

# **PAY EQUITY AND EQUAL EMPLOYMENT OPPORTUNITY IN NEW ZEALAND – DEVELOPMENTS 2008/2010 AND EVALUATION**

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## **Abstract**

*This is the fourth in a series of LEW papers updating developments relating to pay equity and EEO and evaluating their impact. As with my previous papers, it focuses primarily on gender, but also discusses the overall situation and touches on issues related to ethnicity, age and disability. In the last two years the election of a National Government has led to an even less interventionist climate, with the abolition of the Pay and Employment Equity Unit in the Department of Labour and the cancellation of associated pay equity investigations. This paper will discuss these moves and what remains of the Unit's work and other EEO initiatives. It will also examine recent evidence on discrimination on the basis of ethnicity, age, and disability, as well as reports/recommendations/actions for its elimination – including employer/union attempts to improve opportunity for recent migrants and people with disabilities. The situation for older workers will also be examined, with increasing labour force participation at 65+ observed and encouraged, despite considerable discrimination faced by this group. Finally, the paper will discuss the EEO impacts of the 90 day initial period in which the normal dismissal provisions of employment law are waived and other actual and foreshadowed changes to the law potentially reducing labour market protection.*

## **Introduction**

My conclusion to my LEW paper on the same topic two years ago included: "The picture outlined above of the last two years shows many reports and some progress, albeit slow, in a number of areas. The prospects for the future are of concern at a time of world economic uncertainty and likely increases in unemployment – where low paid and EEO groups are often the first to suffer. The election policies of the parties indicated that those elected to government are largely committed to market solutions, educational progress for all, and enhanced growth to improve the position of these groups rather than more specific policies which Labour led governments delivered, albeit to an increasingly limited extent. Voluntary codes and educational resources are likely to continue to be promoted" (Hyman, 2009, p 231). I forecast the survival of several institutions including the EEO Trust, instituted by the 1990 National Government after it repealed Labour's more interventionist Employment Equity Act, the National Advisory Council on the Employment of Women (NACEW), and the Ministry of Women's Affairs (MWA), and also hoped that the Department of Labour's Pay and Employment Equity Unit (PEEU) would survive. Three out of four was a fair score, and unsurprisingly it was the one about which I was least certain, the PEEU, which was abolished. I also suggested that the prospects for real outcomes from the work were even less rosy with respect to pay equity and dollars for pay increases in caring work under a National led

government than they would have been under Labour. This was accurate, with National's plans to reduce the size of the public service and further free up the labour market. The introduction of 90-day probation periods for new employees was inevitable, with lower paid groups, particularly women, Maori/Pacific/immigrants and people with disabilities the most likely to be affected (for good or ill, with polarised opinion). This paper will outline what has occurred in these areas as well as the voluntary initiatives by these and other institutions to assist less advantaged groups in the labour market.

## **Pay Equity for Women – Equal Value and Equal Opportunity**

Feminist groups have long argued that female dominated work is undervalued by both decision makers and the market and that gender neutral job evaluation tools are needed to assess the value of such work against comparable male dominated occupations, followed by remedial mechanisms. Arguments centred on the market as the only appropriate means of evaluation and on the cost of remedying any undervaluation found to exist have held sway and prevented much progress on the equal pay for work of equal value agenda. However, the arguments have been used with some success in collective bargaining and decision making for some groups including nurses, midwives and primary teachers. Nevertheless, the

gender pay gap has narrowed only very slowly since the major improvement resulting from the extension of equal pay for equal (identical) work legislation to all work in the 1970s (by a National Government), with women moving up job hierarchies and into male dominated jobs having more impact than improving the relative pay of female dominated work. Since the 1980s, Labour led governments have been somewhat more likely to pursue proactive pay equity policies than those led by National, but both are nervous of any major interventions in the market. Labour's short lived 1990 Employment Equity Act, repealed by National the same year, had no time to take effect. Labour's next nine years of leading coalition governments saw a much changed industrial relations system, with national awards and occupation bargaining long gone, giving less opportunity for equal value implementation. Hence government policies focused on jobs financed from the public purse, with the establishment of the PEE Unit to service the activity. Organisations in the core public service, the public health sector, and the public education sector were obliged to conduct pay reviews to check if rewards and participation in the full range of job types and job levels were affected by gender and if there was a difference in men's and women's experiences of respect and fairness. The review process was to include development of a response plan for moving towards gender equity by addressing any issues identified, to include a strategy for implementation, monitoring and evaluation. Most had been completed, together with some in local government and CRIs, by the time a National government was elected late in 2008 and the Unit abolished soon after. The Unit had provided tools and assistance including a Pay and Employment Equity Analysis Tool (PEEAT). The website developed by the Unit,

