

# 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  
NEW ZEALAND HUMAN RIGHTS COMMISSION

# 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](http://www.neon.org.nz).

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

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Moana Eruera, Senior Advisor EEO and Crown Entities [moanae@hrc.co.nz](mailto:moanae@hrc.co.nz) for issues related to youth, Māori and Pacific people and "good employer advice".

A more comprehensive Tracking Equality at Work report is available at [www.neon.org.nz/trackingequalityatwork/](http://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.



# 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.<sup>1</sup>

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 rate<sup>2</sup>

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 participation<sup>3</sup>

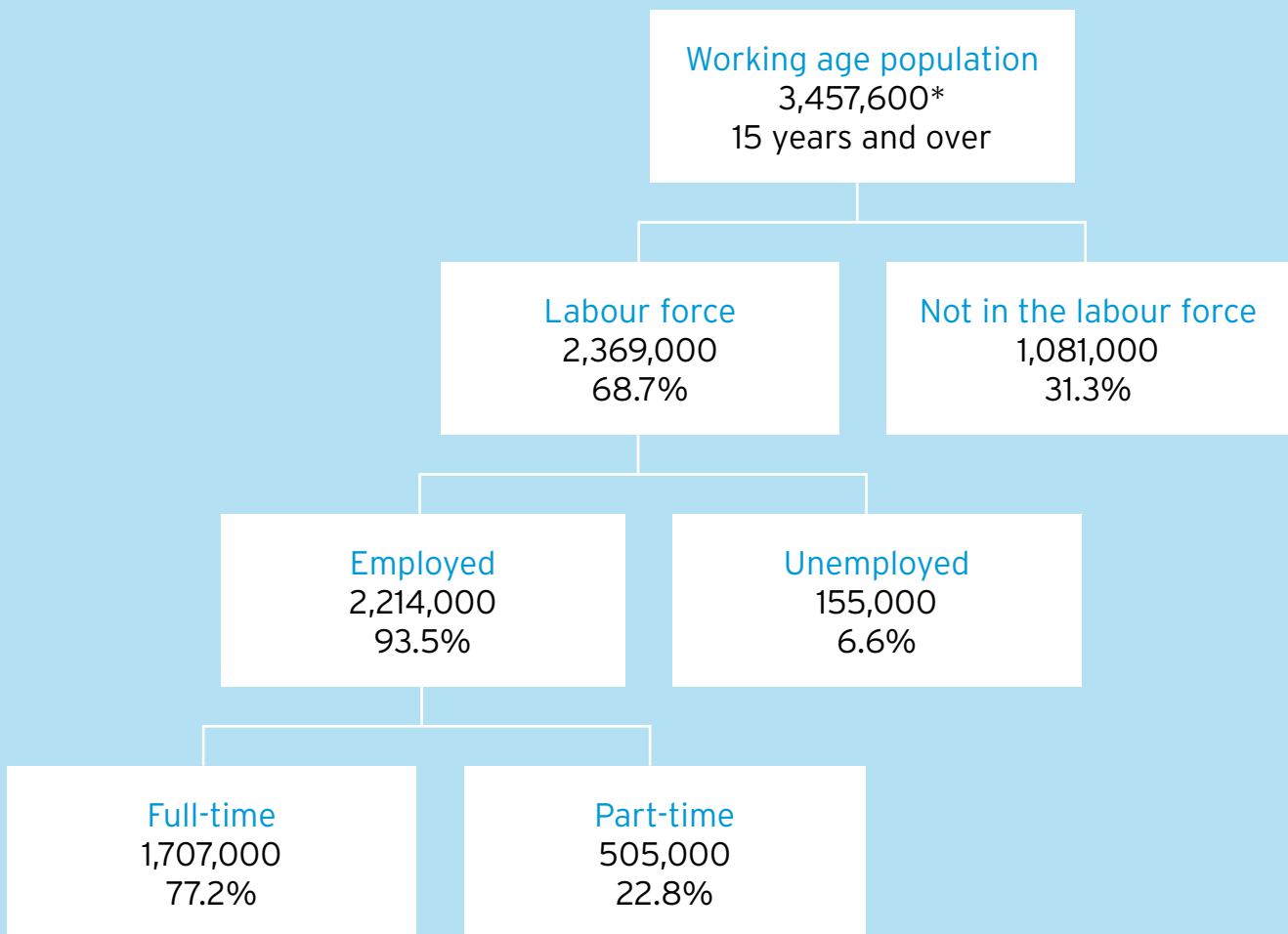
The total labour force is expressed as a percentage of the working-age population. Because New Zealand has no compulsory retirement age and many workers stay in the labour force beyond 65, the figures include those aged 15 years and over with no upper limit. The total labour force is those people who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

<sup>1</sup> 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

<sup>2</sup> Statistics New Zealand Household Labour Force Survey 2010 December quarter Technical notes

<sup>3</sup> Ibid

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



\* Not seasonally adjusted

<sup>4</sup> Reproduced 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.<sup>5</sup> 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.

