



Human Rights
Commission
Te Kāhui Tika Tangata



Tracking Equality at Work

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Tracking equality at work

The world of work has changed dramatically in our lifetimes. Globalisation, economic recession, technological advances, security of tenure, the rise of knowledge work and the decline of manufacturing, the growth of casualised and precarious work, the demographics of work and changes in gender roles are just some of the factors impacting on modern workplaces. What remains unchanged though, is that both employers and employees overwhelmingly say they want fairness at work.

In New Zealand's largest-ever study of work, the *National Conversation about Work*, over 3000 employers, employees and job-seekers broadly said they enjoyed their work, cared about the people they worked with, were proud of the services and products they delivered and loved the challenges of working life. For many, work defined them and was a critical aspect of self identity and self esteem, not just a pay cheque. The vast majority of employers were responsive to employee needs and many treated staff as extended family rather than as units of labour. Universally, there was a strong commitment both in practice and in spirit to the idea of a "fair go" at work and to equality.

Tracking Equality at Work picks up where the *National Conversation about Work* left off. We have used the evidential basis of what people said to us, combined with other work we do such as promoting youth employment, monitoring women's participation in employment, advocating for disability rights at work and examining employment-related discrimination complaints. We have developed new thinking about equality at work that fits modern workplaces and addresses systemic discrimination for disadvantaged groups.

New approaches to equality are emerging world-wide. The focus is moving from equal opportunities to equality of outcomes. It will no longer be sufficient to tick a box to say that equal opportunities programmes are in place and that workplaces prevent discrimination. In many jurisdictions now, workplaces are being asked to demonstrate that the workplace is equal and legislation is being introduced that is outcomes-focussed. *Tracking Equality at Work* is intended to provide new methods to track and advance equal employment opportunities in New Zealand.

Tracking Equality at Work includes the following new elements:

- The first set of Equality at Work Indicators developed in New Zealand to track progress towards equality at work
- A detailed overview of labour market participation
- A focus on the youth employment crisis, arguably the most significant economic and social issue faced by New Zealand society
- A new look at the gender pay gap and a new Pay Equality Bill designed to reinvigorate political and public discussion about this systemic inequality, and
- A set of recommendations for the Human Rights Commission and for the Government to push on with strengthening equality at work.

Tracking Equality at Work aims to ensure New Zealand remains up to date with new thinking about equality in modern workplaces and that it retains its position as an international leader in realising fairness at work.



Dr Judy McGregor
Equal Employment Opportunities Commissioner

Who are we?

Promoting equal employment opportunities (EEO) is the core responsibility of the EEO Commissioner. Under section 17 of the Human Rights Act (HRA), the EEO Commissioner provides leadership and advice on EEO, develops guidelines, monitors and analyses progress in EEO and works with others promoting equal employment. The HRA makes explicit that EEO includes pay equity. A Cabinet minute dated June 2004 gives the EEO Commissioner the authority to provide guidance to Crown entities to help ensure state-sector consistency and good EEO practice including how to be a good employer. Further information on equality at work and EEO is available on the National Equal Opportunities Network website www.neon.org.nz.

A more comprehensive Tracking Equality at Work report is available at www.neon.org.nz/trackingequalityatwork/

- Employment cycle
- Protection from unemployment
- Disabled people
- Migrants
- Occupational segregation and non-traditional roles
- Access to quality and affordable early childhood education
- Paid parental leave
- Low pay and the minimum wage
- Sexual orientation
- Older workers
- Literature review
- Right to work
- Review of Framework of the Future
- Employers' and employees' check lists

The Human Rights Commission welcomes comment on the issues raised in *Tracking Equality at Work*. Contact us:

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Where are we now?

The Commission has looked beyond the basic employment data to illustrate where New Zealand sits in terms of labour force participation.

In compiling employment information for key demographic variables: gender, ethnicity, people with disabilities, young and old, the Commission was struck by a number of points.

- The number of people out of the labour force. This number includes people who are “not actively seeking work” as defined by Statistics New Zealand, as well as parents caring for dependent children and those who have retired.
- That employment data related to people with disabilities is only sampled every five years after the census.
- That there is no national statistical database regarding gay, lesbian, bi-sexual, transgender and intersex (GLBTI) people.
- The level of unemployment of Māori and Pacific youth.
- The level of unemployment of young Pacific women.
- The higher level of unemployment and the lower rate of youth participation in Auckland than in other regions.

Information has been obtained from two main sources; Statistics New Zealand and complaints and enquiries data from the Human Rights Commission. Employment statistics quoted are unemployment rates and participation rates.

Statistical data was purchased from Statistics New Zealand and is broken down from the Household Labour Force Survey December 2010.¹ Where statistics are broken down to this extent, group samples can get quite small and may not be representative of the group as a whole. Apparent differences may be due to sampling errors rather than actual differences between the groups. Another caution is that in employment there may be several factors acting and the dominant factor may not be readily apparent. The statistics however, do point to areas of concern and at the least warrant further investigation.

Unemployment rate²

People are counted as unemployed if they are of working-age (over 15) who during the reference week were without a paid job, available for work, and had either actively sought work in the past four weeks, or had a new job to start within the next four weeks. Those who are without a job and have not actively sought work recently are not considered to be unemployed and are not in the labour force. The unemployment rate is the number of unemployed persons expressed as a percentage of the labour force.

Labour force participation³

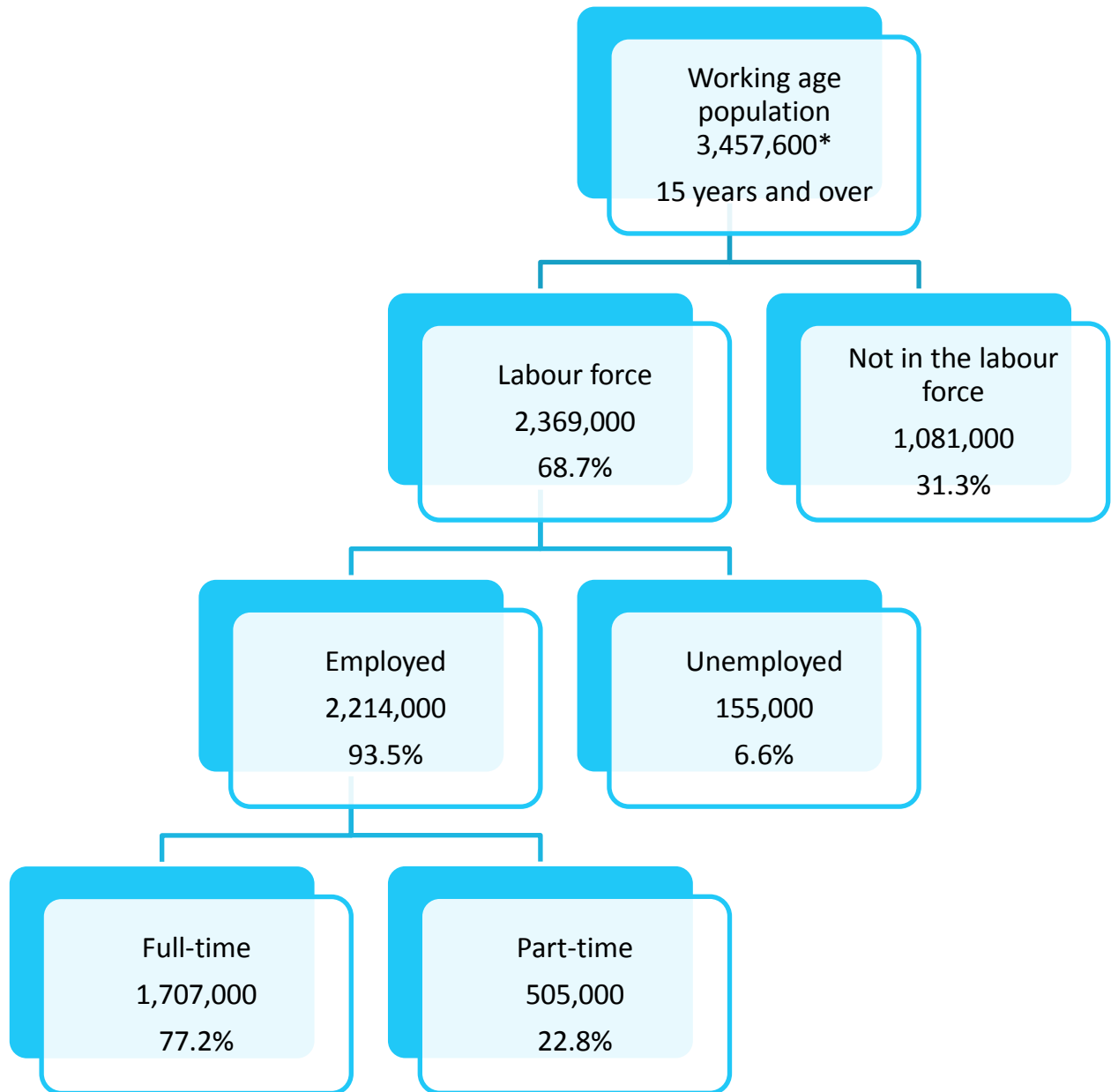
The total labour force is expressed as a percentage of the working-age population. Because New Zealand has no compulsory retirement age and many workers stay in the labour force beyond 65, the figures include those aged 15 years and over with no upper limit. The total labour force is those people who meet the criteria for being employed or unemployed. A paid job of one hour a week or more is considered to be employed.

¹ This work is based on/includes Statistics New Zealand's data which are licensed by [Statistics New Zealand](#) for re-use under the [Creative Commons Attribution-Noncommercial 3.0 New Zealand licence](#). The data is from the Household Labour Force Survey December 2010

² Statistics New Zealand Household Labour Force Survey 2010 December quarter Technical notes

³ Ibid

**Table 1: Structure of the Labour Market: March 2011 quarter
(seasonally adjusted)⁴**



*Not seasonally adjusted

⁴Reproduced from the Department of Labour report on the Household Labour Force Survey

Discrimination Complaints to the Human Rights Commission

The most commonly cited ground in employment or pre-employment complaints is disability, followed by sex, then race. The percentage of each of the grounds over the last five years is shown in Table 2 (totals do not add up to 100% because it is common for more than one ground to be cited).

Table 2: Employment discrimination complaints 2005-2010

	Overall
Disability	24.9%
Sex	15.8%
Race	14.9%
Ethnic or national origins	12.6%
Sexual harassment	12.4%
Age	10.5%
Racial harassment	7%
Family status	6.1%
Religious belief	4%
Sexual orientation	2.4%
Marital status	1.7%
Victimisation	1.2%
Employment status	1.1%
Colour	<1%
Ethical belief	<1%
Political opinion	<1%
Racial disharmony	<1%

Regions

Up-to-date labour market information is critical to monitoring current and historic trends in regional economies, projecting future trends, assessing the impacts of developments on regional economies and developing regional strategies. It is also important for quantitative analysis of social conditions and living standards of particular groups and communities, research into income distribution and interactions with other aspects of social policy.

Participants the Commission met with as part of the *National Conversation about Work* said the provision of adequate labour market information for local employment and economic planning purposes was more limited since the Department of Labour ceased providing dedicated labour information staff in the regions. The Commission raised the issue with Economic Development Agencies New Zealand (EDANZ) who agree labour market information is an issue for some regions but not all.

Tables 3 to 10 compare labour market participation rates and unemployment rates across regions.⁵ There are limited regional differences in participation and unemployment rates for Europeans. There appear to be lower participation rates for Māori in Auckland and Waikato than in Wellington and Canterbury, and a lower participation rate for Pacific peoples in Auckland and Canterbury than in other regions. Unemployment rates for Māori and Pacific peoples are higher across all regions than for Europeans.

The population in the Auckland region is considerably larger than any other region and accounts for 31% of the national working age population (15 years and older). The Auckland region is home to 71% of all working age Pacific peoples. One third of all Māori of working age live in Auckland and the only region that has a higher number of Māori is the rest of the North Island, that is, all of the North Island except Auckland, Waikato and the Wellington region.

The percentage of youth labour force participation is the lowest in Auckland of all regions and for all ethnicities, although the difference for European youth compared to other regions is slight. Auckland has the highest unemployment rate for both youth (19.4%) and across all age groups at 7.8%. In the North Island the unemployment rate for Māori and Pacific youth is of particular concern.

The figures for 25–44 year olds across all regions show much higher participation in the labour force and much lower rates of unemployment across all regions and all ethnic groups. Differences between ethnic groups appear to be stronger than regional differences.

Both participation rates and unemployment rates reduce across the country as older people exit the labour market. Numbers are too small to observe regional differences in unemployment or participation rates.⁶ Ethnic differences in labour market participation in Auckland, Waikato and Canterbury warrant further exploration. The Canterbury labour market will have changed considerably in the next quarter.

⁵ Regional data separated for age and ethnicity was made available from Statistics New Zealand based on the HLFSS survey information December 2010. Regional data was available by Auckland, Waikato, Wellington, the rest of the North Island, Canterbury and the rest of the South Island.

⁶ Estimates less than 1000 are suppressed (..S) as they are subject to sampling errors too high for most practical purposes

Table 3: Participation rate: Under 25 yrs by ethnicity

Region	European	Māori	Pacific peoples	Asian/MELAA ⁷ / other	Total
Auckland	63.6%	46.6%	43.6%	49.5%	55.2%
Waikato	65.0%	51.9%	70.4%	60.7%	60.4%
Wellington	72.9%	66.4%	59.9%	72.5%	70.2%
Canterbury	72.1%	70.6%	..S	52.7%	68.9%
Rest of North Island	65.1%	59.1%	66.4%	55.9%	62.8%
Rest of South Island	69.5%	52.7%	..S	54.5%	67.7%

Table 4: Unemployment rate: Under 25 yrs by ethnicity

Region	European	Māori	Pacific peoples	Asian/MELAA/ other	Total
Auckland	16.6%	28.2%	25.9%	19.0%	19.4%
Waikato	14.2%	29.5%	..S	..S	17.9%
Wellington	12.3%	23.6%	..S	..S	14.1%
Canterbury	10.5%	16.5%	..S	26.2%	12.4%
Rest of North Island	15.0%	31.2%	41.6%	..S	19.3%
Rest of South Island	12.8%	..S	..S	..S	13.6%

Table 5: Participation rate: 25–44 year olds by region and ethnicity

Region	European	Māori	Pacific peoples	Asian/MELAA/ other	Total
Auckland	85.7%	75.0%	73.3%	78.6%	81.1%
Waikato	83.8%	77.4%	78.6%	86.5%	83.1%
Wellington	88.0%	85.0%	81.9%	85.0%	87.1%
Canterbury	85.9%	76.9%	82.8%	80.3%	84.6%
Rest of North Island	83.1%	73.2%	77.5%	85.7%	81.3%
Rest of South Island	84.8%	76.0%	86.9%	86.1%	84.9%

⁷ Middle Eastern, Latin American and African

Table 6: Unemployment rate: 25–44 year olds by region and ethnicity

Region	European	Māori	Pacific peoples	Asian/MELAA/ other	Total
Auckland	4.2%	8.0%	8.6%	9.2%	6.4%
Waikato	3.5%	11.9%	..S	..S	5.2%
Wellington	2.3%	9.5%	16.3%	..S	3.9%
Canterbury	5.7%	..S	..S	9.5%	6.0%
Rest of North Island	4.1%	11.4%	..S	..S	5.6%
Rest of South Island	3.9%	..S	..S	..S	3.9%

Table 7: Participation rate: 45 and over by region and ethnicity

Region	European	Māori	Pacific peoples	Asian/MELAA/ other	Total
Auckland	63.2%	70.3%	54.0%	55.9%	61.0%
Waikato	62.8%	57.7%	70.3%	64.0%	61.8%
Wellington	62.8%	62.5%	67.2%	60.1%	62.8%
Canterbury	62.9%	73.5%	52.3%	53.8%	62.1%
Rest of North Island	57.1%	61.9%	72.2%	65.6%	57.9%
Rest of South Island	60.9%	71.1%	..S	61.9%	61.2%

Table 8: Unemployment rate: 45 and over by region and ethnicity

Region	European	Māori	Pacific peoples	Asian/MELAA/ other	Total
Auckland	3.4%	7.4%	8.0%	5.1%	4.2%
Waikato	2.0%	8.8%	..S	..S	2.8%
Wellington	3.1%	..S	..S	..S	3.4%
Canterbury	3.0%	..S	..S	..S	3.4%
Rest of North Island	3.0%	8.4%	..S	..S	3.9%
Rest of South Island	2.4%	..S	..S	..S	2.9%

Table 9: Participation rate: Total by region and ethnicity

Region	European	Māori	Pacific peoples	Asian/MELAA/ other	Total
Auckland	70.7%	64.8%	58.7%	64.4%	67.3%
Waikato	69.9%	63.1%	73.1%	74.4%	68.7%
Wellington	72.8%	73.8%	70.7%	74.1%	72.7%
Canterbury	71.7%	73.8%	53.3%	65.5%	70.7%
Rest of North Island	65.8%	65.0%	72.7%	71.3%	65.8%
Rest of South Island	69.7%	67.9%	67.3%	69.8%	69.7%

Table 10: Unemployment rate: Total by region and ethnicity

Region	European	Māori	Pacific peoples	Asian/MELAA/ other	Total
Auckland	5.9%	12.2%	12.4%	9.9%	7.8%
Waikato	4.4%	14.7%	19.1%	6.5%	6.1%
Wellington	4.3%	12.6%	16.7%	4.1%	5.4%
Canterbury	5.3%	8.6%	..S	11.4%	6.0%
Rest of North Island	5.3%	15.3%	18.7%	5.3%	7.1%
Rest of South Island	4.7%	10.7%	..S	4.7%	5.0%

Younger and older workers

In this section we refer to young workers as those under 25, and have separated those under and over 20 years old where possible. We have defined older workers as those over 65, for the purpose of this analysis. Internationally, 55 years and over and sometimes 45 years and over constitute “older workers”.

Unemployment rates for young people, especially for those under 20 years old, are currently very high. These unemployment rates refer to those people who do not have a job, and are actively seeking work. Pacific youth, Māori and people from other ethnic minorities are much more likely to be unemployed than young Europeans. Tables 11 and 12 demonstrate the double disadvantage of age and ethnicity.

Participation rates reflect engagement in the labour force and many young people are participating in education, training or caregiving and so it is expected that the younger group (under 20 years) will have lower participation rates. The rate of young people who are disengaged from the labour market, that is, not in employment, education, training or caregiving (NEET) is of concern, and again is higher among Māori and Pacific youth. Young men have a slightly higher NEET rate than young women.

Workers over 65 years have a much lower participation rate than younger cohorts but the rate in New Zealand is high compared to other OECD countries and is increasing. Interestingly, Māori have the highest proportion of over 65 years in the workforce by ethnicity. Participation rates of younger “older” workers (i.e. 45 -55 years) are very high and unemployment low.

Employment statistics

Table 11: Participation rate by age and ethnicity

Ethnicity	15-19	20-24	65 and over	Total 15 and over
European	54.6%	80.7%	18.1%	69.8%
Māori	45.4%	69.7%	20.2%	66.4%
Pacific peoples	33.8%	68.8%	13.1%	61.6%
Asian/MELAA/ Other	34.5%	66.0%	15.3%	66.9%
Total	48.5%	75.9%	17.8%	68.5%

Table 12: Unemployment rate by age and ethnicity

Ethnicity	15-19	20-24	65 and over	Total 15 and over
European	20.4%	9.3%	2.2%	5.1%
Māori	38.2%	18.8%	..S	13.4%
Pacific peoples	40.9%	17.2%	..S	13.6%
Asian/MELAA/ Other	33.5%	12.2%	..S	8.5%
Total	25.5%	11.2%	2.2%	6.6%

Table 13: Gender participation rate by age

Gender	15-19	20-24	65 and over	Total 15 and over
Male	48.6%	80.2%	23.5%	74.9%
Female	48.4%	71.3%	12.9%	62.5%
Total	48.5%	75.9%	17.8%	68.5%

Table 14: Gender unemployment rate by age

Gender	15-19	20-24	65 and over	Total 15 and over
Male	24.8%	11.6%	2.5%	6.4%
Female	26.3%	10.8%	..S	6.8%
Total	25.5%	11.2%	2.2%	6.6%

Older workers are sometimes categorised as those over 45. Table 15 shows participation rates start to reduce in the late fifties and early sixties but reduce sharply at 65 years.

Table 15: Participation and unemployment of older workers

Older workers	Participation	Unemployment
45–49	87%	4.0%
50–54	86.3%	3.8%
55–59	81.4%	3.7%
60–64	70%	3.3%
65	17.8%	2.2%

Not in Education, Employment or Training (NEET)

“Over recent years, the proportion of young people in New Zealand who are not engaged in employment, education, training or caregiving (NEET) has been monitored as an indicator of youth engagement in training and employment. It serves as a good alternative to the traditional labour force participation rate, which is less relevant for youth given the high numbers of youth out of the labour force because they are at school or in tertiary study. Those youth who are categorised as NEET are disengaged from both formal learning and work, and as such, are considered to be missing the opportunity to develop their potential at an age that heavily influences future outcomes. While the NEET measure does not count young people involved in other activities that could contribute to their well-being, or are 'in between' activities for a short period of time (for example, just returned from or about to leave for overseas, or on holiday from work or study), it is still a particularly useful indicator of youth disengagement.”⁸

As at March 2011, in the 15-19 years age group, just under one in ten (9.3%) of males were NEET, compared with 7.6% of females. The school leaving age is now 16. Among those aged 20–24, 12.3% of men and 10.4% of young women were NEET. Young Māori aged 15–24 have the highest NEET rates, at 17%, followed by Pacific youth at 14.5% and European youth at 8.2%.

⁸ http://www.dol.govt.nz/publications/lmr/youth/in-the-labour-market/youth-2009_07.asp

Employment-related age complaints

The following section summarises complaints received by the Human Rights Commission in relation to employment and age issues. The most common theme of age discrimination complaints in the last five years involves explicit or perceived age preferences in pre-employment. This includes complaints from people who have been told that they are either too old or too young for jobs, as well as people who believe that age is the reason for being declined employment. Of those who stated that they were told they were 'too old' or 'too young' for a role, most had been told they were too old for a role. Being considered 'too old' affected people in all age groups, including a complainant aged under 20 who was considered too old for a role in which the employer wanted to pay youth rates. Retirement complaints largely involve older workers claiming pressure to retire by their employers.

Table 16: Age employment complaints

	Number of age complaints	Proportion of age complaints
Age preference in pre-employment	109	40%
Pre-employment questions	32	12%
Retirement	29	11%
Different entitlements based on age	13	4%

Gender

Employment Statistics

Tables 17 to 20 show gender differences by age and ethnicity which warrant further investigation. While there is little difference in the participation rates of young European men and women, there is a substantial difference in the participation rates between young Māori men and women and between young Pacific men and women. In the 25–44 age range, the participation rates of men is greater than women across all ethnic groups. This is also true of those 45 and over, but not so markedly. There is also a substantial difference in unemployment rates between young Pacific men and women.

Tables 21 and 22 demonstrate the double disadvantage of gender and ethnicity. The gender pay gap between the highest hourly rate (European men) and the lowest (Pacific women) is 24.4%.

Table 17: Male participation by age and ethnicity

	Under 25 yrs	25-44 yrs	45 and over	Total
European	69.3%	93.9%	67.3%	76.0%
Māori	61.7%	84.7%	68.6%	72.3%
Pacific peoples	52.7%	87.4%	63.5%	69.3%
Asian/MELAA/ Other	54.6%	91.3%	65.6%	73.5%
Total	64.3%	92.1%	67.0%	74.9%

Table 18: Female participation by age and ethnicity

	Under 25 yrs	25-44 yrs	45 and over	Total
European	65.7%	76.9%	55.6%	63.9%
Māori	50.9%	68.5%	61.0%	61.1%
Pacific peoples	43.0%	64.3%	52.3%	54.5%
Asian/MELAA/ Other	51.4%	71.9%	51.6%	60.8%
Total	59.8%	74.5%	54.9%	62.5%

Table 19: Male unemployment by age and ethnicity

	Under 25 yrs	25-44 yrs	45 and over	Total
European	13.3%	3.8%	3.2%	5.0%
Māori	27.2%	8.9%	9.7%	13.8%
Pacific peoples	22.9%	7.6%	10.3%	12.1%
Asian/MELAA/ Other	18.2%	5.4%	5.0%	7.7%
Total	16.6%	4.7%	4.0%	6.4%

Table 20: Female unemployment by age and ethnicity

	Under 25 yrs	25-44 yrs	45 and over	Total
European	14.4%	4.4%	2.6%	5.3%
Māori	27.7%	10.7%	6.1%	12.9%
Pacific peoples	32.7%	13.3%	..S	15.2%
Asian/MELAA/ Other	17.3%	9.7%	4.6%	9.4%
Total	17.1%	6.4%	3.1%	6.8%

Table 21: Median hourly rate⁹

	All	Full-time	Part-time
Men	\$21.25	\$22.12	\$14.50
Women	\$19.00	\$20.62	\$15.33
Total	\$20.00	\$21.58	\$15.00

Table 22: Median hourly rate by gender and ethnicity¹⁰

	Men	Women
European	\$22.06	\$19.33
Māori	\$18.00	\$17.00
Pacific People	\$17.88	\$16.68
Asian	\$19.18	\$18.00
MELAA	\$22.00	\$20.00
Other	\$22.06	\$18.00

⁹The annual Income Survey from Statistics in New Zealand (June 2010) provides the following comparative pay data.

