

## 18. Rights of Women

### Tikanga o te Ira Wahine



**"We condemn discrimination against women in all its forms."**

## We condemn discrimination against women in all its forms.

Convention on the Elimination of all Forms of Discrimination against Women, Article 2

### Introduction Tīmatatanga

Women and girls have the same fundamental human rights as men and boys have. These rights are set out in the Universal Declaration of Human Rights, and more explicitly referred to in the Convention on the Elimination of Discrimination Against Women (CEDAW) and the Beijing Platform for Action. In the Preamble to CEDAW, discrimination is described as:

**“...an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity”.<sup>1</sup>**

The Beijing Platform for Action identifies 12 critical areas of concern, including violence against women, economic inequality and the burden of poverty on women, insufficient mechanisms to promote women’s advancement, and inadequate promotion and protection of the human rights of women.<sup>2</sup>

Women are also members of other marginalised groups, such as indigenous women, women from ethnic minorities and disabled women. They suffer from multiple disadvantages and therefore require additional human rights protections. The promotion and protection of women’s rights in international and domestic legislation have traditionally included affirmative action, often referred to as special measures. Rights which acknowledge the unique role of women as mothers are also included in international human rights protections.

New Zealand women fare relatively well on several authoritative international measures. The Global Gender

Gap Index, produced by the World Economic Forum, calculates gender equality in terms of economic participation and opportunity; educational attainment; health and survival; and political empowerment. New Zealand was placed fifth, behind the Nordic countries, for the fourth year in a row in 2010.

The Human Development Reports from the United Nations Development Programme include two measures of gender equality. The Gender Empowerment Measure (GEM) combines indices such as: the participation of women in economic and political life; the representation of women in parliament, as senior officials and management, and as professional and technical workers; and the gender disparity in earned income. In 2009, New Zealand was ranked 10th out of 109 countries. The Human Development Index (HDI) is a composite measure of three dimensions of human development: life expectancy, education and standard of living. The Gender Development Index (GDI) captures inequalities between men and women on these indicators. In terms of the ratio of the GDI to the HDI, New Zealand ranks 69th out of 155 countries.

New Zealand was the first nation to grant women the right to vote, in 1893. Since then women have made huge gains in participation in many fields, such as education, the labour market and politics. Despite positive economic and social progress, equality between men and women has not yet been achieved, and progress on many key indicators is either painfully slow or static.

The focus of this chapter is on four critical issues relating to women’s rights: economic equity; representation and participation; violence against women; and maternity protections. These issues have been selected because the Commission considers them to be among the most pressing issues for women in New Zealand. They have persistently been a focus of CEDAW committee recommendations and requests, and are critical areas of concern in the Beijing Platform for Action. Women’s reproductive and sexual health is covered in the health chapter. The review includes the contributions of civil society to strengthening the implementation of human rights for women, and refers to several significant cases.

1 ibid

2 Fourth World Conference on Women (1995), Beijing Platform for Action. Accessible online at <http://www.un.org/womenwatch/daw/>

The Commission has recently undertaken the National Conversation about Work, an extensive consultation with employers, employees and community groups in all regions of New Zealand. More than 3000 people have participated in the conversations – at least half of them women, including women’s groups.

This chapter draws on material from the National Conversation, which will be used to develop a new equality-in-employment framework for the Human Rights Commission.

This chapter acknowledges that women are not a homogeneous group, and that in particular indigenous women, migrant women, rural women and women with disabilities often face multiple barriers to full and equal participation. Specific reference is made to these groups in various sections of this chapter, where pertinent and where data is available. The Commission has had difficulty sourcing data about women from different groups and has advocated for improved data collection and publication.<sup>3</sup>

## International context Kaupapa ā taiao

The Convention on the Elimination of all Forms of Discrimination Against Women, CEDAW, is the principal international instrument on the rights of women. The Convention’s focus is on eliminating all forms of discrimination against women so that substantive equality, which requires equality in practice and the elimination of structural forms of inequality, can be achieved. Substantive equality is discussed in the chapter on equality.

The CEDAW committee<sup>4</sup> describes the three obligations that are central to state parties’ efforts to eliminate discrimination against women as:

1. **To ensure that there is no direct or indirect discrimination in their laws and that women are protected against discrimination – whether committed by public authorities, the judiciary, organisations, enterprises or private individuals – in the public as well as the private spheres, by competent tribunals as well as by sanctions and other remedies.**
2. **To improve the de facto position of women through concrete and effective policies and programmes.**
3. **To address prevailing gender relations and the persistence of gender-based stereotypes that affect women, not only through individual acts by individuals but also in the law, and legal and societal structures and institutions.**<sup>5</sup>

CEDAW requires state parties to take all appropriate measures, including legislation, to eliminate discrimination against women by persons, organisations or enterprises, and by abolishing or modifying laws, regulations, customs and practices which constitute discrimination against women.

The convention specifically allows for special measures to accelerate equality, and states that these measures, such as affirmative action and positive obligations or duties, do not constitute discrimination. Temporary special measures are permissible for the purpose of accelerating equality, but these can only be in place while the inequality that the measure is designed to address persists.

Article 11 requires state parties to take all appropriate measures to eliminate discrimination in employment. In the context of just and favourable conditions of work,

3 For example, the State Services Commission no longer collects disability data in the annual Human Resource Capability Survey across the public service

4 Report of the Committee on the Elimination of Discrimination Against Women (2004) general recommendation No 25 on Article 4(1) of CEDAW on temporary special measures pp 78–86 30th Session A/59/38

5 International human rights standards and national laws originally focussed on sex as the basis for different treatment of men and women, and prohibited discrimination based on sex. Sex refers to the biological distinction between males and females and includes people of indeterminate sex. But it was soon realised that this term was not broad enough to include the various forms of discrimination related to women and men. Social and cultural assumptions or stereotypes about the roles and responsibilities of men and women were also relevant (for example, whether it was socially acceptable for women to work in certain jobs or to do paid work at all). ‘Gender’ is the term which came to refer to the social, cultural or other constructions of what it means to be a man or a woman, including expectations about roles and behaviours. Today, the term ‘gender discrimination’ is often used in place of the term ‘sex discrimination’. The CEDAW committee has stated that ‘sex discrimination’ includes discrimination based on gender stereotypes

CEDAW specifically refers to both equal pay for equal work, and “fair wages and equal remuneration for work of equal value”. Equality of treatment in the evaluation of the equality of work is also specifically required. CEDAW also requires equality of opportunity; the right to promotion; job security; and access to vocational training and retraining, including apprenticeships.

The Convention includes a number of maternity protections and prohibition of discrimination on the basis of marriage or maternity. Maternity protections include paid maternity leave or comparable social benefits “without loss of former employment, seniority or social allowances”.<sup>6</sup> State parties are also required to encourage the provision of the necessary social services to enable parents to meet family obligations, as well as work responsibilities and participation in public life. In particular, this includes the establishment and development of a network of childcare facilities.

The convention includes specific mention of rural women (Article 14), which includes a statement that state parties should ensure the application of the provisions of the convention to women in rural areas.

“The issue of gender-based violence is not specifically addressed by the CEDAW Convention, but the committee has adopted the approach that it is included in the prohibition on gender-based discrimination in the convention, being “violence that is directed at a woman because she is a woman or that affects women disproportionately” (general recommendation no. 19).”<sup>7</sup> The Declaration on the Elimination of Violence Against Women was adopted by the General Assembly in 1993.

The Beijing Platform for Action has been accepted as the implementation framework for CEDAW. In the Beijing Declaration, governments, the international community and civil society, including non-governmental organisations and the private sector, were called on to take strategic action in the following critical areas of concern:

- the persistent and increasing burden of poverty on women

- inequalities and inadequacies in and unequal access to education and training
- inequalities and inadequacies in and unequal access to healthcare and related services
- violence against women
- the effects of armed or other kinds of conflict on women, including those living under foreign occupation
- inequality in economic structures and policies, in all forms of productive activities and in access to resources
- inequality between men and women in the sharing of power and decision-making at all levels
- insufficient mechanisms at all levels to promote the advancement of women
- lack of respect for and inadequate promotion and protection of the human rights of women
- stereotyping of women and inequality in women’s access to and participation in all communication systems, especially in the media
- gender inequalities in the management of natural resources and in the safeguarding of the environment
- persistent discrimination against and violation of the rights of the girl child.