<sup>5</sup> Regional data separated for age and ethnicity was made available from Statistics New Zealand based on the HLFS 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.

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.<sup>6</sup> 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.

**Table 3 / Participation rate: Under 25 yrs by ethnicity**

REGION	EUROPEAN	MĀORI	PACIFIC PEOPLES	ASIAN/ MELAA <sup>7</sup> /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 <sup>7</sup> /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%

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

<sup>7</sup> Middle Eastern, Latin American and African

**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%

**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%
<b>Total</b>	<b>48.5%</b>	<b>75.9%</b>	<b>17.8%</b>	<b>68.5%</b>

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%
<b>Total</b>	<b>25.5%</b>	<b>11.2%</b>	<b>2.2%</b>	<b>6.6%</b>

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%
<b>Total</b>	<b>48.5%</b>	<b>75.9%</b>	<b>17.8%</b>	<b>68.5%</b>

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%
<b>Total</b>	<b>25.5%</b>	<b>11.2%</b>	<b>2.2%</b>	<b>6.6%</b>

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.”<sup>8</sup>

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%.

### 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%

<sup>8</sup> [http://www.dol.govt.nz/publications/lmr/youth/in-the-labour-market/youth-2009\\_07.asp](http://www.dol.govt.nz/publications/lmr/youth/in-the-labour-market/youth-2009_07.asp)

## 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%
<b>Total</b>	<b>64.3%</b>	<b>92.1%</b>	<b>67.0%</b>	<b>74.9%</b>

**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%
<b>Total</b>	<b>59.8%</b>	<b>74.5%</b>	<b>54.9%</b>	<b>62.5%</b>

**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%
<b>Total</b>	<b>16.6%</b>	<b>4.7%</b>	<b>4.0%</b>	<b>6.4%</b>

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%
<b>Total</b>	<b>17.1%</b>	<b>6.4%</b>	<b>3.1%</b>	<b>6.8%</b>

Table 21 / Median hourly rate<sup>9</sup>

	ALL	FULL-TIME	PART-TIME
Men	\$21.25	\$22.12	\$14.50
Women	\$19.00	\$20.62	\$15.33
<b>Total</b>	<b>\$20.00</b>	<b>\$21.58</b>	<b>\$15.00</b>

Table 22 / Median hourly rate by gender and ethnicity<sup>10</sup>

	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

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

<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup>

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%
<b>Total</b>	<b>62.1%</b>	<b>83.0%</b>	<b>60.7%</b>	<b>68.5%</b>

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%
<b>Total</b>	<b>16.8%</b>	<b>5.5%</b>	<b>3.6%</b>	<b>6.6%</b>

<sup>11</sup> Calculated by multiplying the percentage unemployed by the participation rate.

<sup>12</sup> 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%
<b>Total</b>	<b>11.0%</b>	<b>8.3%</b>	<b>5.2%</b>	<b>3.1%</b>	<b>..S</b>	<b>6.4%</b>

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%
<b>Total</b>	<b>10.1%</b>	<b>8.5%</b>	<b>6.6%</b>	<b>3.7%</b>	<b>..S</b>	<b>6.8%</b>

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%
<b>Total</b>	<b>10.6%</b>	<b>8.4%</b>	<b>5.8%</b>	<b>3.4%</b>	<b>3.4%</b>	<b>6.6%</b>

## 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 employment<sup>13</sup>

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%

<sup>13</sup> [http://www.hrc.co.nz/hrc\\_new/hrc/cms/files/documents/02-Dec-2010\\_15-51-46\\_HRNZ\\_10\\_DisabilityCh5.html](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.

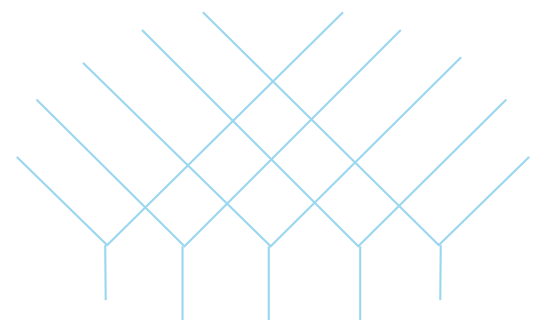
The Human Rights Commission will use these indicators to monitor progress for both national and international reporting purposes. Making progress visible will encourage greater efforts to achieve equality.

