

13. Right to Work

Tika ki te Whai Mahi



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Universal Declaration of Human Rights, Article 23 (plain text)

Introduction Tīmatatanga

The quality of life of New Zealanders is dependent on decent work. For many people, particularly Māori and Pacific youth and disabled people, the challenge is how to access it. For those caring for families, particularly women, the challenge is how to reconcile paid and unpaid work. For the increasing number of older people, the challenge is how to exit the workplace with dignity. For others, the challenges are the lesser value placed on unpaid work and protection from unemployment.

The work landscape is constantly changing, in response to a recessionary world economy that is witnessing new and more complex patterns of production and consumption. No one in the workplace is immune from technological change, the requirements of 'knowledge work' and globalisation. These have changed where we might work, how we might work, and the nature of our employment rights and responsibilities. What remains constant is that the workplace is a strategic entry point to a society free from discrimination.¹

At the time this chapter was written, the New Zealand Government had announced a number of proposed changes to employment conditions.² In the Commission's view, the cumulative effect of these changes will impact on workers' rights.

THE RIGHT TO WORK

The right to work is a fundamental human right, strongly established in international law. It recognises that work is not solely a source of income that provides for the basic necessities in life, but has the potential to satisfy social, intellectual and personal needs and therefore is integral for a life of human dignity.

The right-to-work agenda is firmly rooted in the foundation of universal human rights. Former United Nations High Commissioner for Human Rights Mary Robinson noted that "sixty years ago, the drafters of the Universal Declaration of Human Rights (UDHR) knew that decent work was fundamental in a world where all human beings would be born equal in dignity and rights".³

In terms of the right to work, Article 23 of the UDHR states that employment must be "freely chosen", under "just and favourable conditions" and equally giving the right to "just and favourable remuneration", "protection against unemployment" and "to form and to join trade unions".⁴

The right to work underpins the realisation of other human rights, such as housing, education and culture. Article 24 of the UDHR states that everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

The following human rights elements are used to analyse the employment cycle of the right to work. The Human

FIGURE 1: RIGHT TO WORK FRAMEWORK



1 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* (Geneva, International Labour Organisation), para 1

2 See the New Zealand context section of this chapter.

3 "Working out of crisis: aligning finance with decent work and a fair globalisation," background paper for workshop organised by NGLS, ILO and Realising Rights on 1 December 2008 as a side event at the UN Conference on Financing for Development, Doha

4 *ibid*

Rights Commission uses the framework when advocating for the right to work, which spans protection from unemployment and how people access work, through to their exit from the labour market. It also incorporates human rights elements, including participation and non-discrimination.

International context

Kaupapa ā taiao

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

1. the opportunity to work
2. free choice of employment
3. just and favourable conditions of work
4. non-discrimination
5. the right to form and join trade unions.

There is international consensus on ‘core labour standards’, which relate to a range of fundamental principles and rights at work. The International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work commits states to promoting these rights regardless of whether they have ratified the relevant conventions.

These principles and rights are embodied in eight fundamental ILO conventions, covering elimination of all forms of forced or compulsory labour; abolishment of child labour; elimination of discrimination in employment and occupation; and ensuring the freedom of association and the right to collective bargaining. New Zealand has ratified six of the eight fundamental conventions, but has yet to ratify the conventions on freedom of association and protection of the right to organise (C87) and minimum age (C138).

The Government’s position in relation to C87 is that the Employment Relations Act 2000 provides for the

right to organise, to bargain collectively and to strike (in certain circumstances). It also recognises the role of trade unions. Similarly, in relation to C138, the Education Act 1989, the Health and Safety in Employment Act 1992 and the Health and Safety in Employment Regulations 1995 provide effective age thresholds for entry to work in general and for safe work.⁵ C138 stipulates that the minimum age for admission to employment or work shall not generally be less than 15 years.⁶

The Commission considers that if New Zealand law and practice is in line with the principles of ILO138 and ILO87, then these conventions should be ratified. The Human Rights Act 1993 (HRA) provides little protection for those aged 16 years and under. The Commission has argued for the age of cover in the HRA to be extended in relation to employment protection.

The ILO sets international labour standards and assists countries to implement ‘decent work’ agendas at national level. New Zealand’s tripartite approach brings together the Government, workers (represented by unions) and employers in dealing with New Zealand’s own decent work programme and ILO matters.

Some argue that the right to work has been neglected in both the development and human rights discourse. Economists have been slow to frame their policy choices in terms of the human rights obligations of states, but this is beginning to change.⁷ Equally, additional consideration needs to be given to promoting the private sector’s potential to provide additional jobs and decent work opportunities.⁸

In addition to decent work programmes and other widely accepted international instruments, the ILO suggests that national specialised bodies be set up to assist individuals with the right to work, and that specific legal provision on non-discrimination and equality in the workplace be implemented. It also suggests that governments establish new approaches – for example, active labour market policies – to closing the gender pay gap.

5 Ministry of Foreign Affairs and Trade (2003), *New Zealand handbook on international human rights* (Wellington: MFAT).

6 The convention provides for persons aged over 13 years to engage in specified categories of ‘light work’.

7 ‘Working out of crisis: aligning finance with decent work and a fair globalisation’, background paper for workshop organised by NGLS, ILO and Realising Rights on 1 December 2008 as part of the UN Conference on Financing for Development, Doha

8 Business New Zealand (2010), in a submission to the Commission on the draft chapter

OTHER INTERNATIONAL INSTRUMENTS

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

The New Zealand Government ratified the CRPD in 2008. This is the most modern application of the right to work, and outlines a number of key areas governing employment for disabled people. The CRPD recognises the right of disabled people to work on an equal basis with others. It affirms that state parties have the responsibility to safeguard and promote the realisation of the right to work by taking appropriate steps, for example through legislation.

The CRPD states that disabled people should be employed in the public sector; that the private sector should actively promote the employment of disabled people through affirmative action programmes, incentives and other measures; and that reasonable accommodation should be provided to disabled people in the workplace. Article 27 of the CRPD states that disabled people have “the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to people with disabilities”. These and other employment considerations are explained further in the chapter on the rights of disabled people.

CEDAW states that women have the right to equal pay for work of equal value, the same employment opportunities as men, and protection from dismissal because of pregnancy. In 2007, the CEDAW Committee recommended that New Zealand enact comprehensive laws guaranteeing women’s substantive equality at work with men in both the public and private sectors. The Committee further recommended that New Zealand include adequate sanctions for any acts of discrimination against women, and ensure that effective remedies are available to women whose rights have been violated. Concerns about private sector practices relating to gender

equality were also raised by the committee. Currently, there is no compulsion such as the “good employer” obligation for the public sector imposed on the private sector. The chapter on human rights and women examines this area more fully.

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

UNDRIP was adopted by the General Assembly of the United Nations in 2007. Though New Zealand initially voted against the Declaration, in 2010 the Government revised its position and now supports it. Article 17 specifically states that governments shall protect indigenous children from economic exploitation and from dangerous or harmful work; and that indigenous People have the right not to be discriminated against in matters connected with employment. The declaration also points out that indigenous peoples have rights under international labour law and under national laws.