Specific reference to the rights and needs of the girl child feature prominently in the Beijing Declaration. For example, it states “[We reaffirm our commitment to] ensure the full implementation of the human rights of women and of the girl child as an inalienable, integral and indivisible part of all human rights and fundamental freedoms.”<sup>8</sup>

Prohibiting discrimination against women is reinforced by the major human rights instruments of the United Nations:

#### **The Universal Declaration of Human Rights**

#### **The Covenant on Civil and Political Rights**

#### **The Covenant on Economic, Social and Cultural Rights**

#### **The Convention on the Elimination of all forms of Racial Discrimination**

6 Convention on the Elimination of Discrimination Against Women, Article 11(2b)

7 Ministry of Foreign Affairs and Trade (2008), *New Zealand Handbook on International Human Rights* (Wellington: MFAT), p 86

8 Fourth World Conference on Women (1995), Beijing Platform for Action. Accessible online at <http://www.un.org/womenwatch/daw/beijing/platform/declar.htm>

### The Declaration on the Rights of Indigenous Peoples

### The Convention on the Rights of the Child

### The Convention on the Rights of Persons with Disabilities

Recent conventions and declarations have articulated the multiple disadvantages experienced by particular groups of women, and the need to take additional measures to ensure their fundamental human rights and freedoms. At a Committee on the Status of Women 2010 side event held in New York, there was strong advocacy for the use of CEDAW and the Convention on the Rights of Persons with Disabilities (specifically Article 6) to be used to mutually reinforce the rights both of women and of persons with disabilities.<sup>9</sup>

Article 6 urges state parties to:

1. **recognise that women and girls with disabilities are subject to multiple discrimination, and in this regard...take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms, and**
2. **take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms.**

The Convention also includes reproductive rights and sexual and reproductive health (Articles 23 and 25). This is considered groundbreaking from a human rights perspective.

Article 1 of the Declaration on the Rights of Indigenous Peoples urges states to take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention is to be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 22 states that particular attention is to be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of the declaration. States are also urged to

take measures, in conjunction with Indigenous peoples, to ensure that indigenous women and children enjoy full protection and guarantees against all forms of violence and discrimination.

Six ILO<sup>10</sup> conventions also focus specifically on women. They are:

#### C111 Discrimination (Employment and Occupation)

#### C100 Equal Remuneration

#### C156 Workers with Family Responsibilities

#### C183 Maternity Protection

#### C175 Part-time Work

#### C168 Employment Promotion and Protection Against Unemployment

New Zealand has ratified C100 and C111.

## New Zealand context Kaupapa o Aotearoa

The New Zealand Government has an obligation to ensure non-discrimination and equality, having ratified international conventions. The Government regularly reports to international bodies on compliance and progressive realisation of rights set out in the international human rights treaties.

New Zealand ratified CEDAW in 1985. In 2007 it withdrew its reservation to Article 11(2)(b), after the implementation of paid parental leave. The last reservation, on women's participation in the armed forces, has also been withdrawn. In 2000 New Zealand signed and ratified the Optional Protocol to CEDAW, which provides a complaint mechanism once all domestic remedies are exhausted.

Domestic legislation includes the Human Rights Act 1993 (HRA) and the Bill of Rights Act 1990 (BoRA). The HRA includes these prohibited grounds of discrimination: sex, including pregnancy and childbirth; marital status, including being single, married, in a civil union, or in a de facto relationship, as well as being the surviving or separated spouse or partner of any one of those relationships, or a party to one of those relationships

9 Rangita de Silva de Alwis, Director of International Human Rights Policy at the Wellesley Centers for Women, has urged that both treaties be used to "cross-fertilise both agendas" at a workshop at the Committee on Status of Women meeting in New York 2010

10 The ILO Conventions are accessible online at <http://www.ilo.org/ilolex/english/convdisp1.htm>

which has ended; and family status, which includes having responsibility for children or not, being a relative of a person or being in a marriage, de facto relationship or civil union with a particular person.

In 2001 the HRA was amended to include an Equal Employment Opportunities Commissioner. The mandate of the EEO Commissioner includes responsibility for providing leadership, advice and guidance on equal employment opportunities, including pay equity (equal pay for work of equal value).

The HRA and the BoRA both protect the right to freedom from discrimination. The BoRA applies to the public sector, the legislature, the executive, and the judiciary. The HRA applies to both public and private sectors:

A publicly funded, free dispute resolution service is available for complaints of discrimination in the public and private sectors, and public-sector employers are required to meet the same non-discrimination standards as private-sector employers.

Special measures are permissible in both the HRA and the BoRA. Although the wordings of section 73 (1) of the HRA and section 19 (2) of the BoRA differ, both are designed to ensure equal outcomes by addressing disadvantage that is the result of unlawful discrimination. There are limits to introducing special measures. The measure must be tailored to reduce the actual disadvantage of the group it is aimed at; the impact of the measure on those to whom it does not apply should be considered; the measure should be proportional to the degree of disadvantage; and measures to ensure equality should be temporary, that is, until the disadvantage is resolved.<sup>11</sup>

## New Zealand today Aotearoa i tēnei rā

This section focusses on economic equity, representation and participation, violence against women and maternity protections. Within each section, relevant legislation and case law are outlined, together with a description of recent developments.

The four topics are included in a number of domestic statutes:

Government Services Equal Pay Act 1960

Equal Pay Act 1972

State Sector Act 1988

Local Government Act 2002

Crown Entities Act 2004

Domestic Violence Act 1995

Paid Parental Leave Act 2002

Employment Relations Act 2008 amendment:  
infant feeding

Employment Relations Act 2007 amendment:  
flexible work

Complaints to the Human Rights Commission in the last two years show a gendered pattern. The number of complaints and enquiries by women on the grounds of sexual harassment was much higher than the number by men, whereas men made complaints and enquiries about race at a much higher rate than women did.

Approaches to the Commission by women, disaggregated by ethnicity, are fairly similar to the proportions recorded in the 2006 Census, with a slightly higher proportion of Māori women and a slightly lower proportion of Pacific women approaching the Commission. The proportion of women from 'other' ethnicities, such as African, Middle Eastern and Latin American, is significantly lower than their proportions in the general population.

## ECONOMIC EQUITY

**“Opportunities for women in employment have increased, and they have taken up careers once considered the prerogative of men. Despite this, and despite advances in women’s educational achievements, their earnings are still on average less than men’s. It is also difficult for women to reconcile family duties with paid work without affecting their chances of promotion or skill enhancement. However, even when they manage to overcome these obstacles, they earn less than men.”**<sup>12</sup>

11 Human Rights Commission (2007), Guidelines on Measures to Ensure Equality (Auckland: HRC). Accessible online at [http://www.hrc.co.nz/hrc\\_new/hrc/cms/files/documents/18-Mar-2007\\_18-54-53\\_Special\\_Measures\\_A4\\_Final\\_PDF.pdf](http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/18-Mar-2007_18-54-53_Special_Measures_A4_Final_PDF.pdf)

12 International Labour Office (2007), *Equality at Work: Tackling the challenges*, pp xi –xii

Closing the gender pay gap is increasingly a global focus of civil society, with its members urging improved labour-market legislative and policy responses. For example, BPW International, the Federation of Business and Professional Women, runs an International 'Equal Pay Day' awareness campaign which is gaining traction in Europe, Australia and New Zealand.

### Legislative framework

In 1960, equal pay legislation eliminated different pay rates for men and women doing the same job in the public service. The Equal Pay Act 1972 extended the right of women to equal pay for equal work into the private sector.

When the act was passed, the award system was in place, meaning that many wage rates were negotiated for various occupations and applied across the labour market. The effectiveness of the equal pay legislation has been limited in recent decades, partly due to the abolition of the award system. The Employment Equity Act, providing for equal pay for work of equal value, was passed in 1990 but repealed six months later. "Currently the remedy for employment discrimination (including pay) under the Equal Pay Act, the Employment Relations Act and the Human Rights Act is for the individual affected to lodge a complaint. Under all three acts the onus is on the employee to identify the problem and instigate the complaint. It is against the law for employers to discriminate, but there is no requirement for employers to ensure or demonstrate that pay systems are equitable." <sup>13</sup>

Provisions in public sector <sup>14</sup> legislation, the State Sector Act 1988, the Crown Entities Act 2004 and the Local Government Act 2004, require that employers must be 'good employers'. This includes having an equal opportunities programme, that is "a programme that is aimed at the identification and elimination of all aspects of policies, procedures, and other institutional barriers that cause or perpetuate, or tend to cause or perpetuate, inequality

in respect of the employment of any persons or groups of persons". <sup>15</sup> Good-employer provisions also require "recognition of the employment needs of women". <sup>16</sup> The legislation does not specify reporting mechanisms or detail about how an EEO programme is to be developed.

At present, only public sector employers are required under law to engage in these positive duties. There is no private sector obligation to undertake these in domestic legislation. The private sector is bound only by the general anti-discrimination and employment law frameworks.

### Case law

In 2007, a landmark case on sexual discrimination in employment in the private sector was successfully concluded in the High Court. The decision in *Talleys Fisheries Limited v Lewis and Edwards* established that employers should not be segregating women into work that is substantially similar to work undertaken by men, but with lesser pay. The court said that what is "substantially similar" needs to be assessed by looking at core aspects of jobs, rather than "difference in detail". The judgment said that "the reason she [Ms Lewis] received less money was because she was made a trimmer and the reason she was made a trimmer was because she was a woman". *Talleys* (the employer) agreed to implement an EEO programme, to train managers about the Human Rights Act and to pay compensation to Ms Lewis.

