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Centre for Labour, Employment and Work

New Zealand redundancy provisions in a global context

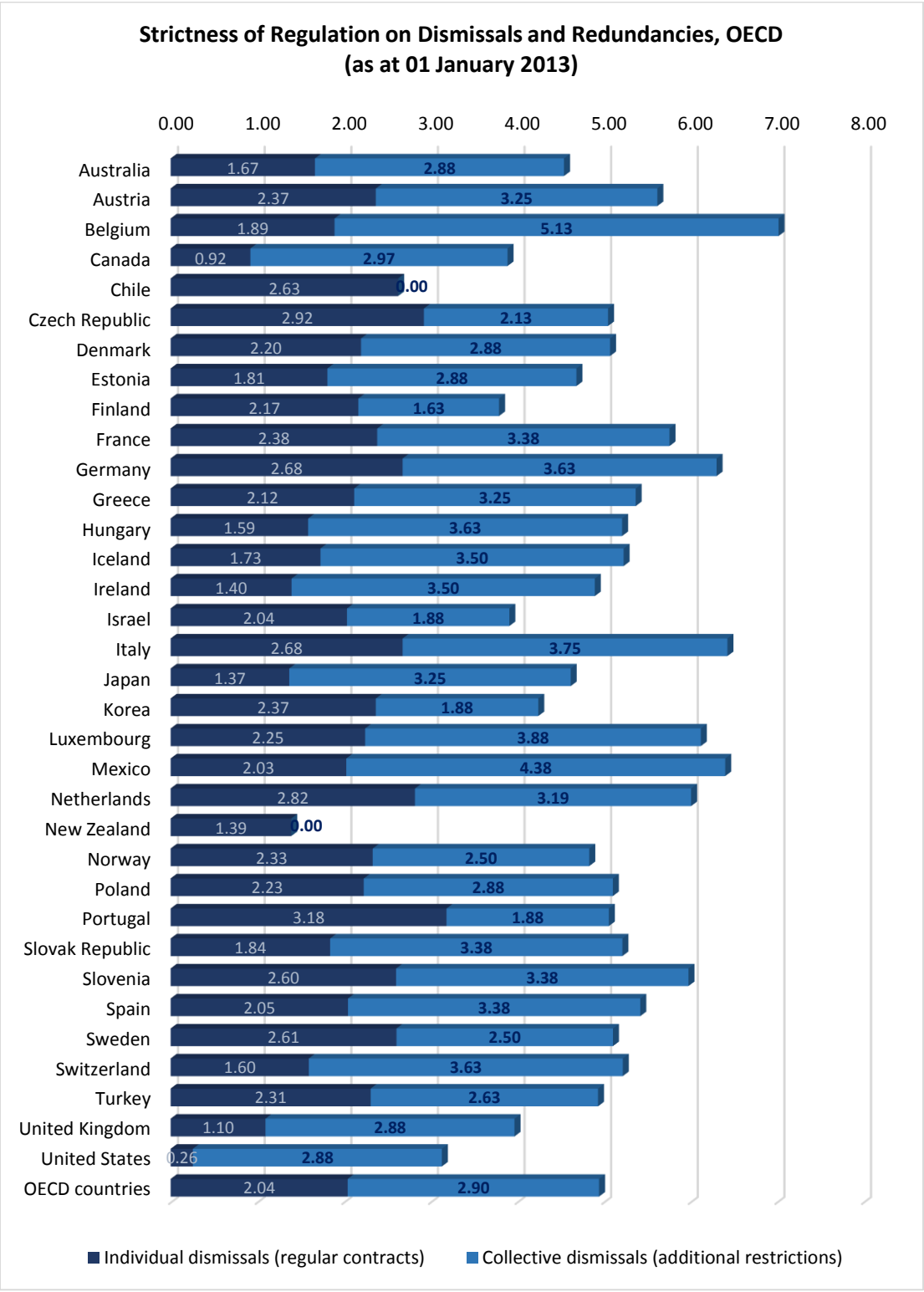
Dr Stephen Blumenfeld, Director, CLEW

In our February *CLEW'dIn* article entitled 'Redundancy provisions – trends in the period 2003-2015', we noted that, since the 2008 recession, the share of employees in New Zealand on collective employment agreements specifying no compensation in the event of redundancy is on the rise and the typical maximum entitlement threshold has been reduced. This prompted one subscriber to ask why workers in New Zealand have been so accepting of this during a period of rising work instability.

The figure below shows how New Zealand compares to other OECD countries in strictness of protection for employees facing individual and collective dismissals (the latter being the term OECD uses for redundancies affecting more than one employee).[1] The indicator of 'strictness of employment protection' - collective dismissals (additional provisions) - measures additional costs and procedures involved in dismissing more than one worker compared with the costs of individual dismissal. As such, it should not be considered in isolation from the indicator of strictness of employment protection - individual dismissals (regular contracts).

Noteworthy is that New Zealand is at the bottom of this league table, reflecting the fact that there are no statutory protections for workers in the event of redundancy. Important in this regard is the fact that most on individual employment agreements are not likely in a position to negotiate better terms and conditions and, hence, any protections in the event of redundancy. As has been the case for the past 25 years, since enactment of the *Employment Contracts Act* in May of 1991, without the support of a trade union or other advocate (which the majority of workers in New Zealand do not have), employees are compelled to accept whatever their employer offers, on a take-it-or-leave-it basis. Moreover, the Courts in New Zealand have long asserted that acceptance of a take-it-or-leave-it offer is tantamount to bargaining, as required under the *Employment Relations Act* (and the *ECA*, prior to October 2000).

[1] The data pertain to an index of strictness of protection for employees facing dismissal of all types (including redundancy), which was created by the OECD using information gathered by the ILO. The OECD indicators of employment protection are synthetic indicators of the strictness of regulation. For more information and full methodology, see www.oecd.org/employment/protection.



So, the only 'mystery' here is why trade unions have been willing to give away or cut back on hard-won redundancy benefits. The answer to this no doubt lies in the nature of bargaining, specifically the fact that one party is never willing to give up something without getting something in return. To this end, trade unions and their members, who are unlikely during the term of any given collective to face redundancy, have traded off employer claims to cut redundancy benefits in return for the employer's acquiescence to union claims that are considered more salient to the membership,

such as a higher pay settlement. Unions in New Zealand are also well aware of the fact that the Courts have shown a willingness for more than 20 years, since the Court of Appeal's decision in Brighouse[2], to declare redundancy settlements, irrespective of the terms agreed to by the parties in bargaining, to be – in retrospect – 'unfair' following redundancies. As such, they may feel the common law renders it unnecessary for them to negotiate any greater protections.

[2] *Brighouse Ltd v Bilderbeck* [1994] 2 ERNZ 243