

TŪRANGAWAEWAE

Human Rights Commission News

JANUARY TŪRANGAWAEWAE

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Ngā mihi o te tau hou, greetings for the new year!

The Commission is starting 2015 with a new e-newsletter. Tūranga (standing place), waewae (feet), is often translated as 'a place to stand'. Tūrangawaewae are places where we feel especially empowered and connected. This also symbolises New Zealanders standing in and standing up for freedom and peace in Aotearoa New Zealand – a place of human rights for all. In its Treaty and human rights education work the Commission emphasises that the Treaty enables all people to stand here and that it is a promise of two people to take the best possible care of each other.

This year marks a year of commemorations: 175 years since the signing of the Treaty of Waitangi, 70 years since the liberation of Auschwitz and 100 years since Gallipoli. I agree with Dame Susan Devoy: "It's time to reflect on how far we've come and to ask ourselves where we are heading."

In this issue we have our Equal Employment Opportunities (EEO) Commissioner's take on the Kristine Bartlett, Equal Pay Act court case, which tests the application of the Act and will be heard in the Employment Court. Commissioner for Māori and Indigenous Rights, Karen Johansen unpacks the Universal Declaration of the Rights of Indigenous People and explains how this relates to the Treaty of Waitangi.

This month Joanna Collinge left the Commission after completing her second five year term as Executive Director. She has overseen tremendous progress and change at the Commission and contributed significantly to the strengthening of the role of National Human Rights Institutions in the UN system.

The Commission has just appointed a new chief executive, Cynthia Brophy and we have a short interview with her.



Chief Commissioner, David Rutherford

Ka kite anō.

The new Minister of Justice

Ms Adams is the Minister of Justice, Minister for Courts, Minister of Communications and Minister for Broadcasting. *Tūrangawaewae* asked the Minister what her priorities are and to tell us about her work to reduce domestic violence.

“As Minister of Justice my key priorities are to reduce harm and victimisation and ensure that we have a legal system that is efficient and effective with high levels of public confidence.

I intend to ensure the Ministry of Justice continues to work with other sector agencies to reduce crime and its impacts on people. We are focusing on crime-prevention, rehabilitation and reducing re-offending. I have a particular interest in looking at how we deal with family and sexual violence.



Minister of Justice, Hon Amy Adams

In June 2014 Cabinet agreed to four action areas to improve its response to family violence: to better protect victims of domestic violence; to improve victims’ experience when going through the justice system; to support judicial decision-making in cases involving domestic violence; and to ensure domestic violence legislation is modern and fit for purpose.

Justice agencies are working on a package of initiatives to reduce harm and re-victimisation that complements work being carried out by social agencies.”

New Zealand’s National Plan of Action for Human Rights

The Human Rights Commission is facilitating the development of the National Plan of Action for the Promotion and Protection of Human Rights (NPA).

Every four years, countries that belong to the United Nations are asked to declare what they are doing to improve human rights. This process is called the Universal Periodic Review (UPR).

The main issues raised in the UPR concerned New Zealand’s growing diversity and its impact on our society and race relations, inequalities and discrimination and our need to tackle violence and abuse. An additional programme of work is proposed in relation to business and human rights, looking at the actions business can take to contribute to improved human rights realisation.

While the Commission is coordinating the development of the NPA, it is New Zealand’s plan delivered by the Government, not the Commission’s plan. A cross-agency, collaborative approach with the state sector, local government, iwi, civil society and business is essential to its success. To that end the Commission has been working with government agencies to identify tangible, achievable actions (including actions that are already underway or planned) that will progress the UPR recommendations accepted by government.

The NPA will set out a small number of concrete, achievable actions with timeframes and clearly identified agencies that are accountable for delivery. It is expected that these actions will be resourced and reported on. The NPA will be finalised by June 2015.

EEO Commissioner's insights into the Kristine Bartlett Equal Pay Case

When the Equal Pay Act was passed in 1972, it was believed to be just about ensuring men and women received the same pay for the same work. But the Kristine Bartlett Equal Pay Case currently under consideration has turned that on its head.

The Kristine Bartlett equal pay case is a landmark case brought by the Service & Food Workers Union on behalf of Kristine Bartlett who has worked as a caregiver in the aged care sector for 20 years and who receives close to the minimum wage.

There is evidence that the Equal Pay Act 1972 applies to women not only receiving the same pay as men for doing the same work, but also for doing work that is different, but of equal value.

If this case eventually wins, and I believe it will, it will economically empower tens of thousands of women and their families who work in low wage, female dominated occupations.

