determined by the number working in the factory. All commercial premises are inspected, including factories, shops, hotels, restaurants, stores, warehouses, farms, orchards and Government workshops. Priority is given to industries with known safety and health hazards and/or poor accident records. Factory inspectors spend much of their time promoting safety and advising employers and workers on aspects of health, safety and welfare. The Service also encourages employers to set up joint employer and worker health and safety committees in workplaces.

146. High risk industries are inspected at least annually. The remaining factories, shops and other units are inspected less frequently, but at least every five years. Factory inspectors can order changes to unsafe plant or processes and if the safety of individuals is threatened, can require immediate remedial action. Where breaches of safety legislation occur, by either employers or employees, remedial action is requested in writing and failure to comply can mean prosecution. All industrial accidents which result in a person being off work for more than 48 hours must be reported to the Department of Labour and serious accidents investigated by an inspector.

147. Under the Accident Compensation Act 1982, (which is discussed primarily under articles 9 and 12 later in this report), the Accident Compensation Corporation is directed as a matter of prime importance to take an active and coordinating role in the promotion of safety in all the different areas where accidents can occur in New Zealand (Part III, sections 35 ff).

148. During 1988, the Department of Labour established a periodical devoted to safety and health, "Safeguard", with a circulation of 17,000 copies to employers, workers and their organizations. This has been well received.

149. The Council of Trade Unions (about which further detail is given in the report under article 8) operates a wide range of programmes for safety promotion and education, including some in conjunction with the Trade Union Education Authority, TUEA (a statutory organization under the Union Representatives Education Leave Act 1986, also described in more detail under article 8).

3. Workers not covered by legislation

150. Some areas of work are not covered by the above legislation. These are primarily government departments and non-factory workplaces. Legislation in preparation to implement the recent reform of occupational safety and health procedures will place a clear responsibility on all employers to provide safe and healthy workplaces.

151. In some cases, difficulties in recruiting suitably qualified staff, and details in the consultation process with industry, have impeded progress by the Department of Labour in developing Codes of Practice. For example in 1988, the Department reported a problem recruiting a qualified noise scientist and noted the lack of a suitable New Zealand standard for the measurement of industrial noise.

4. Statistical data

152. Tables 4 and 5 contain data on selected sites of fatal non-transport work-related accidents over the period 1977-1986, and on occupational health diseases for the year ended 31 December 1986 (latest available).

Table 4

Selected sites of fatal non-transport work-related accidents 1977-1986

Year	Site		
	Farm	Mine and quarry	Industrial places and premises
1977	36	5	36
1978	29	7	40
1979	25	3	25
1980	30	7	23
1981	33	4	18
1982	29	3	23
1983	20	1	22
1984	26	4	24
1985	25	7	36
1986	25	6	26
1987	18	-	16

Table 5

Occupational health diseases for the year ending 31 December 1986Notification of diseases arising from occupation

	M	F	Total
1. Skin diseases due to -			
Mineral oils	1		1
Grease	1		1
Organic solvents	1		1
Cement			
Chrome			
Resins and Chemicals used in the manufacture of plastics			
Hairdressing chemicals			
Other Chemicals	7		7
Natural products - wool, tobacco, etc.	19		19
SUB TOTAL	<u>29</u>		<u>29</u>
2. Diseases due to dusts, fumes gases vapours, or mist -			
Lead poisoning	4		4
Metal fume fever	2		2
Organochlorine insecticide poisoning			
Organophosphorus insecticide poisoning	5		5
Poisoning by other agricultural chemicals			
Poisoning by fumigants	2		2
Poisoning by other lung irritants	2		2
Poisoning by other cases	2		2
Poisoning by organic solvents			
Any other respiratory diseases	10		10
Asbestosis	2	1	3
Any other condition caused by the above agents other than respiratory	4		4
SUB TOTAL	<u>33</u>	<u>1</u>	<u>34</u>
3. Disease due to physical agents -			
Eye conditions not due to accident	2		2
Hearing loss	573	2	573
SUB TOTAL	<u>575</u>	<u>2</u>	<u>577</u>
4. Permanent damage to vision due to accident	Nil		Nil
5. Diseases due to infectious agents -			
Leptospirosis	44		44
Undulant fever (brucellosis)	5		5
ORF	40		40
SUB TOTAL	<u>89</u>		<u>89</u>
TOTAL	<u>726</u>	3	<u>729</u>
	===		===

Sources of notification -	No.	%
Medical Practitioners (private)	352	48.42
Medical Practitioners (hospital)	22	3.02
Hospital Laboratory		
Private Laboratory	1	0.14
Medical Officer of Health	243	33.33
Department of Labour	2	0.27
Other	109	14.82
TOTAL NOTIFICATIONS	729	100.00
	===	====

C. Equal opportunity for promotion

1. Principal laws

153. The principal laws concerned with equal opportunity for promotion include:

- (a) The Human Rights Commission Act 1977;
- (b) The Labour Relations Act 1987;
- (c) The State Sector Act 1988.

154. The following report to the ILO has been made:

- (a) 1985: Article 22 report on ILO Convention No. 111, Discrimination (Employment and Occupation), 1958.

155. As noted in the report under article 6, the Labour Relations Act 1987 extended the definition of a personal grievance beyond that contained in the Industrial Relations Act 1973 to include detrimental actions such as sexual harassment, duress and discrimination. The Act requires all awards and agreements to contain effective procedures for the settlement of personal grievances. Section 211 of the Act includes in the definition of the term "discrimination" any situation where an employer refuses to offer the same opportunities for promotion as for other similarly qualified workers, on grounds of colour, race, ethnic or national origins, sex, marital status, religious or ethical belief, or involvement in union activities.

156. These provisions are also applicable to the public sector under the State Sector Act 1988 (sections 96 and 97). In addition, the term "good employer" as required of heads of Department under the State Sector Act includes a requirement to operate an equal opportunities programme. This is defined in the Act as a programme aimed at the identification and elimination of all aspects of policies, procedures, and other institutional barriers that cause or perpetuate inequality in respect to the employment of any person or group of persons.

Decisions designed to further and safeguard this right: Equal Opportunities Tribunal, Proceedings Commissioner vs Air New Zealand

157. In a landmark decision of December 1988, the Equal Opportunities Tribunal supported the case alleging sex discrimination brought by the Proceedings Commissioner on behalf of 17 senior female cabin crew against Air New Zealand. The women claimed that for the preceding 13 years, they had been significantly disadvantaged in Air New Zealand's promotional and pay structures. Their salaries, responsibilities and perquisites had been less than those of their male counterparts. During this period, the requests of the complainants for real promotion, made to both their employer, Air New Zealand, and to their union, the Airline Stewards' and Hostesses' Union, had been ignored or rejected.