### Women in poverty

Women are over one-and-a-half times more likely than men to live in a household with a total annual income of \$30,000 or less. At the same time there is little distinction between men and women in reporting whether or not income is adequate to meet everyday needs. <sup>17</sup> Nearly two-thirds (63 per cent) of those aged 15 and over with a personal income of between \$1 and \$5000 a year are women. Three-quarters (75 per cent) of those with a personal income of over \$75,000 a year are men. <sup>18</sup>

13 L. Hill (2004), Equal pay for work of equal value: Making human rights and employment rights work together, *Social Policy Journal of New Zealand*, March Issue 21 pp1–25

14 'Public sector' refers to public service departments; the wider state sector which includes Crown entities such as District Health Boards, School Boards of Trustees, tertiary education institutions, state owned enterprises; and local government. See <http://www.ssc.govt.nz/display/document.asp?NavID=47>

15 See section 118 Crown Entities Act 2004, section 56 State Sector Act 1988 and section 36 of schedule 7, Local Government Act 2002

16 *ibid*

17 Statistics New Zealand (2009), *New Zealand General Social Survey 2008* (Wellington: Statistics New Zealand).

18 *ibid*

Personal income is only one indicator of poverty, which can have profound effects economically and in terms of social isolation. "Poverty leaves women more exposed to violence, less able to escape it. It severely restricts women's ability to organise and fight for change." <sup>19</sup>

In the 2006 Census, the median annual income from all sources for people aged over 15 was \$31,500 for men and \$19,100 for women, a gap of 39 per cent. <sup>20</sup> This is attributed to differences in employment, "among other factors". Men are more likely than women to be in paid work, working full-time and working longer hours. The median income for Māori women was \$17,800 and for Pacific women \$17,400. <sup>21</sup> The cost of disability and ensuing poverty is an issue requiring more detailed research.

Women head 83 per cent of one-parent households. <sup>22</sup> For couples with children, median income from all sources is \$75,600; for families of one parent with children, it is \$27,400. <sup>23</sup> International experience shows that the global recession is impacting negatively on women: families who have to rely on a female breadwinner's income are exposed to a greater risk of poverty, because of women's lower gross hourly wages. <sup>24</sup>

Progressive improvements to the minimum wage have increased the income of women earning at or near that level. Over the past decade, the minimum wage increased from \$7.55 (March 2000) to \$12.75 (April 2010).

As a result of lower lifetime earnings, due partly to a combination of fewer hours worked because of broken and part-time employment, most often because of caring commitments, as well as lower income while working, women in general are less able to save for retirement

than men. In addition, an annuity bought with savings is likely to provide less annual income, because of the longer life expectancy of women. However, New Zealand Superannuation, which is "effectively a Universal Basic Income for the over 65s" <sup>25</sup>, ensures that poverty levels are low and living standards comparatively high among the older population. It is estimated that some 55 per cent of women and 38 per cent of men have no other income in retirement.

### The gender pay gap

In response to New Zealand's most recent periodic report to the CEDAW Committee, in 2006 the committee noted concern about women's disadvantaged status in the labour market, and recommended that efforts be intensified to eliminate occupational segregation and close the wage gap. It called on the Government to monitor the impact of measures taken in both the private and public sectors, and to report on those measures in the next periodic report. <sup>26</sup>

Internationally, calculation of the gender pay gap has proved to be controversial. The UK Office for National Statistics (ONS) has recommended that the British Government use three statistics: the median hourly pay of all workers; the median <sup>27</sup> hourly pay of full-time workers; and the median hourly pay of part-time workers. This recommendation arose from concerns that the gender pay gap was being calculated as the ratio between the median hourly rate of men working full-time and that of women working part-time. In New Zealand, it is common practice to express the gender pay gap in terms of the median hourly rate for all employees. "Estimates based on hourly earnings yield the narrowest pay gaps as women are more likely to work fewer hours in a week

19 Irene Khan (2009), Amnesty International, *Flame: Amnesty International Aotearoa New Zealand's Supporters Magazine*, Summer, p 5

20 QuickStats About Incomes 2006 Census Statistics New Zealand <http://www.stats.govt.nz/census/2006censushomepage/quickstats/quickstats-about-a-subject/incomes.aspx>

21 QuickStats, 2006 Census, Statistics New Zealand, as above

22 Calculated from Ministry of Social Development (2009), *The Social Report* (Wellington: MSD), p 16

23 QuickStats About Incomes, 2006 Census, Statistics New Zealand, as above

24 Committee on the Status of Women (2010), Country report Germany, New York, 1–12 March,

25 Prue Hyman (2007), 'Retirement Income – Issues for Women', background paper prepared for the 2007 Review of Retirement Income Policies (Wellington: Retirement Commissioner), p 9

26 Committee on the Elimination of Discrimination Against Women 39th Session 23 July–10 August 2007 CEDAW/C/NZ/CO/6 <http://www.un.org/womenwatch/daw/cedaw/39sess.htm>

27 Half earn more, half earn less

and a year than men.”<sup>28</sup> According to the New Zealand Income Survey, 71 per cent of part-time workers are women and 58 per cent of full-time workers are men.

The Commission has adopted the ONS recommendation for analysing the gender pay gap in New Zealand. The median hourly rates of pay from the Statistics New Zealand Income Survey for the June 2010 quarter, and the gender pay gaps, are shown in the charts below.

The gender pay gap had persisted at approximately 12 per cent since 2001, and the mean (average) gap is 13 per cent according to Statistics New Zealand. When the variable of ethnicity is added, the results suggest double disadvantage.

**MEDIAN HOURLY RATE**

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

**Full time and part-time employment Median gender pay gap (% difference)**

All female employees / all male employees	10.6
Full time male employees / full time female employees	4.8
Part time male employees / part time female employees	-5.7

The gender gap between the highest hourly rate (European men) and the lowest (Pacific women) is 24.4 per cent.

In 2003 a complaint was taken to the Human Rights Commission by female students, who argued that the interest charged on student loans was discriminatory

**ETHNICITY**

	Men (median hourly rate)	Women (median hourly rate)
<b>European</b>	\$22.06	\$19.33
<b>Māori</b>	\$18.00	\$17.00
<b>Pacific peoples</b>	\$17.88	\$16.68
<b>Asian</b>	\$19.18	\$18.00
<b>MELAA*</b>	\$22.00	\$20.00
<b>Other</b>	\$22.06	\$18.00

\* Middle-Eastern, Latin American, African.

because the gender disparity in lifetime earnings placed a considerable additional burden of debt on women. The case was dropped when the Government introduced interest-free student loans in 2006.

**Pay and employment equity in the public sector**

In 2004 the Pay and Employment Equity Unit was established in the Department of Labour to implement a five-year ‘Pay and Employment Equity Plan of Action’, as recommended by the Pay and Employment Equity Taskforce.

The unit and a tripartite steering group oversaw the rollout of pay and employment equity reviews across the public service and the public-health and public-education sectors, as well as two local councils and three Crown entities. In total, 14.2 per cent of all employees in New Zealand – approximately 225,600 employees – were covered by the reviews.<sup>29</sup>

In addition, the Equitable Job Evaluation System and the New Zealand Gender-inclusive Job Evaluation Standard were developed and made available for implementation.

The reviews found gender pay gaps for all but one of the 36 public-service departments. (Child, Youth and Family

28 Hicks S and Thomas J (2009), *Presentation of the Gender Pay Gap* Office for National Statistics. <http://www.statistics.gov.uk/articles/nojurnal/PresentationoftheGenderPayGap.pdf>

29 See Department of Labour (2009), *Public sector pay and employment equity reviews: Overview report* (Wellington: DOL) (June) <http://www.dol.govt.nz/services/PayAndEmploymentEquity/papers.asp>

undertook a separate review from the Ministry of Social Development.) Pay gaps for median equivalent full-time hours ranged from 3 per cent to 35 per cent. Common findings included:

- unequal starting salaries for the same job
- female-dominated jobs being lower-paid than male-dominated jobs
- gender disparities in pay progression and performance pay
- women predominating among the lowest-paid staff and forming a minority of those in the best paid jobs
- women having a smaller share of additional rewards
- significant gender differences in opportunities to participate in all roles and at all levels.

In the five years to 2009, the overall gender pay gap in the public service decreased slightly, from 16.4 per cent in 2005 to 15.4 per cent in 2009, according to the Human Resource Capability survey of the public service collated by the State Services Commission (SSC). The published survey report does not include a breakdown of the pay gap by individual departments, but this information is provided to individual departments by the SSC.

Across the public health sector,<sup>30</sup> aggregate pay gaps of 50–100 per cent in average total remuneration were reported. However, this figure does not separate out the effect of part-time work. One district health board which reported on full-time equivalent earnings found a pay gap of 31 per cent. As with the public service, women in the public health sector were over-represented in lower-paid occupations and under-represented in higher-paid ones. Gender pay gaps were also found within occupations, including starting rates in some cases.

The review of schools and kindergartens did not identify concerns about the pay rates for teachers. However, women were under-represented in higher-paid “senior management roles and in principals’ positions”. This is consistent with earlier research, which found that 40 per cent of principal positions were occupied by women,

despite women making up 82 per cent of the teaching workforce. “Seen from another perspective, 60 per cent of the principals are appointed from the 18 per cent male pool of the workforce.”<sup>31</sup> The review also identified concerns about some aspects of pay and progression for school support staff, and about the basis on which the work of cleaners and teachers aides is evaluated.