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"> <li>Disaggregated unemployment rates from Household Labour Force Survey (HLFS).</li> </ul>	<ul style="list-style-type: none"> <li>Age</li> <li>Sex/Gender</li> <li>Ethnicity</li> <li>Disability</li> <li>Region</li> <li>Sexual Orientation</li> </ul>	<ul style="list-style-type: none"> <li>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</li> </ul>
2 People on benefits long term (more than a year)	<ul style="list-style-type: none"> <li>Disaggregated long term beneficiary data from WINZ</li> </ul>	<ul style="list-style-type: none"> <li>Age</li> <li>Sex/Gender</li> <li>Ethnicity</li> <li>Disability</li> </ul>	<ul style="list-style-type: none"> <li>Aggregated data available from MSD</li> <li>Disaggregated data could be requested</li> </ul>
3 Adequacy of unemployment benefit	<ul style="list-style-type: none"> <li>Ratio of unemployment benefit to median wage as a percentage</li> </ul>	N/A	<ul style="list-style-type: none"> <li>Calculated from HLFS and WINZ data</li> </ul>
4 Underemployment rates	<ul style="list-style-type: none"> <li>Disaggregated data from HLFS</li> </ul>	<ul style="list-style-type: none"> <li>Age</li> <li>Sex/Gender</li> <li>Ethnicity</li> <li>Disability</li> </ul>	<ul style="list-style-type: none"> <li>Stats NZ except for disability data which is collected in the Census disability survey only</li> </ul>
5 Rates of people not engaged in education, employment or training (NEET)	<ul style="list-style-type: none"> <li>Disaggregated data from HLFS</li> </ul>	<ul style="list-style-type: none"> <li>Age</li> <li>Sex/Gender</li> <li>Ethnicity</li> <li>Disability</li> <li>Region</li> </ul>	<ul style="list-style-type: none"> <li>Stats NZ except for disability data which is collected in the Census disability survey only</li> </ul>
6 Complaints about discrimination at job entry	<ul style="list-style-type: none"> <li>Discrimination data from Human Rights Commission (HRC)</li> <li>Survey of Discrimination in NZ</li> </ul>	<ul style="list-style-type: none"> <li>Age</li> <li>Sex/Gender</li> <li>Ethnicity</li> <li>Disability</li> <li>Sexual Orientation</li> <li>Family Status</li> </ul>	<ul style="list-style-type: none"> <li>Data is recorded and analysed by HRC</li> <li>UMR Annual Survey commissioned by HRC</li> </ul>
7 Gender stereotyping in tertiary education courses, industry training and apprenticeships	<ul style="list-style-type: none"> <li>Disaggregated data for Modern Apprentices</li> <li>Disaggregated data for fields of study at university</li> </ul>	<ul style="list-style-type: none"> <li>Age</li> <li>Sex/Gender</li> <li>Ethnicity</li> </ul>	<ul style="list-style-type: none"> <li>Data available from Tertiary Education Commission (TEC) and Ministry of Education</li> </ul>
8 Uptake of paid parental leave (PPL)	<ul style="list-style-type: none"> <li>Disaggregated data of parents accessing PPL</li> <li>Complaints data from those excluded from PPL</li> </ul>	<ul style="list-style-type: none"> <li>Sex/Gender</li> <li>Employment status</li> </ul>	<ul style="list-style-type: none"> <li>Not published but could be requested from IRD</li> <li>Data is recorded and analysed by HRC</li> </ul>
9 Access to Early Childhood Education (ECE)	<ul style="list-style-type: none"> <li>Waiting times for ECE</li> <li>Affordability of ECE</li> <li>Participation of children in ECE</li> </ul>	<ul style="list-style-type: none"> <li>Ethnicity</li> <li>Region</li> </ul>	<ul style="list-style-type: none"> <li>Data available from TEC and Ministry of Education</li> </ul>
10 Occupational segregation	<ul style="list-style-type: none"> <li>Disaggregated data from occupational classification tables</li> <li>Early childhood teachers</li> <li>Modern Apprenticeships</li> </ul>	<ul style="list-style-type: none"> <li>Sex/Gender</li> <li>Ethnicity</li> </ul>	<ul style="list-style-type: none"> <li>Quarterly Employment Survey (QES) data from Stats NZ</li> <li>Early Childhood Education, Ministry of Education.</li> <li>TEC</li> </ul>