It will also assist in lifting families and children out of poverty.

GLOBAL GENDER GAP INDEX

The [Gender Gap index for 2014](#) was released recently. NZ slipped from 7th to 13th place globally.

It would appear the main reason for slippage was due to economic participation and opportunity, where we came in at 30th. We slipped from 15th place in 2013.

This index measures labour force participation rates, female-to-male earned income, wage equality for similar work and the advancement of women and men.

The Equal Pay Case is even more relevant in light of this result.



Kristine Bartlett

There will be a domino effect in allied areas in the aged care sector such as kitchen workers and cleaners, and then it will undoubtedly impact in private sector businesses.

I am Chair of the Caring Counts Coalition. The membership comes from aged care providers, unions, ITO, Age Concern and Grey Power. We have written to the Deputy Prime Minister indicating that due to our diverse membership we are in a unique position to help government to identify pragmatic and sustainable potential solutions to the issues highlighted in the *Terranova v Bartlett* case. We hope they take our offer up!

Read the latest Service and Food Workers' Union media release [here](#).

Dr Jackie Blue

Race Relations Commissioner Dame Susan Devoy was recently interviewed by Al Jazeera online. Here is an abridged version of the story they published.

What are the social challenges New Zealand is facing relating to race and faith communities?

The face of New Zealand is younger and more ethnically diverse than ever before. One-in-10 Kiwis are Asian Kiwis. One-in-four Aucklanders are Asian Aucklanders. Māori and Pacific Kiwis are a young, fast growing population. Last year's census for the first time recorded that more than one million people living in New Zealand were born overseas, 300,000 more than in the 2001 census.

In the past there have been attacks on mosques and a recent report was made to police after the harassment of a Jewish child. How is this being addressed?

Muslim Kiwis and Jewish Kiwis have told us they are feeling under pressure because of ongoing conflicts taking place thousands of miles away from us here in New Zealand.

Leaders from both communities have publicly and unreservedly rejected violent extremism, and are vocal advocates for peace, justice and human rights.

If New Zealanders want peace overseas then we need to start right here at home, because human rights begin at home, with everyday people.

The streets of our towns and suburbs are where race relations will thrive or die: it's really up to us. While our incidents are far fewer than what's happened in other countries, they have still happened.

What solutions to current tensions are your office looking into?

There is no panacea when it comes to race relations. Every country has its own issues to address, its own past to reconcile – its own future to guarantee.

We are at a crossroads when it comes to race relations, ethnic diversity and national identity and we all need to play a role in the conversation over where New Zealand is heading. Now is the time to talk about and plan for the kind of country we want our children and grandchildren growing up in. We can't just rely on our Kiwi saying "She'll Be Right" and hope for the best.



Dame Susan Devoy at the Muslim Women Who Inspire Awards, August 2014

Dame Susan Devoy interview continued...

Is institutionalised racism a problem in New Zealand today?

Approximately a third of all complaints and enquiries to the Human Rights Commission are about racial discrimination. Nine out of 10 complaints are resolved by our team of mediators.

In terms of institutional culture we have some unique strategies in place; one is a partnership between New Zealand police and Māori New Zealanders. "Turning The Tide" aims to turn around statistics that see Māori make up more than 40 percent of all police apprehensions, 50 percent of the prison population: even though Māori New Zealanders make up only 15 percent of the population. Our police commissioner was a keynote speaker at our annual Diversity Forum and told us that 'empathy' and 'valuing diversity' had been added to the key police values.

What is your message to New Zealand's faith communities at this moment of tension?

Our message to Kiwis is to stand up for Muslim and Jewish Kiwis or anyone they see being victimised.

Don't be a bystander, be brave and make sure the victims know they are not alone and the perpetrators know they will not be tolerated.

Bosses need to adhere to human rights law around religion

Sometimes religious practices like praying or fasting or taking particular days of rest are required on normal working days. This is sometimes a dilemma for bosses to accommodate, and also for an employee who values their job and appreciates that there is ongoing work to be done. But whose rights take precedence – the employer's or the employee's?

The case about an employee needing to not work on Saturdays for religious reasons was found in favour of the employee. Director of the Office of Human Rights Proceedings, Robert Kee, who represented the employee at the Tribunal hearing explains that this was an important decision because so many businesses would be unaware of their obligations under the Human Rights Act.

"This is a case about the right of an employee not to be discriminated against by their employer on the ground of religion," says Mr Kee, "This is an important decision as it demonstrates employers' obligations under the Human Rights Act, which are often overlooked, particularly by small to medium sized businesses."