Reviews conducted in Crown research institutes and local government also found gender pay gaps. Similar disparities as in the public service were found. Women were found to be earning less than men in the same occupations, and were concentrated in lower paying occupations and under-represented in senior management. Equitable job sizing, especially for support roles, was also raised as an issue.

Each review included a response plan. “Response plans were much stronger on taking action to prevent problems in the future than in immediate action remedying the identified problems. In many cases, there were very limited monitoring, accountability and reporting arrangements, including in relation to reporting on progress to employees within organisations.”<sup>32</sup> The Department of Labour also commented that “some organisations could not be confident that they were meeting all their responsibilities under equal pay, equal employment opportunity and anti-discrimination legislation.”

In 2009, the Pay and Employment Equity Unit was disestablished and the plan of action and pay investigations were discontinued. Recommended pay investigations will not now proceed or be completed. A cabinet minute noted the decision to discontinue pay investigations, but also noted that public-service departments and the public-health and public-education sectors were to continue to implement response plans, excluding pay investigations. Chief executives were reminded of their obligation to ensure that they continue to address and respond to gender inequities. The minute also noted government “encouragement of employers in the voluntary participation of both public- and private-sector organisations in pay and employment equity projects”.

30 The district health boards and the New Zealand Blood Service

31 Brooking, K (2003), *Boards of Trustees’ selection practices of principals in New Zealand primary schools: Will the future be female?*, p 1. Paper presented at BERA Conference, Edinburgh 11–13 September 2003

32 Extracts from ‘Public sector pay and employment equity reviews – Overview report’ Department of Labour June 2009 <http://www.dol.govt.nz/services/PayAndEmploymentEquity/papers.asp>

In November 2009, a survey of Crown entities undertaken by the Commission as part of annual monitoring of good-employer reporting included questions about pay and employment equity. Only six (13 per cent) of the Crown entities who responded reported having a pay gap. Of these, the findings show significant gender-pay gaps ranging from 3 per cent to 29 per cent. Nine Crown entities (20 per cent) said they did not know whether they had a pay gap, and 30 (67 per cent) reported that they had no pay gap at all.

Eighty per cent of respondents said they were not interested in analysing the pay gap in their organisations in the next two years, and an additional 10 per cent did not feel the need for further information or guidance on pay and employment equity issues.

The Human Rights Commission held a Pay and Employment Equity Roundtable in August 2009 to advance issues of pay and employment equity, following the disestablishment of the Pay and Employment Equity Unit of the Department of Labour. Its aim was to explore ways of continuing the momentum towards closing the gender pay gap, with the Government expressing interest in ensuring that pay and employment equity is the responsibility of all employers.

A legal opinion by Helen Aikman QC for the Commission found that despite the disestablishment of the Pay and Employment Unit, the public sector would still be expected to address equality issues as part of being a good employer (section 118 Crown Entities Act 2004 and section 56 State Sector Act 1988).

The Commission developed a monitoring framework for pay and employment equity which is published online on the Commission's EEO website, [www.neon.org.nz](http://www.neon.org.nz). This toolkit is aimed at improving the availability of self-help mechanisms for the public and private sectors.

The Ministry of Women's Affairs "received a 12 per cent funding increase – an additional \$2 million over four years to do more research and policy work on the gender pay gap. The extra funding would be spent taking a fresh look

at the causes of the gender pay gap and taking effective measures to reduce it." <sup>33</sup>

A sex discrimination complaint has been made to the Human Rights Commission on the discontinuation of a pay investigation into the pay of social workers which had been recommended in the pay and employment equity review at Child, Youth and Family. Parties to the complaint were notified in May 2010 and mediation initiated.

#### Pay and employment equity in the private sector

Other than broad labour market data, very little is known about the gender pay gap in the private sector, because there are no reporting obligations on business concerning equal-employment opportunities. The Talley's sex discrimination case referred to above highlighted the lack of visibility of unequal pay between men and women doing similar work. At CSW 2010 in New York, there were repeated international calls for greater transparency around remuneration in the corporate world.

#### What next?

Women continue to express frustration about the lack of progress and the lack of effective mechanisms to address entrenched and systemic pay inequality both in the public and private sectors. A school support worker told the Commission during the National Conversation: "I don't begrudge cleaners and caretakers a pay rise, but the unfairness is blatant. A cleaner earns more vacuuming than a teacher's aide who tube-feeds and catheterises a student." <sup>34</sup>

In its last report, in 2007, the CEDAW committee recommended that New Zealand:

**...enact and implement comprehensive laws guaranteeing the substantive equality of women with men in both the public and private sectors, especially in regard to equal pay and equal opportunity in employment. It also recommends that the state party include adequate sanctions for such acts of discrimination against women and ensure that**

33 Minister of Women's Affairs press release, 9 June 2009 Accessed online at <http://beehive.govt.nz/release/women%E2%80%99s+affairs+gets+boost+gender+pay+gap+work>

34 Human Rights Commission (2009), *National Conversation about Work: Nelson/Marlborough/Tasman Report*, Department of Labour (2009). Presentation at the National Refugee Resettlement Forum, Wellington. 27 May 2009

**effective remedies are available to women whose rights have been violated.**<sup>35</sup>

The Human Rights Commission has recommended a timetabled approach to implementation of pay and employment equity that reflects New Zealand's economic conditions. It has also recommended that the Government set a minimum target for halving the gender pay gap by 2014 and eliminating it by 2020. This will require cross-party political commitment and broad-based civil society and business support.

**REPRESENTATION AND PARTICIPATION**

Over the past decade women have at some time held many of the positions of power in New Zealand. Two consecutive female prime ministers led New Zealand for over 10 years. At one point, Helen Clark was Prime Minister; former Prime Minister Jenny Shipley was Leader of the Opposition, and the positions of Attorney-General, Chief Justice and Governor-General were all held by women. The chief executive officers of the two largest tele-communications companies were also women.

However, Dame Silvia Cartwright, then Governor-General of New Zealand, noted:

**New Zealand and international media have focussed on the perceived predominance of women across some of the country's key leadership positions during recent years. This type of commentary has been welcomed by many as proof that our nation is paying more than lipservice to issues of gender equity in the workforce. Such attention, however positive, carries the risk of a double-edged sword. It is all too convenient to assume that this profile accurately reflects the status of all professional women.**<sup>37</sup>

In 2010, at the beginning of a new decade, only one of those positions (Chief Justice) is held by a woman.

**Women in leadership positions**

Every two years the Commission publishes a comprehensive stocktake of women in leadership in public and private life, entitled the *New Zealand Census of Women's Participation*. The last census was published in 2010. Early indications for the next census are that improvement in many areas is likely to be minimal, and in some cases there has been regression.

In general, the census reveals poor progress and a considerable disparity between the public sector, where there is a legislative imperative, and the private sector, where a voluntary approach is the norm.

In the private sector, women are significantly under-represented in governance positions on the boards of companies listed on the three securities markets of the New Zealand Stock Exchange. The New Zealand stock market (NZSX) companies have women making up 8.65 per cent of board members; debt market (NZDX) companies have 5.73 per cent; and alternative market (NZAX) companies have 5.07 per cent.

Women are better represented on state sector boards, making up 34 per cent of the boards of Crown companies and 42 per cent of state-sector statutory bodies.<sup>38</sup> This falls short of the 50 per cent target for gender parity in government-appointed bodies by 2010. Disaggregated data about the representation of groups of women is lacking. The collection of ethnicity data for boards is not mandatory, and appointing agencies tend not to ask nominees or appointees to disclose their ethnicity.<sup>39</sup> Where this is done,<sup>40</sup> limited representation of Māori and Pacific women is evident. Of the women appointed to boards of companies monitored by Crown Ownership Monitoring Unit, a total of 33.5 per cent of board members, 4 per cent are Māori and 1 per cent are Pacific.

35 Committee on the Elimination of Discrimination Against Women 39th Session 23 July–10 August 2007 CEDAW/C/NZ/CO/6

36 Human Rights Commission (2009), Periodic Review Report to the United Nations on the Universal Declaration of Human Rights in 2009

37 Human Rights Commission (2004), Foreword, *New Zealand Census of Women's Participation* (Auckland: HRC), <http://www.hrc.co.nz/home/hrc/newsandissues/glacialprogressinwomenoncompanyboards>

38 Human Rights Commission (2004), foreword, *New Zealand Census of Women's Participation* (Auckland: HRC)

39 Ministry of Pacific Island Affairs (2010), *Report on Pacific appointments and reappointments for the period 1 July–31 December 2009*

40 As at 1 March 2009 Crown Ownership Monitoring Unit <http://www.comu.govt.nz/boards-and-appointments.html>

Of the 186 publicly listed companies in the three securities markets, only three, a tiny 1.6 per cent, had female chief executives.<sup>41</sup> The percentage of women in senior management in privately held businesses shows a distinct improvement. An annual business survey undertaken by accountancy company Grant Thornton reported that in New Zealand, 27 per cent of senior management were women, a higher level of representation than Australia, the United Kingdom and the United States. However, the difference in women's representation between the boards of publicly listed companies and those of privately held businesses reflects the number of family-owned private companies, the smaller size of many private businesses in New Zealand, and the fact that female entrepreneurship generally starts in private business.