¹⁰ Ibid

Sex discrimination complaints

The most common type of complaint on the ground of sex was in relation to pregnancy accounting for 31% of the sex complaints in employment (Table 23) in the last five years. Pregnancy complaints include women being made redundant or having their roles otherwise terminated shortly after advising of pregnancy (34 complaints), being declined roles (12) or other pre-employment problems (10), and poor treatment after advising of pregnancy (16).

Related to the pregnancy complaints were a further 23 complaints about parental leave, including problems with jobs not being held open for people returning from parental leave.

Sexual harassment is included as a separate form of discrimination in the HRA and remains persistently high.

Table 23: Sex discrimination and employment complaints

	Number of sex complaints	Proportion of sex complaints
Pregnancy	128	31%
Gender preference in pre-employment	95	23%
Parental leave	23	6%

Table 24: Sexual harassment complaints

	Number of sexual harassment complaints	Proportion of sexual harassment complaints
Harassment (by colleague or not specified)	184	57%
Harassment by person in senior role	113	35%

Ethnicity

Employment Statistics

Tables 25 and 26 indicate the acuteness of Māori and Pacific youth unemployment. More than one in four Māori and one in four Pacific youth in the labour market are unemployed.

For all under 25 year olds, 9.3% of Europeans, 15.4% of Māori, 13.1% of Pacific youth and 9.5% of Asian/MELAA/other are unemployed.¹¹ The different participation rates leads to questions as to what those people are doing – and for under 25s many will be in education.

Unemployment rates by qualification (Tables 27 to 29) suggest that while higher education levels reduce the likelihood of unemployment, Māori, Pacific people and other people from ethnic minorities with a post secondary school diploma have higher rates of unemployment than Europeans with no qualifications.¹²

Table 25: Participation rates

	Under 25 yrs	25-44 yrs	45 and over	Total
European	67.5%	85.2%	61.3%	69.8%
Māori	56.3%	76.1%	64.5%	66.4%
Pacific peoples	48.0%	75.3%	57.5%	61.6%
Asian/MELAA/ Other	53.2%	80.9%	58.2%	66.9%
Total	62.1%	83.0%	60.7%	68.5%

Table 26: Unemployment rates

	Under 25 yrs	25-44 yrs	45 and over	Total
European	13.8%	4.1%	2.9%	5.1%
Māori	27.4%	9.7%	7.8%	13.4%
Pacific peoples	27.2%	10.2%	7.5%	13.6%
Asian/MELAA/ Other	17.8%	7.5%	4.8%	8.5%
Total	16.8%	5.5%	3.6%	6.6%

¹¹ Calculated by multiplying the percentage unemployed by the participation rate.

¹² Other factors such as age may be at play here, for example are Europeans with no qualifications older on average than Māori workers with no qualifications? Sampling errors may also account for the difference. The issue needs further investigation.

Qualifications and unemployment

Table 27: Male unemployment rates by educational qualification and ethnicity

Ethnicity	None	School qual	Post school (Diploma)	Bachelor	Not specified	Total
European	8.6%	6.5%	4.1%	2.6%	..S	5.0%
Māori	22.6%	12.5%	8.8%	..S	..S	13.8%
Pacific	14.2%	15.8%	10.4%	..S	..S	12.1%
Asian/MELAA Other	..S	12.4%	8.9%	4.8%	..S	7.7%
Total	11.0%	8.3%	5.2%	3.1%	..S	6.4%

Table 28: Female unemployment rates by educational qualification and ethnicity

Ethnicity	None	School qual	Post school (Diploma)	Bachelor	Not specified	Total
European	7.9%	7.3%	4.8%	2.4%	..S	5.3%
Māori	18.9%	15.1%	11.8%	..S	..S	12.9%
Pacific	16.3%	17.0%	16.1%	..S	..S	15.2%
Asian/MELAA Other	7.3%	12.3%	11.4%	7.5%	..S	9.4%
Total	10.1%	8.5%	6.6%	3.7%	..S	6.8%

Table 29: Total unemployment rates by educational qualification and ethnicity

Ethnicity	None	School qual	Post school (Diploma)	Bachelor	Not specified	Total
European	8.3%	6.9%	4.4%	2.5%	3.0%	5.1%
Māori	21.0%	13.8%	10.2%	4.2%	..S	13.4%
Pacific	15.0%	16.4%	13.1%	..S	..S	13.6%
Asian/MELAA Other	6.0%	12.3%	10.0%	6.1%	..S	8.5%
Total	10.6%	8.4%	5.8%	3.4%	3.4%	6.6%

Employment and pre-employment race-related complaints

The five race-related grounds (race, racial harassment, racial disharmony, colour, and ethnic and national origins) are commonly combined in Commission reporting. The combined overall proportion of race-related employment complaints in the five year period 2006–10 was 28.1%.

The most commonly cited themes of race-related complaints are shown in Table 30.

Table 30: Race and employment complaints

	Number of race-related complaints	Proportion of race-related complaints
Discrimination	168	23%
Racist abuse/comments	162	22%
Language in the workplace	93	13%
Harassment	89	12%
Declined role	40	5%
Ethnic targeting of roles	40	5%

'Discrimination' is something of a catch all category and is when the complainant either used the word 'discrimination', or described a situation where a person was being treated differently allegedly due to race-related reasons, and when the complaint did not fit into another common theme category. Similarly 'harassment' complaints are when the complainant used the word 'harassment' to describe the complaint, and when it did not fit in any of the other common themes.

Complaints of racist comments or abuse were the most common single issue (other than the broad 'discrimination'), accounting for 22% of race-related complaints.

'Language' complaints are of two main types: issues around languages other than English being spoken in the workplace, and English language ability or accent:

- 49 complaints were about languages other than English being spoken in workplaces, including 8 relating to prohibitions on the use of te reo Māori at work and 3 other Māori language issues.
- 29 complaints were about people having trouble gaining work, or problems with colleagues because of their accent or lack of English language skills.
- 15 complaints were about job advertisements which specified a first language command of English (11 complaints) or the ability to speak another specified language (4 complaints).

Numbers of each type of complaint have fluctuated in the last five years, and there is no evidence of an increase in any of the specific themes in the last two years.

People with disabilities

Statistics on employment¹³

The only reliable national survey of outcomes for disabled people is the New Zealand Household Disability Survey conducted every five years. Although the New Zealand General Social Survey is described as a biennial survey of social and economic outcomes for all New Zealanders aged 15 and over, it does not provide disaggregated data for disabled people. Other more regular surveys, such as the Household Labour Force Survey, do not provide data on disabled people.

Table 31: Unemployment rate 2006, Disability Survey

	Disabled	Non-disabled
Male	5%	3%
Female	9%	5%

As with the total population there is a positive association with educational attainment and labour force participation. At every level of qualification, however, disabled people are less likely than non-disabled people to be in the workforce. The participation rate of disabled people with post school qualifications (76%) is about the same as that of non-disabled people with no qualifications.

The likelihood of being in the labour force is greater for some types of disability than others. People with a vision or hearing impairment are most likely to be in the labour force, while people with an intellectual impairment or experience of mental illness are the least likely.

Disability discrimination complaints

Complaints recorded under the ground of disability include permanent disabilities as well as temporary injuries or illnesses. The most commonly received type of complaint relates to the termination of employment (including the threat or perceived threat of termination) which the complainant believes is related to disability/injury/illness. Complaints relating to being declined roles were also high for people citing disability as a ground of complaint. Numbers of complaints relating to termination of employment have been steady over the last three years, while numbers of complaints relating to problems obtaining employment have dropped slightly in the last two years.

Table 32: Disability and employment complaints

	Disability complaints	Proportion of disability complaints
Termination of employment	166	26%
Declined role	149	23%
Discrimination at work	92	14%
Accommodation at work	69	11%
Sick leave	30	5%

¹³ http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/02-Dec-2010_15-51-46_HRNZ_10_DisabilityCh5.html

Equality at work indicators

Given New Zealand's current labour market situation, how can we make progress? First, we need to be able to track progress. What gets counted often gets done.

New Zealand has never had a method of objectively benchmarking EEO. This set of Equality at Work indicators has been developed by the Commission working with experts and using overseas examples. It provides time series data and aims for an objective progress report on how New Zealand is doing that can be used by government, policy agencies, industry sectors, employers, trade unions, researchers and civil society.

The Human Rights Commission will use these indicators to monitor progress for both national and international reporting purposes. Making progress visible will encourage greater efforts to achieve equality.

The 20 indicators have been selected to reflect all aspects of the employment cycle used by the Human Rights Commission in promoting the right to work. Measures are described for each indicator, alongside the grounds on which equality will be determined such as age, gender, ethnicity and disability which reflect human rights discrimination. Other sources of inequality in employment such as regional variation are also included. Finally, the availability of data for each indicator is detailed. This has been included to assist monitoring, and to highlight data gaps.

In most cases data is publically available from government agencies or is available for purchase. However, data on equality in employment for disabled people is scant and up-to-date information is not available. The most comprehensive and reliable source of employment data for disabled people is the Disability Survey conducted as a supplement after the New Zealand Census conducted every five years. The 2011 Census has been postponed as a result of the Christchurch earthquake and will now be held in 2013. Data on sexual orientation and employment is not available and submissions to Statistics New Zealand to include sexual orientation questions in the 2011 Census were not successful.

The indicators are developed from similar equality indicators from other jurisdictions, including the Canadian Human Rights Commission's *Framework for Documenting Equality Rights 2010*.

Top 20 indicators

	Indicators	Measure	Grounds	Data Availability
1	Unemployment rates	<ul style="list-style-type: none"> Disaggregated unemployment rates from Household Labour Force Survey (HLFS). 	<ul style="list-style-type: none"> Age Sex/Gender Ethnicity Disability Region Sexual Orientation 	<ul style="list-style-type: none"> Collected and can be purchased from Stats NZ except for disability data which is collected in the Census disability survey only. Sexual orientation data is not collected by HLFS or Census
2	People on benefits long term (more than a year)	<ul style="list-style-type: none"> Disaggregated long term beneficiary data from WINZ 	<ul style="list-style-type: none"> Age Sex/Gender Ethnicity Disability 	<ul style="list-style-type: none"> Aggregated data available from MSD Disaggregated data could be requested
3	Adequacy of unemployment benefit	<ul style="list-style-type: none"> Ratio of unemployment benefit to median wage as a percentage 	N/A	<ul style="list-style-type: none"> Calculated from HLFS and WINZ data
4	Underemployment rates.	<ul style="list-style-type: none"> Disaggregated data from HLFS 	<ul style="list-style-type: none"> Age Sex/Gender Ethnicity Disability 	<ul style="list-style-type: none"> Stats NZ except for disability data which is collected in the Census disability survey only
5	Rates of people not engaged in education, employment or training (NEET)	<ul style="list-style-type: none"> Disaggregated data from HLFS 	<ul style="list-style-type: none"> Age Sex/Gender Ethnicity Disability Region 	<ul style="list-style-type: none"> Stats NZ except for disability data which is collected in the Census disability survey only

	Indicators	Measure	Grounds	Data Availability
6	Complaints about discrimination at job entry	<ul style="list-style-type: none"> Discrimination data from Human Rights Commission (HRC) Survey of Discrimination in NZ 	<ul style="list-style-type: none"> Age Sex/Gender Ethnicity Disability Sexual Orientation Family Status 	<ul style="list-style-type: none"> Data is recorded and analysed by HRC UMR Annual Survey commissioned by HRC
7	Gender stereotyping in tertiary education courses, industry training and apprenticeships	<ul style="list-style-type: none"> Disaggregated data for Modern Apprentices Disaggregated data for fields of study at university 	<ul style="list-style-type: none"> Age Sex/Gender Ethnicity 	<ul style="list-style-type: none"> Data available from Tertiary Education Commission (TEC) and Ministry of Education
8	Uptake of paid parental leave (PPL)	<ul style="list-style-type: none"> Disaggregated data of parents accessing PPL Complaints data from those excluded from PPL 	<ul style="list-style-type: none"> Sex/Gender Employment status 	<ul style="list-style-type: none"> Not published but could be requested from IRD Data is recorded and analysed by HRC
9	Access to Early Childhood Education (ECE)	<ul style="list-style-type: none"> Waiting times for ECE Affordability of ECE Participation of children in ECE 	<ul style="list-style-type: none"> Ethnicity Region 	<ul style="list-style-type: none"> Data available from TEC and Ministry of Education
10	Occupational segregation	<ul style="list-style-type: none"> Disaggregated data from occupational classification tables Early childhood teachers Modern Apprenticeships 	<ul style="list-style-type: none"> Sex/Gender Ethnicity 	<ul style="list-style-type: none"> Quarterly Employment Survey (QES) data from Stats NZ Early Childhood Education, Ministry of Education TEC

	Indicators	Measure	Grounds	Data Availability
11	Labour force participation	<ul style="list-style-type: none"> Disaggregated data from HLFS 	<ul style="list-style-type: none"> Age Sex/Gender Ethnicity Disability Sexual Orientation 	<ul style="list-style-type: none"> Purchased from Stats NZ except for disability data (which is collected in the Census disability survey only). Sexual orientation data is not collected by HLFS or Census
12	Leadership rates in senior management and governance roles	<ul style="list-style-type: none"> Diversity in senior management roles Diversity on boards 	<ul style="list-style-type: none"> Sex/Gender Ethnicity Disability 	<ul style="list-style-type: none"> SSC data on public service Ministry of Women's Affairs data on public sector boards HRC's Census of Women's Participation for board membership and management in private sector (top listed companies) Disability data is not currently being collected
13	Gender pay gap	<ul style="list-style-type: none"> Pay gap 	<ul style="list-style-type: none"> Sex/Gender Ethnicity 	<ul style="list-style-type: none"> Stats NZ data across labour force SSC data across the public service
14	Minimum wage	<ul style="list-style-type: none"> Minimum wage as a percentage of median and mean wage Disaggregated data on minimum wage jobs 	<ul style="list-style-type: none"> Sex/Gender Ethnicity 	<ul style="list-style-type: none"> Annual Review of minimum wage by Department of Labour

	Indicators	Measure	Grounds	Data Availability
15	Minimum wage exemptions	<ul style="list-style-type: none"> Number of employees receiving minimum wage exemptions 	<ul style="list-style-type: none"> Disability 	<ul style="list-style-type: none"> On request to Department of Labour
16	Harassment complaints	<ul style="list-style-type: none"> Complaints received by the Human Rights Commission 	<ul style="list-style-type: none"> Age Sex/Gender Ethnicity Disability Sexual orientation 	<ul style="list-style-type: none"> Data is recorded and analysed by the HRC
17	Discrimination at work complaints	<ul style="list-style-type: none"> Complaints received by the Human Rights Commission 	<ul style="list-style-type: none"> Age Sex/Gender Ethnicity Disability Sexual Orientation Family status 	<ul style="list-style-type: none"> Data is recorded and analysed by the HRC
18	Flexible work opportunities	<ul style="list-style-type: none"> Quality of working life survey 	<ul style="list-style-type: none"> Age Sex/Gender 	<ul style="list-style-type: none"> Stats NZ 3-yearly survey (Dec 2011 is next due date)
19	Trade union membership	<ul style="list-style-type: none"> Unionisation rate 	<ul style="list-style-type: none"> Sex/Gender Ethnicity 	<ul style="list-style-type: none"> Dept of Labour Annual Union Membership Return Report
20	Transparency of pay rates (including starting rates)	<ul style="list-style-type: none"> Company websites include pay bands for each occupational group Companies report starting rates for each occupation 	<ul style="list-style-type: none"> Sex/Gender 	<ul style="list-style-type: none"> Research required, not generally available currently

Youth work crisis

There is broad political and social consensus in New Zealand that youth unemployment (15-24 year olds) is a ticking time bomb as it is in many developed and developing countries globally. Business New Zealand Chief executive, Phil O'Reilly has described the record high youth unemployment rate as "an emergency" and that something needs to be done to avoid a generation of unemployed.

Latest OECD figures report New Zealand as having the 16th highest rate of unemployment of 36 OECD countries. The OECD's most recent survey shows younger Kiwis are 3.7 times more likely to be registered as not being able to find paid work than other adults.¹⁴ The youth unemployment rate was 18.8% as at March 2011.

The report *ILO Global Employment Trends for Youth 2010* says that of some 620 million economically active youth aged 15 to 24 years; 81 million were unemployed at the end of 2009 - the highest number ever. This is 7.8 million more than the global number in 2007. It adds that these trends will have "significant consequences for young people as upcoming cohorts of new entrants join the ranks of the already unemployed" and warns of the "risk of a crisis legacy of a 'lost generation' comprised of young people who have dropped out of the labour market, having lost all hope of being able to work for a decent living".¹⁵

The New Zealand Council of Trade Unions (CTU) states that young people want to work and up skill, but there simply are not enough jobs or training opportunities available for many young people. The Government has failed to provide a plan for how they will create long term and sustainable work and education opportunities, says the CTU.

In May the Government announced it would spend \$55.2 million dollars on work and training subsidies for young people. Part of the package includes \$17.2m for employers to employ and train young people in the aged care, horticulture, and agriculture sectors. The Mayors Taskforce for Jobs (MTFJ) welcomed the Government's announcement but said the package presents "nothing new" and "isn't enough."

Some young people are beginning to "degree stack" by returning for their second and third degrees because they cannot find jobs. Others are forced to move geographic locations to find work, and many are becoming increasingly idle and disengaged. Many New Zealand families are bearing the cost and burden of young unemployed at home.

The Commission and the Mayors Taskforce for Jobs agree that a joined-up approach to youth employment is needed that requires active labour market interventions.

Youth employment issues

Young men and women have been disproportionately affected by the global recession. Both well-educated young people and others less educated are struggling to find work and this has a variable impact in different New Zealand cities and regions. For example, in Christchurch business sectors where young people work such as hospitality and retail have been hit hard by successive earthquakes and many employees are redundant or waiting in limbo to hear about the future of their workplaces. The Government announced it would provide up to \$42 million in the 2011 Budget for trades training in the Canterbury region to aid recovery. This would provide up to 1500 additional training places at polytechnics, private providers and ITOs.

¹⁴ OECD (2010). *Off to a good start? Jobs for Youth New Zealand country notes*. www.oecd.org

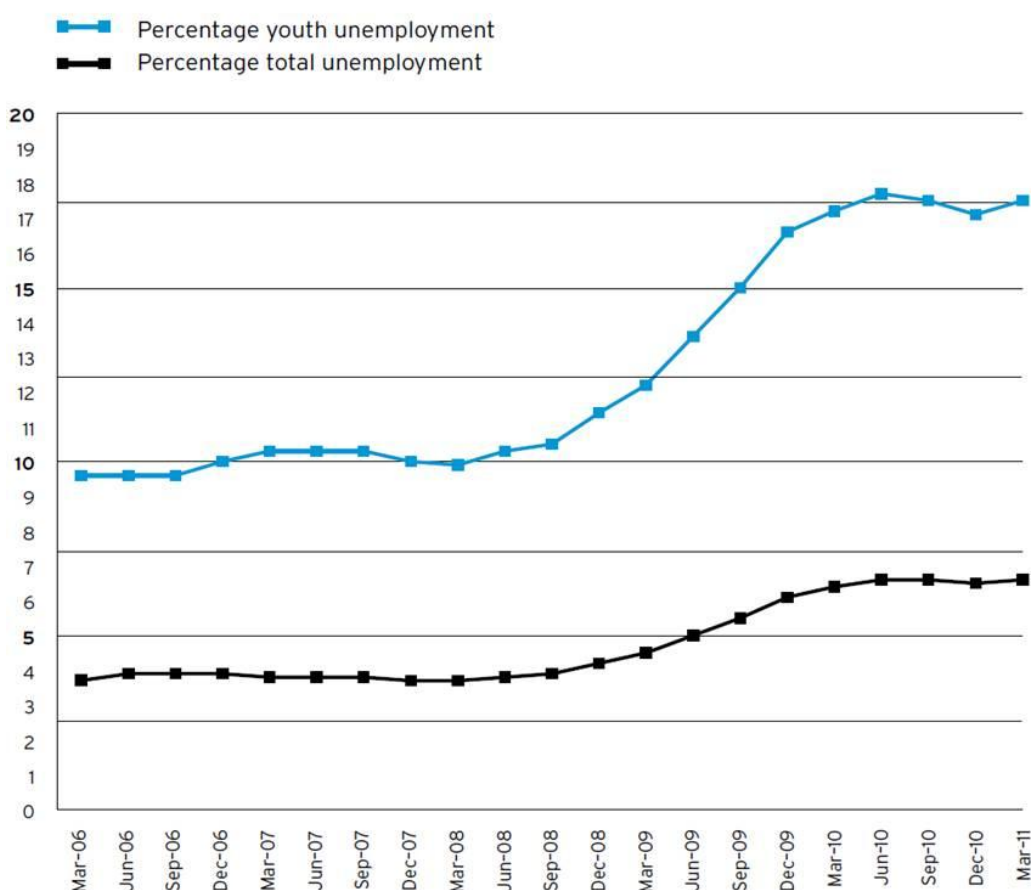
¹⁵ Press Release: ILO August 11, 2010

Many who are in employment, especially young women, are often engaged in relatively unskilled or informal and precarious occupations, which is a major waste of human resources, as well as a source of considerable frustration among young people and their families. A New Zealand Institute of Economic Research spokesman reported that young people were often in more vulnerable sectors where there is less job security, high turnover, lower wages and more part-time and casual hours.¹⁶

The unemployment situation of Māori and Pacific youth is particularly acute. The Household Labour Force Survey for March 2011 shows Māori youth unemployment at 28.8% and Pacific youth unemployment at 28.1%.

A comparison of youth unemployment rates between 2006 and 2011 shows a dramatic increase. The unemployment rate for youth was 17.5%¹⁷ in the year to March 2011, which was 0.4 percentage points above its level a year ago, and 7.9 percentage points higher than its level five years ago. Compared with the unemployment rate for all people, which was 6.6% in the year to March 2011, the youth rate is noticeably higher.¹⁸

Figure 1 / Youth unemployment rates 2006 - 2011



¹⁶ Youth jobless rate soars to 19.4%, The Press. 6 January, 2011

¹⁷ Data from the Household Labour Force Survey has been annualised by averaging the results from the past four quarters. This may occasionally result in a small rounding error compared to annual results produced directly by Statistics New Zealand.

¹⁸ Historically youth unemployment is higher than the general unemployment rate.

While up-to-date data for unemployed disabled youth is not available, disability advocates and commentators note the double disadvantage in the labour market of being both disabled and young. Disabled young people believe strongly that employer attitudes need to change. More than three quarters (76%) who had looked for work said their job seeking experience was poor or very poor.¹⁹

There are major issues facing young people and work:

- The recession has had a dramatic impact on youth unemployment numbers;
- There is a worrying level of employer bias about hiring young people;
- Young tertiary-qualified people are struggling to gain employment;
- Some secondary students are working long hours while still at school;
- Youth with low levels of educational attainment, including numeracy and literacy problems, are falling through the cracks.

There is real concern that unless action is taken urgently, the youth situation will become unsustainable, representing a threat to social cohesion and to future labour supply, even though young people historically eventually gain employment. Moreover, young people represent a valuable resource to the economy, business and society.

Some employers are biased against young people because of their perceived attitudes to work and because of stereotypes about the youth work ethic. Employers frequently express a preference for experienced workers citing young people's lack of job readiness and absence of a work ethic.

Access to plain-English information about employee rights, qualifications, courses and career pathways is an issue for young people seeking or in work. Many young people would like to see an improvement in the accessibility of information and examples of on-the-job experiences. The quality of career's advice is an issue for some young people.

What the Commission and others are doing

In 2011 the Commission released its publication "*Breaking Through: Young People at Work*".²⁰ This guide provides practical advice to employers on how young people can be employed and presents the business case to encourage greater investment in young people and work.

The Commission continues to support the efforts of groups like the Mayors Taskforce for Jobs to advocate and promote youth employment. The Commission is also promoting the development of a national youth-to-work strategy that includes a plan for every young New Zealander.

Mayors around the country are working together to ensure young people in their communities make successful transitions from school to work, education or training. The Mayors Taskforce for Jobs established in 2000 proposes a model called "Youth Connections" that tracks all school leavers and connects them to opportunities within their own communities. The model is based on Local Authority boundaries and relies on community support and collaboration across central and local government agencies. The Taskforce recommends that a community consultation process take place in all Local Authorities so communities can determine the best way to provide for NEET and other at risk young people. The Taskforce also recommends the establishment of a National Call Centre and Youth Connections Local Authority Community Forums. Noting that youth unemployment has remained high and of concern over the last 20 years particularly in recent

¹⁹<http://www.myd.govt.nz/have-your-say/youth-voices-consultation-reports/young-disabled-and-speaking-out.html>

²⁰ <http://www.neon.org.nz/eeogroups/youngpeopleatwork/>

recessionary times, the Taskforce believes it is time for a new approach — one which is based on communication, ownership and responsibility for the well-being of their young people.

The Youth Transition Service (YTS) began in 2005 as a free service which assists young people into further education, training, work or other meaningful activities. By 2007 14 services were operating. Since then a number of other services have grown out of local needs but are not part of YTS.

