



**Human Rights in New Zealand Today
Ngā Tika Tangata O Te Motu**

reprint of Chapter 16

**THE RIGHT TO WORK
Te tika ki te whai mahi**

THE RIGHT TO WORK

Te tika ki te whai mahi

Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and protection against unemployment.

(Universal Declaration of Human Rights, Article 23(1))

1. Introduction - Timatatanga

The right to work is a fundamental human right strongly established in international law. It recognises that work is not solely a source of income that provides for the basic necessities in life. Because of work's potential to satisfy social, intellectual and personal needs, it is an integral prerequisite for a life of human dignity. The right to work is of fundamental importance and underpins the realisation of other human rights such as the right to housing, the right to education, and the right to culture. Article 24 of the Universal Declaration of Human Rights ensures everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

2. International context - Ki ngā kaupapa o te ao

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

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

There are eight core International Labour Organisation (ILO) conventions that align with, and further strengthen, the Covenant. They cover four 'core labour standards':

- Conventions 29 and 105 ban forced labour and slavery
- Conventions 87 and 98 require countries to allow freedom of association and collective bargaining
- Conventions 100 and 111 ban workplace discrimination
- Conventions 138 and 182 set a minimum working age of 15 and ban the worst forms of child labour (e.g., bonded labour, hazardous labour, military conscription and sex trade).

The Declaration on Fundamental Principles and Rights at Work, adopted in 1998, commits States to promote these rights whether or not they have ratified the relevant conventions.

Other international instruments

Other principal international instruments recognise the importance of the right to work. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), and the Convention on the Rights of the Child

(UNCROC) set out the employment rights specific to each of these constituent groups.

CEDAW provides for women the rights to equal pay for work of equal value, to the same employment opportunities as men, and to protection from dismissal because of pregnancy. In its 2003 Concluding Comments on the fifth periodic report of New Zealand, the CEDAW Committee recommended that efforts be made to eliminate the occupational segregation that continues to contribute to the gender wage gap.

The UNCROC ensures that children have the right to a minimum working age, regulation of the hours of employment, and protection from workplace exploitation.

3. New Zealand context - *Ki ngā kaupapa o Aotearoa*

Elements of the right to work in New Zealand are expressed in a broad range of domestic statutes. The principal piece of legislation governing industrial relations is the Employment Relations Act 2000 (ERA), which aims to build productive employment relationships founded on the principle of ‘good faith’, address the inequality of bargaining power, support collective bargaining, ensure individual choice in employment and promote mediation while reducing the need for judicial intervention. The ERA also contains protections against unjustifiable dismissal or disadvantage, which includes the grounds for discrimination under the Human Rights Act 1993 (HRA) and special provisions dealing with sexual and racial harassment.

The New Zealand Bill of Rights Act 1990 (BoRA) provides a wide range of civil and political rights and freedoms by ensuring that all actions, decisions, and legislation of the Government and the broad public sector are consistent with the fundamental principles set out in the Act. Section 19 protects individuals from discrimination across the same grounds as the HRA and section 17 ensures the right to freedom of association.

The HRA sets out anti-discrimination provisions and establishes the role of the Equal Employment Opportunities (EEO) Commissioner.

The anti-discrimination measures in the HRA prohibit employment discrimination on 13 grounds, such as gender, race, disability, and age. Almost all aspects of employment are covered in section 22 of the HRA, making it unlawful for an employer or employment agency to refuse to employ a qualified applicant for work, offer an applicant or employee less favourable conditions of work, or terminate or cause to resign an employee because of one of the grounds of discrimination.

The EEO Commissioner is responsible for providing advice and leadership on EEO activities, monitoring and evaluating EEO progress, and leading discussions about EEO issues, including pay equity. The EEO Commissioner’s role extends the Human Rights Commission’s promotion of right to work issues.

The Equal Pay Act 1972 entitles women to equal pay with men if both are working in the same job. When this Act was passed, many wage rates were negotiated for various occupations and applied across the entire 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 Relations Law Reform Bill proposes to repeal the Equal Pay Act and replace it with different, and arguably more functional, equal pay provisions. These will, however, be limited to like work rather than to work of equal value.

The Health and Safety in Employment Act 1992 serves as the primary legislation to ensure workplaces are safe and productive. The Act promotes the prevention of harm to employees and others at a place of work by defining hazards, imposing duties, setting requirements (including employee participation), and encouraging systematic health and safety management. A range of regulations and guidelines specific to certain industries also aim to support the concept of 'favourable work conditions'.