<http://www.dol.govt.nz/services/PayAndEmploymentEquity/index.asp> remains active and gives a link to order the PEEAT, the Equitable Job Evaluation scheme (EJE), and the Spotlight Skills Recognition Tool (for more details on each of these, see Hyman, 2009), all available free of charge to both public and private sector employers. Overall, reviews had found lower starting salaries for women, barriers to career development, lower performance pay, and pay gaps ranging from 3% to 25%, varying by department and occupation. Women's incomes also tended to be lower in female dominated occupations. Two very useful overview papers on the reviews and the process were prepared by the Unit in its last days. They too are included in the Toolkit available at <http://www.dol.govt.nz/services/PayAndEmploymentEquity/order/Default.aspx>.

With the gap left by the PEEU, the Human Rights Commission in 2010 released a pay and employment equity monitoring framework and questionnaire for organisations to use for self-assessment and monitoring to measure their current performance and progress towards gender equity, concentrating on a few key indicators (Human Rights Commission, 2010a). Designed to permit a quick 'health' check of the gender statistics, policies and practices of an

organisation, and see what adjustments may need to be made, it could be followed by use of the review process. Where reviews have already been conducted, it can assist with scrutiny of key indicators to assess progress since the review and examine the effectiveness or the response plan.

Current government policy in this area is set out as follows at DOL's PEE website above: "Government's overarching policy for employment and workplace relations is based on demonstrating good faith, natural justice, human rights, good employer practice and meeting all statutory requirements. Government policy supports continuing implementation of pay and employment equity response plans, *excluding* (my italics) pay investigations of female-dominated occupations, and recognises the obligations of public sector chief executives to ensure they continue to address and respond to any identified gender inequities as part of good management practice and being a good employer. Government encourages voluntary participation of public and private sector organizations in pay and employment equity projects. The Department of Labour will continue to provide to both public and private sector organisations the pay and employment equity tools and resources including the review tools and the Equitable Job Evaluation System." Hence, organizations should be continuing to implement their response plans but without an internal government organisation to provide an overview of progress. The Human Rights Commission, with a strong EEO role and an Equal Employment Commissioner, Dr Judy McGregor, therefore took on itself a role in monitoring progress in the public sector. Noting that the reviews and response plans were not made public, the Commission asked government departments to report their overall gender pay gap at June 2010, as well as actions taken to address gender disparities in starting salaries, to increase representation of women in management positions, and to implement other recommendations in their response plans. The results are included in the Commission's recent wide-ranging two yearly report on their Census of Women in Professional Life, which has been extended to a number of new areas (Human Rights Commission, 2010b).

The HRC found that the overall gender pay gap in the public service, measured by average earnings, remained the same between 2008 and 2009 at 15.4%. The range of the gender pay gap across government departments was wide, with only one department, the Serious Fraud Office, having a gap in favour of women and with 12 of the 34 departments having gaps over 20%. To put this in dollar terms, the 23.2% pay gap at the Ministry of Economic Development amounts to an average \$19,636 difference in annual pay. Comments on the gender pay gap unsurprisingly focused on occupational segregation effects, with women predominating among the lowest paid staff. Several departments said that they were monitoring starting salaries and determining salaries for roles using gender neutral job sizing. Some went further, with Agriculture and Forestry saying they checked the gender mix on

short-listed applicants, used moderation to ensure internal equity for salaries, and included a decision justification of starting salary in personnel files.

Nevertheless, only 17.6% of public service chief executives are women, a decline from 23% two years earlier, with women also under-represented throughout senior management. The proportion of women in tier 2 and 3 management positions is 37.8%, unchanged in two years, but up from 35.6 % in 2005. Women from ethnic groups other than European are particularly under-represented. Of the women in senior management positions, 10.3% are Maori, 1.5% Asian, 1.5% Pacific and 84.2% European. A number of departmental responses on initiatives to improve the position referred to career development programmes and the identification and development of talent, with specific strategies including identifying barriers, actively supporting talented women and rethinking management roles. On other actions taken, common responses included changes to human resource practices such as revision of the recruitment process, resizing jobs, revising remuneration systems and policies, increased monitoring and reporting, professional development programmes, flexible work practices, and creating a positive work environment. Many individual departmental responses on all the questions are included in the report. Overall while welcoming the wide-range of activities, the report concludes in this area that the “declining percentage of female chief executives and the large number of departments with significant gender pay gaps is unacceptable and requires a whole of government commitment and stronger accountabilities for public service chief executives” (ibid, p 60).