158. In supporting the case, the Tribunal declared that the women had been denied equal promotional opportunity, and ordered the company to realign them in the seniority ranks to positions alongside their male counterparts. The Tribunal also declared that the women had not been offered the same superannuation rights and entitlements as their male counterparts. The complainants' claim covered loss of salary, overtime and pay increments, loss of superannuation rights, humiliation and injury to feelings, legal expenses, loss of opportunity to take voluntary severance and loss of benefits such as annual leave allocation. The Tribunal did not rule on the claims for damages, as the amount sought was higher than that which it can award. However, in April 1990, the case for damages was settled out of court with a cash payment to the women. The amount of the settlement payment was confidential.

2. Principal arrangements and procedures

159. The notion of equal employment opportunities, including opportunities for promotion, has become well established in the public sector, based on steps taken even before the entry into force of the State Sector Act. An Equal Employment Opportunities (EEO) Unit was established in the State Services Commission in 1986 to assist departments in setting up their own EEO programmes. In 1989 the Commission provided guidelines to the Chief Executive Officers of Departments to assist them, as "good employers", in the development of EEO policies and programmes. The Commission also monitors the activities of Departments in this area.

160. Under the State Sector Act, the State Services Commission retains the function of advising and assisting each department with the training and career development of staff. The Commission has particular responsibility for middle and senior management programmes. Recent examples of courses to assist state servants in their changing roles have covered career planning, organizational skills, strategic planning, managing media relations, and consultancy skills.

161. The Commission also provides courses in bicultural development, career development for Maori women, financial management, negotiation, supervisory and writing skills. Some courses are specially arranged for disabled staff.

162. Increasing numbers of employers in the private sector now dedicate resources to EEO-type training programmes. Guidelines have been drawn up by the Ministry of Women's Affairs on extending job opportunities for women. The

Ministry has also convened seminars for employers on these matters. The Human Rights Commission has also conducted a major inquiry into the situation of women in banking.

163. Under new employment equity legislation referred to in section A.5 above, (paras. 139-140) the planning of equal employment opportunities will eventually be mandatory in workplaces of over 50 workers, thus ensuring that all significant employers establish equal opportunity programmes. The requirements will be based on those already laid down in the State Sector Act and will be phased in over three years. Designated groups for which the EEO provision will apply include women, Maori people, people with disabilities, Pacific Island people and other ethnic minorities.

3. Factors and difficulties

164. The main difficulty in this area is that caused by entrenched attitudes and traditional expectations about those hitherto restricted to a narrow range of occupations and rarely seen in management roles. There appears to be growing awareness of the unacceptability of management positions being filled by only a narrow range of people. With greater numbers of role models from under-represented groups now appearing in senior positions, attitudes appear to be changing somewhat.

D. Rest, leisure, limitation of working hours and holidays with pay

1. Principal laws

165. The principal laws include:

- (a) The Shop Trading Act 1977;
- (b) The Holidays Act 1981;
- (c) The Labour Relations Act 1987;
- (d) The State Sector Act 1988.

166. The following reports to the ILO have been made:

- (a) 1983: Article 19 reports on ILO Conventions No. 106 and recommendations No. 103, Weekly Rest (Commerce and Offices), 1957; and No. 116, Reduction of Hours of Work, 1962;
- (b) 1983: Article 19 report on ILO Convention No. 132, Holidays with Pay (Revised), 1970;
- (c) 1984: Article 22 reports on ILO Conventions No. 1, Hours of Work (Industry), 1919; No.30, Hours of Work (Commerce and Offices) 1930; and No. 47, Forty-Hour Week, 1935.

2. Position in law and practice

167. As noted earlier, the majority of workers in both the private and public sector have their conditions of work set in the awards and agreements negotiated between unions and employers. The principle of the

forty-hour working week is well established in New Zealand, having been legislated for in 1935. Under section 172 of the Labour Relations Act 1987, awards and agreements must provide for a forty-hour, five day (i.e. Monday to Friday) maximum working week exclusive of overtime, and the 1973 Industrial Relations Act which it repealed contained a similar provision. Exemptions to the rule under the Labour Relations Act are where the parties agree, and where the Arbitration Commission decides it would be impracticable to work efficiently with a forty-hour restriction.

168. For work above the forty-hour limit, employers pay penal or overtime rates determined in each award, usually 1-1/2 or double rates.

169. All workers must receive at least 15 working days' (three weeks') paid annual leave, under the terms of the Holidays Act 1981. This leave is not usually available to a new employee until one year's continuous service with the same employer has been completed. Shift workers often qualify for an extra week's leave. One week's extra annual leave is often allowed each year to those workers with a minimum of between five and ten years' completed service. If an employee finishes up before completing a full year's service, he or she is entitled to 6 per cent of their total gross earnings for the period worked. This is holiday pay in lieu of paid annual leave.

170. Employers are required under the Holidays Act to keep holiday books recording the leave entitlements for each individual worker. Labour inspectors may inspect such records to ensure compliance with the Act, and may penalize anyone found in breach, with fines up to \$500. Unions may also play a role in this area, under the powers of entry and inspection accorded them under the Labour Relations Act for the enforcement of awards.

171. The Labour Relations Act guarantees workers 11 days' statutory holidays spread throughout the year, for which they must also receive pay.

172. Public servants have their terms of employment set by the State Services Commission exercising functions prescribed under the State Sector Act. Most public servants work a 37-1/2 hour week.

173. Under the Shop Trading Hours Act 1977, shops may open at any time between 7 a.m. and 9 p.m. Mondays to Saturdays inclusive, but are to be closed outside these hours and on Sundays and statutory holidays unless an extension of opening hours has been authorized by the Shop Trading Hours Commission. In 1988, an official review of the Act was authorized by Government, taking account of present-day conditions and the special needs of the tourist industry. Under draft legislation now before Parliament to change shop trading hours, shops will be able to open on Sundays and statutory holidays.

174. Public interest and active media coverage of such matters keep attention focused on possible exploitation of workers by excessive hours of work. For instance, in 1989 a non-governmental so-called "Sweating Commission" investigated the conditions, especially hours of work, of shop workers in various parts of New Zealand. Their concerns at an apparent undermining of long-established protections against excessively long working hours have become part of the debate surrounding the changes to legislation currently before Parliament.

3. Implementation in various sectors

175. The terms of employment of workers in the health sector are governed by awards negotiated with their employers in conformity with the Labour Relations Act. As is the case with the Police Force, where necessary a 24-hour service is achieved by workers being rostered on 8-hour shifts. Under the Police Act 1958, regulations prescribing matters relating to the conditions of service of the Police are made by Order in Council.