Article 5 of CERD mirrors the general principles of other international instruments in relation to non-discrimination in employment.

New Zealand context Kaupapa o Aotearoa

Elements of the right to work in New Zealand are expressed in a range of domestic statutes. The rights of employees have progressed in a number of ways since the last review of human rights in 2004.

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

In 2009, provisions for trial periods were introduced into the ERA, allowing employers with fewer than 20 employees to agree to a trial period with new employees of up to 90 days. During this period, the employer can provide notice of dismissal and the employee may not raise a personal grievance on the grounds of unjustified dismissal. Parties are still able to access mediation services, but the employee cannot take the matter further to the Employment Relations Authority or the Employment Court.⁹ In 2010, the Government announced its intention to extend the 90-day trial period to include all employers. The Commission argues that the proposed legislation's 'fire without redress' measures offend against natural justice, diminish procedural fairness and undermine a 'fair go' for employees. This provision was introduced in part as a response to employers' complaints about the cost of fighting personal grievances. Disability advocates are concerned that disabled people will be disadvantaged by the 90-day trial period, as many employers will not be patient enough to wait for suitable accommodations to be put in place.

The Employment Relations (Flexible Working Arrangements) Amendment Act 2007 came into force in July 2008. Its purpose was to give eligible employees with caring responsibilities the right to request a variation to their hours of work, days of work or place of work. The effect and operation of the amendment will be reviewed in 2010. The review will also include recommendations in relation to whether the statutory right to request flexible work should be extended to all employees.

The Employment Relations (Rest Breaks, Infant Feeding and Other Matters) Amendment Act 2008 has created minimum standards for a modern workforce, in respect of the provision of rest and meal breaks and promotion and protection of infant feeding through breastfeeding. Further changes announced in 2010 propose to offer greater flexibility around when breaks can be taken. Disability advocates argue that the proposed changes will undermine the right to decent breaks and that for many disabled people, the ability to have scheduled breaks at

regular intervals is an essential component for them to be able to work effectively.

In 2010, the Code of Employment Practice on Infant Feeding under the Employment Relations Act 2000 was launched. This provides guidance for employers on how to fulfil their obligations concerning the provision of breastfeeding breaks and/or facilities.

From 1 April 2007, the minimum entitlement for annual holidays was increased from three to four weeks. In 2009, a five-member ministerial advisory group reviewed the Holidays Act 2003 and recommended options to make it easier to understand, less costly and more flexible, but without reducing current entitlements. The Commission's submission to the review concluded that: "in regard to trading the fourth week of annual leave for cash at the employee's request, the Commission strongly supports the retention of four weeks' annual leave. While the proposal offers individual choice, the Commission is concerned that because of New Zealand's low-wage economy and long working hours ethic, many New Zealanders will trade away the fourth week of annual leave to the detriment of rest and recreation. This violates the spirit of decent work, as outlined in domestic law and international conventions."¹⁰

In 2007, the Disabled Persons Employment Promotion Act 1960 was repealed, thereby removing the blanket exemptions from the Minimum Wage Act that formerly applied to sheltered employment. Workers in sheltered employment must now receive at least the minimum wage – unless they have an individual minimum wage exemption permit – and have access to holiday and sick leave entitlements.

In 2010, the Government indicated that it would not include men or seasonal workers in paid parental-leave provisions, even though the Commission, the National Advisory Council for the Employment of Women (NACEW), the Families Commission and others have consistently urged successive governments to do so. Under the Parental Leave and Employment Protection

9 Although the employee can not raise a personal grievance in relation to unfair dismissal if notice to dismiss is given within the 90-day trial period, a personal grievance may be raised on the grounds of discrimination, harassment or unjustified action.

10 Human Rights Commission (2009), Submission on Review of the Holidays Act 2003 (Questions 3 and 6), Ministerial Advisory Group, 21 August

(Paid Parental Leave for Self-Employed Persons) Amendment Act 2006, entitlement has been extended to self-employed mothers working an average of 10 hours a week, and self-employed people who assume the care of a child with a view to adoption. A more detailed analysis of paid parental leave is contained in the chapter on human rights and women.

In 2010, the ILO agreed to begin work on a new standard to protect the rights of domestic workers. While a majority of countries favoured development of a convention, New Zealand did not, and received strong criticism from the Commission and unions as a result.¹¹ While domestic workers in New Zealand are covered by basic employment provisions, they have traditionally had limited coverage in employment and discrimination law, because they work in private homes and not in offices, factories or other workplaces.

The Government's proposed employment changes announced in 2010 include extending the 90-day trial period to all employers; allowing employees to trade a maximum of one week of their minimum annual holiday entitlement a year for cash and transfer public holidays; limiting union access to workplaces; and requiring workers to provide proof of illness when they take sick days. The Council of Trade Unions (CTU) argue that the proposed changes amount to "an accumulation of attacks on workers' rights" and are "a massive attack on the job security of every New Zealander".¹² By contrast, Business New Zealand believes that planned changes to employment law are likely to be very positive: "These changes are a practical and 'good practice' approach to employment relations that should help achieve more productive workplaces."¹³

The Commission is concerned that the proposed changes alter the 'decent work' framework and could undermine workers' rights.

11 *Domestic Workers Under ILO Spotlight* (2010), Heathrose Research accessed October 2010, <http://www.heathrose.co.nz/index.php/news/117-ilo-to-look-at-domestic-workers-rights>

12 'Employment changes unfair, unions say', July 18, One News, <http://tvnz.co.nz/national-news/employment-changes-unfair-unions-say-3650760>

13 Phil O'Reilly (9 Aug 2010), 'Employment law becomes simpler, more practical', Commentary posted at <http://www.businessnz.org.nz/issues/205>

THE 'GOOD EMPLOYER'

Several statutes refer to the promotion of equal employment opportunities (EEO) through the good-employer concept. The State Sector Act 1988 (section 56(2)), the Crown Entities Act 2004 (section 118) and the Local Government Act 2002 (section 36(7)) address responsibilities and accountabilities for equality throughout the wider state sector.

Under these statutes, a good employer is an employer who operates policies containing provisions necessary for the fair and proper treatment of employees in all aspects of their employment, including:

- good and safe working conditions
- an equal employment opportunities programme
- the impartial selection of suitably qualified personnel for appointment
- recognition of the aims and aspirations of Māori, their employment requirements, and their need for involvement of Māori as employees of the entity
- opportunities for the enhancement of the abilities of individual employees
- recognition of the aims, aspirations, employment requirements, and cultural differences of ethnic or minority groups
- recognition of the employment requirements of women
- recognition of the employment requirements of persons with disabilities.

The positive duty to be a good employer is limited to the state sector, and there is no legislative equivalent in the private sector. However, both the Employment Relations Act's good faith provisions, and the Human Rights Act's anti-discrimination provisions and common-law obligation of mutual trust and confidence apply generally.

New Zealand today

Aotearoa i tēnei rā

International standards and domestic legislation are given meaning by factors specific to the New Zealand employment environment. This section provides a description of some key features shaping the world of work in New Zealand, including the Commission's role.