Government’s specific ruling out of pay investigations of female-dominated occupations recommended by reviews, noted above, was of major concern to the organisations which have long fought for equal pay for work of equal value – the investigations would have analysed and compared job content against male dominated work to see whether the work was undervalued. Interestingly, the definition of pay equity on the official website above appears to sanction equal pay for work of equal value, although the reference to market factors dilutes this somewhat: “Pay equity means gender doesn’t affect what people are paid. It means women receive the same pay as men for doing the same work, and for doing work that is different, but of equal value. The value of work is assessed in terms of skills, knowledge, responsibility, effort, and working conditions. Other considerations in setting remuneration can include market factors, productivity and performance.” The first two pay investigations recommended by reviews covered CYFS social workers and special education support workers, the latter a female dominated low paid group working one to one with special needs children part time and without security of tenure. These pay investigations had been completed with the EJE scheme used to make comparisons of the value of the work of SES workers against prison officers and hospital orderlies. The decision, on the grounds of possible unaffordable

remuneration pressure, prevented trade unions from addressing discriminatory pay rates and related issues in pay negotiations with the employing departments and meant probably underpaid female dominated groups bearing the brunt of economic pressures.

With the abolition of the PEEU, MWA was given the responsibility of more gender pay gap work financed by a 12 percent funding increase (\$2 million over four years) from the savings - and attempting to defuse adverse political reaction. The Ministry of Women’s Affairs 2008 Briefing Papers to the incoming government had included a section headed “Legislation is not the answer”. It argued that issues such as the gender pay gap “will not necessarily respond to further legislation or other forms of direct government action (such as requiring gender implications statements on some Cabinet Committee papers). Removing these last barriers that prevent women – and men – from achieving their full potential will require a much more co-operative and lateral thinking approach. For the Ministry it will mean working more closely with other government agencies, with NGOs, with communities and with individuals. It will also mean engaging more with men because men will also benefit from a society that makes the best use of everyone’s talents” (Ministry of Women’s Affairs, 2008). MWA’s approach has thus been to find partners and allies, and act as influencers and catalysts, working with businesses, professions, and the wider sector, which aligns well with the National government’s approach. The four areas of work which are in the programme are:

- Understanding the differences in pay between male and female workers with tertiary education
- Occupational segregation: promoting trades and removing barriers for women
- Career pathways for women in low-paid occupations
- Making the business case for flexible work arrangements

The work to date related to two of these areas is described as follows in the MWA’s annual report to June 2010:

- “undertaking case-study research with the accountancy sector to identify the benefits of good flexible work practices. The study showed that benefits include greater productivity, higher profits, improved customer satisfaction, cost savings and increased efficiency, and the ability to recruit and retain top staff
- working to get more women into traditional trades and to keep them there by developing women in trade networks and working with industry training organisations (ITOs) to promote and support their initiatives
- undertaking analysis of graduate income data (2002–2007), which showed that one year after entering employment the average income gap between men and women with a bachelor’s qualification or above was around 6 percent, and after five years the average income gap had increased to 17 percent” (Ministry of Women’s Affairs, 2010a).

The working paper on graduate incomes was based on IRD data (the Student Loans and Allowances

Integrated data set – the uptake of student loans was between 72% and 82% in that period) and examined 2001 graduates' incomes in 2002 and 2006. Despite limitations, such as very broad divisions for field of study and lack of hours/occupations data, the gap is striking and in line with earlier Vice Chancellors' Committee graduate income reports. Nevertheless, there is a significant premium for women attached to gaining a bachelor's or higher qualification, with income premiums 20 to 47 percent higher after five years (see Ministry of Women's Affairs, 2010b for more detail of the working paper). With women by 2006 constituting 62 percent of all bachelors' graduates and outnumbering men in business, management, sales, marketing, and law, in addition to their ongoing dominance in teaching and nursing, the situation should be changing, but the Ministry's accountancy case study demonstrates the resistance to change in such professions (Ministry of Women's Affairs, 2010c).