In 2009 the Government announced its youth employment package spending \$152 million to create work, education and training opportunities for unemployed youth. In all the Government announced nine programmes to be targeted at youth employment. A number of these are administered through Work and Income New Zealand. In 2011 some previous initiatives such as Community Max ceased, and funding redirected to a suite of new packages. This includes \$17.2m for employers to employ and train young people in the aged care, horticulture, and agriculture sectors as well as other high demand industries, \$13m to extend the Job Ops scheme which will now include training and \$25m for the government's Limited Services Volunteers scheme or "boot camp" as it has become known.

Across New Zealand there are numerous youth-to-work initiatives, incubator programmes and outstanding examples of regional good practice. For example, Otorohanga's youth employment initiatives have immense community support and have resulted in zero youth unemployment. Many of these schemes have been developed by local government and supported by central government funding streams. Post-settlement iwi have a significant role to play in sustainable employment for young Māori, for example, Waikato-Tainui's trade training partnership with Transpower.

Employers are also playing their part in encouraging and supporting young people. Appointees to advisory groups, graduate recruitment programmes, talent management and participation in job expos are some of the initiatives the Commission has been told about. A multitude of creative and innovative practices exist across New Zealand aiming to improve the employment prospects of young people.

However, many of these operate in isolation to one another underlining the need for a national programmatic approach to youth employment which ensures there is leverage off a broad knowledge base, that there is a way of transferring best practice and innovation, and consistency and continuity when something is working. Such an approach will need the involvement and support of parents, family, iwi, schools, the wider community, employers, trade unions, political parties, regional authorities, and youth services if it is to succeed.

Recommendation

A new approach is needed to ensure all young people reach their potential.

The Commission urgently recommends a national programmatic approach to youth employment initiatives and advocates:

A national youth-to-work strategy that includes a plan for every young New Zealander that has cross-party support and sufficient long-term funding security. The strategy must be responsive to the needs of Māori and Pacific youth as particularly vulnerable groups of young people, and address the barriers faced by disabled youth.

The gender pay gap

While youth employment is a “time bomb” which is dramatically impacting on equality at work, the gender pay gap has been a systemic and enduring inequality for women and is a fundamental breach of human rights.

New legislation is necessary because efforts and approaches to date have been only partly successful, an experience mirrored by comparable countries. In New Zealand the gender pay gap measured by average hourly earnings has persisted at about 12% for the last ten years. Current legal remedies have not resulted in systemic change and neither has voluntary/non-interventionist policies. The proposed Pay Equality Bill is based on legislative approaches recently adopted in a number of other similar jurisdictions and is available to reinvigorate a positive debate about how New Zealand can best implement the right to equal pay.

This Pay Equality Bill is intended to provoke discussion about what legislation is required to achieve pay equality. It is hoped that this discussion can occur across political party lines and outside sectional interests. Progress on equality is unlikely to be made and certainly will not be sustained without broad-based commitment.

The draft legislation rests on three essential pillars. The first is that the right to equal pay, including equal pay for work of equal value, is not in contention. Domestic legislation and international conventions to which New Zealand is a signatory have affirmed that right. That battle has been won. The issue is how that right can be realised.

The second pillar is that anti-discrimination legislation has been insufficient to make equal pay a reality and so a positive duty to advance equality is warranted. An individual would not have to prove discrimination, rather the responsibility is on the employer to prove equality in line with the existing right to everyone to receive equal pay and pay equity. A positive duty to equal pay would include transparency of pay and pay systems and an obligation on employers to record pay differentiations by gender and make those records open to Labour Inspector scrutiny.

The third pillar is the determination of work of equal value. Jobs are deemed to be of equal value if they have the same job points on a gender neutral job evaluation tool. It is proposed that tools used to evaluate jobs for this purpose must meet the Gender-Inclusive Job Evaluation Standard (P8007/2006) developed under the auspices of the former Pay and Employment Equity Unit of the Department of Labour and approved by the Standards Council. It is used to ensure jobs are evaluated by using a gender neutral job evaluation tool. This addresses current problems with the selection of comparator groups and determining the extent to which a male-dominated occupation and a female-dominated occupation are similar or different.

The new proposed Pay Equality Bill aims to shift the current negative debate about the gender pay gap and move on from the ‘blame game’ that has characterised recent political discussion. It is available to the Government, any political party or individual members of Parliament to debate and sponsor. The draft bill has been developed as part of the EEO Commissioner’s leadership and advocacy functions.

Why a Pay Equality Bill?

Equal pay and equal pay for work of equal value have been a policy issue in New Zealand and overseas since the Second World War.²¹ As an increasing number of women entered the paid workforce the question was frequently asked why women were paid less than men for doing the same work. This practice not only undermined the notion of equality but it was perceived as being unfair. After much lobbying, the issue was placed on the political policy agenda in the 1960s. Over the past 40 years New Zealand and overseas jurisdictions have tried various policy approaches but the inequality between male and female pay rates has persisted.²²

It is time for a new approach. Rather than persist with the traditional model of relying on the notion of discrimination alone to remedy an inequality, this draft bill asserts the right to equality of pay. The right to equality is the conceptual foundation of the law relating to discrimination. It is therefore appropriate that the positive right to equality be incorporated in a statutory framework. Sandra Fredman²³ in her book describes the basis for this new approach as follows:

Equality is a pivotal concept linking negative and positive human rights duties...More recently, however, the artificiality of the distinction between negative and positive duties within the equality guarantee has become increasingly evident. This is in part due to the ineffectiveness of duties of restraint in addressing discrimination and inequality. It has become clear that without a positive duty to promote equality, patterns of discrimination and social exclusion will remain unchanged...real progress can only be made through a unified approach to equality, one which includes both positive and negative duties."

The policy framework of the Pay Equality Bill differs from that taken by previous legislation. The focus in previous legislation such as the Equal Pay Act and the repealed Employment Equity Act had been on the industrial/employment relations statutory framework. The underlying assumption of the legislation was that equal pay was primarily an employment matter and best resolved through employment-related concepts, procedures and institutions. While it is a fact that the payment for labour is grounded in the workplace, previous legislative attempts to make equal pay a reality have been only partially successful.

The Equal Pay Act 1972 did partially close the ordinary time hourly earnings gap from 69.9% to 78.5%.²⁴ Ten years later the hourly earnings gap remained at about 78%.²⁵ Since that time the pay gap narrowed unevenly and slowly, then stalled in the last decade.²⁶ Overall in March 2010, women's average hourly earnings were 87.4% of men, and women's average weekly full-time equivalent earnings were 81.4% of men's.²⁷ These statistics are averages and disguise considerable differences across occupations as illustrated by the recent *New Zealand Census of Women's Participation*²⁸ which reveal the gender pay gap in the public sector varied from 38.81% in Defence, 29% in Treasury, 27.2% in the Office of Prime

²¹ Corner, M. (1988) *No Easy Victory*, NZ Public Service Association

²² Report of the Director-General, ILO (2007) *Equality at Work: Tackling the Challenges: Global Report under the Follow-Up to the ILO Declaration on Fundamental Principles and Rights at Work*

²³ P 175 Fredman, S (2008) *Human Rights Transformed* Oxford University Press

²⁴ *Equal Pay Implementation in New Zealand: Report of a Committee Appointed by the Minister of Labour* (1979) Department of Labour.

²⁵ *Equal Pay Study: Phase One* (1987) Department of Labour

²⁶ http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/15-Dec-2010_12-41-06_Chapter_13.184-203.pdf

²⁷ Statistics New Zealand March 2010 *Quarterly Employment Survey* (QES)

²⁸ *New Zealand Census of Women's Participation* 2010 Human Rights Commission

Minister and Cabinet to 14.9% in Labour, 11% in Social Development, 1.65% in Archives and -12.0% in the Serious Fraud Office.

The New Zealand experience of only partial success in closing the pay gap between male and female employees is similar to that of comparable countries such as Canada, Australia, and the United Kingdom. The International Labour Organisation noted that “despite phenomenal advances in their educational achievements, women continue to earn, on average, less than men in all countries”.²⁹ The Report examined the various causes and dimensions of the gender pay gap and concluded “Pay equity is about redressing the undervaluation of jobs typically performed by women and remunerating them according to their value. This is not necessarily a reflection of market forces or skill requirements, but may mirror differences in collective bargaining power, preconceived ideas about scarce skills/market rates or the historical undervaluing of “female” jobs.”³⁰ After noting that while collective bargaining had been the principle method of introducing pay equity schemes in many countries, the change in global economic policies had witnessed a recent decline in collective bargaining. The Report therefore concluded “The more collective bargaining is decentralised, the wider the wage disparities and hence the wage gap. As the commitment to equal pay for equal work continues to advance, the social partners will need to explore new modalities to best give effect to these rights both inside and outside the collective bargaining context.”³¹

The emergence of a need for a new approach has been noted in Canada, Australia, and the United Kingdom as well as in New Zealand. This new model relies on the development of a human rights framework that incorporates the notion of equality. Mary Cornish, Chair of the Ontario Equal Pay Coalition states “the strategy for securing pay justice for women requires at a minimum pro-active equal pay for work of equal value laws along with other equality promoting laws and policies.”³² The need to position pay equality within an overall equality framework has been adopted in Canada through the Canadian Human Rights Commission project to develop a *Framework for Documenting Equality Rights*³³

This Framework’s objective is to provide reliable and policy-relevant data on equality rights in Canada by examining the social and economic well being of groups protected under the Canadian Human Rights Act. The benchmark for the Framework is the constitutional guarantee of equality set out in section 15 of the Canadian Charter of Rights and Freedoms³⁴ that provides “Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.” Although New Zealand does not have a written constitution, in this context the Human Rights Act and the Bill of Rights Act may be considered the equivalent of section 15.

In Australia also there have been changes in the statutory framework to determine pay equality. Under the Fair Work Act 2009 it is unlawful to treat a woman less favourably in the workplace on the basis of her gender. The Act also contains a ‘modern award objective’ that

²⁹ P 73 *Equality at Work: Tackling the Challenges: Global Report under the Follow-Up to the ILO Declaration on Fundamental Principles and Rights at Work* (2007) Report of the Director-General, ILO

³⁰ P74 *ibid*

³¹ P91 *ibid*

³² Cornish, M., (2009) in a paper *New Governance Approaches to Closing the Gender Pay Gap: Perspectives from Canada* International Labour Law and Social Security XIX World Congress, Sydney, Australia)

³³ *Framework for Documenting Equality Rights* (2010) Canadian Human Rights Commission

³⁴ (Part 1 of the Constitution Act 1982

provides when making an award, Fair Work Australia must take into account ‘the principle of equal remuneration for work of equal or comparable value’. Importantly also the Sex Discrimination Commissioner is entitled to refer an industrial instrument to Fair Work Australia to ensure it is non-discriminatory. Fair Work Australia has power to make ‘equal remuneration orders’ to ensure that there will be equal remuneration for work of equal or comparable value. Legislative reform has also been signalled to the Equal Opportunity for Women in the Workplace Act 1999 (EOWW Act).

The Human Rights Law Resource Centre submission to the Review of the EOWW Act noted “The interaction between the Sex Discrimination Act (SDA), the EOWW Act and the FW Act provide a strong legislative framework which can be utilised to ensure equal remuneration for work of equal value.”³⁵ The Australian Minister of the Status of Women, the Hon Kate Ellis MP recently announced in March 2011 reforms of the EOWW Act and Equal Opportunity for Women in the Workplace Agency (EPWA). These reforms include a new *Workplace Gender Equality Act* and Workplace Gender Equality Agency with the objects of the Act including pay equity.³⁶ Although it is too early to assess the effectiveness of this legislative framework, it is relevant in the New Zealand context because it recognises the issue of pay equality is both a human rights and an industrial issue and that the institutions responsible for the enforcement in both sectors can and should work together.

The other jurisdiction of relevance in the context of New Zealand’s development of a pay equality legislative framework is the new Equality Act in the United Kingdom. While again it is too early to assess the effect of this new legislation on delivering pay equality, it does provide a new approach that has been described by Bob Hepple,³⁷ as “The shift in focus from negative duties not to discriminate, harass or victimise, to positive duties to advance equality, justify the re-invention of this branch of the law as *equality law*, of which discrimination law is an essential but not exclusive part.”

In other words the Equality Act creates a positive right to equality as the starting point. While the Act sets out the right to pay equality, the provisions of the Act are supplemented by an *Equal Pay Statutory Code of Practice*³⁸ to assist the parties in the implementation and enforcement of the right to pay equality. This approach has much to commend it because a frequent criticism of equal pay and pay equity legislation is that it is complicated and difficult to implement or enforce and for this reason the parties do not attempt it.

New Zealand since 2001 has also been developing a new approach to human rights that focuses on the right to equality. Under the 2001 Amendment to the Human Rights Act 1993 an Equal Employment Opportunities Commissioner was appointed with the function to “lead discussions of the Commission about equal employment opportunities (including pay equity). The Commission established the EEO Unit and in July 2003 began work with a review of the state of EEO in New Zealand. The review results were published in *Framework for the Future: Equal Employment Opportunities in New Zealand*³⁹ The Report found that after a benchmarking exercise with the EEO experience of Australia, the United Kingdom, Canada, and the United States that New Zealand did not compare well in terms of EEO effectiveness. It recommended that a new approach be adopted that builds on past initiatives but developed a framework that ensured EEO becomes a reality for all members of the community and that everyone may “lead the lives they have reason to value”.⁴⁰

³⁵ Human Rights Law Resource Centre Ltd, (October 2009) Melbourne, Vic, Australia,

³⁶ EOWA Reforms: E-List message, 30 March 2011

³⁷ P1 Hepple, B., *Equality The New Legal Framework* (2011) Hart Publishing

³⁸ *Equal Pay Statutory Code of Practice* (2010) Equality and Human Rights Commission

³⁹ *Framework for the Future: Equal Employment Opportunities in New Zealand* (2004) Human Rights Commission

⁴⁰ p281 Amartya Sen *Development as Freedom* (2000) New York: Anchor Books

The Human Rights Commission project entitled *What Next: National Conversation about Work*⁴¹ and the *Census of Women's Participation*⁴² have also made a number of recommendations about making progress towards equality, including equality in the workplace. During the *National Conversation about Work* project the Human Rights Commission visited 16 regions of New Zealand and talked to thousands of New Zealanders about what constitutes good work and what makes for decent workplaces. They identified how work can be improved to increase productivity and profitability and at the same time enhance family life, and community well being. The material gathered by the Human Rights Commission recommended strengthening the Equal Pay Act 1972 to include equal pay for work of equal value. At a Pay and Employment Equity Roundtable organised by the Human Rights Commission in 2009, the need to review the Equal Pay Act 1972 was acknowledged and that the review needed to reflect the changes that have taken place since 1972.

If progress is to be made on pay equality then a new approach to the statutory framework is required. The human rights approach is not entirely new as the Human Rights Act recognises the right to be free from discrimination on the grounds of sex in employment matters. New Zealand and overseas experience has shown, however, that the evidential burden on the complainant has been a major obstacle to pursuing a complaint. The shift in focus to a positive right to pay equality is an attempt to remove this obstacle by ensuring the information about rates of pay is enforceable through the Department of Labour Inspectorate and made available to the Authority when a complaint is filed. The move to a positive right to pay equality is logically the appropriate development when it has been legally acknowledged that women have a right to be paid equally. New Zealand has ratified the ILO Convention No. 100 Equal Remuneration and enacted both the Equal Pay Act and the Human Rights Act. The issue is not whether there is such a right but how to provide the most effective legal regime to ensure the right is implemented and enforced.

The attached draft provides a framework for a new Act to replace the 1972 Equal Pay Act. The draft is intended to indicate the approach that should be taken when new legislation is drafted. It is acknowledged that more detail will be required in any new Act but at this stage it is important to identify the principled policy approach that needs to be taken. The Pay Equality Bill is similar to the United Kingdom Equality Act 2010 in that it establishes a right to pay equality. This right is stated without the need to first identify there has been discrimination. The Bill assumes all pay is equal between men and women and that all pay systems have been subject to the Gender-Inclusive Job Evaluation Standard.⁴³ The effect of this is that the onus shifts from the individual employee to the employer to prove there is pay equality in the workplace.

The Bill acknowledges that it is often difficult for an individual to find the evidence that there is differentiation in the pay rates. The requirement for the employer to keep pay equality records and to record any differentiation in the pay records, which are subject to inspection from a Labour Inspector, is an attempt to address the evidential issue. The provision relating to confidentiality of pay rates is also intended to address the issue of access to relevant information. In effect the Labour Inspector can now access the information instead of the individual employee. Again this provision reflects the fact that the state has endorsed the concept of pay equality through previous legislation and in effect this Bill is ensuring the enforceability of this commitment.

The Pay Equality Bill is an attempt to assert a positive right to pay equality and provide a procedure for the implementation and enforcement of that right that is clear and simple. The previous policy work on pay equity has resulted in the Gender-Inclusive Job Evaluation

⁴¹ *What Next: National Conversation about Work* (2010) Human Rights Commission

⁴² *New Zealand Census of Women's Participation* (2010) Human Rights Commission

⁴³ Standards New Zealand P8007/2006

Standard⁴⁴ that can now be used to ensure job evaluation systems can deliver pay equality. The use of this Standard and the keeping of proper pay equality records provide an evidential basis for any complaint relating to a lack of pay equality. The inclusion of provision for the inclusion of an equality clause through collective bargaining is recognition of the need for pay equality schemes to be appropriate for the enterprise or enterprises covered by the collective agreement.

While there is a commitment for employers to pay equally through the inclusion of a pay equality clause in their employment agreements, individual and collective, the Bill makes provision for the negotiation of an equality clause through collective bargaining. This provision is an acknowledgment that collective bargaining has traditionally been the method of equal pay implementation. It also recognises that it may take time to fully implement pay equality and a timetable appropriate to the enterprise of industry can be incorporated in the collective agreement. In the past, however, the evidence would suggest that pay equality has not been a priority in collective bargaining so the Bill deems all collective agreements also have an equality clause. This is not a matter of choice for either the employer or the union. The issue under negotiation, therefore, is the form and nature of the equality clause though the scheme must conform to the Gender-Inclusive Job Evaluation Standard.

Provision has also been made in the Bill for codes of practice to be issued by both the Employment Relations Authority and the Department of Labour. The form and nature of these codes needs to be determined. It seemed appropriate, however, that the Employment Relations Authority and the Department of Labour be responsible for the development of codes of practice because over a long period of time the Department and various industrial/employment institutions have developed policy in this area. The Human Rights Commission has a specific responsibility under the Human Rights Act for advocacy and the provision of information and education on matters relating to human rights. It is therefore appropriate the task of advocacy and the provision of information and education on matters relating to pay equality is included within the functions and powers of the Commission.

Provision has also been made for both the Human Rights Commission and the Employment Relations Authority to issue codes of practice to ensure there is an understanding and enforcement of the Act. This mechanism has been used in both the United Kingdom and Canada to avoid drafting complicated legal provisions that essentially relate to process. The legal status of the codes is a matter to be decided. In the United Kingdom they are formal and laid before the Parliament. The Canadian Human Rights Commission also issued an Equal Wages Guideline that is published in the Canada Gazette.

Perhaps more important than the 'best practice' guidelines is the programme of information and education to be undertaken by the Human Rights Commission. Without a public understanding not only of the importance of the notion of equality to the well-being of all New Zealanders, but also an understanding of how the notion of pay equality can be implemented in a way that enhances the economy, it is unlikely to gain acceptance. While it is understandable that both employers and unions and employees may argue against and for pay equality from their own self-interest, it is essential that the argument that demonstrates pay equality is in the public interest be also placed before the community. The Human Rights Commission has the mandate to make that argument on the evidence available.

The Department of Labour is the proper agency to provide the administrative infrastructure for the operation of the Act. The Department of Labour already has responsibility for the Authority and the Labour Inspectors who have a central role in the implementation and enforcement of the pay equality provisions once a complaint is made. It is also experienced in assisting the parties with collective bargaining issues. It will be essential, however, that

⁴⁴ *ibid*

there is close cooperation between the Department and the Commission in the preparation of any Codes of Practice or information material. This model of inclusion of both the Commission and the Department in the Pay Equality Bill is based on the assumption that a new agency would not be acceptable nor is it really necessary under the model outlined in the Act.

In conclusion the attached Bill is intended to indicate what is essentially a different approach to the issue of pay equality. It builds on the experience of the past in New Zealand and while working within the traditional institutional framework represents a different conceptual framework in which to locate the issue, namely, an equality framework. This new model is consistent with the experience of comparable overseas jurisdictions. Australia has taken a different pathway because it still retains an industrial relations infrastructure and a state commitment to contribute to industrial relations. New Zealand no longer has the infrastructure to sustain such a model. It is time to try a new approach. A statutory right to pay equality is the obvious way forward. It provides the opportunity to redress a major area of inequality in New Zealand.

This commentary and the Pay Equality Bill have been written by Professor Margaret Wilson, Professor of Law and Public Policy at the University of Waikato.

Article 11 of the Convention on the Elimination of Discrimination Against Women (CEDAW) signed by New Zealand in 1980 and ratified in 1985, says:

States parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular ...

The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work.

PAY EQUALITY BILL

A Bill to make provision for equality through the removal and prevention of discrimination in rates of pay of males and females in paid employment to promote observance in New Zealand of the principles underlying International Labour Convention 100 on Equal Remuneration and the United Nations Convention on the Elimination of All Forms of Discrimination Against Women.

1. Short Title

This Act may be cited as the Pay Equality Act.

2. Objects

The objects of the Act are –

- (1) To provide for the inclusion in all employment agreements, individual and collective, of an equality clause;
- (2) To identify equal work and provide for equal pay for equal work and work of equal value;
- (3) To provide for the right to be free from the discrimination of inequality of pay.

3. Interpretation

In this Act, unless the context otherwise requires, -

“Agreement” means-

- (a) a contract of employment;
- (b) an individual employment agreement entered into by one employer and one employee who is not bound by a collective agreement;
- (c) a collective agreement as defined in the Employment Relations Act

“Authority” means the Employment Relations Authority constituted under the Employment Relations Act 2000

“Court” means the Employment Court constituted under the Employment Relations Act

“Employee” includes a person who has entered into or works under a contract of employment or apprenticeship with an employer

“Employer” includes a person employing any employee or employees

“Labour Inspector” means an employee of the department designated under section 223 of the Employment Relations Act to be a Labour Inspector

“Pay” includes the salary or wages actually paid and legally payable and includes bonus and other special payments, allowances, fees, commissions, and any other benefits or privileges whether paid in money or not

“Union” means a union registered under Part 4 of the Employment Relations Act

“Work of Equal Value Unit” means a unit established within the Department of Labour with persons qualified and experienced in the Gender-Inclusive Job Evaluation Standard (P8007/2006)

4. Application of the Act

The Act will apply to both the public and the private sectors.

5. Equal Work

(1) For the purposes of this Act, A’s work is equal to that of B if it is-

- (a) like B’s work,
- (b) rated as equivalent to B’s work,
- (c) of equal value to B’s work.

(2) A’s work is like B’s work if-

- (a) A’s work and B’s work are the same or broadly similar; and
- (b) Such differences as there are between their work are not of practical importance in relation to the terms of their work.

(3) A’s work is rated as equivalent to B’s work if a job evaluation study-

- (a) gives an equal value to A’s job and B’s job in terms of the demands made on an employee, or
- (b) would give an equal value to A’s job and B’s job if the evaluation did not include values different for men from those set for women.

(4) A’s work is of equal value to B’s work if it is-

- (a) neither like B’s work nor rated as equivalent to B’s work, but
- (b) nevertheless equal to B’s work in terms of the demands made on A by reference to the Gender-Inclusive Job Evaluation Standard (P8007/2006).

6. Equality Clause

(1) Every employment agreement, individual and collective, shall be deemed to include an equality clause.

(2) An equality clause is a provision that provides for equal work as defined in section 5 and has the following effect-

- (a) if a term of A’s agreement is less favourable to A than a corresponding term of B’s agreement, A’s term is modified so as to have the same effect as the term in B’s agreement;
- (b) if A does not have a term which corresponds to a term of B’s that benefits B, A’s terms are modified so as to include such a term.

7. Defence of Material Factor

- (1) The equality clause in A's terms has no effect in relation to a difference between A's term and B's terms if it is shown that the difference is because of a material factor, reliance on which-
 - (a) does not invoke treating A less favourably because of A's sex than B is treated, and
 - (b) if the factor is within subsection (2), is a proportionate means of achieving a legitimate aim.
- (2) A material factor is within this subsection if A shows that, as a result of the factor, A and persons of the same sex doing work equal to A's are put at a particular disadvantage when compared with persons of the opposite sex doing work equal to A's.
- (3) For the purpose of subsection (1), the long-term objective of reducing inequality between men and women's work is always to be regarded as a legitimate aim.
- (4) A material factor includes evidence that a Job Evaluation Scheme that is consistent with the Gender-Inclusive Job Evaluation Standard (P8007/2006) has been undertaken and implemented by the employer.