The Human Rights Commission's guidelines for employers and employees on workplace requirements can be found [here](#)

Being a small person matters

The United Nations Convention on the Rights of the Child says that in all actions concerning children the best interests of the child shall be the paramount consideration.

“Children have a right to be free from violence and abuse while at school and our schools need support to ensure this becomes a reality,” Chief Human Rights Commissioner David Rutherford says.

On 14 November last year Mr Rutherford was responsible for a small paper boy (his buddy) and took him to the Supreme Court and to various meetings throughout the day – [Buddy Day](#). This meant that he was able to think about how his actions and the decisions he made during the day might affect a child and in particular how a child is affected by being in an abusive environment or by actually suffering direct abuse.



David Rutherford with Buddies

“As a child I learnt how bad it could be from my friends at school who told me about getting bashed at home. In the 70’s my father, a school deputy principal, banned corporal punishment in his school because he thought it was wrong and it legitimised those beatings that some kids were getting from their parents,” Mr Rutherford explains.

Last June the Ministry of Education published [Bullying Prevention Guidelines](#) for schools. The Human Rights Commission has been promoting the need for guidelines since 2012. The Ministry established the Bullying Prevention Advisory Group to support schools and communities in responding effectively to bullying.

What to look out for in the Employment Relations Act (ERA) changes

- Part 6A of the ERA was introduced to ensure continuity of work for employees in industries where restructuring is common. The amendment of part 6A removes this protection for staff in small to medium sized businesses.
- New employees no longer come within the provisions of the collective agreement in their first 30 days. This may result in offering new employees pay and conditions less than that contained in the collective, further undermining collective bargaining and freedom of association. It also will disadvantage young people who are considered more vulnerable at the start of employment.
- Enables employers to walk away from collective bargaining. Research undertaken for the Taskforce on Pay and Employment Equity reported that unions contribute positively to gender equity by narrowing pay dispersion, improving pay at the bottom of the pay distribution, improving minimum standards and engaging in equality bargaining.
- Any worker can request flexible work and that the employer must consider within one month and if declined, give reasons.
- Changes to the right to a tea break are open to abuse – need to check what your entitlements are and monitor use of ‘flagging’ the tea break.

Treaty of Waitangi and UNDRIP

When thinking of United Nations declarations it is easy to think that any documents, treaties or agreements are very ‘high level’ and therefore probably too hard to make sense of or just something for governments to refer to. After talking with Commissioner for Māori and Indigenous Rights, Karen Johansen about the United Nations Declaration on the Rights of Indigenous People (UNDRIP), it appears that the basics of this declaration are actually rather straight forward.

In a nutshell: The 2007 declaration sets out a framework of minimum standards for the survival, dignity, well-being and rights of the world’s indigenous peoples.

It declares discrimination against indigenous peoples unlawful and promotes their full and effective participation in all matters that concern them. It addresses both individual and collective rights; cultural rights and identity; rights to education, health, employment, language, lands and resources. It also affirms their right to remain distinct and to pursue their own priorities in economic, social and cultural development.

Tūrangawaewae asks Karen Johansen, ‘Why would New Zealand need to be involved with this Declaration when we already have the rights of indigenous people (Māori) established in the Treaty of Waitangi 1840?’

“UNDRIP affirms the status of treaties between indigenous people and States. It helps explain how international rights standards apply and how the promise of the Treaty can be achieved,” Karen Johansen explains.

“The Treaty of Waitangi established a set of rights and obligations and a relationship between the Crown and Rangatira which remains in place today. Together with domestic and international human rights standards, it forms the basis for human rights in our country.

“If you put this declaration alongside the Treaty it shows the rights of the indigenous people, and the State’s responsibility to uphold those rights.”

Ms Johansen says to understand UNDRIP in relation to our Treaty it is helpful to look at each article of UNDRIP and then think about what that might mean for Māori.

For example, she says, Article 14 of the Declaration is about the right of indigenous people to educate their own people and this provides a practical way to think about Article 3 of the Treaty, which is about protection of taonga and tikanga – the right to and retention of culture and customs, which clearly includes the right to educate our people.

In addition, a major principle of UNDRIP reinforced at the World Conference on Indigenous Rights in New York last September, is that of requiring prior and informed consent of indigenous people in regard to decision making by the State on matters that affect indigenous people.



Karen Johansen

Treaty of Waitangi and UNDRIP cont...