INDICATORS	MEASURE	GROUNDS	DATA AVAILABILITY
11 Labour force participation	<ul style="list-style-type: none"> <li>Disaggregated data from HLFS</li> </ul>	<ul style="list-style-type: none"> <li>Age</li> <li>Sex/Gender</li> <li>Ethnicity</li> <li>Disability</li> <li>Sexual Orientation</li> </ul>	<ul style="list-style-type: none"> <li>Purchased from Stats NZ except for disability data (which is collected in the Census disability survey only).</li> <li>Sexual orientation data is not collected by HLFS or Census</li> </ul>
12 Leadership rates in senior management and governance roles	<ul style="list-style-type: none"> <li>Diversity in senior management roles</li> <li>Diversity on boards</li> </ul>	<ul style="list-style-type: none"> <li>Sex/Gender</li> <li>Ethnicity</li> <li>Disability</li> </ul>	<ul style="list-style-type: none"> <li>SSC data on public service</li> <li>Ministry of Women's Affairs data on public sector boards</li> <li>HRC's Census of Women's Participation for board membership and management in private sector (top listed companies)</li> <li>Disability data is not currently being collected</li> </ul>
13 Gender pay gap	<ul style="list-style-type: none"> <li>Pay gap</li> </ul>	<ul style="list-style-type: none"> <li>Sex/Gender</li> <li>Ethnicity</li> </ul>	<ul style="list-style-type: none"> <li>Stats NZ data across labour force</li> <li>SSC data across the public service</li> </ul>
14 Minimum wage	<ul style="list-style-type: none"> <li>Minimum wage as a percentage of median and mean wage</li> <li>Disaggregated data on minimum wage jobs</li> </ul>	<ul style="list-style-type: none"> <li>Sex/Gender</li> <li>Ethnicity</li> </ul>	<ul style="list-style-type: none"> <li>Annual Review of minimum wage by Department of Labour</li> </ul>
15 Minimum wage exemptions	<ul style="list-style-type: none"> <li>Number of employees receiving minimum wage exemptions</li> </ul>	<ul style="list-style-type: none"> <li>Disability</li> </ul>	<ul style="list-style-type: none"> <li>On request to Department of Labour</li> </ul>
16 Harassment complaints	<ul style="list-style-type: none"> <li>Complaints received by the Human Rights Commission</li> </ul>	<ul style="list-style-type: none"> <li>Age</li> <li>Sex/Gender</li> <li>Ethnicity</li> <li>Disability</li> <li>Sexual orientation</li> </ul>	<ul style="list-style-type: none"> <li>Data is recorded and analysed by the HRC</li> </ul>
17 Discrimination at work complaints	<ul style="list-style-type: none"> <li>Complaints received by the Human Rights Commission</li> </ul>	<ul style="list-style-type: none"> <li>Age</li> <li>Sex/Gender</li> <li>Ethnicity</li> <li>Disability</li> <li>Sexual Orientation</li> <li>Family status</li> </ul>	<ul style="list-style-type: none"> <li>Data is recorded and analysed by the HRC</li> </ul>
18 Flexible work opportunities	<ul style="list-style-type: none"> <li>Quality of working life survey</li> </ul>	<ul style="list-style-type: none"> <li>Age</li> <li>Sex/Gender</li> </ul>	<ul style="list-style-type: none"> <li>Stats NZ 3-yearly survey (Dec 2011 is next due date)</li> </ul>
19 Trade union membership	<ul style="list-style-type: none"> <li>Unionisation rate</li> </ul>	<ul style="list-style-type: none"> <li>Sex/Gender</li> <li>Ethnicity</li> </ul>	<ul style="list-style-type: none"> <li>Dept of Labour Annual Union Membership Return Report</li> </ul>
20 Transparency of pay rates (including starting rates)	<ul style="list-style-type: none"> <li>Company websites include pay bands for each occupational group</li> <li>Companies report starting rates for each occupation</li> </ul>	<ul style="list-style-type: none"> <li>Sex/Gender</li> </ul>	<ul style="list-style-type: none"> <li>Research required, not generally available currently</li> </ul>

# 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.<sup>14</sup> 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".<sup>15</sup>

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.