Since 2002, New Zealand women in employment have enjoyed paid parental leave around the time of their giving birth to or adopting a child or children. The Parental Leave and Employment Protection (Paid Parental Leave) Act 2002 provides both job protection and continued income for workers during their period of maternity leave. Although workers can receive their full average pay or a portion of it for a period of up to 12 weeks, their jobs must remain open to them for up to a year (unless there is good reason not to do so). Due to strict eligibility requirements, New Zealand women who are self-employed, some homecare and seasonal workers, and some workers in long-term contracts with the same employer are entitled to neither paid parental leave nor job protection. The Government has announced that the scheme will be extended to include women who have been in a job for at least six months and will provide 14 weeks' paid leave to meet international human rights standards. It has also made a commitment to do further work on the question of women who are self-employed.

In its Concluding Observations on the second periodic report of New Zealand, the Committee on Economic, Social and Cultural Rights applauded the introduction of the Employment Relations Act, the ratification of ILO Convention 98 concerning the right to organise and collective bargaining, and the introduction of paid parental leave. The Committee expressed concern at the relatively high unemployment rate among young people and the persistence of the wage gap between women and men.

Because of its diverse elements, the right to work is given shape by many other laws and regulations in New Zealand, such as social security and tax legislation, the Minimum Wage Act 1983, and the Education Act 1989.

New Zealand has ratified six of the eight ILO Conventions. It has not ratified two Conventions – 87 on Freedom of Association and Protection of the Right to Organise and 138 on Minimum Age of employment. The Department of Labour is undertaking a work programme assessing New Zealand's compatibility with ILO Convention 138.

The Human Rights Commission

The Commission's primary functions allow for a number of organisational activities aimed at promoting and protecting human rights, including the right to work. Issuing policy advice on human rights issues, providing education through community-based outreach programmes, and advocating politically and publicly on human rights matters are the Commission's core activities. Crucial to protecting human rights at work is the Commission's disputes resolution service, which individuals and groups can access to help resolve complaints of discrimination. A review of employment-related discrimination complaints and enquiries is contained in the Commission's *The Employment Report for Mana ki te Tangata, New Zealand Action Plan for Human Rights*.

4. New Zealand today - Aotearoa i tenei rā

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

The dynamics of the labour market

The dynamics of New Zealand's employment environment are influenced by factors such as international trade, market forces, global labour demands, the impact of technology on information, production and services, legislative infrastructure, labour market organisation, changing demographics and workplace norms and values. The effects of small population size on sustainability and growth and regional labour market disparities are also important.

This report was written during buoyant economic times when the official unemployment rate was 4.4 percent, a 16-year low, and more New Zealanders (1,886,000) were in paid employment than at any other time in the country's history. There is a natural tendency during good times to minimise the impact of structural disadvantage in the labour market and inequities in participation and outcomes. However, the current strength of the labour market provides an opportunity for informed debate about how to improve outcomes through work for individuals, families, workplaces, the communities in which they are located and society. The employment environment described here concentrates primarily on legislative infrastructure and labour market organisation, changing demographics and workplace norms and values. It will then be analysed against a human rights framework that looks at accountability, non-discrimination, participation and empowerment in the employment cycle.

Some of the significant cross-cutting issues shaping the employment environment in New Zealand are:

- the nature of work
- demographic trends
- business structure and employment relationships
- the organisation of labour
- workplace values and norms
- labour participation rates by diverse groups.

The nature of work

In the last decade there has been a shift in industrial production and consumer demand from goods to services, in line with the rest of the developed world. Service industries have created 90 percent of the job growth during the past 15 years to 2002, in contrast to the slow growth in agriculture and a sustained decline in manufacturing (Grimmond, 2002). Between 1996 and 2001, professionals were the main drivers of employment growth, rising by 43,000, 44 percent of the total net employment increase. Together, managerial, professional, technical and service and sales occupations accounted for 78 percent of the 327,000 new jobs added from 1992 to 2002 (Department of Labour, 2003b).

This profound shift has forced a re-evaluation of pathways to work in terms of skills, education and training. Significant emphasis is currently being placed by the Government on improving productivity and the technical skills required for the 'knowledge economy', which relies heavily on information technology and

computerisation. This indicates that the nature of work within occupations is changing, with greater emphasis on technical and interpersonal skills (ibid).