The public sector has had an equal employment opportunity mandate under the good-employment provisions of the State Sector Act since 1988. Despite this, women continue to be under-represented in management positions. Women make up 59 per cent of the public service, but only 17 per cent of chief executives and 38 per cent of senior management (tier 2 and 3).<sup>42</sup> A survey of Crown entities conducted by the Human Rights Commission in November 2009 found that in the 47 per cent of organisations that responded, women made up 61 per cent of staff but only 11 per cent of chief executives. They make up 42 per cent of tier 2 management positions and 39 per cent of tier 3 positions.<sup>43</sup>

While data from the state sector is often sliced by gender and ethnicity, reporting does not include both factors together. Data provided on request by the State Services Commission<sup>44</sup> shows that the composition of senior management positions in the public service includes European women 31.5 per cent, Māori women 3.9 per cent, Pacific women 0.6 per cent, Asian women 0.6 per cent, MELAA women 0.09 per cent, and other women 1.5 per cent.

The Commission, recognising the lack of data on Māori women leaders, included a chapter on Māori women in the 2008 Census of Women's Participation. The observation was made that "the relative invisibility of Māori women in governance does not represent the true reality of their contribution".<sup>45</sup> Māori women have very high participation rates in voluntary, paid and unpaid work outside the home, compared with non-Māori and Māori men.

Data on people with disabilities in general, let alone disabled women, is even less visible, with information about representation in the state sector extrapolated from Census data collected by Statistics New Zealand in 2006. Complaints data collected by the Commission shows that for those who identified as female and disabled, and who approached the Commission on the ground of disability, the most common area of complaint was employment, accounting for 27 per cent of these approaches, followed by government activity (21 per cent), educational establishments, and the provision of goods and services (17 per cent each).

#### Women in politics

In the current Government, of 20 Ministers inside Cabinet, six (30 per cent) are women. The highest ranked woman is Judith Collins, at seventh. When all ministers outside Cabinet and support party ministers are included, the proportion of women falls to 25 per cent.<sup>46</sup>

The percentage of women in Parliament has increased from 21 per cent in the last first-past-the-post electoral system in 1993 to 34 per cent in the most recent election in 2008, the fifth mixed-member proportional election. More women are list MPs (54 per cent) than electorate MPs. This has been a feature of all mixed-member proportional elections except one: 2002. The majority of men elected to Parliament are electorate MPs.

41 Judy McGregor (2010) (in press), *Women in management in New Zealand*. In M Davidson and R Burke (eds), *Women in management: Progress and prospects*, vol 2 (Gower UK)

42 State Services Commission (2009) *Human Resource Capability Survey of Public Service Departments 2009* (Wellington: SSC) [http://www.ssc.govt.nz/upload/downloadable\\_files/hrsc09.pdf](http://www.ssc.govt.nz/upload/downloadable_files/hrsc09.pdf)

43 Human Rights Commission (2010), *Crown Entities and the good employer: A progress report* (Auckland: HRC).

44 Data made available by the State Services Commission from the 'Human Resource Capability Survey 2009'

45 Human Rights Commission (2008), 'New Zealand Census of Women's Participation 2008' (Auckland: HRC), p 45

46 As at 13 September 2010

Relative to other OECD countries, New Zealand compares well. The OECD average female representation in national government is 23 per cent. New Zealand ranks eighth, after Sweden, Finland, the Netherlands, Denmark, Spain, Norway and Belgium.

Similar levels of representation are found in local government elections. In 2007, 32 per cent of elected members were women. Women's representation is highest on district health boards at 46 per cent, followed by city councils, at 37 per cent. Of the 73 mayors elected in 2007, 13 (18 per cent) are women. Three women were elected mayors of city councils and 10 women were elected mayors of district councils. Disaggregated data which identifies gender and ethnicity together was not published.

Council-controlled organisations (CCOs), including utility companies, transport services (including airport authorities), bus companies and parking operations, tourism and cultural boards, fire authorities and an array of other services, appear to be increasing in number. Women's representation on CCO boards is below that for elected councils, at about 20 per cent.<sup>47</sup>

#### Women in the labour force

Both in New Zealand and across the globe, in the past two decades greater numbers of women have entered the paid workforce than ever before. The labour force participation of New Zealand women was 62.3 per cent as at the September 2009 quarter, just below the peak level of 62.6 per cent in the previous year. The labour force participation of men is 74.1 per cent, and their overall labour force participation is 68 per cent.<sup>48</sup> The participation rate for Māori women is the same as for non-Māori women;<sup>49</sup> the rate for Pacific women is 59.2 per cent.<sup>50</sup>

Women are far more likely than men to work part-time. Approximately four out of 10 women in employment work part-time (i.e. less than 37 hours a week), compared with one in 10 men.<sup>51</sup> Women are also more likely to be involved in unpaid work, and patterns of female unpaid work are changing in the household and the community. In the National Conversation about Work, the notion of 'granny work' was identified, with grandparents providing childcare for working parents.<sup>52</sup>

"As well as being less likely to participate in the labour force than non-disabled, disabled people who do participate are less likely to be in work."<sup>53</sup> Women with disabilities experience a double disadvantage in the labour market. In 2006, the unemployment rate for disabled men was 5 per cent, compared with 3 per cent for non-disabled men, whereas the unemployment rate for disabled women was 9 per cent, compared with 5 per cent for non-disabled women.<sup>54</sup> Qualifications improve labour market participation, but disabled people with tertiary qualifications have the same participation rate as non-disabled people with no qualifications.

#### Sexual harassment in the workplace

Sexual harassment at work is a barrier to full participation in and enjoyment of the workplace. Complaints and enquiries to the Commission about sexual harassment are highly gendered, especially for younger women. Of the 85 approaches to the Commission by women on the ground of sexual harassment, the vast majority were from women in the 18–50 age group.

#### Women in education

There has been considerable public debate on gender and education in recent years. A great deal of publicity has focussed on the increasing overall proportions of women

47 Human Rights Commission (2008), *New Zealand Census of Women's Participation 2008* (Auckland: HRC), p 57

48 Department of Statistics (2009), *Household Labour Force Survey*, September (Wellington: StatsNZ).

49 Department of Labour (2009), *Māori in the New Zealand labour market* (Wellington: DOL), <http://www.dol.govt.nz/publications/lmr/maori/in-the-labour-market-2009/executive-summary.asp>

50 Ministry of Pacific Island Affairs and Department of Labour (2009), *Pacific women's work: an overview of Pacific women's participation in New Zealand labour market* (Wellington: MPIA/DOL)

51 National Advisory Council on the Employment of Women (2010), Wellington, New Zealand

52 Human Rights Commission (2010), *National Conversation about Work: Canterbury regional report*. Accessible online at <http://www.neon.org.nz/nationalconversationaboutwork/regionalreportswhatnext/>

53 Statistics New Zealand and the Office for Disability Issues (2008), *Disability and the labour market in New Zealand in 2006* (Wellington: StatsNZ/ODI)

54 *ibid*

in tertiary education and with completed degrees, and on girls' versus boys' levels of achievement in primary and secondary education, as opposed to the continuing gender disparities in labour market outcomes. These show entrenched occupational segregation and a persistent gender pay gap disadvantaging women with tertiary qualifications.<sup>55</sup>

Participation in tertiary education is an indicator of the extent to which women are currently acquiring the skills and qualifications for participating in work, society and public life. In 2007, women (14.2 per cent) were slightly more likely than men (12.3 per cent) to be enrolled for a tertiary qualification, and accounted for 54 per cent of domestic students enrolled. Women are also more likely than men to be enrolled in higher-level rather than lower-level qualifications.<sup>56</sup>

Participation of Māori women in tertiary education is particularly high. Māori women have the highest levels of participation overall, followed by Māori men, Pacific women and European women. Māori women in particular have very high levels of participation in sub-degree-level qualifications (certificates and diplomas). European women are slightly more likely than Māori and Pacific women to study at bachelor level.<sup>57</sup>

Completion rates are also higher for women. Of students who completed a tertiary qualification in 2006, 59.3 per cent were women.<sup>58</sup>

Young women are significantly under-represented in trades training through the Modern Apprenticeship Scheme. The addition of hairdressing as an occupation qualifying for funding under the scheme has increased the proportion of women in modern apprenticeships to 11.7 per cent. Of those young women, 71 per cent

are European/Pakeha, 19 per cent Māori and 3 per cent Pacific. The Modern Apprenticeship Scheme has received considerable public funding at a time when financing a university qualification is increasingly user-pays.