<sup>14</sup> OECD (2010). *Off to a good start?* Jobs for Youth New Zealand country notes. [www.oecd.org](http://www.oecd.org)

<sup>15</sup> Press Release: ILO August 11, 2010

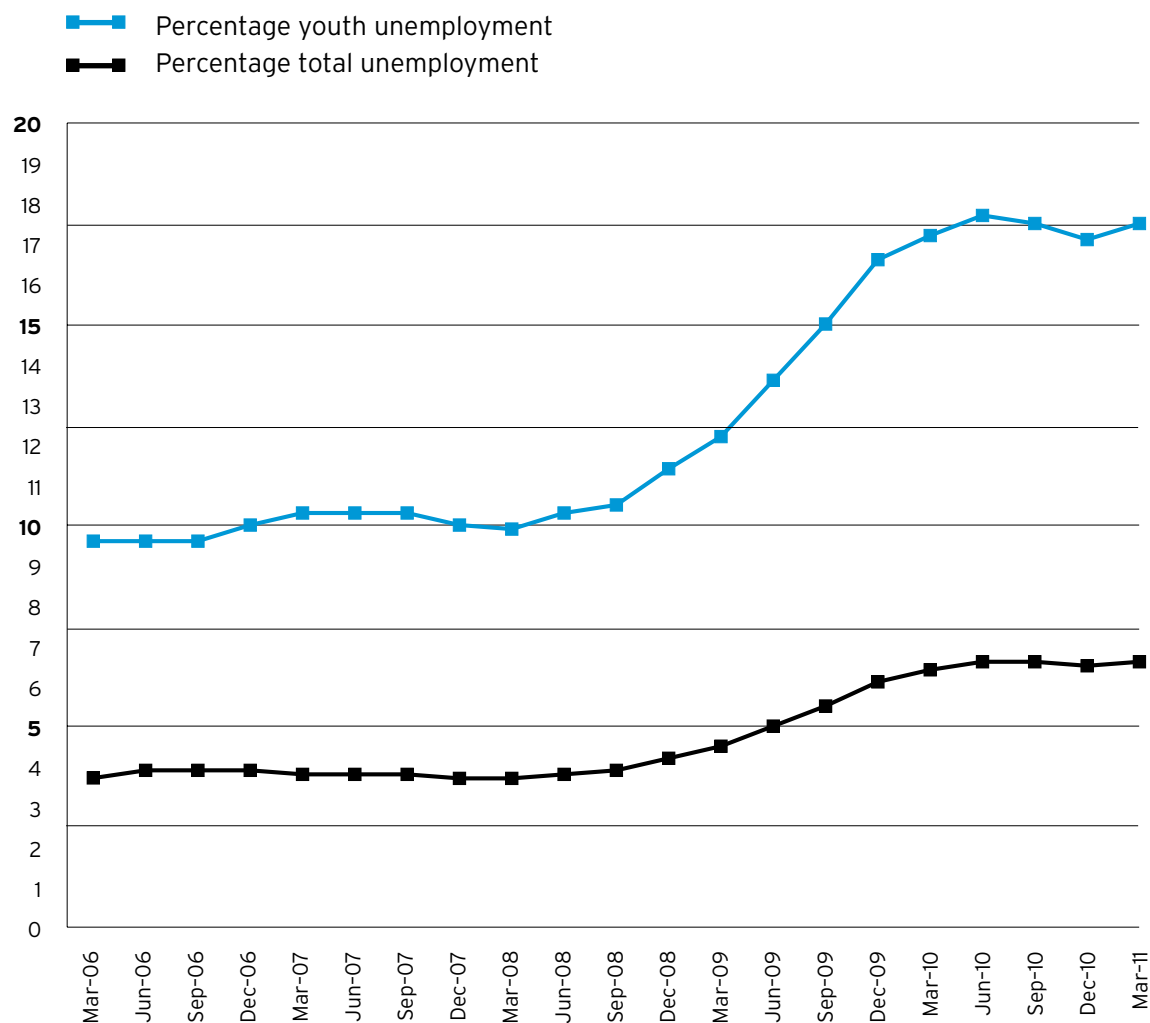
Many who are in employment, especially young women, are often engaged in relatively unskilled or informal and precarious occupations, which is a major waste of human resources, as well as a source of considerable frustration among young people and their families. A New Zealand Institute of Economic Research 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.<sup>16</sup>

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%<sup>17</sup> 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.<sup>18</sup>

Figure 1 / Youth unemployment rates 2006 - 2011



<sup>16</sup> Youth jobless rate soars to 19.4%, The Press. 6 January, 2011

<sup>17</sup> 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.