Demographic trends

New Zealand will continue to have a small population, predicted as unlikely to reach five million in the next 50 years, but people will be more mobile, more ethnically diverse and older (Population and Sustainable Development, 2003). In 20 years time, European/Pakeha will make up only 67 percent (compared to the current 76.5 percent) of the workforce, with the number and proportion of Māori, Pacific peoples and Asian workers increasing and making up greater numbers of younger workers.

In 50 years, half of New Zealand's population will be aged over 45 years and a quarter over 65 years. Ageing populations will change the nature of work, particularly given the predicted decline in fertility rates. Retaining mature employees and overcoming employer stereotypes about 'difference' and diversity will be significant challenges if New Zealand wishes to improve productivity and enhance growth. At an individual level, workers will need to think about career development spanning longer periods if they remain in paid employment past traditional retirement age. Older workers will need to have better access to on-the-job training to avoid skills obsolescence (McGregor & Gray, 2002). Increasing demands for workers places a premium on attracting more women, new migrants and disabled people, and on maximising the participation and potential of young as well as older people in paid employment.

Business structure and employment relationships

About 75 percent of workers in New Zealand are paid employees and approximately 39 percent of the workforce is employed in enterprises that have over 100 full-time equivalent staff. However, these firms comprise less than half a percent of the total number of New Zealand enterprises. OECD data show that the level of self employment in New Zealand is relatively high by international standards – small businesses make up about 86 percent of enterprises (Goodchild, Sanderson & Leung-Wai, 2003).

At about 22 percent, self-employment constitutes a significant proportion of the New Zealand labour market, more than the number of people who work in manufacturing or retail and almost three times the number employed in agriculture (2001 census).

New types of employment relationships relating to contracting and franchising are blurring distinctions between self-employed and paid employees. Workplaces are increasingly using types of flexibility such as outsourcing and casualisation. The size and significance of non-standard work in New Zealand is undergoing change. Reliance on direct employment relations is decreasing and both workers and certain labour requirements are frequently outsourced.

New business structures and different employment relationships will develop in response to factors such as rapid occupational change, technological 'push' and more assertive Māori development. While the main income for Māori is still drawn from the national economy, collectively-owned trusts and incorporations coupled with Māori-owned businesses, increasingly built on cultural knowledge and skills, are predicted to grow (NZ Institute of Economic Research, 2003). The Internet and broadband technology also promise as yet unforeseen changes in conventional business structures in e-business. Work that is independent of location (such as teleworking) may have both positive and negative effects and impact unequally on

women and older people at home. More research is needed to determine whether these changes make it more difficult to apply Government policy and to assess the implications for the enforcement of minimum standards in relation to employment.

The organisation of labour

The most dramatic change in the organisation of labour in New Zealand is arguably the individualisation of the employment relationship, which is more pronounced among younger workers.

Trade union membership in New Zealand has substantially declined in the early 1990s, partly as a consequence of labour market de-regulation that saw individual employment contracts promoted and multi-employer contracts decline. In 1985, 43.5 percent of the total employed labour force were union members (May, Walsh, Harbridge & Thickett, 2003). Union membership has recently risen for the fourth year in a row to 21.7 percent of wage and salary earners in 2004 (Brookers Legal News). However, this is only half of what it was in the mid-1990s. The public sector is more strongly unionised than the private sector, although private sector membership improved in 2003. There is growing evidence of a collapse of collective bargaining in the private sector; it is five times more common in the public sector. There is general agreement among commentators that significant union renewal did not occur when the Employment Relations Act replaced the Employment Contracts Act (ibid).

Employers' organisations have widened the range of their services from lobbying nationally and locally on behalf of business and industry to include legal, education and promotional activities. They are specifically addressing regional shortages of skilled labour, through the provision of schemes such as migrant worker placement. There is less need for institutional employer industrial representation, given that less than a quarter of New Zealand workers are covered by a collective agreement.

Changes in the organisation of labour raise the question of how knowledge of employment rights is communicated to employers and employees and how protection of employment rights is reinforced.

Workplace values and norms

Workplace values and norms are not static and are responsive to legislative compliance, leadership, staff commitment and organisational capacity.