THE HUMAN RIGHTS COMMISSION

The role of the Commission is to:

- advocate and promote respect for, and an understanding and appreciation of, human rights in New Zealand society
- encourage the maintenance and development of harmonious relations between individuals and among the diverse groups in New Zealand society.

Promoting equal employment opportunities (EEO) is a core responsibility of the EEO Commissioner. Under section 17 of the 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.

There is a specific statutory reference to pay equity in the HRA at section 17(a).¹⁴ A June 2004 cabinet minute¹⁵ gives the EEO Commissioner the authority to provide guidance to departments and Crown entities, to help ensure state-sector consistency and good EEO practice, including 'how to be a good employer'.

Examples of some of the most recent and current activities related to the Commission's EEO functions include distribution of thousands of copies of plain English pre-employment guidelines related to the Human Rights Act 1993; publication of a regular census report every two years, monitoring women's progress in governance, management and public life in New Zealand; tool kits for businesses around employment of older workers; and a monitoring tool for employers and employees in the public and private sectors to assess progress on pay equity.

From 2008 to 2010, the Commission undertook a major qualitative enquiry into work in New Zealand, the National Conversation about Work.¹⁶ This is discussed further in this chapter.

COMPLAINTS AND ENQUIRIES

Individuals and groups can resolve complaints of employment discrimination through the Commission's enquiries and complaints service and the Office of Human Rights Proceedings. Complainants also have the option of taking their concerns to the mediation service of the Department of Labour or to the Employment Relations Authority.

The HRA sets out 13 prohibited grounds of discrimination and outlines what constitutes discrimination in employment. The grounds are age (from 16 years), colour, disability, employment status (unemployed or a recipient of a benefit or compensation), ethical belief (lack of religious belief), ethnic or national origins, family status, marital status, political opinion (including having none), race, religious belief, sex (including childbirth and pregnancy) and sexual orientation.

In 2009, the Commission received 688 employment and pre-employment complaints in relation to non-discrimination. Areas of complaint included, but were not limited to, age, race, pregnancy and breastfeeding, English-only policies and job advertisements. There were 167 complaints and enquiries on the ground of disability. Over the past five years, employment and pre-employment complaints have accounted for 45 per cent of all complaints to the Commission annually. The majority of employment complaints in New Zealand are dealt with by the Employment Relations Authority.

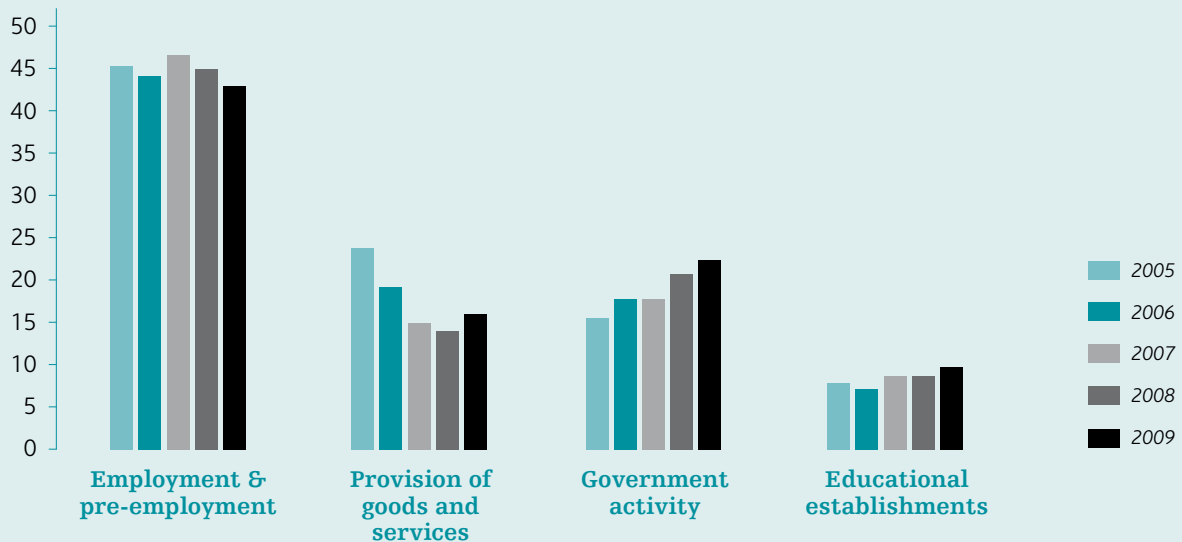
Pregnancy or breastfeeding featured in complaints and enquiries to the Commission in 2009. The most common issue related to women who were made redundant or faced the threat of their employment being terminated after they had advised their employer of their pregnancy, or while on parental leave. A woman was advised by her manager not to apply for the position of team leader after

14 One of the functions of the Equal Employment Opportunities Commissioner is to lead discussions of the Commission about equal-employment opportunities (including pay equity).

15 Cabinet minute June 2004, see <http://www.neon.org.nz/Crownentitiesadvice/cabinetminute/>

16 Human Rights Commission (2010), *What next: National Conversation about Work* (Auckland: HRC), <http://www.neon.org.nz/nationalconversationaboutwork/>

TOTAL COMPLAINTS TO THE HUMAN RIGHTS COMMISSION BY AREA



she had told her manager she was pregnant. The woman argued that she was being treated differently because of her pregnancy. She received a written and verbal apology for any hurt caused and \$3000 compensation for injury to her feelings.

In 2009, several instances of 'English-only' workplace policies received national media attention. One complaint to the Commission involved a Mandarin-speaking Chinese migrant who worked in a fast-food franchise and lost her job because customers complained about staff speaking in Asian languages in their presence. She was told not to speak Mandarin at work and was dismissed when she was caught doing so. After mediation, the employer recognised that it was in their interest to develop practical guidelines on the use of language in the workplace. The franchise agreed to compensate the worker and offered her another job.

Twenty-four people approached the Commission in 2009 with complaints or enquiries about the legality of certain job advertisements. In one instance, a complainant noticed an online job advertisement that said, "No Asians need apply". She complained to the Commission and the advertisements were removed.

Case law

New Zealand case law is important in establishing legal precedents as a means by which employment practice

is regulated and people are kept safe. Since 2007, the Commission has been involved in litigation in high-profile cases of sexual harassment, age discrimination and pay equity.

In 2010, a South Island baker was ordered to pay \$19,000 in damages and lost wages to a female employee. The baker sexually harassed the woman over a period of four months, with frequent unwanted touching and sexual innuendo. The case is being appealed. Over the years, the Commission has continuously stated that "sexual harassment causes huge distress to victims, triggers reputational damage to business and employers, and is completely unacceptable behaviour".

An age discrimination case was brought by Air New Zealand pilot Captain McAlister in 2009. He claimed that he had been demoted on turning 60 years of age, because he could no longer fly Boeing 747 aircraft to certain countries. The court found that Air New Zealand had discriminated against him. It concluded that his demotion was discriminatory, but that age was a genuine occupational qualification. The case was remitted to the Employment Court to decide whether Air New Zealand could establish that it could not reasonably accommodate McAlister by adjusting its activities, given that he could not fly Boeing 747s to certain countries.