This case study research inquired into the nature and prevalence of flexible workplaces and practices and to what degree this was a response to significant challenges, including skills shortages, demographic challenges, an increasing number of women entering the profession, and the need to retain younger people, mainly women, to assist in meeting these challenges. Twelve public practice firms using some form of flexibility were involved, ranging in size from four staff to 900. Although a majority of accountancy staff from graduates to senior managers are now women, a majority of partners and associates are men and "many experienced women 'disappear' long before making the step up to partnership." While the few firms which operated flexibly saw the benefits outlined above and were performing well in financial terms, most had not responded to these challenges or the increasing representation of women in a planned way. Instead, a traditionally male culture predominated, as "accountancy, particularly in the 'Big Four' firms, tends to attract a certain personality type, described variously as 'A Type', 'driven', 'ambitious', and 'Alpha male'. Characteristics of this 'type' included being competitive, driven by money, and enjoying long hours in the office followed by long hours 'networking' over drinks and at sporting fixtures. There was a sense that this culture and type of personality is the norm... One interviewee observed that once women were recruited, there was no interest in hearing about how they'd like to do things differently; they didn't speak up about it; and there was no cultural change in the organisation to take into account that women may do things differently. She noted that male partners could sometimes perceive the way a female staff member chose to do a job as being less effective, simply because it was not how they would have done it... Both male and female participants interviewed across a range of firms were of the view that caring for children and being a partner were mutually exclusive; that, because of the demands of both these jobs, it was not possible to do both... Long hours at partnership and associate level, due to clients' expectations of fast work turnarounds and an

obligation to spend time after hours building client relationships, were constantly cited as key reasons why there were not more women partners... Sharing the profits according to the work brought in so that some partners could take a reduced income in return for reduced hours was not regarded as feasible. And yet in the two medium-sized firms where flexibility was part of the business model, participants stated that the 'educating of clients' or prioritising work flows was paramount to getting clients to accept a different way of working. Small firms also noted it was perfectly possible to educate the client to be less demanding in terms of work turnaround. The two medium-sized firms operating flexibly had partners working flexible hours". In the large firms, "there was little recognition that in losing talented female graduates to partnership they might be losing their most talented employees, with implications for the quality of the partnership and ultimately its profitability. This is not just a gender issue. Younger people indicated that few of them wanted to be partners because of the long hours and the nature of the commitment required" (ibid).

This resistance to change in accountancy is borne out by the HRC Census which reports the numbers of women partners in large firms (Human Rights Commission, 2010b, p 26). The 12 biggest had only 76 women partners out of 598 (12.71%), despite the majority of accountancy staff from graduates to senior managers being women. The proportion varied from zero at Polson Higgs (13 partners) to 20.7% at PKF (29 partners). The largest firm, Price Waterhouse Coopers, had 13 out of 110 (11.8%). Many qualified and experienced women leave long before making the step up to partnership for the reasons outlined in the case study so that while the pipeline effect should produce fairly rapid change, these factors cast doubt on this unless firms change their practices considerably. The Census also has sections on women's representation in central and local government, DHBs, law, the media, the police, science, sport, teaching, the judiciary, and senior management together with a suggested agenda for change to improve the situation.

Interestingly, the area where there is most activity, even if the results are slow to change, is that of attempting to increase the representation of women on Boards of Directors. Such efforts are clearly needed as the latest corporate board figures show New Zealand poorly placed on this with only 9.32% women directors in the New Zealand Stock Exchange top 100 firms, while the Scandinavian countries vary from 12.5% (Denmark) to a high of 44% (Norway), Spain has 19.2%, the United States 15.2% and the United Kingdom 12.2% (ibid, p 6). Initiatives to assist women develop the skills needed include an EEO Trust sponsored cross-company mentoring programme, with ten women to be mentored by men and women from different companies, while the New Zealand Shareholders Association has added three women to its board.

Global Women has launched a year long programme involving customised mentoring and coaching aimed at

building the next generation of female leaders in large public, private, and non-profit organisations, while there are also some sector specific initiatives (ibid, p 8). The business case for women on boards has been put in a glossy publication sponsored by Business New Zealand, the Institute of Directors and the Ministry of Women's Affairs (2009) and available on a new section of the Ministry's website which "aims to inspire more women to join boards and committees. It provides governance advice, tools and information drawn from the expertise of the Ministry of Women's Affairs and experienced women directors" and contains advice and case studies.