<sup>18</sup> 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.<sup>19</sup>

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"*.<sup>20</sup> 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 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.

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

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

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.

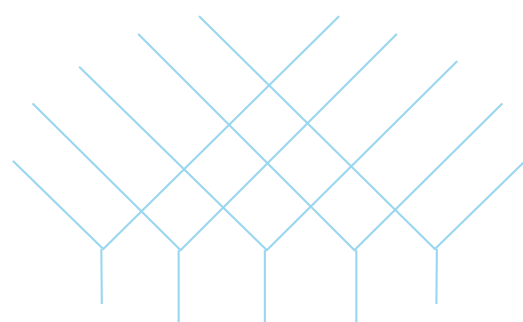
However, many of these operate in isolation to one another underlining the need for a national programmatic approach to youth employment which ensures there is leverage off a broad knowledge base, that there is a way of transferring best practice and innovation, and consistency and continuity when something 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.<sup>21</sup> 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.<sup>22</sup>

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 Fredman<sup>23</sup> 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%.<sup>24</sup> Ten years later the hourly earnings gap remained at about 78%.<sup>25</sup> Since that time the pay gap narrowed unevenly and slowly, then stalled in the last decade.<sup>26</sup> 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.<sup>27</sup> These statistics are averages and disguise considerable differences across occupations as illustrated by the recent *New Zealand Census of Women's Participation*<sup>28</sup> 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 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

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

<sup>22</sup> 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*

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

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

<sup>25</sup> *Equal Pay Study: Phase One* (1987) Department of Labour

<sup>26</sup> [http://www.hrc.co.nz/hrc\\_new/hrc/cms/files/documents/15-Dec-2010\\_12-41-06\\_Chapter\\_13.184-203.pdf](http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/15-Dec-2010_12-41-06_Chapter_13.184-203.pdf)

<sup>27</sup> Statistics New Zealand March 2010 *Quarterly Employment Survey (QES)*

<sup>28</sup> *New Zealand Census of Women's Participation 2010* Human Rights Commission

Labour Organisation noted that “despite phenomenal advances in their educational achievements, women continue to earn, on average, less than men in all countries”.<sup>29</sup> 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.”<sup>30</sup> 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.”<sup>31</sup>

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.”<sup>32</sup> 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*<sup>33</sup>

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 Freedoms<sup>34</sup> 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 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.”<sup>35</sup> 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*

<sup>29</sup> 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

<sup>30</sup> P74 *ibid*

<sup>31</sup> P91 *ibid*

<sup>32</sup> 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)

<sup>33</sup> *Framework for Documenting Equality Rights* (2010) Canadian Human Rights Commission

<sup>34</sup> (Part 1 of the Constitution Act 1982)

<sup>35</sup> Human Rights Law Resource Centre Ltd, (October 2009) Melbourne, Vic, Australia,

*Equality Act* and Workplace Gender Equality Agency with the objects of the Act including pay equity.<sup>36</sup> 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,<sup>37</sup> 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*<sup>38</sup> 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*<sup>39</sup> 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".<sup>40</sup>

The Human Rights Commission project entitled *What Next: National Conversation about Work*<sup>41</sup> and the *Census of Women's Participation*<sup>42</sup> 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

<sup>36</sup> EOWA Reforms: E-List message, 30 March 2011

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

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

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

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

<sup>41</sup> *What Next: National Conversation about Work* (2010) Human Rights Commission

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

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.<sup>43</sup> 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 Standard<sup>44</sup> 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.

<sup>43</sup> Standards New Zealand P8007/2006

<sup>44</sup> *ibid*

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 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 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**

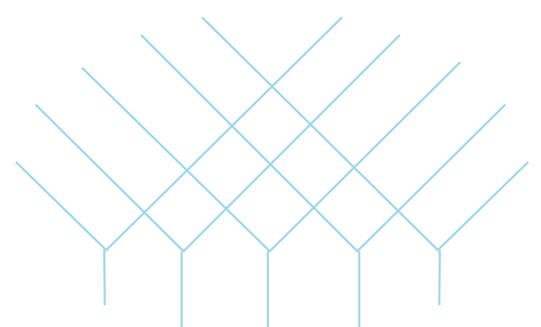
- (1) Every person commits an offence against this Act and is liable on summary conviction to a fine not exceeding \$5000 who, either alone or in combination with any other person or group or body of persons, does any act with the intention of defeating any provision of the Act.
- (2) Every person commits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