In 2007, the Commission won a landmark pay-equity case (described in the chapter on human rights and women),

which established that employers should not segregate work on the basis of gender, and that substantially similar jobs should be paid the same. The ruling showed that the complainant suffered disadvantage by receiving less money for similar work because she was a woman.¹⁷

National Conversation about Work

The National Conversation about Work project is about fairness at work. Between 2008 and 2010, the Commission held a nationwide series of engagements, to listen to employers, employees, organisations, businesses and community groups about what would make a difference to them in order to achieve equality and fairness at work, and how this might impact on families.¹⁸

The National Conversation is the Commission's largest ever work-related enquiry. It represents the views of more than 3000 New Zealanders, working in a variety of industry sectors in cities, provinces and rural communities from all 16 regions of the country.

By the end of the project, the Commission had gathered some clear, effective ideas for moving forward on EEO and helping employers with EEO advice and guidance. Now it is ready to propose new solutions to workplace inequality.

The Commission learned that some issues of fairness at work are common to every workplace, while others vary from region to region, depending on its age, profile and labour market economics. The employment of young people, for example, differs between industries and may be less critical in Wellington than in South Auckland, where there is a higher proportion of young Māori and Pacific people. In rural areas, access to childcare is more difficult, making that an important issue for families.

In each region, the Commission met employees and employers from key industries. Participants in the National Conversation included population groups identified as EEO target groups in legislation, because

of their well-documented disadvantage at work. These groups included people with disabilities, Māori, other ethnic groups and women.

Meetings with employers as part of the National Conversation reflected favourably on them. Many of the employers we spoke to were responsive to their employees' needs, such as family responsibilities, emergencies and other life events, and were devastated by the emotional trauma of redundancies when they had to lay off staff.

A new national framework for EEO in New Zealand will be developed from the findings of the National Conversation. These findings provide an evidential base about labour participation by diverse groups, and the impact of the recession in New Zealand. The conversation began just prior to the recession and ended as the economy was said to be in a fragile recovery.

Impact of the recession

The 2009 global recession is the largest and longest since the Great Depression of the 1930s. Not since 1981 has real gross domestic product (GDP) fallen in consecutive quarters across the whole of the OECD.¹⁹

The recession has had a profound effect on the labour market across New Zealand. Over the course of the National Conversation, the Commission heard about the emotion and pain associated with redundancy and unemployment, as well as the resilience of employers and communities in facing new market challenges.

In the last quarter of 2009, New Zealand's official unemployment rate rose to 7.3 per cent. In real terms, 168,000 people were unemployed in the last quarter of 2009, the highest level in 16 years.²⁰ In recessionary times, unemployment is a lagging indicator typified first by mass layoffs and later by delays in rehiring.

In the first quarter of 2010, the unemployment rate had dropped to 6.0 per cent. The Department of Labour

17 A report of this case is accessible online at http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/15-Jun-2007_13-26-56_Talleys_June_07.pdf

18 Human Rights Commission (2010), *What next: National Conversation about Work* (Auckland: HRC), <http://www.neon.org.nz/nationalconversationaboutwork/>

19 The Treasury New Zealand (2010), *Special Topic: Recession and recovery in the OECD*, <http://www.treasury.govt.nz/economy/mei/jan10/03.htm>

20 Statistics New Zealand (2010), *Household Labour Force Survey December 2009*, http://www.stats.govt.nz/browse_for_stats/work_income_and_spending/employment_and_unemployment/HouseholdLabourForceSurvey_MRDec09qtr.aspx

cautioned against the long-term sustainability of these results. The number of unemployed grew by 19,000 to 6.8 per cent by the end of the June quarter. Commentators in New Zealand and abroad predicted a 'jobless recovery', illustrated by the continued climb in unemployment figures and the continued loss of hundreds of jobs.²¹

During the course of regional engagements, the Commission found the recessionary impact has been greater on some groups and in some regions of New Zealand. The term 'Mancession' has been coined to illustrate the perception that men are taking a 'bigger hit' than women in the recession. Between the December 2007 and September 2009 quarters, 34,000 fewer people were employed, and 80 per cent of those were men. In fact, in New Zealand, both men and women are experiencing unemployment at approximately the same rate, but age disparities exist by gender. For example, the biggest increase has been in unemployed males aged 20-24; this group rose by 6500 over the past year, from 11,500 in June 2009 to 18,100 as at June 2010.²²

Throughout the recession, employers have been caught between ensuring that essential skills are retained, and keeping their businesses economically viable. The Commission heard many employers express their reluctance to take a chance on new staff. One employer told us, "Small and medium enterprises have gone through cutbacks and layoffs, and employers are now scared to take on new people."

The Commission observed that many employers were less willing to give people a go, because they were particularly keen to operate a lean labour force. This appears to have impacted more heavily on marginalised groups, such as younger people and those with disabilities, who struggle to gain unskilled or semi-skilled employment.

During the National Conversation, the Commission was struck by the vulnerability of provincial New Zealand to layoffs in dominant industries. The loss of several hundred jobs from one company or one industry in smaller centres has a much more significant impact on the whole

community than is the case in urban New Zealand. In the former Rodney District, for example, Irwin's Tools, a major employer, first shed 105 jobs and then closed entirely. An estimated \$8 million was lost from the local economy, which had a ripple effect throughout the community as other service industries and businesses were affected too.

Despite stories like this throughout New Zealand, the optimism and resilience of regions, businesses and individuals was also evident. In some places, the Commission was told: "We don't have a recession here." In others, employers and employees were taking innovative steps to ride out economic uncertainty.

The Commission was struck by employers' efforts to minimise staff layoffs. Across the country, employers and their staff have worked hard together to reduce hours, redesign tasks and provide more flexible work practices to help save jobs and livelihoods.

The impact of public sector restructuring and job shedding, including in Auckland's local government sector, has yet to be fully assessed. Disability advocates are concerned that disabled workers may be more likely to lose their jobs in a restructure, or that new roles offered to them may be inappropriate and fail to take into account reasonable accommodations.

Unpaid work

Unpaid work is not widely recognised in human rights instruments. For example, many international conventions and relevant domestic-employment legislation exclude unpaid household production, reproduction and services from consideration. This is despite the essential nature of unpaid work, the considerable amount of time spent carrying it out, its significant economic value, and its vital role in underpinning and facilitating paid work.

The majority of New Zealand adults participate in some form of unpaid work. Census data shows that women have higher participation rates than men in all forms of unpaid work.²³ Some people have made a deliberate choice not to undertake paid work while caring for their children, seeing this as their priority.

21 Michael Coote (2009), 'Don't expect jobs from the coming recovery', National Business Review, 20 July 2009. Accessed online at <http://www.nbr.co.nz/opinion/michael-coote/dont-expect-jobs-coming-recovery>

22 Statistics New Zealand (2010), 'Household Labour Force Survey', June 2010 quarter

23 Statistics New Zealand (2006), *Quickstats about unpaid work*, <http://www.stats.govt.nz/Census/2006CensusHomePage/QuickStats/quickstats-about-a-subject/unpaid-work.aspx>

Women taking part in the National Conversation overwhelmingly referred to three key issues related to work. The first two, flexible work options and access to child-care, relate directly to women's unpaid work roles within the family. The third, often linked with the first two, relates to equality at work. These issues are discussed in more detail below, in relation to women and work.