176. Under section 46 of the Defence Act, the conditions of employment of servicemen are fixed by the Secretary of Defence. The terms of the Labour Relations Act do not apply to their conditions of service. However, the Secretary of Defence operates under a directive from Cabinet to fulfil the basic requirements of a good employer.

4. Factors and difficulties

177. Provisions for workers in the unionized sector are, broadly speaking, well established and effectively enforced. However, problems are known to exist in the relatively small (but perhaps growing) informal sector, especially where unauthorized immigrant workers are concerned.

178. In March 1990 the New Zealand Human Rights Commission issued a "Report on Migrant Workers" in which a number of concerns relating to the treatment of migrant workers were examined, with specific reference to article 7 of the Covenant, and to other international obligations assumed by New Zealand. The report received wide media attention. The Commission had been asked to investigate alleged abuses and exploitation of migrant workers, in particular those undertaking work illegally, i.e. without a work permit or other authorization as required under the Immigration Act 1987. It learnt of several cases where such workers were, for example, being paid below award rates, working excessively long hours without any overtime or penal rates, and penalized for attempting to seek union help.

179. The Commission found that there was sufficient of public importance in the position of these workers to warrant investigation by a formal Commission of Public Inquiry under the Commissions of Inquiry Act 1980. The Commission's report is under consideration.

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III. ARTICLE 8: TRADE UNION RIGHTS

A. Principal Laws

180. The principal laws concerned with trade union rights include:

- (a) The Trade Unions Act 1908;
- (b) The Incorporated Societies Act 1908;
- (c) The Industrial Relations Act 1973 (until 1987);
- (d) The Labour Relations Act 1987;
- (e) The State Sector Act 1988;
- (f) The Union Representatives Education Act 1986.

181. Reference may also be made to New Zealand's first and second reports to the United Nations Human Rights Committee on implementation of the International Covenant on Civil and Political Rights (art. 22).

182. The Trade Unions Act 1908 was the first statute that provided for the legal recognition and registration of workers' societies. The Act makes it clear that unions are exempt from criminal prosecution for actions taken in restraint of trade and defines a trade union as "any combination, whether temporary or permanent, for regulating the relations between workers and employers, or between workers and workers, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business". Unions continue to be able to be registered under this Act and the Incorporated Societies Act 1908.

183. In practice, however, trade union rights for most New Zealand workers are implemented under the Labour Relations Act 1987, which repealed the Industrial Relations Act 1973 after a two-year consultation process and is regarded as the most significant piece of industrial relations law enacted in New Zealand this century. The Government's objective in the legislation was to encourage the development of more effective union and employer organizations, which can operate independently of legislative support, and can negotiate relevant awards and agreements that will be adhered to.

B. Right to form and join trade unions

184. Every worker in New Zealand has the right to join a trade union. This right is guaranteed under section 60 of the Labour Relations Act, subject to the person's work being within the coverage of the union's membership rule. Over 40 per cent of workers in New Zealand are estimated to belong to unions.

185. The Act provides penalties against anyone attempting to stop a worker from joining a union or a particular union (sect. 72). In addition, the Human Rights Commission Act 1977 makes it unlawful for any industrial union or professional trade association, whether registered or not, to deprive a person of membership or suspend their membership by reason of colour, race, ethnic or national origins, sex, marital status or religious or ethical belief.

186. It may be noted that the Labour Relations Act also provides penalties where undue pressure is placed on a worker to join a union; and grounds for a personal grievance include duress in relation to membership or non-membership of a union. Union members have access to the personal grievance procedures whether or not they are covered by an award or agreement.

187. New Zealand's industrial legislation has provided for some form of preference for union members since 1936, usually by the inclusion of an "unqualified preference" provision in awards and agreements. The only significant break in this system was during 1984, when amendments to the Industrial Relations Act prohibited any form of preference for any worker based on consideration of their membership or non-membership of a union. Sections of the law giving effect to compulsory unionism were repealed. These arrangements were themselves overturned in 1985, with the enactment of legislation to return to a system broadly based on the previous "unqualified preference" provisions, i.e. by the inclusion of a "union membership" clause.

188. Similar provisions were carried over into the Labour Relations Act (Part III), which provides for a registered union to negotiate the inclusion of a union membership clause in an award or agreement. Such clauses require that all adult workers (or workers paid adult rates) who are bound by the award or agreement should become members of the union. A union membership clause can be inserted into the document if the parties agree to it, or if not, the union can hold a ballot of all the workers concerned to determine whether the clause should be inserted. The provision allows the majority of workers covered by the document to choose whether they wish all workers covered by it to belong to the union. Most current awards and agreements have union membership clauses.

189. Union membership is voluntary for apprentices, workers under 18 years of age unless they are earning the adult rate, and for workers earning above a "salary bar", i.e. above the level covered by the relevant award or agreement.

190. Exemption from union membership is possible even if the union concerned has a membership clause in its rules. A worker who does not wish to join or belong to a union may apply to the Union Membership Exemption Tribunal for certificate of exemption. The Tribunal approves exemptions only if it is satisfied that the applicant genuinely objects to being a member of a union on grounds of conscience or other deeply held personal belief. Once granted, the exemption is valid for life unless revoked by the Tribunal. Under section 71 of the Labour Relations Act, an employer may dismiss a worker who has refused to comply with a union membership clause if the worker has not obtained a specific exemption.

191. A union may expel a member who fails to pay fees or levies properly established by the union, and for other reasonable causes set out in the union's rules (as provided for under the Labour Relations Act).

192. The position regarding formation of unions is that a group of workers can obtain registration as a new union under the Labour Relations Act, provided it has the minimum 1,000 members required, and provided none of these members are already bound by existing awards or agreements. (This protects the position of existing registered unions which have negotiated awards and agreements for the workers they cover. It does not protect a registered union's coverage of workers who have no award or agreement, against unregistered groups.)

193. The 1,000 member minimum required under the Labour Relations Act for the registration of new unions was a significant change from the terms of the Industrial Relations Act, under which a minimum of only 10 workers had been required. The purpose of this change was to improve the effectiveness of workers' representation in the industrial relations system by promoting larger, better resourced unions; it led to significant amalgamation and rationalization among New Zealand unions. The Act permits provisional registration of those groups of workers that do not immediately have 1,000 members, but which are likely to reach that number within two years, and which meet the other requirements for registration.

194. As an alternative to these provisions of the Labour Relations Act, the Trade Union Act 1908 still provides for groups of only seven or more members of a trade union to register that body with the Registrar of Friendly Societies. The Incorporated Societies Act 1908 provides registration for any group above 15 members. In both cases, however, such registration does not give corporate identity, and all property has to be vested in trustees in the name of the union. Only a handful of organizations are registered under these Acts.