Another major initiative is a partnership between the New Zealand Human Rights Commission and the EEO Trust entitled A Place At The Table, aimed at improving the diversity of Boards of Directors in New Zealand to span women and other underrepresented groups. In particular, "Women on Boards: Getting Ahead" was launched in September to involve meetings with male Board chairs, engage with shareholding ministers and make approaches to the top 100 companies lacking women directors. At the launch, Warehouse director Janine Smith argued that diversity of thought on boards was essential to business success. The main ideas and suggestions from the forum span encouraging human capital reporting, mainstreaming the business case, telling the story, involving men as champions, mentoring and leadership, bridging the divide between public sector and private sector boards, and setting targets (detailed suggestions under each heading at [http://www.eeotrust.org.nz/a\\_place\\_at\\_the\\_table/index.cfm](http://www.eeotrust.org.nz/a_place_at_the_table/index.cfm)).

Important as it is to have good gender representation in top positions in all areas, many women's organisations regret the emphasis on this at the expense of improvement in the participation, status, and pay of women throughout the labour market, especially that of low paid women in which ethnic minorities are overrepresented, and where their caring work is often hard to combine with paid work. Aggregate gender earnings gaps have hardly changed in the last decade, with women of all ethnicities having lower average hourly earnings below men from the same groups. However, ethnic earning gaps are even wider than gender gaps, as the table below shows, with ethnicity and gender gaps compounding. Pacific workers are the lowest earnings group with Pacific women earning on average only 69.9% of the hourly rate of Pakeha men. Further, the latest unemployment figures show the Pacific rate at 13.5% and the Maori rate 16.2%, both far higher than the average of 6.4%

Further, there is evidence of a combination of mistaken complacency that EEO has been achieved or is outmoded or need not be taken seriously despite anti-discrimination legislation, in some quarters at least. In September, a woman refused a job selling cars because she was female was paid \$6500 and received an apology from the dealer with the help of legal representation by the Office of Human Rights

Proceedings, following a complaint to the HRC and the failure of mediation. She had answered an advertisement for a car salesperson but was told that as the firm had two 'sales ladies' (sic) on board, they would only consider men for this vacancy, despite the fact that she had previous sales experience and was qualified for the sales job advertised. The Director of the Office of Human Rights Proceedings Robert Hesketh said the woman was delighted at the outcome. "It does raise the issue of whether there should be provision for the Tribunal to award punitive damages. If that was possible, it would publicly highlight the unacceptability of discrimination and perhaps we would see less of this kind of issue" (<http://www.hrc.co.nz/home/hrc/newsandissues/genderdiscriminationcasesettleswithapologvand6500damage.php?more>). It is not surprising that these types of events still occur, but more so that employers are too ignorant even to cover up such discrimination, showing their ignorance of the legislation.

Also in the EEO area, there is much lip service paid to the importance of parents' and others' caring work for children and others in need, and the desirability of work life balance encouraged by family friendly workplaces – although official policies and employer attitudes often fall far short of what is needed. Caveats about the realities were expressed in my previous paper in this series, despite the Flexible Employment Arrangements Act, 2007. Lower level workers have little bargaining power and their insecure patterns of perilous work may be misrepresented as allowing work life balance. And higher level workers seeking flexibility often find it interpreted as a lack of commitment, as the accountancy case study above illustrated. The PEE reviews mentioned earlier had similar findings on this, with the desire for part time work or flexibility often reducing career options, especially for women.

Nevertheless, some employers are making efforts in this area. The EEO Trust 2010 Work & Life Awards had over 40 entries with the supreme award, interestingly, going to the Warehouse for parenting programmes for distribution staff – leading to better team cohesion and performance. Over 200 employees in the company's South Auckland distribution centres took part in the programmes, run by the Ministry of Social Development-backed parenting programme SKIP (Strategies for Kids, Information for Parents) in work time. They "drew out participants' feelings and beliefs about what being a good parent meant and explored how to help each other be better parents, stressing communication and non-physical discipline" (see [http://www.eeotrust.org.nz/news/index.cfm?content\\_id=20108](http://www.eeotrust.org.nz/news/index.cfm?content_id=20108)). Staff were reported as becoming closer, with engagement and productivity increasing and absenteeism decreasing. The Trust has also published WorkLife, which "offers examples, ideas and commentary, supporting people developing flexible and productive workplaces" (EEO Trust, 2010).