#### What next?

Successive governments have eschewed target setting for women's representation. The CEDAW committee has called on New Zealand to consider using special temporary measures such as benchmarks, targets, recruitment and support programmes, incentives and quotas. As a follow-up to the Beijing Women's Conference held in 1995, New Zealand committed to improving the proportion of women on statutory boards (Crown companies) to 50 per cent by 2000. This target has been endorsed by successive governments, with the target date reset at 2010 in the 2004 Action Plan for New Zealand Women compiled by the Ministry of Women's Affairs.<sup>59</sup> The Beijing Platform for Action urges governments to "take measures to ensure women's equal access to and full participation in power structures and decision-making".<sup>60</sup>

The Human Rights Commission has recommended the adoption of targets to improve representation of women in political and public office in its comments on the fifth periodic report on the International Covenant on Civil and Political Rights.<sup>61</sup>

#### VIOLENCE AGAINST WOMEN

**Violence against women is perhaps the most shameful human rights violation, and it is perhaps the most pervasive. It knows no boundaries of geography, culture or wealth. As long as it continues, we cannot claim to**

55 Judy McGregor (2010) (in press), Women in management in New Zealand. In M Davidson and R Burke (eds), *Women in management: Progress and prospects*, vol 2 (Gower UK)

56 Ministry of Women's Affairs (2008), *Indicators for change* (Wellington: MWA)

57 *ibid*

58 NZ UniGradStats (2008) New Zealand University Vice-Chancellors' Committee <http://www.nzvcc.ac.nz/files/u10/NZUniGradStats3.pdf>

59 Action Plan for New Zealand Women (2004) Ministry of Women's Affairs Wellington <http://www.mwa.govt.nz/news-and-pubs/publications/actionplanReportFinal.pdf>

60 Strategic Objective G1 Beijing Platform for Action 1995, accessible on line at <http://www.un.org/womenwatch/daw/beijing/platform/>

61 Comments on New Zealand's fifth periodic report on the Convention on Civil and Political Rights presented to the UN Human Rights Committee, New York March 2010 <http://www.hrc.co.nz/home/hrc/internationalhumanrights/unitednationshumanrightscommittee.php>

**be making real progress towards equality, development and peace.**<sup>62</sup>

It is estimated that violence against women “affects one third to one half of all women over their lifetime”.<sup>63</sup>

The CEDAW committee has emphasised that violence against women is a form of discrimination, perpetrated against women on the grounds of their sex. It is both a cause and a consequence of gender inequality. ‘Gender-based violence’ refers to violence against any person based on their actual or perceived gender. It includes violence against men who do not conform to male social or cultural stereotypes, for example assaults on a man because he is seen as insufficiently masculine.

This section focusses on two aspects of violence against women: violence against women in the home (also known as ‘domestic violence’ or ‘family violence’), and sexual violence. These two aspects of violence against women are often linked. It has been estimated that “around 75 per cent of sexual abuse overlaps with family violence (primarily women and children as victims)”.<sup>64</sup>

**Legislative framework**

New Zealand has enacted specific legislation dealing with family violence: the Domestic Violence Act 1995. The definitions of violence in the act closely mirror the wording of the Declaration against Violence against Women:

**The objectives of the Domestic Violence Act 1995 are to reduce domestic violence through the use of education and counselling programmes and to deal with violence when it occurs, through the use of ‘protection orders.’**

The act covers a range of ‘close personal’ domestic relationships where protection may be necessary. This

includes any form of family relationship, “regardless of whether the relationship arises from a legal or a de facto union”. The definition of acts of violence “includes physical, sexual and psychological abuse. It covers such things as intimidation, harassment, damage to property and threats of abuse. This could be a single serious act or a pattern of behaviour resulting from a number of minor acts.”<sup>65</sup>

The Domestic Violence Act, the Sentencing Act 2002 and the Bail Act 2000 were amended in 2009 to strengthen protection orders. Changes included introducing police-issued safety orders, and enabling criminal courts to issue a protection order where an offender is sentenced for a domestic violence offence. Training on the use of safety orders and evaluation of their impact are advocated by groups working in this field. It is argued that “greater priority needs to be given to the human right to safety if women and children are to remain safe when seeking protection under the Domestic Violence Act”.<sup>66</sup>

Concerns about the adequacy of current legislation and implementation issues, in the context of alarming rates of unreported sexual violence crimes and a low rate of successful prosecution of reported crimes, have prompted a number of initiatives to improve official and community responses to violence. Domestic violence intervention organisations have also expressed concern about the way in which the Domestic Violence Act is implemented.<sup>67</sup>

Changes sought in submissions from the Human Rights Commission<sup>68</sup> and Amnesty International<sup>69</sup> on Improving Sexual Violence Legislation in New Zealand include reconsideration of consent provisions in the Crimes Act, and the admissibility of evidence of a sexual history between the complainant and the accused.

62 Kofi Annan (1999), quoted in ‘Violence Against Women in Aotearoa New Zealand 2009’, Herbert R, Hill A and Dickson S. Published online at <http://www.roundtablevaw.org.nz/Integrated.pdf>

63 ibid

64 ‘Pulling it all together’: Family Violence and Sexual Violence in New Zealand, Ruth Herbert (2010). Powerpoint presentation supplied by the author

65 Domestic Violence – Protection orders fact sheet, Neighbourhood Support New Zealand, downloaded from <http://www.ns.org.nz/7.html>

66 Towns A and Scott H (2006), ‘Accountability, natural justice and safety: The protection order pilot study (POPS) of the Domestic Violence Act 1995’, *New Zealand Family Law Journal*, 7(7):157–168

67 ibid

68 Submission to the Ministry of Justice, 2008

69 Submission to the Ministry of Justice, 2008

At the time of writing, changes to social welfare legislation were being proposed. The National Council of Women has raised the issue of the effect the proposed changes could have on women fleeing situations of domestic violence. The effect of the changes will be to require solo parents to look for and accept suitable part-time work when their youngest dependent child turns six years old. Given the proposed work-test regime, the cost of childcare and the need of women to accept poorly paid work, these changes could result in women being forced to return to or remain in violent relationships.<sup>70</sup>

### Sexual violence

**Sexual violence is a highly gendered crime. Overwhelmingly sexual assault is perpetrated by men against women.**<sup>71</sup>

The 2006 Crime and Safety Survey found that approximately 29 per cent of women and 9 per cent of men had experienced unwanted and distressing sexual contact over their lifetime.<sup>72</sup> Studies quoted by the Ministry of Women's Affairs show the gender of victims of sexual violence as being between 92 and 95 per cent female.<sup>73</sup> In 2008, New Zealand women were three times more likely than men to feel unsafe or very unsafe when walking alone in their neighbourhood at night.<sup>74</sup>

The groups most at risk of sexual violence are young women, Māori women, women who have been victimised before and people with disabilities.<sup>75</sup> Young women between the ages of 16 and 30 comprise 66–70 per cent of victims of sexual violence. Just under half of all victims

are New Zealand European, just under one third are Māori, and just over one tenth are Pacific.

Globally, persons with disabilities are up to three times more likely to be victims of physical and sexual abuse and rape, and have less access to physical, psychological and judicial interventions.<sup>76</sup> In New Zealand, disabled women are one of the groups most at risk of sexual violence, although the proportion of disabled victims changes depending on whether disability is self-identified (31 per cent of victims) or determined by a doctor (15 per cent).<sup>77</sup>

The impact of sexual violence on victims includes significant and long-standing physical and mental health consequences. "High numbers of female prisoners, mental health patients and people with drug and alcohol problems report a history of sexual violation."<sup>78</sup> Short- and long-term effects can include "low self-esteem, post-traumatic stress disorder, suicide, injury, permanent disability, pregnancy complications, chronic pain syndromes, and injurious health behaviours such as smoking, alcohol and sexual risk taking".<sup>79</sup>

Despite sexual offences being the fifth most common offence reported in the Crime Survey and the "most costly crime per incident" by Treasury estimates, only 10 per cent of sexual offences are reported to the police. Of those, only 8 per cent "result in a perpetrator being convicted".<sup>80</sup> This means that for every 1000 incidents of sexual violence, only 100 are reported and only eight perpetrators are convicted.

The principal providers of services to survivors of sexual violence are specialist sexual-violence agencies, which

70 National Council of Women press release, 30 March 2010

71 Ministry of Justice (2009), Report of the Taskforce for Action on Sexual Violence (Wellington, New Zealand)

72 Family Violence statistics report (2009), Research Report no. 4 /09 Families Commission (Wellington, New Zealand), p 155

73 'Restoring Soul' (2009) Ministry of Women's Affairs (Wellington, New Zealand), p 84

74 New Zealand General Social Survey (2008), Statistics New Zealand (Wellington, New Zealand). Accessible on-line at <http://www.stats.govt.nz/nzgss/>

75 Kingi V and Jordan J (2009) and Triggs S et al (2009), quoted in 'Restoring Soul' (2009), Ministry of Women's Affairs (Wellington, New Zealand), p 12, <http://www.mwa.govt.nz/news-and-pubs/publications/restoring-soul-pdf>

76 'Promoting Sexual and Reproductive Health for Persons with Disabilities' (2009) WHO/UNFPA

77 ibid

78 Report of the Taskforce for Action on Sexual Violence (2009), Ministry of Justice (Wellington, New Zealand)

79 'Restoring Soul' (2009), Ministry of Women's Affairs (Wellington, New Zealand), citing Mossman E et al 2009

80 Report of the Taskforce for Action on Sexual Violence (2009), Ministry of Justice (Wellington, New Zealand)

provide two main services: crisis support and ongoing support designed to assist recovery. Specialist services are typically funded fully or partly by government agencies under contract. Ongoing funding is not guaranteed, and some funding sources are contestable.<sup>81</sup> The availability of culturally appropriate services and services for diverse population groups (including Māori, Pacific people and ethnic communities, including refugees, people with disabilities, men and young people) is uneven and has been identified as a gap in services.