“This is an issue that often comes into play in situations where businesses or corporations are granted approval by the State to carry out activities, such as mining or other industries that deal with natural resources, that impact on indigenous peoples.

“While these situations can often lead to disputes, UNDRIP provides a framework for businesses to involve indigenous peoples in decisions and to find ways of working together to find solutions that benefits both,” Ms Johansen explains.

Clearly, UNDRIP provides a new lens with which to view the Treaty of Waitangi and how to bring that up to date with today’s modern world.

The Human Rights Commission is providing technical support to the Iwi Chairs Forum to progress the government’s commitment to UNDRIP. The Iwi Chairs Forum is establishing a group to monitor the implementation of UNDRIP and report to the United Nations committee on its findings.

Cynthia Brophy – New CE for HRC

The Commission’s new chief executive started a couple of weeks ago. To read about her professional background click [here](#). Tūrangawaewae asked her a few questions...

Do you think being from America you bring a different perspective to human rights issues than other New Zealanders?

I think anyone that immigrates to a new country learns a lot about the challenge of leaving a culture you are at home in so to speak, and then learning about and fitting in to one a bit different. I bring the experience of being a relatively recent immigrant.

What I most admire about New Zealanders and what I think is well aligned with how most Americans feel, is the understanding that everyone deserves a fair go and that everyone should have an equal opportunity to succeed.”

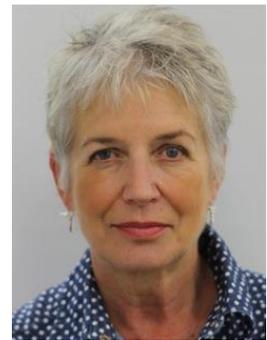
Have you had any experience of personal discrimination?

Yes, I have experienced discrimination. When I started working for a major US insurance company it was an accepted pattern that once you started a family, the career was put on hold if not extinguished. Few women with young children returned to work and childcare was difficult to find.

In every senior role I have had there were very few women on the executive team and never on boards until recently. It is great to see that changing.

Do you have a ‘first 100 days’ wish list of achievements?

In my first 100 days I am keen to get the workforce plan completed so we can ‘settle’ our organisation structure. I want the National Plan of Action to become an effective means of taking human rights forward through our government streams.



Cynthia Brophy

Disability – top of mind

Last September Disability Rights Commissioner Paul Gibson came back from reporting to the United Nations Committee on the Convention on the Rights of People with Disabilities (CRPD) very clear about what the New Zealand Government needs to do to meet its obligations under the Convention.

The CRPD clarifies that disabled people have the same rights as other members of the community. These rights include: the right to be treated fairly and equally; the right to be treated with respect and dignity; the right to make decisions; the right to participate in society and in communities; the right to be free from violence

“All over the world, disabled people are still not experiencing the human rights most other people take for granted,” Paul Gibson says.

Paul explains that on average New Zealand’s intellectually disabled people die 23 years younger than other people, some are abused in care, and there is a desperate need for better job opportunities for all disabled people.

“Disabled people are still too often on the fringes of society and struggling. They are struggling financially by having trouble getting jobs, family carers are struggling with the costs of caring, some disabled people are suffering by being put in isolation, and many are still struggling to have access to the basics like proper access to public buildings.”

In addition he points out that many employers are not employing people with a disability, even

when they can clearly do the job as well as a non-disabled person. In a 2012 research report, 78 per cent of employers said that disabled New Zealanders are discriminated against.

Evidently, the most common employment complaint to the Human Rights Commission is about disability discrimination. Disabled people have repeatedly reported not getting interviews because they acknowledged their disability to the potential employer.

Paul is determined to see major progress on three primary matters next year: Firstly, a real commitment from government to work to end the practice of seclusion of people with a mental health disability. Secondly, schools are directed to accommodate children with disabilities so that local children are part of their community.

Thirdly he wants to see a commitment from government to properly protect disabled people from abuse and neglect.



Paul Gibson

In our March issue:

- Race Relations Day (21 March) Roundup
- Preparations start for the 6th Periodic Review of our actions under the United Nations Convention against Torture
- Freedom of Expression debate
- Business and human rights

Please send us your event notices so we can post them on our website.

Email: Karen.coltman@hrc.co.nz

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Email: as above.

Contact the Commission

InfoLine 0800 496 877 (toll free)

Fax: 09 377 3593 (Attn: InfoLine)

Email: infoline@hrc.co.nz (for general enquiries) TXT 0210 236 4253

Ph: 03 379-2015 Fax: 03 964-8964.