Average hourly earnings by gender and main ethnic groups						
All women	All men	All Māori	All Pakeha	All women as % of all men 86.6%		
\$22.15	\$25.57	\$20.84	\$24.65	All Maori as % of all Pakeha 84.5%		
	Women	Men	All			
Pakeha	\$22.71	\$26.62	\$24.64			
Māori	\$20.04	\$21.56	\$20.84			
Pacific	\$18.62	\$20.35	\$19.54			
Asian	\$20.77	\$21.93	\$21.38			
Average hourly earnings comparisons by main gender/ethnic groups						
Relative to	Pakeha women	Māori men	Pacific men	Asian men	Pakeha men	All men
Pakeha women	-	105.3%	111.6%	103.5%	85.3%	88.8%
Māori women	88.2%	92.9%	98.4%	91.3%	75.2%	78.3%
Pacific women	81.9%	86.3%	91.4%	84.9%	69.9%	72.8%
Asian women	91.4%	96.3%	102%	94.7%	78%	81.2%

Source: Statistics NZ Income Survey, June quarter 2010, Table 10

### **BARRIERS TO EQUALITY FOR ETHNIC MINORITIES, OLDER WORKERS, AND PEOPLE WITH DISABILITIES**

The disadvantaged position of Maori and Pacific workers accentuated by the global recession has already been mentioned, while the outlook for Maori employment in the short term is not promising. A large proportion are employed in manufacturing, retail and tourism-related industries which are particularly affected, though improved educational outcomes and Treaty settlements may improve the situation in the medium term (Department of Labour, 2009). On initiatives to remove barriers, and reduce discrimination faced by all these groups, there is sadly little to add to my paper from two years ago. "With the only legislative underpinnings for EEO in the private sector being the anti discrimination provisions of industrial relations and human rights law, the main developments have been in education and provision of resources to encourage employers to make the best use of all groups of employees" (Hyman, 2009). Here I outline some of the new evidence on the barriers to these groups and resources to suggest how to remove them and be innovative in the workplace.

A paper prepared for the HRC shows that that Asians in New Zealand face more discrimination than all other ethnic groups and are at a disadvantage in finding employment, even though many are recruited here for their skills. Despite the challenges, Asian people tend to be satisfied with their lives in New Zealand, valuing the opportunities and lodging fewer complaints about discrimination than other groups. However, "Asian people who have entered NZ through the General Skills Category have higher levels of unemployment and lower levels of employment than all other migrant groups entering NZ under the same category" despite being "the group with the highest number of university qualifications" (Girling, Lui and Ward. 2010, p 10). The report suggests development of a national strategy towards combating discrimination against Asians. In 2009 the Department of Labour surveyed 942 employers who had had contact with Immigration NZ

with respect to employing immigrants. The survey was aimed at assessing benefits and issues with respect to employing such migrants, settlement issues, and the efficacy of INZ in assisting employers in this area. Of the 442 responses (45% rate, reasonable for such a survey), 91% had at least one migrant on staff and 87% rated these workers as good or very good, with language difficulties reported as the main challenge (Department of Labour, 2010).

The trade union movement joins with other agencies in promoting non-discrimination in employment. It is clear that age discrimination is still prevalent in the labour market despite human rights legislation and a rapid increase in participation of the 65 plus age group. If the age of eligibility for NZ Superannuation is gradually raised in line with trends overseas and increasing longevity, as recommended by the Retirement Commissioner, although not on the immediate agenda of the current government, it will be even more important to ensure that such discrimination is eliminated. Further, it is important for the economy to make best use of the accumulated skills of older workers. Age Okay – Unions Promoting Skills and Experience contains case studies, resources and suggestions aimed at promoting joint employer/employee initiatives in this area (NZ Council of Trade Unions, 2010).