8. Obligation to Provide Information

- (1) Every employer must at all times keep a record showing that all employees are paid in accordance with the equality clause.
- (2) Every employer must record any differences in the remuneration of male and female employees.
- (3) Any clause in any individual or collective agreement that prevents or restricts the disclosure of information relating to remuneration is unenforceable against the individual who wishes to disclose the information in the course of establishing discrimination in the rates of pay on the grounds of sex inequality.
- (4) A Labour Inspector (or person authorised by a Labour Inspector to do so) may serve on an employer a demand notice, if an employee makes a complaint to the Labour Inspector or the Labour Inspector believes on reasonable grounds, that an employee has not received pay or other money payable by the employer under the Pay Equality Act
- (5) Before issuing the demand notice the procedure laid down in section 224 of the Employment Relations Act must be followed.

- (6) A Labour Inspector may commence an action in the name and on behalf of an employee to recover any money payable under the Pay Equality Act.

9. Assessment of whether Work is of Equal Value

- (1) This section applies to proceedings before the Authority on a complaint relating to a breach of an equality clause.
 - (2) Any party to an employment agreement, individual or collective, may lay a complaint for breach of the equality clause.
 - (3) Where a question arises in the proceedings as to whether A's work is equivalent to B's work or A's work is of equal value to B's work, the Authority may, before determining the question, require the Department of Labour (Work of Equal Value Unit) to prepare a job evaluation study that is consistent with the Gender-Inclusive Job Evaluation Standard (P8007/2006) on the question.
 - (4) If the determination of the complaint requires a comparator occupational group to be identified, the Authority will require the Department of Labour (Work of Equal Value Unit) to identify an appropriate comparator group and prepare a job evaluation study consistent with the Gender-Inclusive Evaluation Standard (P8007/2006). The comparator occupational group(s) may be identified within the enterprise itself, or from another enterprise or the same or another industry. The comparator groups are to have same or comparable job evaluation points as determined in accordance with the Gender-Inclusive Job Evaluation Standard (P8007/2006).
 - (5) If the Authority requires the preparation of a study, it must not determine the question unless it has received the job evaluation study.
 - (6) On receipt of the job evaluation study the Authority will make it available to the parties and after receiving submissions from the parties will determine the matter.
- ## **10. Inclusion of Equality Clause in Collective Agreement**
- (1) A collective agreement has no effect unless it contains an equality clause.
 - (2) The form and nature of the equality clause may be negotiated through the collective bargaining process in accordance with the provisions of the Employment Relations Act.

- (3) In the event of dispute over the form and nature of the equality clause the matter will be referred to the Department of Labour (Work of Equal Value Unit) for a job evaluation study consistent with the Gender-Inclusive Job Evaluation Standard (P8007/2006).
- (4) The job evaluation study will be referred to the parties but if agreement cannot be reached the matter may be referred by one or both of the parties to the Authority for a determination that will be binding.

11. Jurisdiction

- (1) The Authority has jurisdiction to determine a complaint relating to or arising out of a breach of the equality clause.
- (2) Where an employee would be entitled to make a complaint under the Human Rights Act 1993, the employee may choose to pursue a complaint under the Pay Equality Act or the Human Rights Act but not both.
- (3) The Authority has jurisdiction to determine an application for a declaration as to the rights of an employee or employees or employer or employers in relation to a dispute about the effect of an equality clause.
- (4) The Authority may, at any time, before or during the hearing or before delivering its decision, on the application of any party to the proceedings or on its own motion, state a case for the opinion of the Employment Court on any question of law arising in any proceedings before the Tribunal.
- (5) The Employment Court shall hear and determine any question submitted to it under this section, and shall remit the case with its opinion to the Authority.

12. Remedies

- (1) If the Authority is satisfied on the balance of probabilities that the defendant has ~~been~~ committed a breach of the equality clause, the Authority may grant 1 or more of the following remedies:
 - (a) a declaration that the defendant has committed a breach of the equality clause;
 - (b) an order restraining the defendant from continuing or repeating the breach, or from engaging in, or causing conduct of the same kind as that constituting the breach, or conduct of any similar kind specified in the order;
 - (c) an order that the defendant perform any acts specified in the order with a view to redressing any loss or damage suffered by the complainant;

- (d) an order that the defendant undertake any specified training or programme, or implement any specified policy or programme, in order to assist or enable the defendant to comply with the provisions of this Act.
- (2) Any order made under this section of the Act may be filed in any District Court, and shall be then enforceable in the same manner as an order made or judgment given by the District Court.

13. Offences

- (1) Every person commits an offence against this Act and is liable on summary conviction to a fine not exceeding \$5000 who, either alone or in combination with any other person or group or body of persons, does any act with the intention of defeating any provision of the Act.
- (2) Every person commits an offence who, wilfully obstructs or hinders any Inspector in the performance of the functions under section 8 of this Act.

14. Codes of Practice

- (1) The Authority may issue codes of practice-
 - (a) that ensure or facilitate compliance with a provision of the Act;
 - (b) that ensure or facilitate the provision of an equality clause in a collective agreement.
- (2) The Department of Labour shall issue a code of practice that is consistent with the Gender-Inclusive Job Evaluation Standard (P8007/2007) for the identification of appropriate comparator occupational groups to facilitate the determination of complaint(s) relating to work of equal value.
- (3) The Human Rights Commission shall establish procedures for the advocacy and promotion of pay equality by education and publicity and the dissemination of information.

15. Department of Labour

The Act is to be administered by the Department of Labour.

What next?

The Commission believes that to push on with equality in workplaces and to assist employers and employees, the following needs to happen. These recommendations represent the top areas for action that will advance equal employment opportunities in New Zealand.

For the Commission

Recommendation 1: Monitor and report on the new equality indicators to track progress in achieving equality at work in New Zealand.

Recommendation 2: Promote the Pay Equality Bill with Government, other political parties, trade unions, employers and the broader public, and prompt political and public discussion about realising the right to gender equality in pay.

Recommendation 3: Promote the new equality framework with New Zealand businesses and employers to reinforce the case for greater equality, diversity and equal treatment at work.

Recommendation 4: Advocate for the promotion and protection of equality at work with trade unions and community/stakeholder groups.

Recommendation 5: Continue efforts to eliminate discrimination and barriers to employment for disadvantaged groups through increased monitoring, further development of guidelines and tools, and advocacy to prevent complaints.

For the Government

Recommendation 6: Develop a national youth-to-work strategy that includes a plan for every young New Zealander that has cross-party support and sufficient long-term funding security. The strategy must be responsive to the needs of Māori, Pacific and disabled youth.

Recommendation 7: Renew efforts to ensure that public sector departments exhibit exemplary EEO practice and are properly monitored. Urgently review the role the State Services Commission plays in providing 'good employer' advice to Chief Executives and monitoring EEO in the public sector.

Recommendation 8: Amend the Employment Relations Act 2000 to include a positive duty to be a 'good employer' to the private sector, in addition to the statutory obligation in the public sector.

Recommendation 9: Ratify the outstanding two core ILO standards 87 – Freedom of Association and Protection of the Right to Organise and 138 – Minimum Age; and support the development of new ILO standards including for domestic workers.

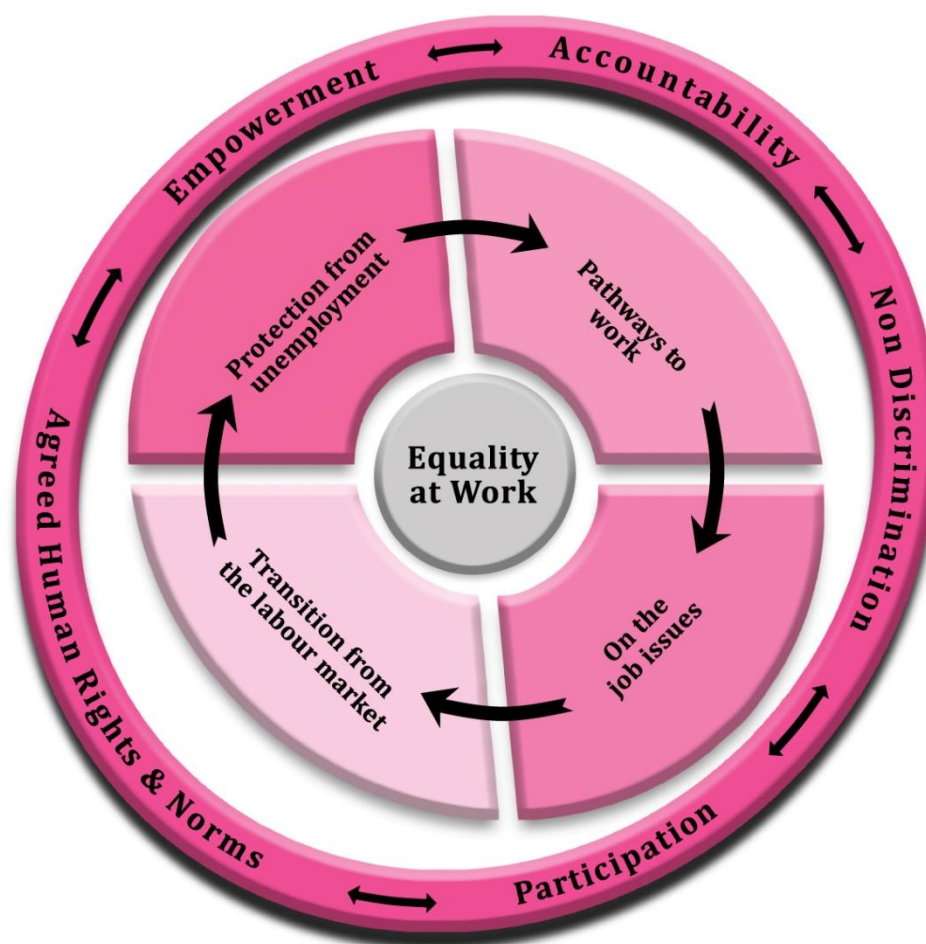
Recommendation 10: Improve labour market information at the regional and sub-regional level and the provision of labour market information for disabled people.

Employment cycle

The employment cycle is used by the Human Rights Commission when advocating for equality issues and the right to work. The cycle spans protection from unemployment and how people access work, through to their exit from the labour market.

Tracking Equality at Work issues are presented using the employment cycle. *Protection from unemployment* explores active labour market policies and income adequacies before the challenges and opportunities relating to how people access employment are discussed in *Pathways to work*. Next, the multiplicity and complexity of *On-the-job* issues that affect employers and employees are presented before finally addressing issues arising from people's *Transition from the labour market*.

Figure 2: Employment Cycle



Protection from unemployment

Two critical aspects of protection from unemployment are income adequacy for those who for a variety of reasons are unemployed and cannot work and the availability of decent work.

International obligations

The Commission's National Conversation about Work highlighted the centrality of work in the lives of New Zealanders, whether they are currently in the labour market or seeking employment. The Commission observed genuine acceptance by both employers and employees that decent work underpins a fair society. This reflects the provisions of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The UN Committee in its general comment on ICESCR said:

States parties are obliged to fulfil (provide) the right to work when individuals or groups are unable, for reasons beyond their control, to realise that right themselves by the means at their disposal.⁴⁵ This includes obligations to:

- reduce the unemployment rate, in particular among women, the disadvantaged and marginalised
- establish a compensation mechanism in the event of loss of employment
- take appropriate measures for the establishment of employment services and
- implement plans to counter unemployment.⁴⁶

The Covenant imposes a duty on each State party to take whatever steps are necessary to ensure that everyone is protected from unemployment and insecurity in employment.⁴⁷ The principal obligation of States parties is to ensure the progressive realisation of the right to work. States parties must therefore adopt, as quickly as possible, measures aimed at achieving full employment.⁴⁸ This includes the requirement to “adopt a national strategy, based on human rights principles aimed at progressively ensuring full employment for all.”⁴⁹

However, while increasing access to sustainable employment is necessary, on its own it is not sufficient to meet international human rights standards.

The ICESCR was the first to recognise the right to an adequate standard of living, which is defined in Article 11 as:

- [T]he right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and continuous improvement in living conditions.

The right to work and equal employment is one component of the right to an adequate standard of living. It sits alongside the right to adequate food, clothing and housing (Article

⁴⁵ Committee on Economic, Social and Cultural Rights 2006. Comment No. 18. The Right to Work p26, Human Rights Commission.

⁴⁶ See ILO Convention No. 88 and, similarly, ILO Convention No. 2 concerning Unemployment, 1919. See also ILO Convention No. 168 concerning Employment Promotion and Protection against Unemployment, 1988.

⁴⁷ Committee on Economic, Social and Cultural Rights 2006. Comment No. 18. The Right to Work p26, Human Rights Commission.

⁴⁸ Ibid at 19

⁴⁹ Ibid at 41

11) and the right to social security (Article 9). This latter right is fundamental to any discussions of welfare reform.

Under Article 25(1) of the Universal Declaration of Human Rights:

“Everyone has the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

The right to social security, including the requirement to address the specific needs of women, children and young people, and disabled people, is also detailed in:

- Articles 9 and 10 of ICESCR
- Article 14 of Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)
- Article 26 of United Nations Convention on the Rights of the Child (UNCROC)
- Article 28 of the Convention on the Rights of Persons with Disabilities (CRPD).

New Zealand has ratified each of these covenants and conventions.

The General Comment on social security⁵⁰ spells out the minimum obligations required by all States parties. The minimum essential level of social security benefits must be sufficient to enable all individuals and families to acquire at least essential health care, basic shelter and housing, water and sanitation, food and education. In addition, each State must respect existing social security schemes and protect them from unreasonable interference, adopt and implement a national plan of action and monitor the realisation of the right to social security.⁵¹ Each country must also demonstrate that every effort has been made to use all resources at its disposal to satisfy these minimum obligations.⁵²

The global recession

In 2009, the ILO called for a recovery plan that focussed on active labour market policies that supported employment and earnings and expanded social protection measures.

Since then the ILO has noted either at best a weakening of the job recovery or at worse a double dip. A lengthy labour market recession has resulted in many unemployed people becoming discouraged and leaving the job market altogether. An earlier focus on fiscal stimulus packages is being withdrawn, the ILO reports, and fiscal policy has shifted to austerity which if badly designed, will prolong the job crisis.⁵³

In industrial countries, the OECD average unemployment rate was 8.2% in February 2011. In advanced economies job growth is expected to remain stagnant.⁵⁴ A return to pre-crisis levels is not foreseeable before 2015 and youth employment is predicted to take a lot longer to recover. Employment is a lagging indicator in economic recovery.

Worryingly, in countries that are experiencing job growth, a disproportionate number of jobs are part-time. While this may have assisted in maintaining jobs in the short term, there is now concern that a “permanent, involuntary increase in part-time employment ...will lead to a deterioration in the overall quality of jobs being created.”⁵⁵

⁵⁰ Committee on Economic, Social and Cultural Rights (2008). General Comment 19: The right to social security, para 1. Thirty-ninth session: E/C.12/GC/19.

⁵¹ Ibid paras 59 and 60.

⁵² Ibid para 42.

⁵³ P1 *World of Work Report 2010: From one crisis to the next?* Summary International Labour Organization

⁵⁴ *World of Work Report 2010 From one crisis to the next.* ILO

⁵⁵ P8 *ibid*

Globally, there is an emergence of two labour markets characterised by informal, low skilled, insecure and uncertain employment on the one hand and high skilled, relatively secure employment on the other. There is a fear that transition from the first type of employment to the second will be difficult. The global recession has had a particularly severe impact on youth employment, with many young people unable to find work that matches their skills and is precarious if they can get work at all.

In 2009 the Director General of the International Labour Office said, “Dry figures cannot capture the anger, frustration and despair of people. Working women and men have absolutely no responsibility for the financial collapse. Yet they are being thrown out of work or being asked to make major cuts in wages and working conditions. This is giving rise to legitimate, organized and constructive protest. In addition the social effects of the recession cumulate insidiously in drug and alcohol abuse, domestic and workplace violence, rising suicides, increased crime, inter-community conflict as well as spontaneous riots and different forms of violence.”⁵⁶

Social security in New Zealand

The report of the Welfare Working Group said, “New Zealand’s benefit system is a social assistance approach around defined categories of need. Benefits are provided to sole parents, unemployed people who are looking for work, people who are sick or disabled, widows, older women who do not have a partner, and people who care for the sick and infirm. In addition to meeting defined categories of need, people are only eligible for benefits if they are part of a low income nuclear family. This means that the earnings of both the individual and their partner are taken into account when determining eligibility for a benefit.”⁵⁷

The Welfare Working Group reported that 376,000 people were receiving a benefit at June 2010, 79,058 of whom received an unemployment benefit, 68,056 received a sickness benefit, 99,269 received an invalid’s benefit and 99,298 were in receipt of a domestic purposes benefit. At June 2010, the Household Labour Force Survey put the seasonally adjusted number of unemployed at 159,000. On these figures, it appears that about half of those people who are unemployed (i.e do not have a job and are looking for work) receive an unemployment benefit.

Benefit levels are determined by type of benefit, partnership status, age and in some cases family size. A second tier of benefit provides additional payments for costs such as housing and costs associated with disability. A third tier provides extra support to cover hardship encountered with unexpected costs and is either one off or for a limited period.

The Welfare Working Group calculated that “the average net amount of main and supplementary benefit income was \$296 per week.”⁵⁸

Income Adequacy

According to the Ministry of Social Development beneficiary families’ incomes were below recognised poverty lines after they had paid for housing.

The proportion of household income required to purchase a basic balanced diet (as determined by Otago University’s food costs survey) was calculated for various low income household types.⁵⁹

⁵⁶ Somavia, J. (2009) *Shortening the Global Recession, Accelerating recovery and setting course for inclusive and sustainable world development*, speech to International Monetary, Finance and Development Committee, Washington DC, USA, 25-26 April, 2009.

⁵⁷ *Welfare Working Group report 2011*, p38

⁵⁸ *Welfare Working Group Report* p38 data quoted as at April 2010

⁵⁹ Robinson, V. 2010, *Food costs for Families*. Regional Public Health

A family relying on the unemployment benefit with two children would need to spend 66% of their income after paying rent in a state house to purchase a healthy diet. A comparable family renting in the private market would need to spend 75% of their income after rent. Other costs such as power, transport, clothing, telephones and household and personal cleaning products would need to be met by what is left.

In the report prepared for Wellington Regional Public Health, it was said, “Families earning low incomes and receiving benefits need to spend a high proportion of their income to purchase a healthy diet and are likely to have little option but to compromise their food choices to be able to provide for the many competing expenses of daily life.” The report concluded “To adequately address and reduce nutrition-related health conditions the complex issues of improving access to sufficient income and affordable healthy food needs to be tackled.”⁶⁰

In the Review of Human Rights in New Zealand the Human Rights Commission⁶¹ observed that the right to social security is compromised if core benefit levels do not enable people to feed and house themselves and their families. People are not dying of starvation in New Zealand the Commission said, but relative poverty means that some people do not get enough nutritious food to eat, and this has a direct impact on health and educational outcomes.

The Alternative Welfare Working group has suggested determining the level of income support using the Swedish model. In Sweden income adequacy is ensured by setting income support at a level which covers a “basket of needs” which includes food, housing, power, clothes, shoes, play, leisure, health and insurance. It also recommends indexing social security to the average wage, in the same way that superannuation levels are set.⁶²

National Conversation about Work

The importance of work to New Zealanders as a source of well-being beyond an economic transaction is clear. This insight came when participants talked about what they liked about their work and when people talked about the emotional and social impact of redundancy, retirement and trying to enter or re-enter the workforce. While income sufficiency is important, work clearly provides more than a pay cheque.

Employers are currently caught between ensuring essential skills are retained in anticipation of the economic recovery and staying economically viable.

The Commission observed that many employers were less willing to give people a go, because they were keen to operate a lean labour force. In particular this appears to impact on younger people and those with disabilities. A Nelson participant who ran a disability support agency said, “When there was low unemployment and people were struggling to fill jobs, employers were opening their eyes to possibilities in the labour market (of employing disabled people). The pressure is off now. The triple bottom line has gone.” The triple bottom line approach involving “people, planet and profit” recognises social and environmental impacts, as well as economic impacts of business.

Globally, the prospect of a “jobless recovery” has been flagged. Those who are frequently marginalised in the labour market, such as disabled people and young people with minimal academic qualifications, are struggling to gain employment at the moment, particularly in the unskilled or semi-skilled labour market. Many of the vulnerable and disadvantaged people who lose jobs or are unemployed and receive social security assistance want both to get

⁶⁰ P23 Ibid

⁶¹ *The Right to Social Security* in Human Rights in New Zealand 2010, Human Rights Commission

⁶² www.alternativewelfareworkinggroup.org.nz accessed 26 April 2011

back to work as soon as possible, and to reduce their dependency on benefits. It is the unavailability of suitable, decent work and the availability of affordable childcare where they live that relentlessly limits their participation in the workforce.

The Commission was struck by the vulnerability of provincial New Zealand to layoffs in dominant industries. The loss of several hundred jobs from one company or one industry in smaller centres has a much more significant impact on the whole community than is the case in urban New Zealand. This was described as an “eco-system” approach in Hawke’s Bay. “If an anchor company falls over, it is not 100 jobs that go but 400. If you map the supply chain that supports the anchor company, you see how inter-dependent businesses are.”

The lack of wider community awareness and subsequent planning about the potential for major company layoffs is an issue in many regions. Job creation schemes and regional initiatives to assist people into work varied from region to region and depended on precarious funding. Some authorities have taken a regional approach to supporting job retention and growth, others were less active. For example, programmes developed by Hastings District Council, in conjunction with the local Work and Income office, have enabled a number of “hard-to-place” youth to get into short-term jobs that provide a positive work experience, build confidence, work skills and provide labour for much-needed community projects. Critically the human resource infrastructure for the community projects was provided by the council. Many of these schemes, even examples of exemplary good practice, appear to be operating in isolation from one another.

Proposed reforms to social security have been an “unrelenting focus” on work⁶³ predicated on the assumption that “work will become available for people as the economy recovers.”⁶⁴ The Commission in its submission on the Social Assistance Future Focus Bill said “It is the lack of jobs in regions and provinces as well as urban areas, rather than attitudes to work amongst job-seekers, that is the critical driver of a focus on work...It is the unavailability of suitable, decent work where they live that relentlessly limits their employment focus.”

From a human rights framework, protection from unemployment focuses on active labour market policies that ensure full employment characterised by decent jobs that are freely chosen. Where for whatever reason a person cannot work (either because there are no appropriate jobs available or because they are unable to work) then an adequate social security floor must be available.

Future action

- Progressively increase the level of both the minimum wage and benefit levels to ensure universal entitlement to an adequate standard of living.
- Implement active labour market policies that include regional factors to stimulate employment creation.

⁶³ *Explanatory note at 3 to the Social Assistance (Future Focus) Bill 2010*

⁶⁴ *Regulatory Impact Statement to the Social Assistance (Future Focus) Bill 2010*

Disabled people

Disability is the most frequent ground of enquiry and complaint to the Commission in the area of employment. Currently disabled people are estimated as having twice the level of unemployment as their non-disabled peers. However, there are a number of factors that lead the Commission to query whether or not this is an under-estimate.

Employment data for disabled people is only collected every five years in a survey conducted after the main census. It is not collected in other more regular surveys such as the Household Labour Force Survey sampled quarterly or the Income Survey sampled annually or the State Service Commission's annual human resources capability survey. Reliable statistics on the employment of people with disability are collected in the New Zealand Household Disability Survey conducted every five years after the general survey.

During the course of the National Conversation about Work the Commission heard that disabled people were experiencing a particularly difficult time accessing and maintaining employment. Discriminatory assumptions about what people were capable of is a significant barrier to the employment of disabled people.

Without more frequent data gathering, society is unable to monitor the situation for disabled people and also means progress cannot be tracked either. The Commission has identified the development of a full range of social statistics which measure key outcomes as an area of action to progress the rights of disabled people.⁶⁵

International obligations

New Zealand ratified the Convention on the Rights of Persons with Disabilities (CRPD) in 2008. The CRPD did not introduce any new human rights, but clarifies the obligations and legal duties of states to respect and ensure the equal enjoyment of all human rights by disabled people.

The purpose of CRPD, expressed in Article 1 is to “promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by persons with disabilities, and to promote respect for their inherent dignity.” Included in the principles that govern the CRPD are non-discrimination, full and effective participation and inclusion in society, and equality of opportunity. Article 27 (1) provides a comprehensive list of the rights of disabled people in relation to employment including the employment of people in the public sector (Art.27 (1) g), the private sector (Art.27 (1) h) and the open labour market (Art.27 (1) j).

New Zealand legislation

Disabled people have the same rights and legal entitlements as other New Zealanders. The Human Rights Act 1993 (HRA) and the New Zealand Bill of Rights Act 1990 (BoRA) protect the right of disabled people to freedom from discrimination. Both rely on the HRA definition of disability:

- physical disability or impairment
- physical illness
- psychiatric illness
- intellectual or psychological disability or impairment
- any other loss or abnormality of psychological or anatomical structure of function
- reliance on a guide dog, wheelchair or other remedial means
- the presence in the body of organisms capable of causing illness.

⁶⁵ P278 *Rights of Disabled People* Human Rights in New Zealand 2010. Human Rights Commission

Reasonable accommodation

Reasonable accommodation is a term used to describe the creation of an environment that will ensure equality of opportunity for disabled people, family commitments or particular religious practices. It is most commonly used in the provision of goods and services and employment. The CRPD states "Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms. The denial of reasonable accommodation is a form of discrimination, according to the Convention.