Voluntary work is an important part of unpaid work, and volunteers contribute to the diversity of New Zealand's communities. Many Māori, Pacific and other peoples contribute to their wider family and community life in ways they may not consider to be volunteering, but which demonstrate a commitment to their cultures and communities.

During the course of the National Conversation, the Commission heard that the voluntary sector in New Zealand was under pressure. Older volunteers in New Plymouth told the Commission: "Social services that rely on volunteers are feeling the pinch. Funding is drying up and the cost of volunteering is becoming too expensive." The costs for those on fixed budgets, especially transport costs, meant people were losing the ability to contribute. Volunteers felt the community would lose social capital and cohesion as a consequence.

In Southland, frequent reference was made to the community/voluntary sector's support for the cultural, sporting and social life of the Southland community. One participant observed: "For a politically conservative region, the strength of the community is almost socialist."

Labour participation by diverse groups

New Zealand's labour force is becoming increasingly diverse. The challenges faced by an ageing population, a young 'brown' (Māori and Pacific) population critical to the future job market and increasing numbers of migrants from ethnically diverse backgrounds call for targeted solutions. Agencies such as the Office of Ethnic Affairs are responding to these challenges through the provision of diversity management advice and intercultural awareness training. A greater understanding of the specific needs of New Zealand's diverse labour force follows.

Disabled people

The New Zealand labour force participation rate for disabled people in 2006 was 45 per cent, compared

with 77 per cent for non-disabled people. This indicates the barriers faced by disabled people in accessing work. Disincentives to participation often reported by disabled people include high benefit-abatement rates and secondary tax, both of which reduce the value of earnings.

The Commission, along with many disability advocates, considers people with disabilities to be one of the most disadvantaged groups in the current New Zealand labour force, which has probably suffered disproportionately in the recession. People with disabilities face considerable difficulties securing employment and also face problems of underemployment. The right to work for people with disabilities is comprehensively addressed in Article 27 of CRPD.

Disability advocates have expressed frustration with the reasonable accommodation provisions of the HRA. In particular, they object to the exception in section 29(1a), which suggests that different treatment is not illegal where it is not reasonable to expect an employer to provide special services or facilities that would allow a disabled person to perform the job satisfactorily.

Disabled people and their advocates indicated that gaining employment or job interviews are a major barrier to participation in the labour force. In the National Conversation, a group of deaf people in Hawke's Bay talked about the multiple barriers inherent in the recruitment process.

Disabled people also face barriers in the workplace. A Southland participant in the National Conversation said: "You have to work harder to prove your worth". A disabled person from Auckland talked about "the feeling that you need never to be a burden, always reasonable, as good as everyone else but better". A deaf job seeker in Hawke's Bay said: "All they look at is what we can't do, not what we can do."

The Commission observed that employers were much more likely to be supportive and accommodate a person's needs if that person had acquired their disability after being employed, because the employer and co-workers already have a relationship with the person and want to make it work. In one case, a 40-year-old who had a stroke took 18 months to return to work. When he then

approached his employer about returning to work, he was welcomed back and a job with new boundaries, reflecting the genuine skills of the employee, was created. By contrast, Auckland Disability Law reports a number of cases each year of people who have been laid off after acquiring an impairment, with no effort made on the part of the employer to make reasonable accommodations. In addition, disabled people have reported that their job descriptions may be unilaterally changed by their employers, incorporating additional duties that they are not able to perform due to impairment issues.

Employers with a disabled family member are also more likely to be open to employing a disabled person. Disabled people want the state sector to do more to model good practice in providing equal employment opportunities to disabled people, in line with the state's CRPD obligations.

Employer attitudes are changing only slowly, with increased societal awareness of the rights of disabled people. Suggestions for change include promotion of positive experiences, such as greater recognition of employers that employ disabled people; testimonials from employers who have found disabled people to be great workers; encouragement of other employers to take on disabled staff, including through active EEO programmes; and better public education and awareness-raising in relation to people with disabilities. The newly established Employers' Disability Network supports employers' understanding of people with disabilities, helps more people into work and improves services to disabled customers.²⁴ Similarly, the establishment of Work 4Us Employment Advocacy Service helps disabled people negotiate employment contracts or minimum wage exemptions.

Flexible working hours are also important to the participation of disabled people, as shown by the 2006 Disability Survey, where the most requested form of workplace support was modified hours.

In 2010, the Government announced that it would invest \$2.34 million over three years to help promote, protect

and monitor the rights of people with disabilities, in line with the CRPD. The Government also committed \$3 million for a public awareness campaign to change attitudes and behaviours that limit opportunities of disabled people. Government assistance programmes for disabled workers include the Mainstream programme, designed to support disabled workers in the public sector, supported employment, transition services, and business enterprises formerly known as sheltered employment workshops.

Women

Women's economic empowerment is "arguably the biggest social change of our time".²⁵ In the late 1990s, Statistics New Zealand reported that "the increased participation of women in the labour force has been one of the most significant employment trends of the post-World War II period". This has been attributed to a number of factors, including delayed childbearing and declining fertility; changes to social expectations; and the changing structure of the economy.²⁶ Another reason for women's increased labour force participation has been the increase in service-sector jobs, which has tended to favour women. The employment rate for New Zealand women is now higher than that of the UK, the USA and Australia, but not as high as that of Canada.

The labour-force participation rate for women was 62 per cent in the June 2010 quarter, compared with 74.4 per cent for men. Employment growth rates for females have been high, at 2.24 per cent per annum on average since 1999, leading to greater expansion in female employment over the 10-year period.

This growth has not necessarily translated to greater equality. The gender pay gap has persisted at around 12 per cent over the past decade. Pay and employment equity reviews in the public sector found gender pay gaps in full-time equivalent (FTE) median annual salaries that ranged from 3 to 35 per cent. The representation of women in senior management and governance roles lags behind that of men. Recent statistics are included in the

24 See Vision and Mission Employers Disability Network website, <http://www.edn.org.nz/about-us/vision-and-mission> as at September 2010

25 'We did it!', *The Economist* (Dec 30, 2009), accessible online at <http://www.economist.com/node/15174489>

26 'Women in New Zealand: Women's Labour force participation grows' (1996), Statistics New Zealand (Wellington: StatsNZ), <http://www2.stats.govt.nz/domino/external/web/nzstories.nsf/092edeb76ed5aa6bcc256afe0081d84e/4b6f098f1a2bbc1acc256b180009282c?OpenDocument>

chapter on human rights and women, and in the Commission's biennial census of women's participation.²⁷

As noted above in relation to unpaid work, the three key issues referred to by women taking part in the National Conversation about Work were flexible work options, access to childcare, and equality at work – specifically pay and employment equity.