C. Right of trade unions to federate

195. There are no restrictions on New Zealand trade unions to federate, at the national or international level. Section 28 of the Labour Relations Act provides for any body, however designated, which represents at least two unions (or at least two employers' organizations) to be registered as an association of unions (or of employers' organizations). All the provisions of the Act relating to individual unions or employers' organizations apply similarly to associations of those bodies.

196. Nineteen hundred and eighty-seven saw the establishment of a single national trade union federation, the New Zealand Council of Trade Unions, which unites for the first time the majority of private and State sector unions. Previously two separate organizations, the Federation of Labour and the Combined State Unions, existed to represent the two sectors. The NZCTU represents and coordinates the interests and activities of both. It is the organization which nominates representatives for all tripartite forums. The Council's membership in 1990 stands at 474,000.

D. Right of trade unions to function freely

197. Registration is not compulsory, and non-registered unions are free to determine their own arrangements, provided they are lawful. However, the benefits of registration are so self-evident that the number of non-registered unions in New Zealand is negligible. As set out in section 7 of the Labour Relations Act, registration gives a union exclusive coverage of the workers covered by the union's membership rule, exclusive rights to negotiate on behalf of those workers, the ability to negotiate awards that have effect beyond the original parties to them, and that are enforceable as well as access to the various State-funded procedures for mediation, conciliation and dispute resolution provided in terms of the Act. None of these benefits is available to non-registered unions. Furthermore, the Labour Relations Act removed formal recognition for such groups of workers, effectively obliging them to choose between seeking registration or operating alone outside the system.

198. Once registered, a union becomes a corporate body and can engage in any lawful activity consistent with the general purpose of promoting or furthering the interests of workers. The Act provides for award or agreement negotiations to cover any matter the parties agree to negotiate on, not restricted to industrial matters. Greater scope now exists for unions to provide other services to their members, such as legal services or holiday homes.

199. Part II (sects. 36-57) of the Labour Relations Act recognizes the right of unions (and employers' organizations) to determine their own objects and rules, subject only to controls to advance membership participation, democratic operation, and accountable management. The emphasis on internal democracy and accountability to members is achieved through provisions demanding democratic rules, ballots of membership for rule changes, and election for a set term of all officers with decision-making powers. The rules of a registered union must provide for the election and removal of the management committee of the union and of its officers, and a procedure for the calling of general or special meetings. Two paid two-hour meetings for union business are allowed in a year. Statutory procedure is available for disputing the results of elections.

200. Such restrictions are applied only in the interests of guaranteeing public order. The union is obliged to comply with them both at the point of registration and beyond. The requirements arise because of the unique status of a registered union, i.e. its sole rights of representation over the workers it covers, and the fact that workers may be obliged to join the union.

201. The Labour Relations Act removed the longstanding restriction on unions to represent only workers in the same specified industry or related industries. Part IV of the Act provides for union coverage established by registration to be changed as registered unions seek to extend their coverage. Provided its own members agree, a registered union can apply under sections 100-103 of the Act to obtain coverage of workers already covered by another registered union (or unions). The Registrar of Unions must then ballot the workers in question on a union-by-union basis. If a majority of workers in each and every ballot held by the Registrar prefer to be covered by the union making the application rather than by their current union, the membership rules of the unions concerned change accordingly.

202. The enforcement of awards and agreements is provided for through the right of the parties to take penalty actions before the Labour Court. Most of the powers relating to enforcement of awards and agreements which were held by factory inspectors of the Department of Labour under the Industrial Relations Act were transferred to unions themselves under the Labour Relations Act. To facilitate effective operation, unions have the right to enter employers' premises on union business. Section 196 of the Act sets out in more detail the circumstances in which union officials may exercise this right.

203. Under the Industrial Relations Act 1973, the Minister of Labour had the power to de-register a union if satisfied that a strike was likely to cause serious loss or inconvenience. This provision was repealed under the Labour Relations Act, marking an advance in the effective implementation of trade union rights (though it should be noted that the power had been used only very infrequently).

E. Right to strike

204. Section 230 of the Labour Relations Act recognizes, for the first time in New Zealand law, the right of workers to strike (and the right of employers to lock out), subject to constraints. Workers may lawfully strike in circumstances set out in section 233 of the Act. In general, New Zealand law restricts the freedom to strike so as to minimize industrial action and its effect on industry and the availability of goods and services. Strikes are unlawful over any issues for which the Act provides procedures for final determination. Such issues are listed in section 234 of the Act and include disputes of rights, personal grievances, demarcation issues, disputes of interest (except where the award or agreement concerned is within 60 days of expiry), and strikes that contravene an order of the Labour Court.

205. Statutory penalties in the event of unlawful industrial action were provided for under the Industrial Relations Act 1973, but these were done away with under the 1987 legislation. The primary remedy is now through a civil action for an interim injunction or damages, or both, under the common law economic torts (namely conspiracy, intimidation, inducement of breach of contract, or interference by unlawful means with trade, business or employment). The Labour Court now has sole jurisdiction to hear civil actions in respect of unlawful strikes. Civil actions in tort are not available in any court in relation to civil strikes.

206. Where normal procedures fail to avert a strike, or seem likely to fail, the Minister of Labour has power to call a conference of the parties involved, or to appoint a committee of inquiry.

207. Special provisions relating to strikes in essential industries are set out in the Act. A statutory period of notice must be given before any strike in one of these industries begins, and the Minister has special powers to resolve such disputes. Even if the intended strike would be lawful under the broad definitions of the Act (if it were not in an essential industry), it is unlawful if these special provisions have not been observed. Essential services are listed in a Schedule to the Act and include electricity supply, water supply, the operation of hospitals, and the operation of welfare institutions or prisons.

F. Restrictions

208. Full freedom of association within the terms of this article is withheld from the armed forces and from the police force, as it is considered that such activities would not be consonant with the disciplines of their duties. It is unlawful for the police or armed forces to strike. In terms of the Police Act 1958, there are two recognized employees' organizations for the negotiation of working conditions only. All other Public Service employees have the same rights of association as private sector workers, since section 67 of the State Sector Act extends the provisions of the Labour Relations Act to them, except as otherwise provided.

G. Factors and difficulties

209. In a climate of rapid economic restructuring, following a period of relatively little change, trade unions like other key interest groups have been under pressure to adapt. In the view of some commentators, the period

of regulatory interventionist policies of the early 1980s, particularly the 1982-1984 wage freeze and the brief abolition of compulsory unionism during 1984-1985, had the effect of significantly restricting union functions.

210. The New Zealand labour relations system had by the mid-1980s become characterized by cumbersome structures limiting trade unions' ability to function effectively. The 1987 legislation went some way to rationalize this system, and improved the ability of unions (and employers) to meet the new responsibilities being placed on them by Government. In particular, the removal of certain inflexible features, notably compulsory arbitration, guaranteed union coverage for a particular category of workers, and limitations on negotiations to industrial matters only, have extended the range of unions' activities and improved all parties' ability to resolve their own disputes.