Employers find the legal concept of reasonable accommodation in the Human Rights Act difficult, while disability advocates believe that there are myths about the employment needs of disabled people that need to be countered. Grant Cleland, Chief Executive of Workbridge has observed that most disabled people do not require additional accommodation and the most commonly sought accommodation of those people who do require it, is flexible work hours. Another point made by disability advocates is that every employee requires accommodation of some sort or another, whether it is a desk, chair, or lighting.

In the employment context reasonable accommodation applies to changes to a workplace which are made to ensure that a person who has a disability, family commitments or religious requirements can do a job. This may be as simple as swapping shifts with another employee to accommodate religious observance or installing a ramp for a person in a wheelchair. Whether an employer must make such changes is balanced against the unreasonable cost that may result.

In relation to the provision of services for disabled people, the Court of Appeal has said that there is a presumption that a provider will provide the necessary accommodation unless it is unreasonable. If a person requires special services or facilities (for example, relocation of an office) that it is not reasonable to provide, then the employer or service provider is not obliged to provide them.

In addition, if there is a risk of harm to the individual or others, but measures can be taken to reduce the risk without unreasonable disruption, then the provider or employer should take those measures. If it is not reasonable to take the risk, or the measures necessary to reduce the risk to a normal level are unreasonable, then an employer or provider may be justified in discriminating.

Disability advocates have observed that health and safety concerns based on incorrect assumptions can become a barrier to the employment of disabled people. For example, the Commission heard that a person had been dismissed from his job collecting trolleys in a supermarket carpark because a Labour Inspector said he was unsafe around moving cars because of his learning disability. The trolley attendant had been working at the supermarket without incident for many years. A similar point was made by a group of Deaf who had sought employment that included driving. They said that a significant barrier was the assumption that because they did not hear traffic noise they were less safe than hearing drivers. This assumption ignored their heightened awareness of the visual environment.

State sector

Legislation

The State Sector Act “covers human resource management and general management practice, including requiring State services employers to be 'good employers', to promote equal employment opportunities and efficiency in the organisations that make up the service, and to ensure that employees are imbued with the spirit of service to the community. The CRPD also requires State parties to “employ persons with disabilities in the public sector.”⁶⁶

The wider state sector such as Crown entities and local government are also required to be good employers, have equal opportunities programmes and recognise the employment requirements of disabled people.

Data

The State Services Commission (SSC) no longer collects disability data in the annual Human Resource Capability Survey (HRCS). In the 2005 report the SSC stated, “The collection of disability data in the Public Service is currently under review and disability statistics collected by the survey have not been published since 2002 because of concerns about data quality.”

The HRCS reports on the employment of other equal employment opportunities (EEO) target groups, such as Māori, other ethnic and minority groups and women, and includes representation at senior management levels. Information about the employment of disabled people in the public service comes from the 2006 Household Disability Survey (Statistics New Zealand) and the 2005 Career Progression and Development Survey. *Enabling Ability*,⁶⁷ a 2008 report from the SSC on disabled people in the public service reported:

“The Statistics NZ 2006 Disability Survey indicates that 10.4% of the Public Service proxy group workforce has a disability, compared with 11.2% of the total employed labour force.”

Mainstream Programme

The Mainstream Programme provides a package of subsidies, training, and other support to help people with significant disabilities gain work experience in the State sector. The programme offers a 100% salary subsidy for the first year of employment, and 50% of the salary for the second year as well as funding to meet participants' adaptive technology or specialised assistance costs, training for participants and their supervisors and follow up support.

Currently 221 participants are in the programme, which places over a hundred a year. Mainstream workers are employed in schools and in the public service. The programme leads to permanent work for 41% of participants on average, although not all of the jobs are full-time. Mainstream participants placed in a school are more likely to get permanent work, but that work is more likely to be part-time. Public sector jobs tend to be better paid and for more hours, either fulltime or 30 hours or more a week.

⁶⁶ CRPD Article 27 (1) g

⁶⁷ http://www.ssc.govt.nz/upload/downloadable_files/Enabling-Ability.pdf

Private Sector

Legislation

The private sector is required to comply with the Human Rights Act and not discriminate on the grounds of disability. There is no positive duty toward disadvantaged groups to be 'good employers' including having an equal-employment opportunities programme. It is the Commission's view that mechanisms to address systemic discrimination and disadvantage should be strengthened in both the public and private sectors. Extending the "good employer legislation" to the private sector is one such mechanism.

The CRPD also refers to the private sector specifically in Article 27 (1) (h) which states:

Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programs, incentives and other measures.

Employers' Networks

The EEO Trust promotes equal employment opportunities in the private sector for all target groups and the Employers Disability Network (EDN) provides leadership and specifically encourages and supports disabled people. The network emphasises both the business case for employing disabled people and a rights-based approach. EDN is based on the UK Employers' Forum on Disability and the Australian Network on Disability and is a not-for-profit network of organisations sharing best practice on working with disability in all areas of business. Patron Dr Roderick Deane writes:⁶⁸

- "The EDN is a group of employers dedicated to ensuring that disabled people get the same opportunities in life as the rest of us and, in particular, have access to jobs and work.
- The EDN aims to help employers understand ways in which jobs can be created for disabled people and to encourage welcoming and accepting attitudes to those with disabilities.
- The EDN believes that disability is simply part of the diversity of our society and that disabled people should not be disadvantaged in seeking work but rather be positively encouraged to do so. For this to happen, employers must have a welcoming and inclusive culture.
- The EDN aims to encourage and foster this sort of positive attitude and make it work in practice throughout New Zealand."

The Ministry of Social Development provides secretariat support. To date EDN has set up a website, offering support and advice to employers.

It's about who you know

During conversations conducted around the country as part of the National Conversation about Work it became apparent that employers who had a disabled family member were more likely to employ disabled people. The Commission also observed that people who had acquired their disability after they had been employed were more likely to be accepted as a disabled employee, because they were known in their workplace.

⁶⁸ <http://edn.org.nz/>

Minimum Wage Exemptions

Legislative background

The Minimum Wage Amendment Act 2007 was enacted after the repeal of the Disabled Persons Employment Promotion Act (DPEP). The DPEP had been regarded by many disabled people as “utterly improper and an abuse of human rights”, according to a submission by the Disabled Person’s Assembly (DPA). At the time, it was argued that the changes in the legislation would see disabled people’s employment brought into line with New Zealand and international human rights norms.

The then Minister of Disability Issues, Ruth Dyson said: “The repeal will mean that all sheltered workshops will have to pay everyone they employ at least the minimum wage, unless an individual worker has an exemption. It will also mean that all people who work in sheltered workshops will have access to holiday and sick leave entitlements. To counter concerns about the continuing financial viability of sheltered workshops, the ministry has put in place a system of individual minimum wage exemption permits for workers who are ‘significantly and demonstrably limited’ in their work.”

DPA said that this means disabled workers can be subject to minimum wage payment provisions on the basis of productivity. “In this context, productivity is about comparing a disabled employee’s output with another employee doing the same job and, if it is considered that the disabled employee’s productivity is lower, paying them at a lower rate. It is not a concept used elsewhere in the employment sector.”

The DPEP Act along with the 1983 Minimum Wage Act had allowed for blanket minimum wage exemptions to be given to workplaces that employed disabled people. These workplaces were commonly known as ‘sheltered workshops.’ The law change meant that the individual employee, following an assessment, had to be issued with a permit from the Department of Labour that entitled their employer to pay them a particular amount less than the minimum wage.

The Minimum Wage Exemption Act enables a Labour Inspector to issue a minimum wage exemption permit to a worker if the Inspector is satisfied that -

- (a) the worker is significantly and demonstrably limited by a disability in carrying out the requirements of his or her work; and
- (b) any reasonable accommodations that could have been made to facilitate carrying out the requirements of the work have been considered by the employer and the worker; and
- (c) it is reasonable and appropriate to grant the permit.

Various wage assessment tools are accepted for the purpose of exemptions. Before accepting a Minimum Wage assessment tool, Labour Inspectors have to consider it against set criteria. For example a tool should be balanced and look at both productivity and individual competencies. The tool should be transparent and clearly show how the assessment is linked to wage rates and how the wage rate is calculated. Disability advocates have advised the Commission that the tools used do not appear to be consistent.

National Conversation about Work

The Commission visited ‘business enterprises’ in Invercargill, Dunedin and Christchurch which provide employment for disabled people who would be unable to compete for work in the open labour market. The Commission also heard from disability advocacy groups about the very low rate of pay received by some disabled workers (as low as 15c an hour). They believe that while business enterprises which operate like sheltered workshops remained an option, supported work opportunities in the open labour market were not being fully

implemented. Forms of assistance include supported employment (such as job coaches). Supported employment is usually provided on the assumption that the person will increase their skill levels and competence and that support can be gradually phased out.

Other employment options include micro-financing small business ventures, a mixture of education/training and work and narrowing job descriptions to a range of tasks that the disabled person can manage.

Business enterprises came into being after the repeal of the DPEP Act, which resulted in the closure of sheltered workshops. In reality, people receiving a wage below the minimum have their income supplemented by a social welfare benefit.

The employment of disabled people at rates below the minimum wage is controversial. The Commission heard all sides of the argument – from employers and employees, from business enterprises, from disability advocacy groups and from family members. Opponents of the exemption system say that it is discriminatory and alternate processes that support disabled people to work in the open labour market are necessary. Proponents argue that workers in business enterprises would not otherwise be employed and that working supports social inclusion and promotes well-being.

Facts and figures

Greater transparency around the process of determining minimum wage exemptions has been called for by the disability community. Disability advocates reported difficulty in accessing information from the Department of Labour. The Human Rights Commission wrote to the department asking for information about the number of people receiving exemption permits, rates of pay and about whether or not there was a standardised method of assessing payment rates.

Currently 1076 people receive a minimum wage exemption permit under s8 of the Minimum Wage Exemption Act⁶⁹. In 2001, under the DPEP Act, approximately 5400 people were employed in sheltered workshops. There are 136 employers across New Zealand who employ people who have a minimum wage exemption. Some but not all, are business enterprises.

Rates of pay vary from just under the minimum wage to less than a \$1.00 an hour.⁷⁰

Table 33: Pay rates minimum wage exemptions

Pay range	Number of permits
More than \$10.00	37
\$5 - \$9.99	260
\$3.00 - \$4.99	213
\$2.00 - \$2.99	179
\$1.00 - \$1.99	364
Less than \$1.00	53
Total	1106⁷¹

⁶⁹ Data provided by Department of Labour March 2010

⁷⁰ . ibid

⁷¹ Some people have more than one exemption

The majority (54%) of people with minimum wage exemption permits earn less than \$3.00 an hour.

Disclosure of mental health

From the National Conversation about Work

A particularly vexed issue is whether or not to disclose experience of mental illness. People with experience of mental health issues told the Commission that disclosure on application forms or unexplained gaps in CVs meant they were unlikely to be offered a job interview.

However, non-disclosure carried the risk that their needs will not be accommodated should they become unwell, and in extreme cases be dismissed for dishonesty.

Legal considerations include the appropriateness of questions in the application form and the steps taken to avoid discriminatory practices. One participant with experience of mental illness said, “The crux of the argument around disclosure is that there is still a lot of stigma around employability - there’s the myth that if you’ve got a mental illness you’re actually not employable. You can’t handle stress, you’re potentially dangerous to yourself and to others, you are a lot of extra work, you’re unreliable, you will take lots of time off.”

There were risks either way, disclose and risk not being considered for the job, not disclose and risk being unsupported or being dismissed should you become unwell.

A further meeting attempted to tease out what advice the Commission could usefully provide to prospective employers and employees.

The group suggested that the focus should come off disclosing experience of mental health and onto equality for any worker and their employer. Their advice was to not make it about mental health but ensuring the best person for the job by:

- Focussing on what an individual can do, not do but could learn, and what is outside their capability.
- Challenging discriminatory assumptions about ability based on diagnostic labels.
- Having conversations throughout any person’s employment about their needs and support required to do a job well, regardless of labels and assumptions.

Ensuring best fit requires detailed job descriptions and person specifications that are inclusionary.

The Employers’ Disability Network suggests that employers concentrate on what needs to be done rather than how the work should be done, for example it is better to ask, “this job involves working under pressure to tight deadlines. Tell us about situations where you’ve been under pressure and how you ensured you met deadlines” rather than “how will the pressure of tight deadlines affect your disability?”⁷²

Conversations about how to meet people’s needs or to support them to develop their performance at work is good practice for all employees. However, honest engagement requires a safe and supportive work environment. This conversation could include meeting out-of-work needs such as childcare and in-work needs like professional development needs as well as being responsive to individual needs related to health. The group discussed the

⁷² See *Manager’s guide A best practice approach to working with disabled employees* Employers Forum on Disability and Workbridge 2007 This guide has been adapted for New Zealand and is available from Workbridge or Employers’ Disability Network.

mutual obligations inherent in acting in “good faith.” The employee should be able to say, “this is what I’ll do to keep well at work” and the employer needs to be able to say “this is what I can do if concerns arise.” This does not mean the employer takes on a social work role, rather that there is a plan such as someone to contact. The group commented that these discussions should be held after a 90 day trial period to ensure both employer and employee are confident in their ability to do the job and disclosure can be made without fear of prejudice or discrimination.

There is a cost to employers if employees are afraid to disclose. For example, if medication has been identified by the individual as a useful part of their recovery planning, the employee may stop taking this medication if drug screening might reveal a condition that they have not disclosed and which is not accepted by the organisation. Presenteeism and absenteeism may occur if a person does not feel confident to request sick leave to become well. The Commission heard that having experience of mental health issues could not be an excuse for lack of productivity “If you can’t do the job, you can’t do the job. Both parties need to be fair and reasonable”.

Experience of mental health issues is common in New Zealand:⁷³ Almost half (46.6%) of the population are “predicted to meet criteria for a disorder at some time in their lives, with 39.5% having already done so and 20.7% having a disorder in the past 12 months.”⁷⁴

Legislation

Discrimination

Because disability, which includes “mental illness”, is a prohibited ground under the Human Rights Act 1993 an employer should not seek general information about a job applicant’s medical or ACC history. Employers can ask whether or not a job applicant has the abilities needed for the job. This includes establishing whether or not an applicant has any medical conditions or disabilities that might mean the work could not be satisfactorily carried out. A job applicant should first be made aware of the job’s requirements and then asked about any medical conditions or disabilities that might prevent them from carrying out the work satisfactorily.

Without the context of a full job description the following question could be construed as an intention to discriminate:

Do you have, or have you ever had, a medical condition caused by an injury, illness, disability or gradual process that the tasks of the position may aggravate or contribute to, or that may affect your ability to carry out the work of the position applied for?

If confronted with such a question the applicant could answer “No”, if they believe that any medical condition will not affect their work. Alternatively the applicant could say, “On the limited information available to me my answer is ‘No’”. If the answer is “Yes” the applicant could then describe what they will do to keep well at work and what the employer could do.

However, once a full job description is given, questions about a person’s ability to meet specific job requirements are legitimate. In some instances, where a medical condition makes performance of the job unsafe (for example, a driving job when medication causes drowsiness) then the applicant has a responsibility to declare the medical condition.

⁷³ Oakley Browne, M. A., Wells, J. E., & Scotts, K. M. (Eds). (2006). [Te Rau Hinengaro: The New Zealand Mental Health Survey](#). Wellington: Ministry of Health.

⁷⁴ Ibid

A guidebook for job seekers⁷⁵ with experience of mental health issues advised that there are two situations in which a job seeker must disclose:

1. If your disability or health condition would pose a risk to yourself or others in the workplace. (e.g. if you were applying for a job as a truck driver but you were on medication that made you very drowsy making it unsafe for you to drive).
2. If your disability or health condition meant you would not be able to satisfactorily perform the tasks required in the job AND would be unreasonable to accommodate (e.g. if you were applying for a job in sales with lots of customer contact, but you had a social phobia and couldn't talk to strangers.)

The guidebook goes on to say, "if either of these applies, you need to ask yourself: "Is this the right job for me?"

Good faith

Under the Employment Relations Act both employee and employer are required to act in good faith. The Department of Labour explains good faith in the following way:

"Employers and employees are obliged to deal with each other at all times fairly, reasonably and in good faith.

In broad terms, this means that both employers and employees must:

- act honestly, openly, and without hidden or ulterior motives
- raise issues in a fair and timely way
- be constructive and cooperative
- be proactive in providing each other with relevant information and consider all information provided
- respond promptly and thoroughly to reasonable requests and concerns
- keep an open mind, listen to each other and be prepared to change opinion about a particular situation or behaviour, and
- treat each other respectfully.

Good faith generally involves using practical common sense. Acting in good faith reduces the risk of conflict and problems. It is also a minimum requirement of the Employment Relations Act 2000.⁷⁶

Legal cases

In 2002 the Employment Court ruled that a question on a pre-employment form – *Do you have any medical problems of any kind?* – was unlawful in light of s. 23 of the Human Rights Act which prohibits questions that indicate or could reasonably be understood as indicating an intention to unlawfully discriminate against an applicant for employment. The question would enable an employer to reject an applicant on the basis of a condition which would have minimal or no impact on work performance.

In this case the employee answered "yes" to the question and gave details of one condition; but she did not mention several other medical conditions. After time off work because of illnesses the employer ascertained that she suffered from several medical conditions which she had not disclosed. The employer dismissed her because of her failure to disclose her full medical situation. The court decided that she was not obliged to disclose all her medical conditions.⁷⁷

⁷⁵ *Taking the first step A guidebook for job seekers with experience of mental health issues* LEAP Like Minds Employment Advocacy Project 2005

⁷⁶ <http://dol.govt.nz/er/solvingproblems/keyprinciples/goodfaith.asp>

⁷⁷ *Imperial Enterprises Ltd v. Attwood* [2002] 2 ERNZ 740.

In 2009 the Employment Relations Authority considered a situation where an employee had not disclosed her bi-polar condition on two separate occasions when her failure to do so provided an inaccurate answer. The employer subsequently failed to accommodate her condition. The applicant was able to establish that her condition was one that her employer needed to reasonably accommodate but had failed to do so. The Authority deducted 25% from the damages as the employee's failure to disclose contributed to the discrimination grievance arising.⁷⁸

In 2010 the Authority upheld a decision by an employer to dismiss an employee who failed to disclose on a pre-employment questionnaire that he had a pre-existing mental health condition. Of critical importance to the Authority's decision was the employer's practice in assessing the information about physical and mental health provided by applicants. The information is considered by a different person to that who assesses work history and standard CV-type information. The employer considers in detail an applicant's medical history before making a decision whether to employ or arrange a suitable programme to facilitate employment.

The Authority concluded that the separate consideration of the detailed medical information from other aspects of the recruitment process indicated that the medical information was requested for the purposes of assessing an applicant's physical and mental fitness to perform the role and duties, it was part of assessing whether the person was qualified for the job. The Authority did not accept that the form could reasonably be taken as indicating an intention to unlawfully discriminate.

The employee said that such questions should only be asked after the initial assessment had determined that an applicant was otherwise suitable for employment. Otherwise there is a risk that a suitable applicant, who is entitled to reasonable accommodation, might be discriminated against.

The Authority said that employer was entitled to assess its legal obligations. It can only do that by asking appropriate questions to elicit the necessary information from the applicant and, if necessary, seeking expert reports. The Authority noted that there was evidence of the employer continuing to employ people who suffer from mental illness and the employer does not discriminate against people with a mental illness. The evidence supported the employer's claim that it needs to know about the nature of a person's illness in order to assess whether it can reasonably and safely be accommodated so as to continue or permit the person's employment.

The Authority commented on the employee's evidence that he had been advised by an advocate to say that his false answers resulted from miscalculation rather than a deliberate decision to withhold information because of his fear of discrimination:

"The statutory obligation is for those in an employment relationship to deal with one another in good faith which includes not misleading one another. Acting on advice, [the employee] breached that obligation ... That leads on to a point made by counsel about the stigma attached to mental illness. It might be understandable that a young man such as ... would think he should hide his mental health history to avoid any risk of discrimination. There will be differing views on that. In doing so, however, [the employee] exposed himself to the risk of adverse consequences should his employer later discover his falsehood. His other option was to properly answer the questions asked and rely on the anti-discrimination provisions in the Human Rights Act, and the remedies available for a proven breach of that Act if necessary."⁷⁹

⁷⁸ *Atley v Southland District Health Board* (2009) 8 HRNZ 888; (2010) 9 NZELC 93,427.

⁷⁹ *Lidiard v New Zealand Fire Service Commission* ERA Christchurch CA51/10, 8 March 2010.

Future action

- Urgent action is required in the state sector, led by SSC which includes:
 - Adequate data capture so that progress can be monitored and is transparent
 - Special measures (affirmative action programmes) with targets to increase the numbers of disabled people into decent employment in the public service.
 - Target setting for major public service departments to improve the employment of disabled people. This is required by Article 27 (1) (g) by the CRPD that New Zealand has ratified which reads, *Employ persons with disabilities in the public sector.*
- Promote inclusive employment practice in the private sector through organisations such as the newly-formed Employers' Disability Network.
- Amend the Employment Relations Act 2000 to include a positive duty to be a good employer to the private sector in addition to the public sector.
- Review the implementation of the minimum wage exemption legislation in consultation with the disability community and make transparent its current operation through annual disclosures by the Department of Labour. The review should include: assessment of eligibility and rate; numbers of exemptions; pay rates determined; Human Rights implications of the policy and its implementation; the extent to which employment in open settings is being supported and; employers issues.
- Provide guidance on the disclosure of mental health issues to employers, employees and job seekers through the Commission's widely-distributed *Getting a job: An A to Z for employers and employees, Pre-employment guidelines.*

Migrants

International context

There has been considerable controversy including in New Zealand over the promotion, ratification and implementation of international conventions governing migrant employment. This highlights the tension between a human rights approach to social protection and the increasingly deregulated globalised use of labour.

Migrant workers are an extremely vulnerable group present in most nations across the world. While early United Nations conventions do not make reference to migrant workers, the International Labour Organization (ILO) has addressed migrant labour rights through specific conventions and recommendations.

The 1998 Declaration on Fundamental Principles and Rights at Work, which binds all ILO members, protects all migrant workers regardless of status.⁸⁰ The two key ILO conventions related to migrant employment are No. 97, on Migration for Employment (1949), and No. 143, on Migrant Workers (Supplementary Provisions) (1975).

ILO Convention 97 provides the foundations for equality of treatment of nationals and regular migrants in areas such as recruitment procedures. It sets out details for contract conditions and the participation of migrants in job training or promotion, and deals with provisions for unjustified termination of employment.

ILO Convention 143 was adopted at a time when concern about irregular migration (including smuggling and trafficking) was growing. It sets out requirements for respecting the rights of migrants with an irregular status, while providing for measures to end clandestine trafficking and penalise employers of irregular migrants.

Other ILO conventions that protect migrant labour include:

- Forced Labour (No. 29)
- Freedom of Association and Protection of the Right to Organize (No. 87)
- Equal Remuneration (No. 100)
- Discrimination (Employment and Occupation) (No. 111)
- Minimum Age (No. 138).

Continuing international concern about the rights of migrant workers led to the adoption by the United Nations of the Migrant Workers Convention in 1990. The Convention brings together the rights that already protect migrants (including irregular workers) and that have already been accepted by most states through “core” human rights treaties. New Zealand has not ratified this Convention.

Concerns about protection of the rights of migrants in New Zealand have been raised by treaty bodies, including the International Convention on the Elimination of all forms of Racial Discrimination (CERD) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and by the Human Rights Committee in monitoring the International Covenant on Civil and Political Rights (ICCPR) and ICESCR. Migrant workers’ rights were raised in the context of New Zealand’s Universal Periodic Review in 2009. It was recommended that New Zealand ratify or consider ratifying the Migrant Workers Convention. One of the themes of the 2009 Durban Review Conference was protecting the rights of migrant workers.

⁸⁰ <http://www.ilo.org/ilolex/english/convdisp1.htm>

New Zealand Context

Work is arguably the single most important element in the integration of immigrants to New Zealand. Despite this, many migrants find it hard to access decent employment, even with years of experience and qualifications attained elsewhere. A particular problem for some migrant workers is the recognition of qualifications by gate-keeping bodies, especially in some professions. The negative plight of migrants and their employment situation has been covered extensively in the mainstream media including stories of discrimination, exploitation and battles over work and entry visas.

In 2010, the Department of Labour released its research on the economic impact of immigration in the five years from 2005 to 2010. Findings show migrants initially tend to have lower employment rates and incomes than New Zealanders with similar characteristics. The report concludes that overall immigration has made a positive contribution to New Zealand's economic outcomes.

In 2009, the Department of Labour released its Employers of Migrants survey. Overall, 87% of respondents rated their migrant employees as good or very good. Employers said the positive attitude displayed by migrants and their skills and experience were driving factors behind the high ratings. The Minister of Immigration at the time stated, "Migrant workers play a major role in the economy and this survey reinforces the value they provide to employers."⁸¹

The Recognised Seasonal Employer (RSE) policy was introduced in 2007 to meet labour shortfalls in the fruit picking sectors, generate income for Pacific Island countries, and discourage overstaying. The policy allows employers in the horticulture and viticulture industries to recruit temporary workers from Pacific Island countries.