### Family violence

**Domestic violence is a significant issue in New Zealand. Despite the government's efforts to tackle it, the levels of violence within the family, particularly violence against women, remain surprisingly high.**<sup>82</sup>

Relative to other OECD countries, the New Zealand homicide rate is "considerably higher" for women (1.2 per 100,000) than men (0.7 per 100,000).<sup>83</sup> New Zealand police statistics collected in the period 2000 to 2004 stated that 45 women were murdered by their male partner or ex-partner, and three men were murdered by their female partner or ex-partner.<sup>84</sup> Family violence statistics collected by the police in 2006 recorded that 81 per cent of victims were women and 81 per cent of offenders were male.<sup>85</sup> In 2009, 14 women were murdered by their male partner or ex-partner.<sup>86</sup>

Māori women are at three times higher risk of partner violence than women overall. Beneficiaries and those in sole-parent households were also at much higher risk than women overall.<sup>87</sup>

In 2006, 13,091 women and 5549 children used refuge services.<sup>88</sup> The National Collective of Independent Women's Refuges report an increase between 2002 to 2006 of 55 per cent in services and programmes delivered. Services include advocacy and support services and the provision of safe-house accommodation. As with services for victims of sexual violence, culturally appropriate services and services for groups such as disabled women and women from different ethnic backgrounds are not readily available in many areas. Shakti Community Council, which provides support services for New Zealand migrant and refugee communities, has established four ethnic women's refuges in Auckland, Christchurch and Tauranga.

Difficulties understanding and acting on legislative provisions addressing emotional abuse have also been identified. Access to protection for migrant women and for disabled women is hampered by language and cultural barriers, and by the limited availability of appropriate safe places of refuge.

Rural Women New Zealand have noted: "For rural women, there are additional inherent risk factors for the occurrence of domestic violence, as well as additional risk factors in choosing to take action to deal with violence."<sup>89</sup> Implementation of the Domestic Violence Act is particularly problematic for rural women. The difficulties noted include "accessing information and support services for victims, delivery and access of programmes for offenders, and ensuring safety for both women and children with respect to the process of obtaining and enforcing protection orders".<sup>90</sup>

81 'Restoring Soul' (2009), Ministry of Women's Affairs (Wellington, New Zealand)

82 'It's Not OK: New Zealand's Efforts to Eliminate Violence against Women' (2008), Leitner Center for International Law and Justice, Fordham Law School, NY <http://www.leitnercenter.org/files/doc-17866.pdf>

83 The Social Report 2009, Ministry of Social Development (Wellington, New Zealand) quoting OECD homicide death rates for the period 2003–2007

84 New Zealand Family Violence Statistics Fact Sheet (2009), Family Violence Clearinghouse <http://www.nzfvc.org.nz/StatisticsFactSheet.aspx>

85 Family Violence Statistics Report (2009), Families Commission (Wellington, New Zealand), quoting the Police Family Violence Database.

86 Police Statistics on Culpable Deaths in New Zealand, (2010), Police National Headquarters, Wellington New Zealand

87 Family Violence Statistics Report (2009), Families Commission (Wellington, New Zealand)

88 Family Violence Statistics Report (2009), Families Commission (Wellington, New Zealand)

89 Submission of the Domestic Violence (Enhancing Safety), Bill by Rural Women New Zealand (2009)

90 *ibid*

The 'It's Not OK' Campaign for Action on Family Violence, which began in 2007, includes a social marketing campaign aimed at changing the way people think and act about family violence, as well as funding resources for government and non-government organisations working on this issue. Heather Henare, chief executive of the National Collective of Independent Women's Refuges, has commented that through this campaign, more victims are reporting crime and that "statistics show all agencies are upping their game in responding to victims".<sup>91</sup>

#### What next?

**Despite a plethora of reports, a strong legislative framework, significant government funding and the efforts of many dedicated groups and individuals, real improvements in both the family violence and sexual violence sectors in New Zealand remain illusive.**<sup>92</sup>

It has been asserted that "there is consensus that New Zealand has sound legislation on domestic violence", yet has a "serious problem eliminating violence against women".<sup>93</sup> The Leitner Centre<sup>94</sup> identified a number of factors inhibiting progress. These included: difficulties experienced by both victims and perpetrators of violence in accessing programmes; difficulties experienced by victims in accessing legal aid (not just the funding for legal aid, but also the availability of appropriate legal aid); and lack of training in domestic violence for key groups, such as judges, police, lawyers and benefits officers. Domestic violence organisations have also identified the disadvantage experienced by women who leave an abuser, including economic disadvantage.<sup>95</sup>

Other barriers identified are:

- a paucity of data collection to properly evaluate policies

- problems of implementing legislation
- the objectification of women by the advertising and pornography industry.

In late 2009, the Report of the Taskforce for Action on Sexual Violence<sup>96</sup> was released by the Minister of Justice, Simon Power. Its key recommendations include:

- sustainable funding for specialist programmes on primary prevention of sexual violence
- specific work on child sexual abuse and adult rape within the It's not OK campaign
- funding shortfalls evaluated for the provision of community treatment for offenders
- a pilot programme for the treatment of non-mandated perpetrators of sexual violence
- legislative amendments (consent, reasonable belief and the rape shield) progressed
- enhancing of the rights of victims in the criminal justice system
- piloting of a specialist court support role for victims of sexual violence
- delivery of specialist training to relevant criminal justice personnel on sexual violence and Te Ao Māori
- ongoing involvement and resourcing of TOAH-NNEST<sup>97</sup> in sexual violence work
- monitoring of progress on the report's recommendations.

## MATERNITY PROTECTIONS

### Paid parental leave

New Zealand provides paid parental leave (PPL) after the birth of a child, but there continues to be debate about eligibility criteria, and also about the duration of leave and level of pay. The Department of Labour has reported

91 Henare H reported on TV3, 1 October 2008, downloaded at <http://www.3news.co.nz/Police-Its-Not-OK-campaign-behind-rise-in-reported-violent-crime/tabid/423/articleID/74049/Default.aspx>

92 'Pulling it all together: Family Violence and Sexual Violence in New Zealand', Ruth Herbert (2010). Powerpoint presentation supplied by the author

93 It's Not OK: New Zealand's Efforts to Eliminate Violence against Women (2008), Leitner Center for International Law and Justice Fordham Law School NY <http://www.leitnercenter.org/files/doc-17866.pdf>

94 ibid

95 'It's Still Not OK', submission from ISNO (2010) to the Human Rights Commission

96 Report of the Taskforce for Action on Sexual Violence (2009), <http://www.justice.govt.nz/policy-and-consultation/taskforce-for-action-on-sexual-violence>

97 'Te Ohaakii a Hine National Network Ending Sexual Violence Together'

that to 31 May 2008, more than 100,000 parents had taken paid parental leave since it was introduced in 2002.

The Parental Leave Act 2002 provided for twelve weeks' state-paid leave for mothers. As a consequence of this legislation, New Zealand was able to withdraw its reservation on Article 11(2)(b) of the CEDAW convention. The act was later amended to include teachers employed by more than one board of trustees, and medical practitioners employed by more than one district health board. A further amendment extended the paid-leave period to 14 weeks, and to self-employed women.

Eligibility for PPL requires continuous employment for the same employer for a period of six months. This requirement can exclude casual and seasonal workers and multiple job holders.<sup>98</sup> The exclusion from paid parental leave of female employees with continuous attachment to the workforce, but multiple employment arrangements, is a significant issue for women, families, and children, as well as for business and industry. It is particularly important given the growing diversity of types of employment status and situations in the modern workplace. Rural Women New Zealand noted that "difficulties arise for seasonal workers in that they are exempt from accessing PPL", and stated that this group are consequently resigning from the sector and "taking up alternative career options more suitable for family life".<sup>99</sup>

Fathers do not have a primary entitlement to paid parental leave; they are entitled to two weeks' leave without pay, and can access PPL only if it is transferred from their baby's mother to them. Extending paid parental leave entitlement to men would "support greater choice for parents and gender equity in the home" and would "support fathers to be more involved in the early care of their children".<sup>100</sup> A range of agencies, such as the Human Rights Commission, the Families Commission and the National Advisory Council for the Employment of Women, have long advocated for extending PPL to

men in their own right. In response to a recent Families Commission report, the Minister of Labour ruled out extending the current provision for men.<sup>101</sup>

An international comparison of parental leave entitlements by UNICEF showed that of the 25 OECD countries for which data was available, New Zealand came near the bottom, at 23. The measure used was "effective parental leave", and was calculated by weighting the duration of leave by the percentage of salary offered.<sup>102</sup>

#### Flexible work arrangements

The Employment Relations Act was amended in 2007 to give employees with caring responsibilities the right to request flexible work arrangements.

The act requires employers to consider the request for flexible working arrangements, and provides grounds upon which they can refuse a request. Flexible work practices can include changes to hours of work, days of work and place of work.

A review of the act will be completed in 2010, and will consider whether the statutory right to request flexible work should be extended to all employees. It is not known how many employees have used the provisions of the act to request flexible work, as there are no reporting requirements.