211. At the same time, the legislation transferred to unions the responsibility for enforcing awards and agreements (away from the Department of Labour) and for enforcing membership clauses (previously the task of employers), and that involves certain costs to the union. The growth in numbers of unemployed during the period under review has also meant falling membership numbers for many unions.

212. It may be noted, with regard to paragraph 3 of article 8 of the Covenant, that New Zealand has not yet ratified ILO Convention No. 87 of 1948 concerning Freedom of Association and Protection of the Right to Organise. The main reason for this lies in the long-established policy, reflected in current legislation, of promoting a strong and stable trade union structure. This is achieved by conferring certain substantial privileges on registered unions which could be regarded as unduly restricting the freedom of an individual to join an organization of their own choosing.

213. Similar reasoning lies behind the New Zealand reservation on article 8, entered at the time of ratification. Although the measures to ensure effective implementation of trade union rights described in the New Zealand report on this article could be seen as permissible in terms of article 8 (1), the Government of New Zealand maintains its existing reservation not to apply article 8 to the extent that existing legislative measures, enacted to ensure effective trade union representation and encourage orderly industrial relations, may not be fully compatible with that article.

IV. ARTICLE 9: RIGHT TO SOCIAL SECURITY

A. Principal laws

214. The principal laws concerned with the right to social security are:

- (a) The Social Security Act 1964;
- (b) The Disabled Persons Community Welfare Act 1975;
- (c) The Accident Compensation Act 1982;
- (d) The Social Welfare (Reciprocity with Australia) Order 1990;
- (e) The Social Welfare (Reciprocity with United Kingdom) Order 1990;
- (f) The Social Welfare (Transitional Provisions) Act 1990.

B. Main features of the schemes in force

General

215. The development of a comprehensive social security system in New Zealand has been a gradual process throughout the twentieth century. Means-tested old age pensions (1898), widows' pensions (1911), and family allowances (1926) were first steps in providing income support to individuals and families. Widespread poverty during the Depression of the early 1930s demonstrated the inadequacy of existing provisions. The Social Security Act of 1938 put in place a comprehensive system of income support and primary health care for everyone in need, and was a foundation stone of the modern welfare state in New Zealand. Further important developments have been the introduction of universal family benefit (1946), the Accident Compensation Scheme established under legislation of 1972 and 1983, domestic purposes benefit (1973), disability allowance (1974), and national superannuation (1977). Recent developments include additional financial assistance for modest-income families (Family Care 1984/Family Support/Guaranteed Minimum Family Income 1986), and the restructuring of National Superannuation as the Guaranteed Retirement Income in 1990. It should be noted that the structure of benefit and the Accident Compensation Scheme, provided under the Social Security and Accident Compensation Acts, is under general review and further changes will be introduced to take effect in 1991.

216. Unlike social security schemes in most other countries, the New Zealand social security scheme is a non-contributory one. Benefits are financed from general taxation: wage and salary earners are not required to pay regular contributions to a Social Security Fund. The only exception to this is the Accident Compensation Scheme, of which further details are set out below.

217. Cash benefits are paid as of right to those who meet such income, residence and other eligibility criteria as may be applied for each category. There is no discrimination between women and men in the exercise of the right to social security. Details of specific criteria are set out below.

218. Expenditure on social security in New Zealand represents between 12 and 13 per cent of gross domestic product in 1990. In 1975, the figure was 7.1 per cent and in 1965, 6.3 per cent. The increase over the last 10 years has been largely due to national superannuation (the Guaranteed Retirement Income), and there have also been significant increases in expenditure on unemployment and domestic purposes benefits.

219. Sickness, invalids', widows', unemployment, domestic purposes and training benefits are income tested and are adjusted annually on 1 April in line with movement in the Consumer Price Index, but within a wage band. The "net of tax" couple's benefit rate cannot be more than 72.5 per cent or less than 65 per cent of average after tax wages. The basic income exemption is \$50 a week (\$60 for beneficiaries with children), as at December 1989. Benefits are reduced by 30 cents for \$1 a week of income over this amount up to \$80, then 70 cents for \$1 a week of income thereafter. For invalids, widows and domestic purposes beneficiaries, exemptions are calculated on the basis of annual rather than weekly income.

220. In assessing and calculating benefit applications, heterosexual de facto marriages may be recognized as legal marriages, and married people who have separated and who live apart may be regarded as unmarried.

221. New Zealand has entered agreements with both Australia and the United Kingdom to provide reciprocity in relation to a wide range of benefits. In a recent decision, the Government has agreed to the universal portability of national superannuation at 50 per cent of the gross New Zealand rate, and is to negotiate this on a country by country basis.

222. The Accident Compensation Act 1972 was of major importance in the development of New Zealand's social welfare system. The main objectives of the legislation are:

- (a) To promote safety in every walk of life;
- (b) To promote the concept of prompt and effective rehabilitation of all people injured by accident;
- (c) To provide prompt, fair, and reasonable compensation so that every accident victim will be treated according to his or her needs.

223. Some of the provisions of the Accident Compensation (ACC) legislation are mentioned in the report under article 7.B (Safe and Healthy Working Conditions). Under section (g) below, the applications of the ACC to employment injuries are examined. Further detail is provided in the report under article 12 (Physical and mental health).

Specific schemes

(a) Medical care

224. Part II of the Social Security Act 1964 covers Medical and Hospital Benefits and Other Related Benefits. It is administered by the Department of Health. While further detail of arrangements for the provision of medical care under the New Zealand social security system will be found under

article 12, the basic situation is that medical care is largely publicly funded and provided. The public sector, via area health boards, provides free treatment at hospitals for immediate and major medical needs. Part of the costs of primary medical services (i.e. services outside hospitals) is subsidized by the Government through a variety of patient benefits. Patients usually have to meet the rest of the fee charged, but if the consultation related to an accident, most of the costs may be reimbursed under the ACC. For illness consultations, doctors claim the benefit direct from the Department of Health and charge patients directly for the remainder of their fees. (See also sections (b) and (c) below, concerning cash sickness, and maternity benefits).

(b) Cash sickness benefits

225. Under the Social Security Act, the sickness benefit is payable to anyone over the age of 15 who is incapacitated for work through sickness, or as the result of an accident (pending the acceptance of an ACC claim), with a consequent loss of earnings. Twelve months' continuous residence in New Zealand is required before the benefit can be paid, as well as a medical certificate supporting the application. A benefit is not normally payable for the first seven days of the incapacity, but thereafter may be paid indefinitely as long as the situation continues, unless the person becomes entitled to some other benefit. (In the event of long-term incapacity, an invalid's benefit becomes payable.) Pregnancy is not recognized as grounds for a sickness benefit, except in the case of a single woman, when it may become payable at the sixth month of pregnancy.