In 2010 the Department of Labour commissioned an evaluation report of the RSE scheme.⁸² It identified the following positive impacts from the scheme for employers:

- Employers in the horticulture and viticulture industries have access to a reliable and stable seasonal workforce;
- Labour supply crises pre-RSE have been avoided and employers can now plan and manage their business with confidence;
- Significant productivity gains for employers began to emerge in the second season.

The following positive impacts for RSE workers were identified in the RSE evaluation report:

- Workers were able to develop skills;
- Workers were generally satisfied with the amount they earned over 4-7 months, as this was more than they could earn in their home countries;
- Workers from Vanuatu, Tonga and Samoa benefitted financially from working in New Zealand;
- Workers' earnings enhanced the wellbeing of their families and enabled individuals and communities to pursue business ventures;
- Many workers engaged with the local community through church, sports, and cultural activities while in New Zealand.

Although steps have been taken to address some early issues with the scheme, key issues previously identified are raised again in the RSE evaluation report. These include:

⁸¹ Jonathan Coleman (2010) press release Survey recognises migrant worker contribution <http://www.beehive.govt.nz/release/survey+recognises+migrant+worker+contribution>

⁸² Evalve Research (2010), *Final Evaluation Report of the Recognised Seasonal Employer Policy (2007-2009)* (Wellington: DoL), accessible online at <http://www.dol.govt.nz/publication-view.asp?ID=327>

accommodation, particularly costs and overcrowding; lack of awareness and understanding of rights and obligations, fears of adverse consequences of complaining; and unfavourable reactions from the host community.

In 2010 the Commission met with the Department of Labour to discuss issues raised by the RSE scheme and the Commission's own complaints and enquiries data, community intelligence and findings from the National Conversation about Work.

Complaints to the Human Rights Commission since 2005 suggest that some seasonal workers continue to face discrimination, difficult work conditions (which sometimes fall below minimum standards), and difficulty accessing social services. Temporary workers are also often unable to bring their families to New Zealand.

Violation of workers' rights and discriminatory practices if unchecked could impact negatively on local industries and on New Zealand's international reputation. One risk of failing to address these issues is that workers will not want to come or return to New Zealand (or in specific regions or industries) and advise their compatriots not to do so either. A local survey of workers from Vanuatu in the Bay of Plenty, for example, indicates that 65% of the workers found their experience worse than they had expected, 48% indicated that they would not return and 30% indicated that they would not recommend other ni-Vanuatu workers to join RSE.⁸³ Competition with Australia is another supply-side issue.

There are a number of initiatives by employer and professional groups and education providers to assist migrants to overcome barriers to employment. For example, Opportunities for Migrant Employment in Greater Auckland (OMEGA) matches migrants with professionals who share the same skills and industry knowledge, in occupation-specific mentoring. The Auckland Chamber of Commerce operates the New Kiwis website for onshore migrant job seekers and a recruitment-focused website for prospective migrants offshore. The Canterbury Chamber of Commerce's Employment Programme assists work-ready migrants to find employment and help relieve the skill shortage in the Canterbury region.

Migrant-specific courses and bridging programmes, such as the Workplace Communication for Skilled Migrants programme run by Victoria University of Wellington, aim to develop appropriate communication skills and improve cultural understanding of New Zealand workplaces among skilled migrants.

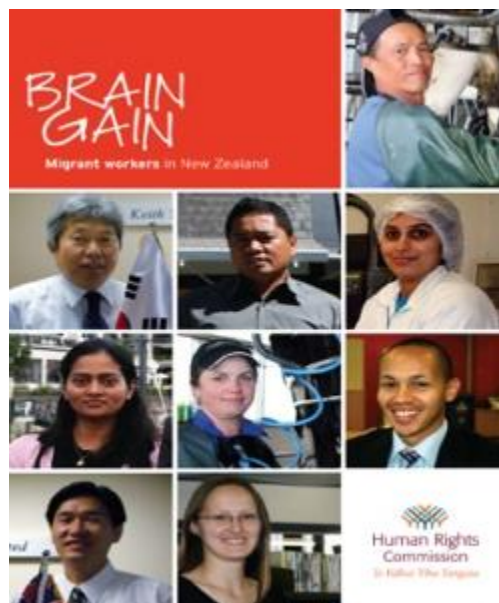
Local councils administer a number of programmes for migrants. For example, the Migrant and Refugee Work Experience Programme helps migrants and refugees gain useful local work experience in roles with Wellington City Council.

Recent immigration policy changes have placed greater emphasis on successful settlement of migrants. These changes include the establishment of migrant resource centres, and coordinated planning at the regional level between government departments, local councils, employer and migrant and community groups.

The Commission has promoted migrant rights through popular and useful publications such as the Commission's widely circulated "A-Z pre-employment guidelines" for employees and employers which has been helpful for migrant employment, establishing what is permissible under the Human Rights Act.

83 Lina Ericsson, *The Ni-Vanuatu RSE Worker: Earning, Spending, Saving and Sending* (Spring 2009), unpublished MA thesis in Political Science, Jonkoping International Business School, pp 53-6.

*Brain Gain – Migrant workers in New Zealand*⁸⁴ promotes positive stories about migrant employment and aims to persuade other New Zealand employers of the benefits of migrant employees.



National Conversation about Work

Participants of the Commission’s National Conversation about Work said there were a number of ways that discrimination was expressed when they sought work. Chinese Aucklanders said some migrants ‘anglicize’ their name to increase the chance of being interviewed for a job.

Outside the major centres, the Commission was told that inherent conservatism in business, together with parochial attitudes, meant that some employers have difficulty with employing migrants.

Typical complaints by migrant employees to the Queenstown Citizen’s Advice Bureau included not being paid holiday pay, being told they had lesser rights because they were on working holiday visas, and being told they were not entitled to annual leave. Migrant worker advocates thought this was just the “tip of the iceberg”. The Commission was told, “Migrants were less likely to complain, because they were in the area for a short period of time or would simply find another job elsewhere.”

Support services for migrants are not as readily available in small towns as in urban centres. The importance of settlement support infrastructure was emphasised by both migrants and other community workers. In Marlborough, the influx of migrant seasonal labourers meant a greater demand for immigration support services. For example, the absence of a regionally based office in Blenheim, where demand is the highest, meant that Department of Labour officers had to travel from Nelson to address issues of apparent exploitation of migrant workers in the wine industry.

The dairy industry is reliant on migrant labour and the Commission heard from Filipino dairy workers particularly in the South Island about poor work conditions, inadequate housing, long work hours and bad employer behaviour. Some dairy farmers in Southland were not used to employing staff, let alone staff from other cultures. Some employers struggled with both the legal requirements of employing staff, including immigration issues, and

⁸⁴ <http://www.neon.org.nz/eeogroups/migrantindex/>

interpersonal skills necessary to effectively manage and communicate with a culturally diverse workplace. Federated Farmers are developing self regulatory mechanisms to assist prospective employees identify accredited employers. This is seen as important in terms of fairness for employees and to ensure that the reputation of the industry as an employer is not damaged by poor practice.

In the wine industry the Commission heard many employers take a responsible attitude with regards to employing seasonal workers but a small number of others exploit staff to the point where it could be considered a violation of human rights. Representatives from Wine Marlborough agreed that rogue operators had harmed the reputation of seasonal work in the area and that registration of RSE contractors would help employment practice in the industry.

According to Wine Marlborough “if everyone signed up to be registered we could monitor employers and employment practices.” Contractors agreed that “registration would be a good thing. Many agreed that rogue operators had the potential to damage the reputation of New Zealand industry in a number of sectors.”

Sustainable Winegrowing New Zealand (SWNZ) has produced “best practice” models for the wine industry including socially responsible employment practices ensuring companies operate with a goal of improving their operations. A new labour component has been added to SWNZ’s advice recognising the need for members to meet their legal employment obligations, which includes having contractors as accredited members of a contractors association. Questions related to managing staff are weighted as major, which means that members must be fully compliant to pass.

Future action

The Commission suggests in relation to the RSE scheme and migrant employment in general that the Department of Labour:

- Provide information on employment law and human rights in relation to employment for both migrant employers and migrant employees in community languages and in multiple formats to ensure accessibility;
- Publicise good practice guidelines and minimum legal standards for RSE employers;
- Monitor the working conditions of migrant workers, including those employed under the RSE scheme, with a view to taking remedial action when poor practice is identified.
- Encourage the development of codes of practice in partnership with industry groups, in particular dairying and viticulture, to ensure fairness for migrant employees in particular and to guide employers on best practice in general.



Occupational segregation & non-traditional roles

Employment in non-traditional roles is an issue for both genders, but more specifically for women who are segregated into lower paid jobs. A female-dominated occupational group is one where 70% or more of the staff are female.⁸⁵ Common examples are clerical work, nursing and education support work.

A male-dominated occupational group is one where 60%⁸⁶ or more of staff are male. There are many male-dominated occupational groups, including prison officers, construction workers and police officers. Examples of occupational segregation in New Zealand follows.

New Zealand Men

One area where men have low representation is in early childhood education (ECE). In 2010, there were 19,901 early childhood teachers in New Zealand, only 349 (1.75%) of whom were men.

There has been a big shift in society toward men playing a greater role in the lives of young children as fathers and male caregivers. But men continue to be significantly under-represented in early childhood education.

The near invisibility of men results from systemic occupational segregation and traditional role stereotyping, fears of child abuse claims, the absence of affirmative action to advertise for and recruit men into early childhood education training and pay rates.

Overseas experience shows that men do not apply to become ECE teachers, because they assume the jobs are for women. What is needed to improve men's participation rates is to create male-friendly environments and actively recruit men.

Similar to ECE, nursing is another non traditional role where men are the minority. Only 7.76% of New Zealand nurses are male. Men are deterred from the nursing profession for similar reasons that they are deterred from ECE including; believing others would see them as unmanly, having limited career options and being poorly paid. Concerted effort is required to recruit more men in nursing and to break gendered stereotypes.

New Zealand Women

The Modern Apprenticeship Scheme aims to increase the number of young people in industry training. The traditional under-representation of women in non-traditional work represents a significant opportunity for improved female participation and increased diversity in the Modern Apprenticeship Scheme. However it has failed to deliver gender equality to date.

“Give Girls a Go” published in 2006 raised concerns about women's low participation in modern apprenticeships noting there was considerable occupational segregation.

⁸⁵ <http://www.neon.org.nz/payequitymonitoringtool/>

⁸⁶ Ibid

In 2010, there were 11,926 modern apprentices⁸⁷. Female participants accounted for 12.4% but this is almost entirely due to the inclusion of hairdressing in the modern apprenticeship scheme. Without hairdressing the women's participation rate drops to 8.4%.

The three largest industry sectors (over 1000 apprentices) in better paid occupations have very low rates of young women. The building and construction industry has 0.3% female apprentices, the engineering sector has 1.2% female apprentices and motor engineering has 2.5% female participation.

A March 2011 report by the Electricity Supply Industry Training Organisation (ESITO) shows "there are significant barriers to recruitment and the ongoing retention of women in trade training in the industry due to strong gender stereotyping of women" the report says.⁸⁸

Some male dominated sectors are making attempts to encourage women's participation. In June 2010, only 3.2% of New Zealand's career firefighter workforce were women. The New Zealand Fire Service set a goal of 5.5% of operational firefighters being female by 2012. In 2010 the service made a concerted effort to attract more female recruits. Its recruitment strategy included targeting all advertising to attracting minority groups including women and contacting existing employees to refer people who represented minority groups.

The establishment of a women's firefighting network in 2001 has been instrumental in helping to attract women to the service. The network provides a means for fire service women to network, discuss and resolve issues faced on the job and also provides an area for any women who are considering employment within the New Zealand Fire Service in both operational and non-operational roles.

The New Zealand Police have also made progress to increase women in its ranks. In 2010 they introduced a positive action programme to improve female representation. A 30% gender equity target was set for training, recruitment and management representation including at executive management level. There are currently 1525 (17.3%) sworn women officers in frontline Police. The Women in Policing Network has helped raise the profile of women in the Police, and has assisted in identifying issues faced by women and in developing and implementing solutions to those issues.

National Conversation about Work

Career choices in New Zealand are still limited by gender stereotyping. However, the Commission met a number of people as part of the National Conversation about Work who challenged cultural norms and made non-traditional choices.

The Commission heard about female air traffic controllers employed by the Airways Corporation, headquartered in Christchurch, and women sea captains at Whalewatch in Kaikoura. In both cases EEO strategies were used to encourage women into these roles. In the case of Airways, targeted advertising was used, and in the case of Whalewatch, educational opportunities were made available.

Equally, the Commission met with men in non-traditional jobs. A group of male kindergarten teachers in Christchurch has set up mutual support structures and actively promote early childhood careers as a job for other men. Male kindergarten teachers challenged the notion of gender roles in relation to young children. "Men need to be invited and made welcome in early childhood centres. They need to know how fantastic the job is", they said.

⁸⁷ <http://www.tec.govt.nz/Tertiary-Sector/Performance-information/Modern-Apprenticeships/Modern-Apprenticeships-2010/>

⁸⁸ *Improving responsiveness to Māori, Pacific People, Migrants and Women*. ESITO. March 2011

The Navy, which has the highest gender ratio of the three armed forces at 23%, tries to reflect society. “You can’t deny 50% of the population.” We heard of greater promotion of women in the Navy, but also the high number of women who become pregnant directly affects deployment into the field.

The highest ranking female officer in an army group spoken to at Waiouru said the career management structure was now identical for men and women. “When I was commissioned, women could only join certain branches. I wanted to be an infantry officer but I couldn’t as combat trades were not open to women then.”⁸⁹

The Commission’s New Zealand Census of Women’s Participation monitors the participation rates of women in a number of non-traditional areas including in agribusiness, accountancy, defence, the judiciary, in law, in the Police and as CEOs or Directors of Boards. The 2010 Census shows New Zealand has a way to go achieve increased numbers of women in non traditional areas of work.

Future action

- The Commission supports strong affirmative action to increase the proportion of women and men in non-traditional roles.



⁸⁹ www.neon.org.nz/newsarchive/afab

Access to quality and affordable early childhood education

The provision of high-quality, affordable, accessible and available early childhood education benefits both young children and their parents, and ultimately the community. Workforce participation of parents of young children is a critical aspect of workforce participation.

Participation in the labour force

By OECD standards New Zealand has a relatively high rate of women's participation in the workforce, but has lower participation rates than the OECD average for women aged 25-39.⁹⁰

"Labour force participation decisions are partly influenced by the cost of childcare relative to the potential income from paid work, as well as the availability and quality of childcare. Apart from considering the financial implications of participating in the labour force, individuals also weigh up the non-financial implications for their family, including the well-being of the child.

A simple labour supply model predicts that a childcare subsidy (or ECE subsidy) would increase the labour force participation of mothers with young dependent children as the subsidy has the effect of increasing the net return that mothers can get from working. Furthermore, if the quality of ECE is high and is perceived by parents to be beneficial for their child, then take-up of ECE is likely to be higher as well."⁹¹

National Conversation about Work

Many working parents told the Commission that they are unable to realise full employment because there are no early childhood education centres in their locality. For example, in the Maniototo area, a group of women are trying to establish an early childhood education centre which will enable them to return to work, better integrate the migrant community and provide local children with early childhood education. The situation in rural communities is especially acute. Army personnel in Waiouru spoke about the need to provide childcare for staff deployed in the field and to accommodate older recruits.

In some rural communities we heard that skilled migrants had been successfully recruited but were not able to be retained because their spouses were not able to work, often because childcare was not available. We heard that the lack of available childcare was one of the reasons new Coasters leave the West Coast. One half of a couple would gain a job and the whole family would relocate. At some point the "trailing spouse" sought employment and found that she (usually) could not access childcare when and if she found a job. One West Coast mother said, "There's a one-year waiting list for the local childcare centre and it's open from 8:30-4:00."

⁹⁰ *Overview of New Zealand Early Childhood Education (ECE) System* 1 October 2010 Introductory Briefing by the ECE Taskforce Secretariat.

⁹¹ *Labour Market and Broader Outcomes* 1 October 2010 Introductory briefing prepared by The Treasury for the ECE Taskforce Secretariat

Early childhood education opening hours did not always match working patterns, with shift workers finding access to dependent care arrangements particularly challenging. In other cases, the cost of childcare is prohibitive.

People on low incomes, such as cleaners in the Hutt Valley and bank workers in Taranaki, said that the prohibitive cost of early childhood education meant that parents had to use informal arrangements or choose not to participate in the labour-force.

Early childhood education provision

The following figures were obtained from the 2009 Childcare Survey.⁹² Formal care arrangements are more common than informal. The most common formal care arrangements are childcare centres⁹³ and the most common form of informal arrangements is care by a grandparent.

Table 34: Types of early childhood education and care arrangements

	Type of care	% of pre-school children
Formal	Childcare centres	25.4%
	Public kindergarten	15.2%
	Playcentre	6.7%
	Playgroups	6.6%
	Organised home based care	4.3%
	Kōhanga reo	2.4%
	More than one type of formal care	11.6%
Informal	Care by a grandparent	31.1%
	Other family member	11.8%
	Friend or neighbour	5.7%
	Another parent living elsewhere	4.9%

Accessibility and affordability

New Zealand spends half the OECD average on children from birth to five years.⁹⁴ According to a recent briefing paper⁹⁵ the cost of ECE relative to income has been steadily falling and fell significantly in July 2007 as a result of the 20 hours ECE policy introduced at that time. The significant reduction in the relative cost of ECE is likely to have had an effect on labour force participation decisions, or affected the composition of employment. The paper asserted that supply is thought to be “more or less keeping pace with demand” nationally, and data such as time on waiting lists and occupancy rates for services suggests that “capacity is not a significant problem in the sector at a national level.” However, the briefing paper notes “The Ministry’s anecdotal information, from parents, services and

⁹² *New Zealand Childcare Survey 2009 (Revised 17 December 2010)* 2010 Statistics New Zealand

⁹³ Licensed and/or chartered early childhood centres that offer day or sessional services for children from birth to school age.

⁹⁴ P15 Ibid

⁹⁵ *Capacity and Availability* 1 October 2010 Introductory Briefing prepared by the ECE Taskforce Secretariat

Ministry of Education staff – is that it is difficult to find a place in ECE, or at least a place that parents find acceptable”.

The Salvation Army’s most recent report on inequalities and early childhood education notes an increase in commercial early childhood centres where “centres have been established in commercially viable communities and as a result there has been an uneven distribution of facilities...Children most at risk of educational failure and women with the lowest rates of labour force participation are most likely to live in the same communities most poorly provided with ECE services.”⁹⁶

The New Zealand Childcare Survey 2009⁹⁷ reported that 14.5% of parents experienced difficulty getting childcare. The most common difficulty was lack of available care on the days or at the times needed (29.2%) and affordability (23.7%). Parents experiencing difficulty were much more likely to be mothers (22.1% of mothers compared to 7.2% of fathers) and sole parents (26.4% compared to 13.0%).

The survey found that the majority (70.5%) of parents who experienced difficulty getting childcare while working or seeking work reported consequences as a result. “Almost half (48.7%) of those who had childcare-related difficulties had made changes to their usual work as a result. Another 28.9% turned down paid work, 23.7% stopped searching for paid work, and 20.9% were prevented from making changes to their usual work. An estimated 6.4% of these parents resigned from paid work as a result of childcare difficulties.”

Sole parents had more work-related consequences which included: they stopped searching for paid work (43.2% of those who experienced difficulty), made changes to their usual work (40.8%) and turned down paid work (35.7%). Sole parents were also more likely than those in two parent families to resign as a result of difficulties with childcare.

Quality childcare

As the Treasury paper quoted earlier observed, quality ECE which is considered by parents to be beneficial to their child is more likely to be taken up. May and Mitchell⁹⁸ report that “a consistent finding from international research is that while good quality care and education enhances social, dispositional and cognitive outcomes for children, poor quality care and education may be detrimental.”

Quality indicators in early childhood education are predominantly about the teachers. The Ministry of Education states, “Quality (in ECE) is achieved through a number of factors such as the interaction of the ratio of trained adults to children, the number of children (or group size) and the qualification levels of teachers. One of the ways to improve the quality of early childhood education is to increase the number of qualified and registered early childhood education teachers.”⁹⁹

A recent Ministry of Education study emphasised the importance of quality in relation to education and care of the under twos as well: “The four-decade legacy of research emphasis on structural aspects of quality for ECS has recently been applied to under-two-year-old provision and consistently suggests that higher quality care is associated with more positive outcomes and fewer negative ones (Jacob, 2009; NICHD, 2004). Quality in these studies is defined as:

⁹⁶ *Monopoly Games in the Nursery Community, Inequalities and Early Childhood Education* The Salvation Army Social Policy and Parliamentary Unit 2011

⁹⁷ *New Zealand Childcare Survey 2009 (revised 17 December 2010)* Statistics New Zealand

⁹⁸ Cited in *Strengthening Community based Early Childhood Education in Aotearoa New Zealand* May, H. & Mitchell, L.

⁹⁹ *Registered early childhood teachers* April 2010 Education Counts, Ministry of Education

- *more highly-educated caregivers* who promote positive social interactions, and
- *lower ratios* of children to caregivers.¹⁰⁰

In recent years teachers in early childhood education have been recognised as comparable to their counterparts in primary and secondary schools. At the time that pay parity was achieved the president of NZEI Te Riu Roa said “Pay parity acknowledges that the work early childhood teachers do is as important as their colleagues in primary and secondary schools.”

Changes to early childhood education funding announced in the 2010 budget has seen funding levels reduced for many centres including those staffed 100% by qualified ECE teachers. From February 2011, the funding rate for registered teachers was lowered and given only for up to 80% of a provider's registered teachers.

Centres with fully qualified staff (25% of all day kindergarten and ECE services) have experienced a reduction of 12% of their funding. Those at the next funding band (above 80% and below 100% fully qualified staff) have lost 5%. A total of 41% of all day kindergartens and ECE services are in this second category.¹⁰¹

A survey conducted by the NZCA found that “Since the funding changes had been announced services reported that a total of 1,161 children have left the 199 services that responded (in addition to children leaving to start school or moving to another ECE service). Respondents expected this pattern to continue.”¹⁰²

Future action

- Ensure that children of working parents have access to affordable, quality early childhood education in all areas of New Zealand, including provincial, rural and poorer communities.



¹⁰⁰ Dalli et al 2011, *Quality early childhood education for under-two-year-olds: What should it look like?* A literature review, Ministry of Education

¹⁰¹ *Looking Ahead ECE Changes in 2011* October 2010 NZ Childcare Association (NZCA)

¹⁰² Ibid

Paid parental leave

New Zealand's situation

In New Zealand new parents can access four kinds of leave: paid parental leave (which is the only one that is paid), special leave, partner's leave, and extended leave. Mothers have both paid parental leave (14 weeks maximum) and special leave, which consists of up to 10 days for pregnancy-related medical care. New fathers have up to two weeks of partner's leave. Both parents can also share up to 52 weeks of extended leave, although paid parental leave is considered part of this. Parental leave policies can impact significantly on equality at work in terms of men's and women's participation in the labour market and how they share childcare responsibilities.

How does New Zealand rate internationally?

The Center for Economic and Policy Research reviewed the national policies of 21 high-income economies, including New Zealand, in June 2008. It looked at two key aspects of parental leave policies: the level of support provided to parents; and the degree to which leave policies promoted an egalitarian distribution between mothers and fathers of the time devoted to childcare. The Center described these two elements as generosity and gender equality.¹⁰³

A Gender Equality Index was devised on a fifteen-point scale, with 15 being top. New Zealand was 11th equal, just making it over half way with 8 points. Sweden earned the highest score at 13 points. While Australia was second to last in this assessment, it has subsequently changed its previous no-paid-parental-leave policy and introduced 18 weeks of paid parental leave with wider eligibility criteria than New Zealand. Several Nordic countries – Finland, Norway, Sweden, plus Greece, stood out in the study for strongest performance and best practice in generosity and gender equality. New Zealand scored poorly in the international comparison in relation to the portion of leave available for fathers and/or reserved exclusively for fathers.

Eligibility in New Zealand

Paid parental leave (PPL) is a government-funded entitlement for a maximum of 14 weeks paid to eligible working mothers and adoptive parents when they take leave from their jobs to care for their newborn or adopted child under the age of six. Eligibility was extended to self-employed people in response to political pressure.

However, casual and seasonal workers are not covered and nor are people who have had more than one job within the eligibility period because they do not have the required continuous workplace attachment through employment by the same employer (s7(b) Parental Leave and Employment Protection Act 1987).

This means many low-income workers miss out. Rural Women New Zealand, for example, has drawn attention to the low proportion of women in agriculture, horticulture and forestry currently eligible for PPL.

Australia has got around the problem of continuous attachment to one employer in its new eligibility requirement by specifying *workforce* attachment in paid work for a specified number of months and hours worked, rather than *workplace* attachment.

¹⁰³ Ray, R., Gornick, J.C. and Schmitt, J (2009) *Parental leave policies in 21 countries: Assessing generosity and gender equality*. Center for Economic and Policy Research. www.cepr.net

The human rights implications of the current limited eligibility criteria are obvious. Member of Parliament Hon. Nick Smith, wrote to the Commission on behalf of a woman in his Nelson electorate who worked as a meat grader for part of the year and as a food laboratory technician for the other months. She applied for paid parental leave when her son was born but was told she was ineligible. “Her situation is identical in every respect to others who are eligible for paid parental leave. She works full-time and for the full year. She and her partner are middle- income earners who have paid their taxes. It is unfair and wrong that she is ineligible simply because she has two employers and not one during the course of a year.” Dr Smith said her case wasn’t isolated in Nelson because of the number of seasonal workers.