Engagements across the country in the National Conversation have shown many examples of informal provisions made by employers, ranging from working-from-home arrangements and flexible start times to temporary and permanent part-time work arrangements in response to personal circumstances. For example, "at one workplace we heard of an unusual variant on flexi-time, which worked for them. Employees could start work at 6:00am, 7:00am or 8:00am, and do an eight-hour day. It was possible to vary start times throughout the week. Working from home was available in a number of industries visited and for a number of work roles. In one workplace which

98 Priority Improvements to Parental Leave (2008), National Advisory Council on the Employment of Women (NACEW)

99 Submission from Rural Women New Zealand on the Parental Leave in New Zealand 2005/2006 Evaluation (2007)

100 Priority Improvements to Parental Leave (2008), National Advisory Council on the Employment of Women (NACEW)

101 Reported 2 December 2009 TV3 [www.3news.co.nz](http://www.3news.co.nz)

102 The childcare transition (2008), Innocenti Report Card 8 Unicef

operated 24 hours a day, everyone was supplied with a laptop. “We might finish at 5pm but the rest of the world hasn’t.” <sup>103</sup>

### Maternity services

After work on a draft, the Government has decided not to proceed with a maternity action plan. The Ministry of Health has identified the following four key actions <sup>104</sup> to improve maternity outcomes:

- develop a quality and safety programmes for maternity services
- review and update guidelines in relation to transfer of care
- develop a national standardised set of maternity notes
- improve maternity and newborn information to better monitor quality and safety of maternity services.

### Adoption

Currently birth mothers in New Zealand are able to give consent to adoption within 10 days of giving birth. This period is much shorter than in other countries, and can lead to women’s decisions being unduly influenced by pressure from their family, from the father of the baby and from agencies offering help to unmarried mothers, at a time when they are still subject to hormonal changes resulting from childbirth and lactation. <sup>105</sup>

### Breastfeeding

In 2008 the Employment Relations Act was amended to include the provision of appropriate breaks during the working day, and appropriate facilities in the workplace, for the purpose of infant feeding (including the expressing of breast milk). The breaks are unpaid unless both employer and employee agree. Infant feeding facilities are to be provided where it is reasonable and practicable in the circumstances, and subject to the operating environment and employers’ resources. While these amendments represent a step in legislative protection for breastfeeding rights, paid breastfeeding breaks would bring legislative protection in line with international standards. The Department of Labour has recently launched the *Code of Practice on Infant Feeding*

to assist employers with the issue of breastfeeding in the workplace.

The Human Rights Commission receives complaints and enquiries on the issue of the rights of women to breastfeed (and infants to be breastfed) in public and in the workplace. In 2005 the Commission published a paper entitled ‘The Right to Breastfeed’. Many women who have experienced negative reactions to public breastfeeding want its practice and benefits more widely understood and accepted in society. For that reason the Commission has sought amendments to the grounds of discrimination under the Human Right Act to explicitly include breastfeeding. Currently the right to breastfeed is implicit in prohibitions on sex discrimination.

### Parental rights of disabled women

The Commission has received reports that a small number of disabled mothers who need high levels of support have experienced difficulty in mothering and retaining custody of their children, especially when the children are small babies. The Ministry of Health has a policy of not supporting non-disabled children in these situations. The mothers feel that they need the support to parent their children. Intellectually disabled mothers have also experienced the same difficulty, as there are no support services available for them. This may well contradict Article 23 (4) of the Convention on the Rights of Disabled Persons, which says: “In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.”

### Early childhood services

Enrolments in early childhood have increased sharply (50.3 per cent) in the past 20 years. Education and care services and home-based services have seen the highest increase in enrolments in the last four years, while kindergartens, playcentres and kōhanga reo have experienced declines. <sup>106</sup> This is attributed to greater demand for all day services that require little parental involvement.

In 2006 the Government announced a policy to provide up to 20 hours’ free optional early-childhood education

<sup>103</sup> Human Rights Commission (2009), National Conversation about Work: Bay of Plenty Report p 9 <http://www.neon.org.nz/nationalconversationaboutwork/regionalreportswhatnext/>

<sup>104</sup> Action on Maternity (2010), Ministry of Health (Wellington New Zealand), <http://www.moh.govt.nz/moh.nsf/indexmh/maternity-action>

<sup>105</sup> Robert Ludbrook (2010), editorial in *Adoption News and Views*, April 2010

<sup>106</sup> Ministry of Education (2009), Annual ECE Summary Report – Education Counts

to all three- and four-year-olds in teacher-led services from July 2007. This has reduced the cost of childcare for families considerably.

In the Commission's engagement with people across the country, reported in the National Conversation about Work, parents identified the provision of childcare as critical to realising labour force participation and equal-employment opportunities for mothers of young children. Three critical aspects of childcare facilities came up repeatedly: affordability, accessibility and availability.

For low-paid workers especially, the cost of childcare remains prohibitive, and often informal and unregulated arrangements are made with friends and family to care for children while parents (mainly mothers) work.

Childcare facilities located either close to home or close to the workplace are highly valued, and the Commission often heard of lengthy waiting lists for centrally located facilities. Working parents in rural and semi-rural areas found it particularly difficult to access childcare facilities, and either made informal arrangements or withdrew from the labour force. In some rural and remote areas, absence or unavailability of childcare centres prompts the relocation of the whole family.

Childcare centre opening hours have also been identified as a barrier to equal opportunities. Women wanting to work in occupations that demand non-traditional hours (for example, shift work and weekend work) or women who work longer hours or start work early (such as nurses and care workers) struggle to reconcile childcare needs and work demands. In some areas childcare centres do not operate five days a week, so the only options available to working parents are part-time work or informal care arrangements.

## Conclusion

### Whakamutunga

Compared to many women across the world, women in New Zealand have made significant progress towards equality over the past century. In recent years, however, progress in a number of key areas has either stalled or is regressing. Analysis of the progress of women from different ethnicities or disabled women across a range of areas lacks visibility because of the inadequate collection

of, and disaggregation of, data. This limits the ability of the Commission and other agencies to analyse the participation and representation of different groups of women across a wide range of public life and professional activities.

In terms of economic equity, progressive increases to the minimum wage over the past 10 years have improved the wages of a significant number of women in low-paid work, and universal superannuation has ensured that in retirement, very few women live in poverty. The Department of Labour's Pay and Employment Equity Unit, before its disestablishment, developed a suite of tools for reviewing the equity of remuneration and employment conditions, which have been used in reviewing pay and employment equity across the state sector.

The persistent gender-pay gap is very much higher for Māori and Pacific women. There is variable evidence of progress in implementing pay and employment equity-review response plans in the state sector and limited evidence of positive outcomes. There is no transparency around addressing pay and employment equity issues in the private sector. Robust mechanisms, including legislation, are needed to progress pay and employment equity. This will require a broad political commitment and public consensus.

The participation rate of women in both the labour market and in tertiary education is high by international standards. There are a number of legislative and policy initiatives that support women's participation in the workforce. They include 20 hours a week free early-childhood education, paid parental leave, flexible work policies and legislation, and legislative support for breastfeeding working mothers. These initiatives are precarious, however, with changes to the provision of early-childhood education funding already announced. The availability of early-childhood education is scarce in rural areas in particular, and parents who work non-standard hours also have difficulty accessing early-childhood services.

Mixed-member proportional representation has resulted in increased diversity in Parliament. One in three members of parliament are women. Women continue to be under-represented in senior management and governance roles in both the public and private sector. Increased accountability for the good-employer provisions of state-sector legislation would be helpful.

The incidence of violence against women remains a significant concern. There is increased public awareness of the issue and political will to reduce the level of violence in the community, with the Government recently responding to the recommendations of the Taskforce on Sexual Violence.

While most women have access to paid parental leave (PPL), some (for example seasonal workers with multiple employers) do not. The level and length of PPL is also minimal compared with what is available in other similar countries. At present improvement to PPL, including men's entitlement, is seen by the Government as unaffordable. The right to breastfeed in public places and in the workplace are established in law and guidelines have been produced. As yet, breastfeeding breaks in the workplace are unpaid. The introduction of paid breaks would ensure New Zealand's compliance with ILO Convention 183.

New Zealand is at a critical juncture in eliminating discrimination against women and achieving equality. The gains made by women in recent decades are fragile and at risk of being eroded. Concerted action by the Government, public agencies and civil society is needed to keep gender on the agenda.

The Commission consulted with interested stakeholders and members of the public on a draft of this chapter. Following the public consultation process, the Commission has identified the following areas for action to progress women's rights:

#### **Pay and employment equity**

Timetabling pay and employment equity implementation that reflects New Zealand's economic conditions, with a minimum target of halving the gender pay gap by 2014 and eliminating it by 2020.

#### **Sexual and family violence**

Reducing sexual and family violence through target setting and fully resourcing a national programme of action.

#### **Paid parental leave and early-childhood education**

Extending paid parental leave to seasonal workers presently excluded and men in their own right, and the increased availability and affordability of early childhood education in rural, provincial and urban areas.

#### **Representation**

Improving female representation at CEO and senior management level, and on boards in the public and private sectors.