226. Rates of the benefit are set out in a schedule to the Act. Sickness and invalids' benefits (see below) are paid at standard social security benefit rates, with additional provisions for married beneficiaries or those with dependent children. Weekly rates as at 1 April 1990 were \$270.44 for a married person, \$162.26 for a single person over 18 years old and \$131.30 for those between 15 and 18 years of age.

227. The number of sickness benefits in force at 31 March 1989 was 16,921. The average duration of sickness benefits for the year ended 31 March 1989 was 29.1 weeks (41.5 weeks for men and 37.4 weeks for women).

(c) Maternity benefits

228. Every woman normally resident in New Zealand has access to free pre- and post-natal care and to free medical and hospital services during confinement. Sections 106-115 of the Social Security Act set out the terms of the benefits relating to State or private hospitals, including State maternity hospitals. Fees for medical care and hospital services are paid by the Department of Health in accordance with a scale set under the Act. Further information on maternity assistance is contained in the report under article 10.B.

(d) Invalidity benefits

229. Sections 40-46 of the Social Security Act describe the provisions governing invalids' benefits.

230. This benefit is payable to any person normally resident in New Zealand, over the age of 15, who is either totally blind or permanently or severely restricted in their capacity for work as the result of an accident, illness or congenital disability. No distinction is made between physical and mental disabilities and intellectual handicap. Under the Act, a period of 10 years' residence in New Zealand is required (with provision for up to one year's absence during that period). Exceptions to the residence requirement are made to take account of special treatment or training overseas, and of overseas service for seamen or military personnel.

231. In computing the income of blind persons to establish the basic income exemption, no account is taken of their personal earnings. The personal earnings of severely disabled beneficiaries may also be disregarded in computing their benefits. The invalids' benefit rate is the same as the sickness benefit (see above). The number of invalids' benefits in force at 31 March 1989 was 26,253. This represents an increase of 114 per cent since 1979. Reasons for the increase include the impact of a depressed employment market on people with disabilities and the fact that people with quite severe handicaps now tend to live longer.

232. As a separate item from the sickness and invalids' benefits, a Disability Allowance may be paid to disabled people who receive (or would qualify for) income tested benefits, to assist with the additional costs associated with disablement. The maximum disability allowance is \$34 per week. As at 31 March 1989, 37,705 people were receiving this allowance.

233. The Handicapped Child's Allowance is paid to people who care for children who need constant care and attention because of a serious physical or mental disability. This allowance is not subject to an income test, and is paid at a flat rate of \$26 per week. At 31 March 1988, 7,958 such allowances were being paid in respect of 8,277 children.

(e) Old age benefits

234. The old age pension introduced in 1898 was the first form of benefit in New Zealand, and income support for the elderly has been provided in one form or another since that time.

235. In 1977, the National Superannuation Scheme replaced age and superannuation benefits and remained in place throughout the period under review until its replacement by the Guaranteed Retirement Income (GRI) Scheme on 1 April 1990, when the Social Welfare (Transitional Provisions) Act 1990 came into effect. Most features of National Superannuation as established under the Social Security Amendment Act 1977 have been retained in the GRI. The following description of the GRI Scheme may therefore be taken to have applied also to National Superannuation, except where specific changes are noted.

236. Guaranteed Retirement Income is available to everyone over the age of 60, subject to a test of residence in New Zealand of 10 years since age 20, including at least five of the preceding ten years. Exceptions to the residence test are allowed for absences overseas relating to medical treatment and various forms of official duty. GRI is not subject to any income test unless payment is claimed for a spouse who does not qualify; but it is taxable, and where income from other sources is above a certain level

(\$3,120 per annum for those with dependent children, \$2,600 per annum without dependent children) a tax surcharge, first introduced in 1984, is imposed as well. Under the GRI, a tax formerly imposed on income from a registered pension scheme has been abolished.

237. Standard rates for GRI are at present somewhat above those for income tested benefits. At the introduction of National Superannuation in 1977, the after-tax rate for a married couple was 70 per cent of the average weekly wage before tax, and rose to 80 per cent in 1978. In 1979 the definition was altered so that the after-tax rate for a married couple was 80 per cent of the average weekly wage after tax. The single rate was set at 60 per cent of the married couple rate before tax. Present policy is for rates to be adjusted on 1 April each year in line with the annual movement of the Consumers Price Index or average after-tax wages (whichever is the lesser), until they are aligned with other benefit rates. Payment is made fortnightly.

238. Where one partner does not qualify to receive GRI, for example where the partner is under 60, GRI may be paid at either:

(a) Half the married couple rate, (the qualified partner receives the married person rate); or

(b) The full married couple rate, including payment for the non-qualified partner, (i.e. each partner is paid at the married person rate but subject to an income test).

239. As noted above, New Zealand has agreements for reciprocal payment of benefits, including GRI, with Australia and the United Kingdom. Under the Social Welfare (Transitional Provisions) Act 1990, anyone receiving GRI is now able to continue to receive 50 per cent of their pension while living overseas, provided that they were resident in New Zealand on 1 April 1990 and are not living in a country with which New Zealand has a reciprocal agreement. (Previously, except where formal reciprocal agreements existed, national superannuitants completely forfeited their pensions whenever they left New Zealand for periods longer than 6 months. Full payment was resumed on return to New Zealand). The provision for 50 per cent portability has opened the way for pensioners to retire to the country of their choice and is likely to be of particular interest to Pacific islanders qualifying for GRI.

(f) Survivors' benefits

240. Widows' benefits are provided under sections 21-27 of the Social Security Act 1964. The widows' benefit is payable to a woman whose de facto or de jure husband has died and who has one or more dependent children under 16 years of age, or who had one or more children and had been married and taking care of her children for 15 years; or subject to certain other conditions relating to her age and the duration of her marriage. Except for widows with dependent children, this benefit is subject to a residence test of three years immediately before the husband's death or five years' continuous residence by one or other partner.

241. The number of widows' benefits in force at 31 March 1989 was 13,026. This level has remained fairly constant during the period under review, and the number of dependent children has continued to decline.

242. Orphans' benefits are described under sections 28-31 of the Social Security Act 1964. The benefit is paid to the person caring for a child whose parents are both dead (or if one parent is dead, who is unsupported by the other parent for reasons set out in the Act). The benefit is normally paid until the child reaches the age of 16 but may be paid until he or she is 18, to assist with further education or in cases where the child is incapacitated from earning a living. Any orphaned child qualifies for the benefit if born in New Zealand, or if the last surviving parent had lived in New Zealand for three years before death.