Discrimination complaints and enquiries

The Human Rights Commission collects data about the number and type of parental-leave complaints but does not specify whether complaints specifically relate to paid parental leave, except for when fathers have identified that their ground of complaint is that they are not entitled to paid parental leave in their own right. The data presented below therefore relates to all parental-leave complaints and enquiries.

Table 35: Parental leave complaints and enquiries

	Complaints	Enquiries	Total
2007	17	5	22
2008	13	5	18
2009	11	8	19
2010	12	10	22
	53	28	81

Table 36: Major themes of parental leave complaints and enquiries

	Complaints	Enquiries	Total
Termination of employment coinciding with leave	14	3	17
Questions and complaints about leave entitlements	11	15	26
Changed working conditions before or after leave	10	-	10
Men and parental leave	9	2	11
Flexible working arrangements after leave	3	1	4
Pressure to take early leave	2	2	4
Other	4	5	9
	53	28	81

Termination of employment coinciding with parental leave

Complaints relating to job termination coinciding with parental leave include:

- Several complaints that jobs were not held while the complainant was on parental leave
- Complaints that roles were made redundant or employees were asked to resign after advising they would be taking parental leave
- Questions around entitlements to parental leave in redundancy situations

Leave entitlements

Complaints relating to parental leave entitlements include:

- Employers not allowing employees to take parental leave or excessively delaying processing applications for parental leave
- Employers not paying parental leave
- Issues around other work benefits not continuing while on leave or prior to taking leave, such as pay increases, bonuses, annual reviews and annual-leave accruals

Changed working conditions

Complaints about changed working conditions include changes made prior to the complainant taking leave, as well as changes made upon returning to work. Examples of these types of complaints are:

- Reinstated in a lesser role on return from parental-leave
- Hours not guaranteed on return from parental-leave
- Hours changed prior to going on leave or on return
- Job description changed prior to parental-leave

Men and parental-leave

The main theme of complaints relating to men and parental-leave concerns different entitlements for men compared with women. Four complaints were received in the last four years on the issue of men not having primary entitlement to parental-leave. A further three complaints note differences in entitlements for men.

Who makes parental-leave complaints?

Almost three quarters (74%) of complaints to the Commission relating to parental-leave were made by women who were pregnant or who had recently taken parental-leave.

A further 8% of complaints were made on behalf of pregnant women/women on parental-leave. Eight per cent of complaints were made by men (recent or soon-to-be fathers) who were directly affected by parental-leave entitlements. In the remainder of complaints it was unknown if the complainant was a recent parent, or in some cases their gender. One complaint was from an employer.

In 12 of the 28 enquiries about parental-leave there was no information about who was making the enquiry, including gender information. In the remaining 16 enquiries, 14 were from new mothers or pregnant women, one from a new father, and one from an employer.

What about fathers?

Fathers understandably are concerned at the absence of paid parental leave for men in their own right in New Zealand. Three organisations, the Human Rights Commission, the Families Commission and the National Advisory Council on the Employment of Women (NACEW), have consistently argued for fathers to have access to paid parental leave. In its suggested priority improvements to parental-leave, NACEW said that a number of countries were

strengthening statutory leave policies towards increased flexibility of leave entitlements that supported family transitions and to support the access of fathers.¹⁰⁴

A new PPL entitlement, ring-fenced for fathers and separate to the entitlements for mothers, was recommended by NACEW. “This would support greater choice for parents and gender equity in the home. It would assist working fathers to take leave irrespective of whether the mother had entitled to PPL, and support fathers to be more involved in the early care of their children.”

A Department of Labour evaluation in 2005/2006 of paid parental leave indicated from a survey of fathers that if there was PPL specifically for fathers, half would take it up¹⁰⁵. Given the increasing societal expectations of fathers being involved in the early care of their children since then, this may be a conservative estimate.

The Families Commission recommended that an individual entitlement to paid parental leave for both mothers and fathers/partners be introduced with 14 weeks paid maternity leave for eligible mothers and four weeks paid paternity/partner leave for eligible fathers.¹⁰⁶

In the *National Conversation about Work* conducted by the Human Rights Commission throughout New Zealand, male participants in different regions of New Zealand raised the unfairness of the lack of entitlement to Paid Parental Leave in their own right.

One father in the Bay of Plenty said that two weeks paid parental leave on the birth of a child for fathers would be great. He also proposed six months PPL for mothers followed by six months PPL for fathers. This would enable mothers to return to work and for fathers to be primary caregivers early in a child’s life.

Future action

- Change the eligibility for paid parental leave to provide for workforce attachment criteria that will extend paid parental leave to casual, seasonal workers and people with more than one job.
- Provide paid parental leave to fathers as primary entitlement holders
- Review the length of paid parental leave with the aim of progressive improvement as New Zealand’s economy improves.

¹⁰⁴ NACEW (2008) *Priority improvements to Parental Leave*, National Advisory Council on the Employment of Women, Wellington.

¹⁰⁵ Department of Labour (2007) *Parental leave in New Zealand:2005/2006 Evaluation, May 2007*, p61.

¹⁰⁶ Families Commission (2007) *It’s about time: towards a parental leave policy that gives families real choice*. Research Report No 3/07.

Low pay and the minimum wage

The ILO defines low pay as two thirds of the median wage. As at June 2010 the median hourly wage was \$20.00. Therefore low pay is just above the current minimum wage at \$13.32. A low-paid job is at or close to the current minimum wage of \$13.00 an hour.

New Zealand's situation

As at 1 April 2011, the adult minimum wage of \$13.00 an hour applies to all employees aged 16 years and over, who are not new entrants or trainees.

The new entrants' minimum wage is \$10.40 an hour. It applies to 16 and 17-year-olds unless they have completed 200 hours or three months employment, or who are supervising and training other workers or who are on the training minimum wage. The training minimum wage is \$10.40 an hour. It applies to employees who are undertaking at least 60 credits in a registered training programme.

An estimated 41,300 workers are on the minimum wage and 252,800 earn less than \$15.00 an hour. Youth, women, Māori, Pacific people and part-time workers are more likely to be low-paid workers.¹⁰⁷

Table 37: Workers paid the minimum wage by demographic group.¹⁰⁸

Demographic group	Percentage of workers paid minimum wage
Female	57.1%
Aged 18–24	56.5%
Part-time	56.0%
European/Pakeha	51.8%
Post-school qualification	37.2%
Married	36.6%
Māori	20.8%
Pacific	5.6%

The Department of Labour noted that “among the population aged 18 to 64 years the average hourly wage for females is 85.5% of the average hourly wage for males. Thus female wage and salary workers earn 14.2% less than males per hour. The Department of Labour advised that increasing the minimum wage to \$13.00 or \$13.50 would not change the gender pay gap significantly.

¹⁰⁷ *Minimum Wage Review 2010* Department of Labour

¹⁰⁸ *Ibid.* Referencing 2010 New Zealand Income Survey, Statistics New Zealand

Industry sectors most affected by changes to the minimum wage are hospitality, retail and agriculture. Approximately, 10.8% of hospitality workers are on the minimum wage, 9.1% of retail workers and 4.4% of agriculture workers. Low-wage jobs in the state sector paying at or near the minimum wage are teaching positions without recognised qualifications or training and non-teaching positions in schools, personal care, home help and childcare services paid for by ACC and home helpers funded by the Ministry of Social Development, and aged care workers and disability support workers funded by the Ministry of Health.

International comparisons

Comparisons between countries across the OECD vary depending on the measure used. If the minimum wage itself is compared, either by purchasing power or by direct comparison, New Zealand rates about seventh among the 21 OECD countries. As a proportion of the average wage, New Zealand's minimum wage is the second highest of the OECD countries with available data, behind France. The Australian minimum wage is considerably higher than that of New Zealand, at NZ\$19.40 an hour. Because the New Zealand average wage is so much lower than that of Australia, the ratio between minimum wage and the average wage is higher in New Zealand.

The ILO's Decent Work programme has the following to say about the minimum wage:

"The minimum wage must cover the living expenses of the employee and his/her family members. Moreover it must relate reasonably to the general level of wages earned and the living standard of other social groups." This principle reflects Article 23 (3) and Article 25 (1) of the UDHR, and Article 7 of ICESCR and ILO C131 Article 3 which states:

The elements to be taken into consideration in determining the level of minimum wages shall, so far as possible and appropriate in relation to national practice and conditions, include:

- (a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups;
- (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.

National Conversation about Work

Many participants identified fair pay as an important element of equality at work. Participants whose income was at or close to minimum wage levels talked about the difficulties they experienced making ends meet. One Rotorua man told us that the rising cost of electricity did not just have an impact on the cost of keeping warm but also on the cost of cooking. He told us that "fish and chips are cheaper" once the cost of shopping and cooking are factored in. Being cold, combined with an inadequate diet and substandard accommodation contributed to poor health outcomes. Other participants said that staff on low wages seek longer work hours to gain an adequate income. Phyllis Puia, a cleaner, who was interviewed for the National Conversation video, said, "I have seen some older people work two to three jobs to make ends meet. This has to stop."

Another participant said, "Fair pay is a big issue for places like old people's homes. Care staff get dreadful wages for the work they do." Managers across industries as diverse as the aged-care sector and horticulture told us that they had to monitor the hours staff were working, including for other employers, to ensure safe working practices. Other people working in jobs paid at, or just above, the minimum wage felt the cost of tertiary study put their aspirations for career advancement out of reach.

Low-paid workers, such as cleaners in the Hutt Valley and bank workers in Taranaki, said that the prohibitive cost of early childhood education meant that parents had to use informal arrangements or choose not to participate in the labour-force.

Payment below the minimum wage

Over 1,000 workers in New Zealand have minimum-wage exemptions. That is, their employer may legally pay them less than the minimum wage. This is discussed in the section on disabled workers. The Department of Labour notes that over the last ten years there has been an increase in the proportion of individuals reporting below minimum wages in the New Zealand Income Survey. With current data sources the Department reports that it is not clear whether this is caused by non-compliance, increased numbers of exemptions to the minimum wage or measurement error. The Department expects that the proportion of workers reporting below minimum wage rates will decline but is monitoring the issue.

Recent case law has upheld the right to the minimum wage (*Natsume v Valley of the Kings Ltd*, *Boniface v Credence Development Ltd*) and workers have been awarded back pay with interest. The “sleepover” case between *IDEA Services Ltd* and *Dickson* is also a minimum-wage case. The focus is on what constitutes “work” for the purposes of receipt of the minimum wage. The Employment Court and the Court of Appeal have determined that sleepovers in this case were work and therefore attracted the minimum wage. The case is now being appealed to the Supreme Court.

Just over one in seven (14.8%) New Zealand workers earn \$15.00 or less per hour, and 5.4% earn \$13.50.¹⁰⁹ Low wages often means long work hours, precarious work, reliance on government transfers, reliance on more than one job holder in a household and individuals holding more than one job. A recent survey shows that New Zealanders are increasingly concerned by income inequality.¹¹⁰ An adequate standard of living as defined by the ILO is one which must cover the living expenses of the employee and his/her family members.

Future action

- Progressively increase the level of both the minimum wage and the benefit levels to ensure universal entitlement to an adequate standard of living. This requires indexing rates to the national average wage, as currently happens to national superannuation, and ensuring regular increases to improve income and reduce inequality.



¹⁰⁹ *Minimum Wage Review 2010* Department of Labour

¹¹⁰ *Wealth Gap Divides Nation* M Donaldson and A Hubbard, Sunday Star Times 23.01.2011

Sexual orientation

New Zealand's situation

New Zealand prohibits discrimination on the grounds of sexual orientation and has made progressive steps towards implementing human rights standards. For example, New Zealand legally recognises same-sex relationships, including property rights and obligations, and registration of civil unions.

Sexual orientation was introduced as a prohibited ground of discrimination under section 21 of the Act in 1993. The Commission accepts complaints of unlawful discrimination from gender minorities (trans or intersex people) on the grounds of sex and interprets sex to include gender and gender identity.

There is a lack of comprehensive data on the gay, lesbian, bisexual, trans and intersex (GLBTI) population in New Zealand which impacts on the case for resources and may cause policy makers to devote insufficient attention to the needs of the GLBTI community. The Census does not include a question about sexual orientation. The only official information available in the Census about the demography of sexual orientation is the number of people who indicated in the 1996 or the 2001 census that they were a 'same sex' couple living together.

This lack of data inhibits research, policy and practice. Although some surveys have been undertaken in New Zealand, little is known about the realities of the ways in which lesbian and gay people participate in society. There is no systematic identification of data gaps, nor a framework for data collation and analysis.

Discrimination towards gay workers is reported in the New Zealand media and negative perceptions and practices still persist. In one case allegations of 'gayness' were central when two customs officers were sacked for leaking information to the media about a gay colleague. At the centre of the argument was the accusation that a gay person can't perform strip searches in a professional manner.

Complaints and enquiries

Complaints and enquiries on the grounds of sexual orientation make up a small proportion (2% over the last 3 years) of all complaints to the Commission. The most common issues brought to the Commission include bullying, harassment and derogatory comments particularly in employment, refusal to employ, or the threat in pre-employment to discriminate on the basis of sexual orientation, refusal of services and termination of employment. For transgender people the most common issue is the general treatment they experienced.

In 2010 the Commission received a complaint by a gay netball coach who was fired from a Christchurch Christian school. The 28-year-old man was employed as a girls' netball coach but was dismissed by the board of trustees after members discovered his sexual orientation. The school principal said that the board had decided the coach's homosexuality was a problem. The sacked coach complained to the Commission and the matter was resolved after mediation. The school was ordered to apologise and pay the man a confidential compensation sum. The board was also told to attend a human rights awareness course.

Internationally

In 2006, in response to well-documented patterns of abuse, international human rights experts met in Yogyakarta, Indonesia to outline a set of international principles relating to human rights, sexual orientation and gender identity.

The Yogyakarta Principles provide a universal guide to human rights which affirms binding international legal standards to which all States must comply. Principle 12: The Right to Work compels States to *“take all necessary legislative, administrative and other measures to eliminate and prohibit discrimination on the basis of sexual orientation and gender identity in public and private employment.”*

What the Commission has done

Participants in the Commission’s National Conversation about Work raised a number of discrimination issues based on sexual orientation. Gay and lesbian workers said that it was important that employers did not focus on being gay but on ensuring that the workplace is inclusive and that it is “OK to be who you are, no matter what.”

In 2006 the Commission launched the world’s first inquiry by a national human rights institution into discrimination experienced by transgender people. The inquiry found transgender people experience significant difficulties finding employment and more often than not are discriminated against.

The Commission has also been working on inclusion of Census questions to help identify GLBTI numbers in New Zealand. Currently the omission of a question on sexual orientation in the Census means there are no statistics on the number of GLBTI people in New Zealand, which results in (i) invisibility; and (ii) lack of consideration in policy making. Information provided by Statistics NZ shows that Census data is considered an integral part of policy making and funding decisions.

Employer support networks

The New Zealand Defence Force (NZDF) is taking steps to be more inclusive of its gay personnel. A Defence Force Gay and Lesbian Information Service (DEFGLIS NZ) will act as a sounding board, advice group and social network for regular, reserve and civilian members of the corps. The New Zealand Navy announced gay-friendly policies in 1998, issuing pink triangle stickers to indicate safe places for gay navy personnel.

Police Diversity Liaison Officers (DLOs) contribute towards an inclusive work environment for gay police employees within the New Zealand Police and provide advice and support to colleagues on GLBTI communities, and sexual orientation and gender identity in general.

In the private sector, large corporates such as IBM have strong support networks for employees.

Future action

The inclusion of a question on sexual orientation should be trialled by Statistics New Zealand with a view to its inclusion in the 2016 Census.

Older workers

Global context

The global ageing demographic is challenging both developed and developing nations. The number of people worldwide aged 60 and older is expected to triple by 2050, according to projections by the United Nations (UN) Population Division. This demographic shift presents opportunities to capitalise on the talent and skills of older people but also create challenges in maintaining financial security.

Human resource strategies, including equal employment opportunities can help reduce discrimination for older workers and help older workers remain employable and productive. However, new thinking is required on what flexible work means for older workers, performance management issues, and how employers develop new ways of talking with older staff about retirement intentions, retention and succession planning.

Flexible work for example may include reorganising hours or negotiating additional leave to give greater choices, so that older workers can be retained in sustainable work.¹¹¹ When managing the performance of older workers care is needed to focus on actual performance and not be influenced by assumptions or stereotypes related to age, which risks complaints about age discrimination.¹¹² Employers should be careful not to use retirement as a substitute for managing poor performance. Employers are also encouraged to have regular conversations with all employees about the future so that the needs of both parties can be met. Retirement planning, including succession planning should begin well before older workers retire.

The ILO's latest *Equality at work* report notes policies at the national and enterprise level can complement legislation and play a major role in addressing older worker issues. A number of countries including Australia, Finland, Netherlands, Norway and the United Kingdom (UK), have conducted large-scale government sponsored information campaigns aimed at overcoming employer reluctance to hire and retain older workers. For example in the UK Age Positive campaigns seek to promote and raise awareness of the benefits of an age-diverse workforce through research and publications, the media, special events, awards and its own website.¹¹³

New Zealand Context

New Zealand, like many other Western countries, has an ageing population and increasingly older people are staying in the workforce. Internationally, New Zealand has one of the highest rates of participation of older workers (55 years and over) in the OECD at 44.1% for the year to June 2010.

Commentators predict the need for older workers as the population ages and not enough young people join the workforce. The March 2011 Household Labour Force Survey shows 18.3% of people aged 65 and over are still in work.

The ageing workforce will impact some sectors more than others. Manufacturing, transport, education, health and community services currently have a relatively high share of older workers. These sectors will need to find new ways of retaining workers including a focus on the health of older workers.

¹¹¹ <http://www.neon.org.nz/eeogroups/valuingexperience>

¹¹² *ibid*

¹¹³ *Equality at work: The continuing challenge*. International Labour Organisation. Geneva. 2011

Internationally, research shows that many people prefer to transition out of work, rather than to abruptly end work in favour of retirement, at the age of eligibility. Businesses are responding by introducing phased retirement. A union secretary said the real question about older workers was “how to let people step down and maintain dignity.”

The New Zealand Retirement Commissioner and the OECD have advised Government to raise the age of superannuation. However, there is concern about the additional strain this will place on older people who must now remain in employment to maintain an adequate standard of living.

Employment-related age complaints

Almost 10 percent of complaints to the Commission in 2010 related to age. Of these, most related to employment or pre-employment, where an older person was overlooked for work in preference for a younger person. Retirement complaints largely involved older workers claiming pressure to retire by their employers.

A recent complaint to the Commission came from an older worker who was referred for a short-term fruit picking job by an agency. When he arrived to work, he was told he was not needed, but two other (younger) people with him were hired. The man suspected it was because he was at least 20 years older than the other two workers. This turned out to be the case, as the employer told the man he needed fit people for demanding work. The man felt humiliated because hard labour had been his life’s work. The employer agreed after mediation to a two-week trial for the complainant. The man was hired for the season after that.

National Conversation about Work

Almost every industry sector that participated in the Commission’s National Conversation about Work identified the ageing workforce as a looming issue. However, the Commission has seen little evidence of systemic approaches being taken in response. A manager at a Feilding meat processing plant said “we’re very aware of the issue and there is increasing understanding that it is a problem, but we’ve had less success in the industry in deciding what to do about it.”

The ageing labour market is a serious future concern for many regions in New Zealand. Venture Taranaki experts believe that labour force succession planning is not sufficiently sophisticated enough to tackle the ageing demographics of the labour market. The ageing workforce means that there is a “black hole” between the current generation (of apprentices) and the baby boomer retirees who are “tired” of working.

The Commission learned that in some sectors, manual jobs, shift work and long hours are onerous on employees and some mature workers suffered from burnout and stress and “would come to a point when they would vote with their feet and retire.” In one workplace employees talked about staff that had retired and had then been re-hired on more casual conditions of work because their skills and experience could not be replaced. Many were concerned with a lack of future prospective employees to fill gaps left by retiring older workers. In heavy industry workplaces, employees thought that older workers who “had been in the game for some time, would not be around for too much longer.”

A female participant at a Positive Ageing Council meeting said that the first generation of older women who had been in paid employment for much of their careers would soon be preparing to retire. Many would have the same issues around their self esteem being bound up with work that confront many men as they faced exiting from the workforce. Employers would have to think very carefully about whether they could afford large numbers of baby boomers to slip quietly into retirement.

The perennial issue of employers' stereotypical attitudes to older workers without acknowledgement of the maturity, experience, institutional knowledge and mentoring potential that they bring to the labour market was identified by several participants. However, in general businesses have a positive attitude towards older workers, although pockets of bias towards older workers exist.

Many older people were still actively engaged in the workforce well past traditional notions of retirement age. Innovative work practices that meet the needs of both the business and the employees are enabling organisations to retain older workers longer. Some strategies to retain ageing workers were being considered, such as flexible work arrangements and mentoring schemes using retired or semi-retired business people.

"Mentoring can be critical in helping to retain institutional knowledge through strong relationships." The New Zealand Refining Company at Marsden Point recognises that older members of the workforce represent a valuable resource of knowledge and experience which could potentially be lost as these employees leave the company's service.

The refinery's Mentors' Scheme aims to link younger employees in the company with the years of knowledge and experience held by its long-serving retiring employees. It offers retiring employees the opportunity to voluntarily play a role in developing the company's current employees.

Refinery mentors provide mentoring, practical support and skills development to new and/or inexperienced employees, in technical areas where the passing on of practical knowledge and experience has the potential to add significant value and/or accelerate the development of essential skills.

Too few businesses have implemented practices to capture institutional knowledge or to transfer the knowledge of older workers to younger workers. It is assumed that 'people pass things along' but the amount of information that people personally hold is underestimated by most businesses. The rapidly ageing workforce requires that active retention of institutional knowledge is required to ensure business sustainability.

Loss of institutional knowledge is a looming crisis faced by small business owners looking to exit. In Dunedin, the "Beyond Business Succession Planning Service" aims to maximise the economic impact of business succession. Beyond Business provides an impartial mentoring service to help business owners tackle the issue of succession and retaining valuable business knowledge.

What the Commission and others have done

The Commission along with the Retirement Commission produced *Valuing Experience*¹¹⁴ a practical guide to recruiting and retaining older workers in 2008. Other publications by the Council of Trade Unions and the EEO Trust also address the issue of older workers.

In 2011, the Ministry of Social Development released *The Business of Ageing: Realising the Economic Potential of Older People in New Zealand: 2011 – 2051*. Findings from the report show among other things that: more older people will participate in the workforce; the economic value of older people's paid and unpaid work will increase; older people's contribution to tax revenue will increase; and the mature consumer market will become more important.

Future action

The Commission urges that Government adopt a “joined up” approach to developing a national programme on managing ageing workforce issues including:

- Models of labour market participation for older workers
- Approaches to transition,
- Succession strategies for small-business owners, and
- Promotion and protection of workers rights.
- Government should evaluate the impact of large scale, government-sponsored information campaigns run in Australia and the United Kingdom to overcome employer reluctance to hire and retain older workers.



¹¹⁴<http://www.neon.org.nz/eeogroups/valuingexperience>

Appendices

- Right to work
- Review of Framework of the Future
- Check list for employees
- Check list for employers

The right to work

International instruments

The right to work is a fundamental human right, strongly established in international law and firmly rooted in the foundation of universal human rights. New Zealand has in the past 60 years played an important and effective role in calling for stronger commitment to human rights.

New Zealand has ratified the majority of the international conventions that relate to the right to work.

International instruments such as core labour standards set by the International Labour Organisation (ILO) and United Nations (UN) Conventions are one way in which employment rights are universally realised.

The Convention on the Rights of Persons with Disabilities (CRPD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (UNCROC), the Declaration on the Rights of Indigenous Peoples (UNDRIP) and the International Convention on the Elimination of All forms of Racial Discrimination (CERD) set out the employment rights specific to each of these constituent groups.

Core ILO standards

International labour standards are primarily tools for governments which, in consultation with employers and workers, seek to draft and implement labour law and social policy in line with internationally accepted standards.

New Zealand has ratified six of the eight fundamental ILO Conventions, including those relating to equal pay, child labour, collective bargaining and banning discrimination. It has yet to ratify the conventions on Freedom of Association and Protection of the Right to Organise (C87) and Minimum Age (C138).

In June 2011 the New Zealand government voted in favour of adopting international standards aimed at improving the working conditions of tens of millions of domestic workers worldwide. The new ILO standard sets out that domestic workers around the world who care for families and households, must have the same basic labour rights as those available to other workers: reasonable hours of work, weekly rest of at least 24 consecutive hours, a limit on in-kind payment, clear information on terms and conditions of employment, as well as respect for fundamental principles and rights at work including freedom of association and the right to collective bargaining.

The ILO also assists countries to implement “decent work” agendas at national level. The ILO suggests that national specialised bodies be set up to assist individuals with the right to work, and that specific legal provision on non-discrimination and equality in the workplace be implemented. It also suggests that governments establish new approaches such as active labour market policies – to close the gender pay gap.