Currently, the uptake of working arrangements developed to meet the needs of working families is highly gendered and emphasises the cultural norm that responsibility for caring for children is primarily borne by women. A number of female employees the Commission talked to expressed their appreciation of flexible work practices that met their needs. One woman reported: "Flexibility is huge for me. I've been home with sick children and am fully resourced to do my job when at home." Research by the Ministry of Women's affairs showed that women working part-time in the accounting sector felt they might be excluded from promotional opportunities available to full-time employees.

Many working mothers are unable to realise full employment, because there are no or too few early childhood-education (ECE) centres in their area. The situation in rural communities is especially acute. For example, in the Maniototo area in the South Island, a group of women are trying to establish an ECE centre, which will enable them to return to work, work longer hours, contribute more financially to their households and better integrate migrant children into the community.

The Commission was also told the cost of childcare is prohibitive. People on low incomes, such as cleaners in the Hutt Valley and bank workers in Taranaki, said the cost of ECE meant parents had to use informal arrangements or choose not to participate in the labour force. The New Zealand Childcare Survey 2009 found that 14.4 per cent of parents who had worked or wanted to work in the previous 12 months reported that they had experienced childcare-related difficulties.

In terms of the third key issue raised by women taking part in the National Conversation, they expressed frustration at the lack of progress in achieving gender

equality at work, particularly in the area of pay and employment equity. A group of Canterbury women lawyers told the Commission they had to work twice as hard to be seen as equal, and that women who asked to be paid at the same rate as men were seen as "greedy, unreasonable and ungrateful". Another said: "Nice girls don't get the corner office (i.e. made partner). You have to be ballsy, push your position and ask."

Men

Men we spoke to in the course of the National Conversation raised with us the unfairness of the lack of entitlement to PPL in their own right. While mothers can transfer all or part of their 14 weeks to their partners, men want a primary entitlement to paid parental leave. One father in the Bay of Plenty said that two weeks' paid parental leave for fathers on the birth of a child would be ideal. He also proposed six months' PPL for mothers, followed by six months PPL for fathers. This would enable mothers to return to work and fathers to be primary caregivers early in a child's life.

Employment in non-traditional roles is an issue for men, particularly in ECE. The male kindergarten teachers the Commission spoke to challenged the notion of gender roles in relation to young children. "Men need to be invited and made welcome in early childhood centres. They need to know how fantastic the job is," they said.

The Commission supports strong affirmative action to get more men into ECE. In 2008, there were 16,861 early childhood teachers in New Zealand, only 219 (1.3 per cent) of whom were men. Overseas experience shows that men do not apply to become ECE teachers, because they assume the jobs are for women – what is needed is to create male-friendly environments, with male mentors, and make active recruiting of men a goal to improve men's participation rates.

Manufacturing and construction are typically prone to changes in economic conditions and employ a high proportion of men. Just under one third of men are employed in the manufacturing and construction industries, and over half of all job losses in New Zealand came from these two industries in 2009.²⁸

27 Human Rights Commission (2008), *New Zealand Census of Women's Participation* (Auckland HRC), <http://www.neon.org.nz/eoissues/census2008/>

28 Department of Labour (2009), *Why are men more affected by labour market downturns?* Accessed online at <http://www.dol.govt.nz/publications/lmr/hlfs-investigation-reports/men-labour-market-downturns-2009dec/index.asp>

In Northland, social service providers who participated in the National Conversation said support for men during tough times was seen as a vital social need. One person said: “We have to help our men adapt to new situations as a consequence of job loss and redundancies.”

The increased labour market participation of women has partly driven flexible work legislation, and men increasingly want flexible work too. A female participant in the conversation said: “More men are taking the chance to work flexibly in a different way, maybe for family or for something they are passionate about. My company is great but my husband experienced something different when he wanted to share parenting by working four days per week. His company pushed back and said no. He was gutted. They just said it wasn’t possible.”

Youth

Youth employment is a major issue in New Zealand. The unemployment rate for youth was 17.6 per cent for the year to June 2010, well above the overall annual average rate of 6.64 per cent.²⁹

The Department of Labour reported that youth are one of the most affected groups during labour market downturns. There is particular concern for the long-term labour market outcomes of youth who are not able to enter the labour market easily.³⁰

Youth have experienced substantial job losses during the recession, with some continuing to look for work, many leaving the labour market altogether and others returning to study. In the June 2010 quarter, there were 37,800 unemployed young people aged 15–19, 30,400 aged 20–24 and 20,100 aged 25–29.

As at June 2010, in the 15–19 years age group, just over one in ten (10.2 per cent) of males were not in education, employment or training (NEET), compared with 8.9 per cent of females. Among those aged 20–24, 13.4 per cent of men and 10.4 per cent of young women were NEET. Young Māori have the highest NEET rates, at 18.3 per cent, followed by Pacific youth at 14.5 per cent and European youth at 9.1 per cent. An OECD youth jobs

report in 2006 showed that New Zealand had a hard core of youth who were at high risk of poor labour-market outcomes and social exclusion.³¹

Māori youth unemployment figures are among the highest of any group in New Zealand, standing at 30.3 per cent in June 2010. A solution to addressing ongoing issues for Māori youth requires a stronger focus on Māori perspectives in policy development by public agencies, according to Te Puni Kokiri (TPK). In 2009, TPK invested heavily in training and employment opportunities for young Māori, creating 1550 training and 252 employment outcomes. However, as with other agencies, funding is limited and funding constraints have resulted in investment in these initiatives ending.

In most regions the Commission visited during the National Conversation, youth employment was raised as a serious concern. In some areas, tertiary qualified young people were struggling to gain employment. In many areas, however, the most disadvantaged youth were those who had low levels of educational attainment.

Youth Transition Services were introduced in 2004 in New Zealand, with the objective of reducing the share of youth who were NEET. The Mayors Taskforce for Jobs – a nationwide network of mayors working on the issues of youth work and livelihood in their communities – was created in 2000 and has played a key role in the organisation of Youth Transition Services. Disengagement of youth while still at school is one of the root causes affecting youth employment issues, according to Youth Transition workers the Commission met around the country.

Various youth-to-work initiatives operate in many of the regions the Commission visited, and are outstanding examples of regional good practice. The Incubator Programme in Hawke’s Bay, for example, targeted low-decile schools, and the Wonderful Wahine programme in Nelson targeted young Māori women. In Otorohanga, the Trade Training Centre had successfully kept youth employment at zero per cent and apprenticeship completion rates above 90 per cent, compared with a

29 Department of Labour (2010), *Youth Labour Market Factsheet*, <http://www.dol.govt.nz/publications/lmr/quick-facts/youth.asp>

30 Department of Labour (2009), *The impact of the recession on young people, New Zealand 2008–09*, <http://www.dol.govt.nz/publications/lmr/hlfs-investigation-reports/recession-impact/index.asp>

31 OECD (2006), *Jobs for Youth – New Zealand, 2006* (Paris: OECD)

national average of less than 20 per cent completion rate. A similar scheme in Dunedin alleviated the cost and administrative burden of trade training for employers and is also very successful. In addition a great deal of work is at present going on to try to improve literacy and numeracy.