243. The Social Security Amendment Act 1987 extended the criteria for eligibility for the orphan's benefit. Increasing use is made of this provision to support children in their extended families as an alternative to departmental care. This is reflected in a significant increase in the number of orphans' benefits being paid. The number of orphans' benefits in force at 31 March 1989 was 2,993 (compared with 362 benefits paid in 1983, for example). The weekly rate for orphans' benefits at 1 April 1990 was \$78.22.

(g) Employment injury benefits

244. The Accident Compensation Act 1982 provides a comprehensive system of compensation and rehabilitation for employment related and other accidental injury. The scheme provides compensation for loss of earnings at the rate of 80 per cent of normal average earnings. No payment is made by ACC for the first week following an accident, but in the case of a work accident the employer is generally required to pay an employee 80 per cent of his or her normal rate of pay for this period. Self-employed people also qualify for compensation at the rate of 80 per cent of normal average earnings after the first week.

245. Accident compensation is a form of compulsory insurance where the community accepts responsibility for the accidents which will inevitably afflict a proportion of its members. The community pays in three ways:

(a) Levies on vehicle owners to pay for motor vehicle accidents;

(b) Levies on employers (including the Crown) and on self-employed people to pay for other accidents to earners;

(c) General taxation, which pays for other claims from the Consolidated Fund.

246. The Social Security Act 1964 contains provision for the payment of a miners' benefit to anyone (subject to a five-year residence test) employed as a miner in New Zealand for at least two and a half years who as a result of that work has become incapacitated by miners' phthisis or any other occupational or heart disease. The number of miners' benefits in force has decreased steadily over the years to only seven in 1989.

(h) Unemployment benefits

247. Reference should also be made to information on protection against unemployment provided in the report under article 6.

248. The unemployment benefit is payable to people who are registered as unemployed with the New Zealand Employment Service of the Department of Labour, are capable and willing to work, and have made reasonable efforts to find suitable employment. This benefit is subject to a 12 months' residence test and is not available to those under the age of 16 (from December 1990, this will rise to 18 years), or to those receiving GRI. For those between 16 and 20 years of age, the benefit is paid as the Youth Allowance (see below). Full-time students and people out of work as a consequence of strik activity are also not eligible to receive unemployment benefit.

249. Payment of the benefit can normally start seven days after an applicant becomes unemployed; or after 14 days for a single person. With effect from October 1989, it is not payable to school-leavers until six months after they have left school. It will continue to be paid for 26 weeks, and payments can be renewed for 26-week periods as long as the beneficiary continues to meet the criteria for eligibility as set out in the Act. Payment can be postponed in certain circumstances set out in section 60 (4) and (6), e.g. in the case of high income earners. As noted in the introduction to this section, the unemployment benefit is one of those which are subject to an income test.

250. The weekly benefit is calculated at varying rates. Weekly rates as at 1 April 1990 were for 16/17 year olds \$86.14, 18/19 year olds \$114.86, single people 20 years and over \$143.57, and for married couples \$223.22, or \$111.61 for each partner.

251. The average number of unemployment benefits in force during the year ended 31 March 1989 (latest available figures) was 103,032 (with a further 9,505 receiving emergency unemployment benefits). The average duration of these benefits during the same period was 25.4 weeks (25.6 weeks for men and 25.2 weeks for women).

252. In 1988 a new scheme was introduced to effect income support for young people. This is the "Youth Allowance" whereby 16 and 17-year-old unemployment beneficiaries, trainees on approved employment-related courses, and tertiary students are paid the allowance at similar rates. One of the main aims of this scheme is to provide neutral signals to young people who are making choices between unemployment, training and education, or employment.

253. Instead of the Youth Allowance, single unemployed people aged 16 and 17, who cannot live at home with their parents or expect financial support from them may be eligible for the Independent Circumstances Allowance. The rate of this allowance in 1990 is \$114.86 per week.

(i) Family benefit

254. One of the original provisions of the New Zealand social security system, the Family Benefit is a universal benefit paid to the mother (or if appropriate the father or other caregiver) of every dependent child under the age of 15 (or up to age 18 for full-time school pupils). Very broad residential qualifications are set out in section 33 of the Social Security Act: for example, every child born in New Zealand, or who has lived there for 12 months, is entitled to the benefit. An advance payment of up to 52 weeks' benefit may be paid in respect of a first child or a child who has started intermediate or secondary education. An advance payment may also be used to purchase a child restraint for a car.

255. The total number of family benefits in force as at 31 March 1989 was 437,287 in respect of 877,204 children. The level of the Family Benefit was increased from \$3 to \$6 per week in 1979 and has remained at that level since then. The direction of policy over recent years has been towards supplementing family benefit with additional assistance to low and middle-income families.

256. Two additional income maintenance schemes relevant in this context are the Family Support Tax Credit Scheme (which replaced the Family Care Scheme) and the Guaranteed Minimum Family Income Scheme, both introduced in 1986. Both are, however, taxation measures rather than social security benefits. Further detail is therefore provided in the report under article 10 (Protection of the Family, Mothers and Children).

257. The Domestic Purposes Benefit (DPB) was introduced in 1973 and is payable to a parent caring for children without the support of a partner; or a person caring at home for someone who would otherwise be hospitalized; and in some cases to an older woman alone. The number of DPBs in force at 31 March 1989 was 85,615. Further details on this benefit is also set out under article 10.

Emergency benefits

258. In some cases, applicants who are unable because of age, physical or mental disability to earn a sufficient livelihood but who do not qualify for an invalid's benefit, sickness or unemployment benefit in terms of normal eligibility criteria, may be paid an emergency benefit on grounds of hardship.

G. Factors and difficulties affecting the degree of realization of the right to social security

259. New Zealand has an extensive system of social security. In contrast to the situation in many countries, this is financed from general taxation. In the first decades after the Second World War, the general shape of the modern welfare state was set out. Most changes in the social welfare area over that period were incremental adjustments, improvements in rates, or expansion in coverage of system generosity within the established framework. (Changes were often, however, made on a somewhat ad hoc basis, accounting in part for anomalies which have more recently caused problems). The decade of the 1970s saw expansion in new directions, notably the introduction of the Accident Compensation Scheme, the National Superannuation Scheme, and the Domestic Purposes Benefit.

260. If the 1950s and 1960s were largely a period of steady incrementalism and the 1970s a period of major new programme development, policy development in this area in the 1980s has been characterized by rationalization, cost containment, and concern for the families of low income wage earners. The three key issues underlying this approach have been the massive growth of costs; increasing visible anomalies within and between benefit systems; and problems of benefit and labour force interaction. These issues have also been the subject of increasing public debate.

