

5 May 2017

Transport and Industrial Relations Committee
Parliament Buildings
WELLINGTON



Attention: The Clerk of the Committee

Submitted via: www.parliament.govt.nz

Dear Committee Members

**Submission of the Human Rights Commission on the Employment Relations
(Allowing Higher Earners to Contract out of Personal Grievance Provisions)
Amendment Bill**

The Human Rights Commission would like to appear before the Transport and Industrial Relations Committee to speak about the human rights implications of the Employment Relations (Allowing Higher Earners to Contract out of Personal Grievance Provisions) Amendment Bill ('the Bill').

The Bill is described as "amending the Employment Relations Act 2000 (the Act) to allow employees with an annual gross salary over \$150,000 to contract out of the Act's personal grievance provisions". The Commission is concerned that the contracting out provisions of clause 5 of the Bill appear to apply to the Act's human rights related personal grievance provisions, such as those regarding discrimination, sexual harassment and racial harassment under sections 104, 108 and 109.

The Commission is concerned that, in this respect, the Bill would seem to be inconsistent with a number of International Labour Organisation (ILO) and human rights treaties and instruments, including:

- ILO Discrimination (Employment and Occupation) Convention 111 (ratified by New Zealand)
- The International Covenant on Civil and Political Rights (ratified by New Zealand)
- The International Covenant on Economic, Social and Cultural Rights (ratified by New Zealand)
- The UN Guiding Principles on Business and Human Rights

In addition, the issue of contracting out of the discrimination protections of the Act (albeit in respect of employment agreements governed by foreign law) is due to be considered by the Supreme Court in June 2017 in the case of *Brown v Basing Ltd*. The Commission is appearing as an intervenor in the proceeding.

The Commission will more fully explain its concerns about the Bill at the hearing before the Committee. We would be happy to provide our speaking notes to the Committee members in advance, should members consider this helpful. In any event, a copy of the Commission's speaking notes will be left with the Clerk after the Commission appears. Thank you for the opportunity to provide the Committee with comments on the Bill.

Yours faithfully

John Hancock
Senior Legal Adviser