Many of these schemes have been developed by local government and supported by central government funding streams. It is apparent that funding for youth-to-work initiatives is both variable and precarious, and there is little certainty about their viability from year to year. This problem is particularly acute in rural areas. Many of the successful, independent regional initiatives lack national visibility.

During the course of the National Conversation about Work, the Commission heard of a strong bias by some employers against young people, because of their perceived attitudes to work and stereotypes about the youth work ethic. In some centres, employers openly admitted to preferring mature workers over the young. Some employers believe they have to make a much greater investment in younger people to get them up to speed.

Some employers recognised that young people have different employment needs. One said: “We have to accommodate the different values of the younger generation.” Youth career workers thought job redesign may be a way to accommodate the needs and expectations of youth. Others agreed that the way work is organised today does not suit the young. Young workers pointed out that development and pastoral care was important to engagement. One said: “Here we are encouraged to learn.”

Older workers

New Zealand, like many other Western countries, has an ageing population. Internationally, New Zealand has one of the highest rates of participation of older workers in the OECD. The participation rate of older people (aged 55 and over) was 44.1 per cent for the year to June 2010. The unemployment rate was 2.9 per cent. Over the past five years, the employment rate of older people has

increased from 38.5 per cent in March 2005 to 42.8 per cent in June 2010.

New Zealand research³² shows that a majority of 65-year-olds are still in paid work. They believe there are more important non-financial motivators for work, such as keeping busy, liking their work, feeling they still have something to contribute and enjoying the contact with other people. Nevertheless, financial considerations were still a strong motivator for many 65-year-olds, particularly for those who lost retirement savings in the global economic crisis. There is concern about the additional strain this has placed on older people, who must now remain in employment to maintain an adequate standard of living.

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

Generally, businesses have a positive attitude towards older workers, although pockets of bias towards older workers exist. Innovative work practices that meet the needs of both the business and the employees are enabling organisations to retain older workers longer. Some strategies to retain ageing workers were being considered, such as flexible work arrangements and mentoring schemes using retired or semi-retired business people, for example the scheme brokered by the Tauranga Chamber of Commerce and the New Zealand Refining Company.

Participants in the National Conversation observed that many older people were still actively engaged in the workforce well past traditional notions of retirement age. In Hawke’s Bay, the Commission met a supervisor of a gang of older seasonal workers (called grey gypsies) who was in his eighties.

Internationally, research shows that many people prefer to transition out of work, rather than to abruptly end work in favour of retirement, at the age of eligibility.

32 Ministry of Social Development (2009), *To work or not to work: Findings from a survey of 65-year-old New Zealanders* (Wellington: Centre for Social Research and Evaluation).

Businesses are responding by introducing phased retirement. A union secretary said the real question about older workers was “how to let people step down and maintain dignity. Some of the older guys are struggling but they don’t want to be seen as weak...It’s a man thing.”

Māori

The labour force participation rate for Māori has increased steadily over the past five years, with a positive shift by Māori towards sustainable, higher-paid forms of employment. Despite this positive trend, Māori unemployment has increased sharply, and in the year to June 2010 was 13.9 per cent, an increase of 3.9 per cent from the previous year. This equates to 26,400 unemployed Māori. Nationally, Māori accounted for 34 per cent (21,116) of all unemployment beneficiaries.

The recession has had a severe detrimental effect on Māori, particularly in Auckland, Northland and on the East Coast. Reports show that by December 2009, the Māori unemployment rate from Ruatoria to Wairoa had increased from 8.0 per cent to 19.2 per cent. By June 2010, 60.5 per cent of unemployment beneficiaries on the East Coast from Gisborne to Hawke’s Bay were Māori.³³ Similarly, in Northland, 62.3 per cent of all unemployment beneficiaries were Māori,³⁴ and 25.9 per cent in Auckland.³⁵ Unemployment was hitting young Māori and those in the top half of the North Island the hardest, reports showed.

A Māori social service provider explained the recession’s impact: “It makes things harder for those on the poverty line...Māori workers are more likely to be supporting two or three families and a loss of income for these people would affect many households.” Additional strain was being placed on rural communities as urban Māori who had lost their jobs returned home. This had a particular impact on kaumatua and social services.

During the course of the National Conversation, the Commission heard about many examples of innovative work practices and positive Māori work environments. Work practices based on whanaungatanga (family orientation) and manaakitanga (caring) were viewed by many as crucial parts of their work environment and a help in sustaining workers. Participants said, “One of the good things of working in a Māori organisation is that you are carried by the tikanga, which is infused in your work. We move as one, as a collective together.” Another Māori employer in the shearing industry referred to their “secret weapon” as being the Māori values that underpin staff practices:

Employment has become very structured, almost sterile. We’ve looked at what makes us special and that is that our staff are our whānau. Through whanaungatanga, the expectation is that we treat each other like family. You work to help us; we work to help you. There is, however, a “double-edged sword” taking people on as whānau, whereby the employment relationship is not strictly employer and employee related. Any risk from this is mitigated by the fact that people feel more valued at work, leading to increased satisfaction and performance.

The Commission observed that one feature of Māori business was the commitment to providing career opportunities, such as support for further education. The aim is not just to build capacity in the company, but to build capacity in the wider community, at a whānau (family), hapū (sub-tribe) and iwi (tribe) level. The staff development practices at Māori companies such as Whale Watch Kaikoura are a strong example of how internal staff practices can benefit communities.³⁶

33 Department of Labour (2010), Quarterly regional labour market update – Gisborne/Hawkes Bay, June 2010. <http://www.dol.govt.nz/publications/lmr/regional/joint/lmr-regional-gjs.asp>

34 Department of Labour (2010), Quarterly regional labour market update – Northland, June 2010. <http://www.dol.govt.nz/publications/lmr/regional/joint/lmr-regional-nth.asp>

35 Department of Labour (2010), Quarterly regional labour market update – Auckland, June 2010. <http://www.dol.govt.nz/publications/lmr/regional/joint/lmr-regional-akl.asp>

36 Human Rights Commission (2010), *What next: National Conversation about Work* (Auckland: HRC). <http://www.neon.org.nz/nationalconversationaboutwork/>

Māori have shown a steady increase in educational attainment in recent years and are more likely to be employed as a result. The employment rate was significantly higher for Māori with tertiary qualifications than for those with fewer or no qualifications.³⁷

Pacific peoples

The unemployment rate for Pacific peoples was 14.1 per cent for the year to June 2010 3.8 per cent above its level 12 months earlier. Compared with the overall unemployment rate (6.6 per cent in June 2010), the Pacific rate has increased sharply. The recession has had a major impact on Pacific people, as a significantly high proportion are employed in unskilled and lower-skilled jobs and are at higher risk of unemployment.

In the year to June 2010, the leading industries in which Pacific peoples worked were manufacturing (20,500 workers) and wholesale and retail (12,200 workers). Over the past year, education and training had the largest gain in Pacific employment (up to 34 per cent). Over the past four years, public administration and safety showed the largest gain (up 73 per cent).³⁸

A report by the Department of Labour in 2009 found that Pacific women were twice as likely to work as labourers compared with New Zealand women generally. Pacific women are most likely to work in healthcare and social assistance and manufacturing industries.³⁹

Pacific people spoken to in Auckland during the National Conversation felt that their skills were not fully recognised and valued. “At work, you take your Pacific ethnicity with you. It’s not something that’s specific in your remuneration package. It’s part of who you are and it’s positive for employers.”