International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights (ICESCR) contains the most comprehensive provisions on the right to work. In Articles 6-8, the Covenant defines the core elements of the right to work.

Equal employment opportunities are specifically referenced in ICESCR Article 7(c), which states that everyone has equal opportunity to be promoted, subject to no considerations other than those of seniority and competence.

The Covenant further states that everyone has the right to the enjoyment of just and favourable conditions of work which ensure in particular fair wages and equal remuneration for work of equal value without distinction of any kind. Specifically, women should be guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.

It also allows for safe and healthy working conditions, including rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays; and the right of everyone to form trade unions and join the trade union of their choice.

The Covenant can be found at <http://www2.ohchr.org/english/law/cescr.htm#art7>.

Convention on the Rights of Persons with Disabilities

The Convention on the Rights of Persons with Disabilities (CRPD) is the most modern application of the right to work, and outlines a number of key areas governing employment for disabled people. The New Zealand Government ratified the CRPD in 2008.

The CRPD recognises the right of disabled people to work on an equal basis with others. It affirms that State parties have the responsibility to safeguard and promote the realisation of the right to work by taking appropriate steps, for example through legislation.

Article 27 of the CRPD relates to work and employment and states that disabled people have “the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to people with disabilities”.

Furthermore the CRPD states that disabled people should be employed in the public sector; that the private sector should actively promote the employment of disabled people including through affirmative-action programmes, incentives and other measures; and that reasonable accommodation should be provided to disabled people in the workplace.

The Convention can be found at <http://www2.ohchr.org/english/law/disabilities-convention.htm#27>.

Convention on the Elimination of all forms of Discrimination Against Women

The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) states women have the right to equal pay for work of equal value, the same employment opportunities as men, and protection from dismissal because of pregnancy. New Zealand ratified CEDAW in 1985.

Article 11 of CEDAW provides the most explicit reference to women’s participation in employment. The Convention says States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a

basis of equality of men and women, the same rights, in particular the right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training.

In addition the Convention states that women have the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work.

In 2007, the CEDAW Committee recommended that New Zealand enact comprehensive laws guaranteeing women's substantive equality at work with men in both the public and private sectors.

The Committee further recommended that New Zealand include adequate sanctions for any acts of discrimination against women, and ensure that effective remedies are available to women whose rights have been violated. Concerns about private sector practices relating to gender equality were also raised by the Committee. Currently, there is no compulsion such as the 'good employer' obligation for the public sector imposed on the private sector in New Zealand.

The Convention can be referenced at <http://www2.ohchr.org/english/law/cedaw.htm>.

Convention on the Rights of the Child

The Convention on the Rights of the Child (UNCROC) ensures that children have the right to a minimum working age, regulation of hours of employment, and protection from workplace exploitation. New Zealand has ratified UNCROC, but with reservations, one of which is reserving the right not to legislate further or take additional measures as may be envisaged by Article 32(2), which relates to child employment.

Article 32 recognises the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. It also says that States Parties should provide for a minimum age or minimum ages for admission to employment; and provide for appropriate regulation of the hours and conditions of employment. The Convention can be found at <http://www2.ohchr.org/english/law/crc.htm#art32>.

Declaration on the Rights of Indigenous Peoples

The Declaration on the Rights of Indigenous Peoples (UNDRIP or 'the Declaration') was adopted by the General Assembly of the United Nations in 2007. Though New Zealand initially voted against the Declaration, in 2010 the Government revised its position and now supports it.

Article 17 specifically states that indigenous peoples have the right not to be discriminated against in matters connected with employment. Under the Declaration indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining.

The Declaration also protects indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

The full Declaration can be found at <http://www2.ohchr.org/english/issues/indigenous/declaration.htm>.

International Convention on the Elimination of all forms of Racial Discrimination

The International Convention on the Elimination of all forms of Racial Discrimination (CERD) mirrors the general principles of other international instruments in relation to non-discrimination in employment.

Article 5(e) of the CERD relates to employment and in particular states people have the right to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration, and the right to form and join a trade union.

The Convention can be found at <http://www2.ohchr.org/english/law/cerd.htm#art5>

What the Commission has done

The Commission actively supports the development of international human rights law, labour standards and United Nations Conventions that relate to equal employment opportunities. The Commission has become more involved in the Treaty reporting process, monitoring the outcomes and integrating them into its work.

For example, the Commission's fourth New Zealand Census of Women's participation considers the progress of women's participation in relation to its CEDAW obligations. Other major conventions the Commission reports on include UPR, CERD, CRPD and ICESCR.

The Commission has consistently urged ratification of the two core ILO standards: 87 – Freedom of Association and Protection of the Right to Organise and 138 – Minimum Age.

The Commission supports an ILO standard for domestic workers.

Review of Framework for the Future

Framework for the Future was described as the long answer to the question “How is New Zealand doing on EEO?” At the time (2003) there was little way of knowing anything comprehensive about EEO progress and few ideas about how to measure progress.

Framework for the Future, published in 2004, provided a benchmark by which the Commission could monitor progress on EEO, assessed progress to date and made a number of recommendations that provided practical steps to improve equal employment opportunities.

The recommendations are listed in the following table and progress is detailed. This analysis considers both the Human Rights Commission’s work and state and private sector agencies responsible for protecting, promoting and implementing EEO.

Recommendations	Progress
<i>Towards Major Policy Change</i>	
1: EEO advocates should work towards the introduction of legislation that places strong positive duties on all employers, starting with large organisations, to develop and implement EEO plans, and regularly report on the outcomes.	Progress on the legislative and policy framework for EEO is considered as a whole, rather than recommendation by recommendation. Progress has been mixed. The seven years 2004–2010 includes a period when the labour market was strong, followed by a recession which saw rising unemployment. This period also covers a change of government. From 2004 when the <i>Framework for the Future</i> was published, the following advances have been made in the policy and legislative field:
2: Future EEO legislative initiatives, policy development, and implementation activities should be preceded by reflection on how best to reconcile EEO as a philosophy and practice with the Treaty of Waitangi.	
3: Any new legislative initiatives should be supported with the use of incentives to encourage positive changes and to discourage lack of action on the part of employers.	<u>Legislation</u> The following legislation has been passed: <ul style="list-style-type: none"> • The right to request flexible work • Rest breaks and breast-feeding breaks • Extension of paid parental leave • Four weeks annual leave • Abolition of youth rates • Repeal of Disabled Person’s Employment Promotion Act.
4: Incentives-based models to promote EEO should be tested and refined in the public service, as part of a renewed commitment to EEO in the state sector. Urgent attention should be given to greater promotion of EEO in the health and education sectors.	However, there is still no legislation requiring a positive duty to provide equal employment opportunities in the private sector or for equal pay for work of equal value. Changes to the rest break legislation have been made.

5: Efforts to compel private companies to establish EEO initiatives should ensure that the business benefits outweigh any compliance costs. New Zealand-based evidence should be developed to support the business case for widespread adoption of EEO initiatives.

6: Any agency established to monitor EEO efforts should have sufficient resources to closely analyse EEO practices as well as the power to sanction bad practice and reward good practice. It should also have sufficient resources to track changing outcomes, assess and report on best practices, and work with organisations to help them achieve positive EEO outcomes.

Legislation enabling the buy-back of one week of annual leave has been passed.

Policy

Pay and employment equity in the public service.

The Pay and Employment Equity Unit has been disestablished.

Business New Zealand supported work on work–life balance in the accountancy sector.

A number of initiatives have been developed to promote the participation of women on private sector boards (Global Women, Agri-Women’s Development Trust, Ministry of Pacific Island Affairs and the continued development of the nominations service of the Ministry of Women’s Affairs).

The Human Rights Commission and the EEO Trust continue to be funded by government to promote, research and monitor progress on EEO. However, the power to sanction bad practice is limited.

The Human Rights Commission has established a biennial census of women’s participation *New Zealand Census of Women’s Participation* which benchmarks progress on women in leadership positions in public and political life.

What next: the National Conversation about Work, a report on EEO issues raised by employers, employees and community groups across the country was published in 2010.

The *Review of Human Rights in New Zealand 2010* includes references to inequality at work specifically in the chapter on the right to work, but also in various other chapters discussing the rights of specific groups and economic, social and political rights.

The Human Rights Commission has also reported to a number of International Treaty bodies on, among other issues, employment opportunities. They include the International Covenant on Civil and Political Rights, Universal Periodic Review and work is proceeding on reports on Convention on the Elimination of Discrimination Against Women and the CRPD.

Building on Current Strengths	
7: Actions by private interests to promote EEO should be encouraged. Branding and other innovative practices would allow organisations that exemplify EEO good practice to publicise their initiatives and advance their reputation among consumers and potential employees.	Since 2004 work-life balance (WLB) and flexible work practices was becoming a workplace norm not just for parents but for all workers. The SSC published a guide on WLB, the Department of Labour was actively promoting WLB practices and the EEO Trust continues to promote WLB via the highly regarded Work-Life Balance awards. There are fears that the recession will have a negative impact on WLB because workers are reluctant to seek flexible working arrangement in an environment of job insecurity and employers are becoming more conservative because businesses are more precarious.
8: The relationship between the Human Rights Commission and the EEO Trust should be assessed with an eye towards strengthening it. Future joint efforts between the two organisations could involve (1) building capacity for research and analysis, (2) sponsoring original research, and (3) improving information dissemination.	The EEO Trust and the Human Rights Commission in partnership developed the NEON website. Other joint ventures have included the visit of Dr Susan Vinnicombe, a leading researcher on diversity in state and private sector boards, and the launch of the forum “A Place at the Table”, aimed at promoting diversity in the boardroom.
9: EEO advocates should jointly explore with educators ways to improve the education outcomes of those who have been traditionally disadvantaged both in the education system and the labour force. For example, the Human Rights Commission could work with the Tertiary Education Commission to forge strategies to promote greater representation of women, disabled people, and racial and ethnic minorities across a range of training programmes.	The eight Vice Chancellors of New Zealand universities agreed to fund a five-year trial Women in Leadership programme to assist women progress in academic life. Increased participation of women in senior academic roles is recorded in the Census of Women’s Participation, albeit off a low base. The Human Rights Commission continues to work with schools in partnership with Amnesty International, the Children’s Commissioner, the Development Resource Centre and the Peace Foundation in the Human Rights in Education program.
11: Public and private organisations should engage in coordinated efforts to promote greater public awareness of EEO as a philosophy and practice. These should include (1) utilising best practice examples and (2) developing guidelines for small businesses.	Labour Minister Margaret Wilson set up the Taskforce for Pay and Employment Equity (PAEE) and Minister Ruth Dyson opened the PAEE unit in the Department of Labour, which oversaw PAEE reviews across the state sector and developed PAEE tools and conducted research. When the unit was disbanded Minister Pansy Wong oversaw additional funding to the Ministry of Women’s Affairs to conduct research on causes of the gender pay gap. Minister Tariana Turia has been instrumental in advances such as the ratification of the Convention on the Rights of People with Disabilities and the formation of the EDN.

12: New efforts should be made to ensure that public service departments exhibit exemplary EEO practice. These could be supported by new leadership, more resources, strong incentives for chief executives, the development of effective EEO training programmes for senior managers, and more comprehensive research and monitoring activities.

The Human Rights Commission, the EEO Trust, the Department of Labour, the Ministry of Women’s Affairs and EDN among others have publicised best-practice examples through a range of both print and electronic publications and awards.

The Human Rights Commission publication *Getting a Job: pre-employment guidelines (the A-Z)* have been designed to be a handy reference tool for businesses. 12,000 copies have been distributed to date and is available from the NEON website. However, there is not a broad norm of EEO best practice across the public and private sectors.

13: Efforts should be made to develop a strong, diverse EEO advocacy coalition. Members should focus on achieving social change, and should keep in close touch through on-going small conferences and task forces designed to explore EEO issues of specific interest to the New Zealand workplace.

While there is somewhat better reporting of EEO indices in the public service, outcome data is showing that EEO progress is either static or declined. The lack of attention to data collection in order to monitor the employment of disabled people in the public service is of particular concern. The Human Resource Capability Survey of the Public Service conducted by the SSC has not collected disability data since 2005.

14: Support should be given to the on-going production of evidence-based research and the provision of statistical analysis relevant to the pursuit of EEO in New Zealand. Efforts should also be made to develop a website-based facility where researchers can freely access datasets and other statistical sources relevant to EEO research.

The Human Rights Commission in partnership with the EEO Trust have developed NEON www.neon.org.nz, the premium EEO website in New Zealand.

The EEO Trust has developed an EEO practitioners network that meets regularly in main centres.

Members from the EEO public service practitioners’ network which was run jointly by SSC and HRC, have now joined the EEO Trust network.

Data disaggregated for vulnerable groups in the labour market has improved, but needs further refinement to enable statistical analysis of cross-sectional issues: for example the effect of gender and ethnicity.

Data on labour market participation and other EEO indices of disabled people remains very sketchy. For example, the SSC no longer includes disability data as outlined above. Disability is not included in the quarterly Household Labour Force Survey.

Check-list for Employees

Getting a job

Getting a job is a life-affirming experience. Meaningful work allows us to maximise our potential and provides us with financial and greater personal security.

Making sure you get a decent job, with a 'good employer' is critical to ensuring on-the-job satisfaction, high levels of productivity and an enjoyable employment experience. There are simple steps you can follow that make this more likely.

They are:

1. Know your rights
2. Learn about the organisation
3. Prepare your interview questions
4. Know where to get help.

Know your rights

As an employee you have legal rights and responsibilities. You should be familiar with them! Here's a quick summary of the important information when you are looking for a job.

You have to deal in 'Good Faith'

Each party must deal with the other in good faith which at the most basic level means telling the truth, with each party being able to have trust and confidence in the other. Good faith is not about always saying 'yes' and it does not mean the two sides have to agree, but both parties should get a fair hearing.

You have the opportunity to seek advice

Prior to employment, employees should get a copy of the proposed agreement and should be allowed a fair and reasonable time to take the agreement away, study it and to seek advice. Your prospective employer should also allow you the opportunity to negotiate the terms of the agreement – although the employer does not have to change the offer, the employer has to listen as part of good faith. From 1 April 2011 all employers will be able to employ new employees on a trial period of up to 90 calendar days. Advice is available from the Department of Labour.

You must be provided with a written employment agreement

All new employees must have a written employment agreement. This includes all casual staff. All agreements are required to contain:

- The name of the employer and employee
- A description of the work to be performed
- An indication of where the work is to be performed
- An indication of the hours of work
- Details of any intended 90 day trial period
- Wages or salary to be paid
- A plain-language explanation of how employment problems will be resolved.

If a prospective employer refuses to provide this, it is a good sign that it is the wrong job for you!

90 day trial period

From 1 April 2011 all employers will be able to employ new employees on a trial period of up to 90 calendar days. There are a couple of important things to note about trial provisions:

- A trial provision is different to a probationary arrangement. A worker that is on probation may have their performance monitored by their employer – but the employer must follow a performance management process if it wishes to dismiss the employee (i.e. the worker must be told about any concerns with their performance, and must be given an opportunity to improve).
- Agreeing to a trial provision doesn't necessarily mean that your employment will be terminated. A Department of Labour survey in 2010 found that 74% of all employees kept their employment beyond their trial period.

In order to rely upon a trial provision an employer is required to comply with the following requirements:

- The trial provision must be in writing, and must be part of the employment agreement.
- The agreement must be entered into before the employee starts work. Practically, this means that the agreement (with the trial provision) must be signed before the employee actually starts work.
- The trial provision must inform the employee that they could be dismissed within a certain time period (up to 90 days) and that time period must start on the person's first day of work.
- The trial provision must inform for the employee that they will not be able to bring a personal grievance against the employer if their employment is terminated on the basis of the trial provision.
- A trial provision may only be applied to a new employee. An existing worker may not be asked to agree to a trial provision.

If you are offered a job, you should carefully read your employment agreement before signing it – and before starting work. If you have concerns about agreeing to a trial provision, raise them with your new employer before signing and returning your agreement.

You cannot require your employer to remove a trial provision, but you could do one of the following things:

- You could ask your employer about the reason for including a trial provision – and whether it is needed in your particular case.
- You could suggest, as an alternative, a probationary arrangement. If the employer is concerned to see how you perform in your new job you could suggest that you have regular meetings to discuss your progress – and agree to be performance-managed if required.

In general, the Employment Court has commented that because a trial provision is inherently disadvantageous to an employee's rights, an employer seeking to rely on one must adhere strictly to the requirements of the Act.

Minimum wage

Employees should get at least the minimum wage if they are 16 years of age and over, whether they are a full-time, part-time or casual employee, a home worker, or paid wholly or partly by commission. The minimum wage doesn't apply to people who have an exemption. Employers and employees may agree to terms that are more than the legislative minimum, but may not agree to terms that are less. The current minimum wage is \$13.00 per hour.

Negotiating pay

The key to negotiating your salary is gathering as much information as possible before negotiation begins. Ideally an employer should be transparent with salary information so that job seekers can make informed salary choices at the start. This is likely to lead to greater equality of pay with other comparable roles in the organisation.

Employment legislation

The principal piece of legislation governing industrial relations in New Zealand is the Employment Relations Act 2000 (ERA). This aims to build productive employment relationships founded on the principle of 'good faith', address the inequality of power in employment relationships, support collective bargaining, ensure individual choice in employment, and promote mediation. The ERA also contains protections against unjustifiable dismissal or disadvantage.

The Human Rights Act 1993 protects people in New Zealand from discrimination in a number of areas of life, including employment. Discrimination occurs when a person is treated unfairly or less favourably than another person in the same or similar circumstances. The Human Rights Act lists 13 areas and grounds where discrimination is unlawful <http://www.hrc.co.nz/enquiries-and-complaints-guide/what-can-i-complain-about/>.

Learn about the organisation

Deciding whether the organisation you want to work for is a 'good employer' or not may be critical to whether you choose to work there. There are several things employees should consider when making this determination.

- Is there an employment agreement and position description that clearly explains the position as you understand it?
- Have you spoken with previous or current employees who give you confidence in the employer's commitment to his/her people?
- Is there any information in Annual Reports or external material that indicates the employer is a 'good employer'?
- Does the organisation have an EEO policy? Can you view the policy?
- Does the organisation have a sexual harassment policy? Can you view the policy?

If you can answer yes to all these questions, then this organisation may fit with your wants and needs.

Prepare your interview questions

You should prepare for all job interviews and even practice with a family member or friend. Practice promoting your skills and competencies that match the job description. An employer should only ask a jobseeker questions that have relevance to the job advertised. If questions are asked that have no relevance to the job (whether in an interview or on a job application form) then employers may be in breach of the Human Rights Act 1993.

To help both job seekers and employers know their rights and responsibilities in the hiring process the Human Rights Commission has published "Getting a job: an A to Z of pre-employment guidelines". These concise, plain-language guidelines tackle questions commonly asked of the Commission. They can be viewed at <http://www.neon.org.nz/eoissues/Pre-employmentguidelines/>.

All the curly issues are covered, from body piercings and credit checks, to sexual harassment and drug testing.

Where to get help

The Department of Labour's employment relations service provides information and investigates problems to do with employment and workplace health and safety. The website <http://www.dol.govt.nz/er/> has comprehensive information about a number of issues, including:

- Employment conditions
- Minimum legal requirements
- Problem resolution
- Health and safety
- Ways to work better
- Labour market information.

The Commission through its NEON website www.neon.org.nz also provides comprehensive advice and materials about employment. The Council of Trade Unions (CTU) www.nzctu.org.nz has a 'Know your rights' section on their website to assist job seekers.

Plain English versions of *Work and your rights in New Zealand* and an *Individual Employment Agreement* are available from www.peoplefirst.org.nz

Check-list

Job seekers should ensure they:

- ✓ Know their employment rights
- ✓ Learn as much as they can about the organisation and its reputation as a 'good employer'
- ✓ Ask if the organisation has an EEO policy and ask to see it
- ✓ Scrutinise other human resources policies, including those for sexual harassment
- ✓ Speak to current or former employees about the organisation's culture
- ✓ Know where to get more information.



Check-list for Employers

Being a Good Employer

The 'good employer' is a term used in legislation relating to the public sector in New Zealand, imposing legal obligations on chief executives relating to equal employment opportunities.

A 'good employer' is an organisation that provides and supports an environment where employees feel valued and respected, where difference is celebrated and diversity encouraged, where there is active staff engagement, transparency in policies and procedures, clear complaints procedures, and regular feedback.

The 'good employer' makes maximum use of skills and strengths of all staff but has special regard for those groups most commonly overlooked – Māori, women, ethnic or minority groups, and disabled people.

There are many different paths to more equal employment opportunities. The following six-step methodology can be adapted by organisations of any size, to suit their existing data collection methods, structures and ways of doing business. It relies on excellent analysis of the issues, identification of what is working well, and areas where improvement is needed. This cannot be done without consulting staff and their representatives. They are the ones most likely to identify issues that need to be addressed, and to highlight what is working well so that the organisation can build on success.

1. Establish and review the workplace profile
2. Analyse the workplace profile and each employment element
3. Prioritise the issues and develop a plan of action
4. Take action to address priority issues
5. Evaluate the effectiveness of those actions and outcomes achieved
6. Plan actions for the future

The Commission has produced extensive guidance and tools to help organisations become good employers and regularly monitors Crown entities' efforts. There are seven key elements that organisations need to concentrate on as they move towards being a 'good employer'. They are:

1. Leadership, Accountability and Culture

Uses diverse networks when recruiting staff; demonstrates leadership and vision that articulates the values of the organisation and the importance of people and diversity; a structure that is supportive and equitable; has managers that are accountable for providing equal employment opportunities for their staff and managing diversity; shows willingness to build engagement processes with employees and their representatives; opportunities for staff to participate in organisational decisions; and a learning culture which recognises and supports the aims and aspirations of all employees.

2. Recruitment, Selection and Induction

Implements an impartial, transparent employment process with no barriers or biases to employing the best person for the job regardless of gender, ethnicity and disability; and provides a comprehensive introduction to the organisation for all employees, setting out the organisation's values and employee opportunities.

3. Employee Development, Promotion and Exit

Provides a learning environment and takes a positive, equitable approach to developing all employees through internal and external training; coaching and mentoring; develops employees in line with organisational and individual requirements; provides equal opportunities for all employees to move up through and out of the organisation in a positive way; and provides performance management practices that are transparent and fair.

4. Flexibility and Work Design

Workplace design and organisation takes account of the need to assist employees to balance work with the rest of their lives and ensures managers relate to employees in a respectful and flexible way, considering the employment requirements of all groups, including parents and other carers.

5. Remuneration, Recognition and Conditions

Has a transparent, fair, gender neutral remuneration system which is regularly reviewed; ensures equitable job opportunities and conditions; and recognises employee contributions.

6. Harassment and Bullying Prevention

Provides a zero-tolerance environment to all forms of harassment and bullying; takes a proactive approach to training managers and staff on their rights and responsibilities; has a specific policy and procedure for dealing with harassment complaints, and acts quickly to address them.

7. Safe and Healthy Environment

Provides a healthy and safe workplace and trains all employees on their rights and responsibilities; creates an environment that supports and encourages employee participation in health and safety; takes a proactive approach to employee health and wellbeing in order to provide physical, cultural and psychological safety; deals with issues in a supportive way; and reduces workplace obstacles to accommodate disabled people.

Check-list

Good employers should ensure they have:

- ✓ Established a workplace profile
- ✓ Analysed workplace data, including from the profile
- ✓ Prioritised issues and developed a plan of action
- ✓ Considered the seven elements of being a good employer
- ✓ Have formalised policies relating to the seven elements
- ✓ Taken action to address priority issues
- ✓ Evaluated the effectiveness of those actions and outcomes achieved
- ✓ Planned actions for the future.



Other resources

The Human Rights Commission has published a number of tool kits and other resources to encourage, promote and monitor EEO. These are available on-line at www.neon.org.nz and include:

- Getting a Job (the A-Z) http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/31-Jul-2008_21-34-42_A-Z_Pre-employment_Guide.pdf.
- Good Employer <http://www.neon.org.nz/crownentitiesadvice/> This includes a quick guide to being a good employer and an on-line tool-kit.
- Pay and Employment Equity <http://www.neon.org.nz/payequitymonitoringtool/> In addition to information about pay and employment equity, a tool to complete a pay and employment equity audit is available.
- Valuing Experience <http://www.neon.org.nz/eeogroups/valuingexperience/> provides information both on older workers' rights and responsibilities and tips for employers.
- Breaking Through <http://www.neon.org.nz/eeogroups/youngpeopleatwork/> advocates for the hiring and retention of young people.
- New Zealand Census of Women's Participation <http://www.neon.org.nz/census2010/> examines the representation of women in governance in the corporate and public sectors as well as in other areas of professional life.
- What Next? The National Conversation about Work represents the views of over 3000 employers and employees working in a wide variety of industry sectors in cities, provinces and rural communities. <http://www.neon.org.nz/nationalconversationaboutwork/>
- Fact sheets relating to
 - Pregnancy http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/19-Oct-2010_12-10-05_RightsPregnantWorker_web.pdf
 - Sexual harassment http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/22-Mar-2010_12-42-50_Sexual_Harassment_ENGLISH.html
 - Racial harassment http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/24-Nov-2009_16-20-38_RacialHarassment-web.pdf



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