The Human Rights Commission has recently carried out two pieces of work involving extensive consultation of relevance to all the EEO target groups. Its status report on the human rights performance of New Zealand in 2010 has sections on the right to work and the rights of disabled people, women, sexual and gender minorities, migrants and refugees, with recommended areas of action to advance the position of each group (Human Rights Commission, 2010c). Its National Conversation about Work, with over 3000 participants over two years, concluded that a human rights approach to employment involves empowerment, accountability, non-discrimination, participation and a link between decision making and agreed human right norms (Human Rights Commission, 2010d – with elaboration of these ideas at

p 29-32). It includes twelve examples of organisations and programmes demonstrating good practices and ten broad priorities for EEO, one of which is to “increase the labour market participation of people with disabilities through active employment policies addressing attitudes, access to work and reasonable accommodation” (ibid, p 33). The recent announcement by government of the establishment of a full-time Disability Rights Commissioner within the HRC has been welcomed by disability rights groups as a sign of real progress in measures to promote, protect and monitor the implementation of the United Nations Convention on the Rights of Persons with Disabilities, with a strong focus on ensuring disabled people can take an equal place in New Zealand society without discrimination.

However, amendments to the Employment Relations legislation to extend 90-day trial periods for new employees from business with under 20 workers to all business is seen as negative by the HRC and many other groups. Proponents of the extension argue that it will encourage employers to take on more new staff, with the risk, costs, and other consequences of errors, for example arising from personal grievance cases, reduced, and hence with potential benefits to low wage and above average unemployment groups. However, the HRC argues that “the legislation’s ‘fire without redress’ measures offend against natural justice, diminish procedural fairness and undermine a ‘fair go’ for employees” (Human Rights Commission, 2010c, p 188). Disability and lesbian/gay groups together with unions representing low paid, ethnic minorities and young workers have concerns that employees they represent are likely to be particularly adversely affected. The HRC is also opposed to the legislation permitting the exchange of the fourth week of the universal holiday entitlement for cash, with employer pressure and financial issues for the low paid likely to push some employees into an undesirable trade-off.

Evidence from the first year of operation of the 90 day law for small businesses is inconclusive (Johri and Fawthorpe, 2010). It was clear that the provision that employees must agree to the probation period is largely spurious – “in practice trial periods were included in employment agreements and the offer of employment was conditional on the employee’s acceptance of a trial period, as with other terms and conditions of the employment agreement” (ibid, p 11). Whether new jobs were created is uncertain. “The ability to use trial periods appeared to have encouraged 40% of employers who had hired someone to do so, however without any counterfactual evidence it cannot be stated categorically that trial periods had created extra job opportunities” (ibid, p 27). Similarly, the evidence is inconclusive on opportunities for disadvantaged groups, although younger workers were as expected overrepresented in the trials - 43 per cent of ‘the last employee hired’ on a trial period were aged between 15 and 24. However, most employers interviewed were seeking the best candidate available regardless of whether they might be categorised as disadvantaged job seekers.

The quantitative research covered 989 employers in small firms in an initial survey, of which 527 went on to complete a follow-up survey. The qualitative research consisted of semi-structured interviews with 31 people including 15 employers, 13 employees, two union officials, and one person from a social support agency. The trial period provision was used by half of eligible employers surveyed, who were generally very satisfied with the way it was working. Employers reported that 74% of those so employed were retained past the trial period, 22% were dismissed and 5% were still within the trial period, while performance related factors were given as the reason for dismissal by 22 out of 29 employers dismissing employees and attitudinal reasons by 14 out of 29 employers.

Employees did not appear to have a comprehensive knowledge of trial periods. While some believed there could be benefits for themselves as well as for employers, they also felt vulnerable to unfair treatment and job loss. Those interviewed generally felt that any monitoring of their performance was done informally through casual observation in the workplace with no planned or formal monitoring. Some employers reported using formal means of evaluation, but not specifically because of the trial period. Employees who felt they would not have been dismissed were it not for the trial period were annoyed and felt they had been disadvantaged and treated unfairly, either because they had not been given a reason or explanation for the dismissal, or because they had been dismissed even though they felt they were performing better than other employees who were not on a trial period and thus could not be dismissed so easily. The qualitative research found some instances where trial periods appeared to have been misused, and unions have reported a number of such cases where they have received complaints.

## CONCLUSION

Widening earnings and income inequalities has been a common experience in much of the world over the last thirty years, with New Zealand moving from a relatively equal society to one of the most unequal. This makes labour market protections including EEO of even more importance than in the early days of awareness and policy making. There is still much to be done, as the evidence above shows, with complacency, backlash and slippage too often impeding equal opportunity for all groups in the labour market.

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