Several participants said they did not feel that Pacific peoples were promoted according to merit and skill. One worker said: “I can think of a very good nurse in one organisation. The employer allowed her flexibility because he valued her, but she should have progressed upwards.

Her skills didn’t translate into greater remuneration. She could have gone higher in the organisation than she did.”

The value of employees with Pacific languages was a strong theme with participants. Participants felt that there is a great need for services, including information, advice and support, to be delivered in their own languages. One participant said: “I love coming back here (to work) so I can use my language.” The desire for Pacific people to learn and use their Pacific languages was strong.

The traditional attitude of older Pacific people to career and vocational choices for Pacific youth, such as trades training opportunities, was seen as a barrier.

The impact of an increasing number of Pacific youth will play an important role in the future New Zealand labour market. In contrast with an ageing, mainly European, New Zealand population, the Pacific population is young, with 38 per cent of Pacific peoples (100,344) under 15 at the 2006 census. The attainment of skills, education and training is vital to ensure that Pacific peoples move increasingly into middle-to-high income brackets and participate on an equal basis with other New Zealanders in employment.⁴⁰

Migrant workers

Work is arguably the single most important element in the integration of immigrants to New Zealand. Despite this, many migrants find it hard to access decent employment, despite years of experience and qualifications recognised elsewhere. A particular problem for some migrant workers is the recognition of qualifications by gatekeeping bodies, particularly in some professions.

In 2009, the Department of Labour released its Employers of Migrants survey. Overall, 87 per cent of respondents rated their migrant employees as good or very good. Employers said the positive attitude displayed by migrants and their skills and experience were driving factors behind the high ratings. The Minister of Immigration at the time stated: “Migrant workers play a major role in

37 Te Puni Kokiri (2010), *Parongo fact sheet – benefits of education for Māori* (Wellington: TPK)

38 Department of Labour (2010), *Pacific peoples’ labour market factsheet*. June 2010 Human Rights Commission (2010), *What next: National Conversation about Work* (Auckland: HRC). <http://www.neon.org.nz/nationalconversationaboutwork/>

39 Department of Labour (2009), *Pacific women’s work*. <http://www.dol.govt.nz/publications/lmr/lmr-pacific-womens-work.asp>

40 Colin Tukuitonga (2009), *Recession paradox for Pacific workforce*. Accessible online at <http://www.mpia.govt.nz/assets/documents/news-archive/2009/FINAL-Oped-recession-colin.pdf>

the economy and this survey reinforces the value they provide to employers.”⁴¹

Despite these positive results, the plight of migrants and their employment situation has been covered extensively in the mainstream media – stories of discrimination, exploitation and battles over work and entry visas. Migrant workers the Commission met with over the course of the National Conversation said there were a number of ways that discrimination was expressed when they sought work.

Chinese Aucklanders said some migrants “anglicise” their names to increase the chance of being interviewed for a job – “repackaging yourself for the New Zealand market”. One participant said, “As long as I know who I am and what I am, then it shouldn’t worry me.”

Participants also said employers sought “Kiwi experience” and English as a first language. The Commission’s widely circulated pre-employment guidelines for employees and employers have been helpful for migrant employment, establishing what is permissible under the Human Rights Act.⁴²

Outside the major centres, the Commission was told that inherent conservatism in business, together with parochial attitudes, meant that some employers have difficulty with employing migrants. Typical complaints by migrant employees to the Queenstown Citizen’s Advice Bureau included not being paid holiday pay, being told they had lesser rights because they were on working holiday visas, and being told they were not entitled to annual leave. Migrant worker advocates thought this was just the “tip of the iceberg”. The Commission was told, “Migrants were less likely to complain, because they were in the area for a short period of time or would simply find another job elsewhere.”

Support services for migrants are not as readily available in small towns as in urban centres. The importance of settlement support infrastructure was emphasised by migrants as well as other community workers. In Marlborough, the influx of migrant seasonal labourers meant a greater demand for immigration support services. For example, the absence of a regional office in Blenheim,

where demand is the highest, meant that Department of Labour officers had to travel from Nelson to address issues of apparent exploitation of migrant workers in the wine industry.

Employers in a number of areas – including the Marlborough wine industry, the Southland dairy industry and Bay of Plenty fruit growers – talked about rogue operators who harmed the reputation of their sector. In the Waikato, one advocate for decent working rights in the rural sector wrote: “I was reminded that our community has a duty of care towards its workers”.

Conclusion Whakamutunga

New Zealand’s legislative framework and mechanisms generally comply with international standards on the right to work, with a few reservations. The Commission believes that a plan of action to ratify ILO Conventions 87 and 138 and the lifting of any convention reservations related to employment is needed. The Commission believes that the Government should support ILO standard-setting for decent work in New Zealand and internationally.

In recent years a number of workplace reforms have advanced workers’ rights, including legislation dealing with flexible work, paid parental leave, holidays, rest breaks, and breastfeeding. However, proposed changes to employment legislation, such as those concerning trial periods, are of concern to the Commission in its promotion of the right to work, a ‘decent work’ agenda and equal-employment opportunities.

A number of groups continue to experience disadvantage in the New Zealand labour market. Disabled people are among the most disadvantaged. Māori, Pacific peoples and youth are also vulnerable groups, as shown by escalating unemployment rates during the recession. The Commission would like to see strategies to increase access to work for Māori, Pacific and disabled people, and a youth-to-work programme for every young New Zealander.

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

42 Human Rights Commission (2008), *Getting a job: An A to Z for employers and employees, Pre-employment guidelines* (HRC Auckland)

Women continue to experience pay and employment inequities, and the Commission believes there is a strong case for securing pay and employment equity across both the public and private sectors.

Disadvantaged groups, often low-paid, seasonal and casual workers, have low bargaining strength in the labour market and are most likely to be disadvantaged by changes that strengthen employers' rights and power. Greater assistance is needed for these workers and others who are in transition.

It is the Commission's view that mechanisms to address systemic discrimination and disadvantage should be strengthened. State-sector legislation requiring employers to be 'good employers', including having an equal-employment opportunities programme, should also apply in the private sector.

Changes to employment occurring at a time of global economic uncertainty require a renewed commitment to equal-employment opportunities and revision of mechanisms to ensure fairness at work. The Commission consulted with interested stakeholders and members of the public on a draft of this chapter. The Commission has identified the following areas for action to advance the right to work:

Equal Employment Opportunity framework

Implementing a new framework for equal employment opportunities that specifically addresses access to decent work for disadvantaged groups, such as Māori, Pacific youth, and disabled people, and that covers pay and employment equity issues for men, women and families.

International Labour Organisation conventions

Ratifying ILO Conventions 87 and 138 and lifting any convention reservations related to employment and the advancing of EEO.

Domestic workers

Supporting ILO standard-setting for domestic workers in New Zealand and internationally.