Cost escalation

261. Between 1970 and 1986, the cost of New Zealand's social security system, excluding the Accident Compensation Scheme, rose from 6 to 12 per cent of

gross domestic product. The \$NZ 8,000 million spent in 1988/89 represented about 13 per cent of GDP. The major causes for this growth have been:

(a) The growth in numbers receiving National Superannuation (from 371,687 in 1977 to 487,079 in June 1989);

(b) The unprecedented growth in unemployment throughout the 1980s;

(c) The increase in numbers of benefits for sole parents, especially the Domestic Purposes Benefit (from 17,231 in 1979 to 87,821 in 1989, of which about 96 per cent were for sole parents). Sole parents on this Benefit now account for almost one fifth of all families with children.

262. Cost escalation has also been a major issue in the Accident Compensation Scheme. Numbers eligible have increased, while average payment rates exceed those payable under comparable social security benefits. Levy rates have had to be raised several times. By the late 1980s, income support payments under the Scheme reached a cost of nearly \$1,000 million compared with the \$8,000 million spent on the combined social security and national superannuation systems.

Anomalies and inconsistencies within income support

263. Perceived inconsistencies within and between various parts of the income support system have given rise to increasing concern since the mid-1980s. Examples of this are:

(a) Different treatment of sickness beneficiaries and accident victims, the latter receiving more than the former, even if they shared the same degree of incapacity;

(b) Ordinary income-tested social security beneficiaries receiving less than retired people in equivalent circumstances receiving National Superannuation, even where the retired had other income, or no additional costs associated with the ageing process;

(c) The unemployed without children receiving less than other social security beneficiaries;

(d) Wide variations in conditions of entitlement for different social security benefits, seemingly not related to variations in need or circumstance

Benefit/employment interface

264. A third major set of concerns focused on the interface between the benefit system on the one hand and the employment and training systems on the other. For example:

(a) Beneficiaries were seen to be better off than low wage earners at a time of decline in real wages (while real benefits were approximately constant, being price adjusted). Between the mid-1970s and the mid-1980s the standard married couple rate of benefit rose from two thirds to three fourths of the average ordinary time wage;

(b) Youth on unemployment benefit received more than students or tertiary trainees, even if the latter came from low-income families.

The benefit reform process

265. To tackle the difficulties outlined above, a process of reform and rationalization was begun in the mid 1980s. It is still continuing, with some changes (though notified to the public) remaining to be implemented over the coming years.

266. In summary, the reform measures of the past six years involved in the first stages, specific changes such as the introduction of a tax surcharge on the other income of national superannuitants, and the introduction of income tested "Family Care" for low-income earners with children. Taxation and benefit reforms characterized the second stage, over 1985/86. The main features were the introduction of Family Support (a tax credit payable, on an income-tested basis, to all earners and beneficiaries); the Guaranteed Minimum Family Income (set above benefit level, for all full-time workers with children); and the taxation of all benefits on a similar basis to other income. (Detail of most of these measures is included in section B above and in the report under article 10.)

267. The current phase of reform focuses on a larger scale rationalization of the whole income support system, addressing also its relationship to the labour market and training. Measures already implemented include the new Youth Income Support Scheme, the Independent Circumstances Allowance and the introduction of a six-month benefit stand-down period for 16 and 17-year-old school-leavers (also referred to above). For ordinary social security benefits, a new indexation formula has been announced, which will over the longer term phase the married couple benefit down to 65 per cent of the average ordinary wage, while protecting real levels of benefit. In addition, the Government in 1989 announced the development of a "universal benefit" within the social security system to replace the five existing categories of income-tested benefit; and allied with this, it announced plans for the partial integration of the social security and accident compensation schemes. At the time of reporting, these plans are still under development. Further information on them will be included in New Zealand's second report.

Other factors

268. Policy makers recognize the need to ensure that policies are responsive and appropriate to all sectors of New Zealand society. Acceptance of the identity and cultures of the different peoples within the community is an important factor in social policy development, including the social security aspects. Sensitive handling in this area is particularly important in view of the high proportion of Maori people among social welfare beneficiaries. Planners are also aware of the need to balance income maintenance (necessary for dignity, self-determination and full participation in community life) against the possible risks of welfare dependence and loss of initiative.

269. In recent years the Department of Social Welfare has moved to decentralize its services to a regional and local district level, bringing it closer to the clientele it serves. This move was reinforced by the acceptance of a 1986 ministerial committee report on a Maori Perspective for the Department of Social Welfare, Puao-te-Ata-tu (Daybreak), which argued for more community involvement in the department's functioning. Puao-te-Ata-tu is reflected in mission statements of the Department of Social Welfare as a

guiding principle. The decision to extend the criteria for eligibility for the orphan's benefit (mentioned under section B (f) above) stemmed from a recommendation of Puaote-Atatu.

D. Progress achieved in the covering of new fields of social security

270. As indicated in preceding paragraphs, New Zealand's social security is already very extensive, based on foundations laid in the Social Security Act 1938. The effectiveness and appropriateness of its provisions have been reviewed from time to time, most importantly by the Royal Commission on Social Security which sat from 1969 to 1972, and as part of the work of the Royal Commission on Social Policy, 1986 to 1988, (referred to in the introduction to this report).

271. Both supported the continuance of the basic provisions of the existing scheme, though recommending certain improvements to take account of social and economic changes. The introduction of the Domestic Purposes Benefit in 1973 was based on a recommendation of the Royal Commission on Social Security, for example. This recommendation reflected changing attitudes within society, and the concern that, in particular families, separation was necessary in the interests of both partners and of the children.

272. Similarly, the Royal Commission on Social Policy found that "the social security benefit system has served New Zealand well for 50 years, and should continue to do so as long as existing arrangements are reviewed and changed to reflect today's social values". The Commission's report has been a catalyst for further research and documentation in this field, and constituted a significant element in discussions of reform and rationalization which have been a feature of the 1980s, as described above.

273. The rate of payment for the major benefits is reviewed by Cabinet regularly, in most cases annually, to keep in line with changes in the cost of living. Rates are contained in schedules to the Social Security Act.

274. An important recent extension of a social security benefit was the decision announced by Government in early 1990 to permit 50 per cent of either the Guaranteed Retirement Income pension, or the veterans' pension, to be payable to eligible people who wish to retire overseas. (This has been mentioned under section B (e) above.) The new provision, which will take effect on 1 April 1991 under the Social Welfare (Transitional Provisions) Act 1990, takes account of the position of those validly wishing to retire overseas. The Act also provides for temporary absences overseas of up to 26 weeks before payments cease.

275. It is of particular importance for New Zealand citizens from the Cook Islands, Niue and Tokelau, who after living and working in New Zealand for many years, may wish to return to their home islands but who in the past have been forced to forfeit the pensions if they do so. This issue will be covered in more detail in separate reports to be presented on the implementation of the Covenant in the Cook Islands, Niue and Tokelau.