Women and men have different work life cycles: there are more women in part-time work (30–40 percent of women aged 30–50 compared with 6–7 percent of men), and women are more likely to have family-interrupted career paths. Changing family patterns mean women are delaying childbirth, having smaller families and coming back to work more quickly.

The tension between women's increased participation in the labour force and the interaction between work and family pressures is acknowledged in Government initiatives such as the Department of Labour's Work-Life Balance project. Work-Life Balance is also a major plank in the Ministry of Women's Affairs Action Plan, 2004.

Work-life balance has been a continuing focus of attention for the EEO Trust, through its annual awards. Its recent research showed that 80 percent of nearly 1,200 New Zealand fathers surveyed would like to spend more time with their children (EEO Trust News, 2003), and a New Zealand survey of workers indicated that the fourth most common reason for changing employers was to achieve a better work-life balance.

Growing recognition of the Treaty of Waitangi has led to the introduction of bicultural policies in some workplaces such as Royal New Zealand Air Force. The ethnic composition of workplaces in the Auckland region, where 17.5 percent of the region's population is made up of ethnic communities, is increasing. The Federation of Ethnic Councils has urged the active promotion of cultural diversity in the workplace, including overcoming employer prejudice (Office of Ethnic Affairs, 2002).

Negative expressions of workplace culture include the continuing incidence of reported cases of sexual harassment in New Zealand workplaces, despite extensive public information and training programmes in the public and private sectors. Unlike some employment areas, there is now a body of employment law and workplace knowledge and experience that would allow for fresh thinking about new ways to prevent sexual harassment. Different expectations of employment and of workplace behaviour are currently evolving and giving new meaning to just and favourable conditions of work.

Labour participation rates by diverse groups

Gender

Women's increasing participation in the labour force (approximately 50 percent) is one of the strongest modern employment trends. In December 2003, 51.2 percent of the working age population were women, of whom 60.1 percent participated in the labour force. In contrast, men made up 48.8 percent of the working age population and 74.2 percent participated in the labour force. At that time, women represented 45.7 percent of the total employed and 49.6 percent of the total unemployed, compared to men who represented 54.3 percent employed and 50.4 percent unemployed, according to Statistics New Zealand. Throughout their working lives, women experience a different pattern of labour force participation from men. Participation rates for men steadily rise with age until around the age of 50, when male participation rates start to drop. For women, however, participation rates increase during their 20s, then drop back in the 30–34 year age group (when women often leave the paid labour force to bear and raise children) before peaking when women are in their 40s. The timing of women's bearing and rearing of children often coincides with career pressures and promotion opportunities.

Women comprise the majority (72.4 percent) of part-time workers in New Zealand and only a minority (37.3 percent) of the full-time labour force. Since 1990, small changes in these statistics for male and female employment patterns have been observed, but in general the trends have remained unchanged.

Māori

Māori remain disproportionately represented in unemployment figures at 10.6 percent, even though they have had the best employment growth of the three main ethnic groups, higher than for Pakeha or Pacific peoples at the end of 2003. The unemployment rate for Pacific peoples was 7.6 percent compared to 4.4 percent overall (Department of Labour, 2003a).

Research shows improvement in upskilling for Māori. Over half the increase in Māori employment is in professional and associated occupations. But employment for Māori and Pacific peoples remains concentrated in lower skilled occupations and both groups are more vulnerable to job loss in an economic downturn.

Gender and ethnicity interact in participation rates. Although their participation has steadily increased, Māori women's participation rates and employment rates have been considerably lower than that of Māori men over the past 15 years. Māori women have the highest jobless rates of all groups, including Māori women, Māori men, non-Māori men and non-Māori women (Ministry of Women's Affairs, 2001).

Pacific peoples

Over the past six years until 2003, employment growth for Pacific peoples has averaged 4.8 percent in comparison to the average rate of 1.5 percent, and their unemployment rate has declined the most of all ethnic groups, down 2.1 percent to 7.6 percent (Employment Strategy, 2003). However, Pacific peoples are predominantly entering clerical and production occupations and remain over-represented in lower skilled jobs. Weekly income movements lag behind those for Pakeha and Māori.

Youth

Young people are disproportionately affected by unemployment and are particularly vulnerable in times of slow employment growth. While there is little significant gender difference, Māori and Pacific young people are over-represented in unemployment figures. Nationally, Government is developing youth transition policies linking school leavers to jobs or education and training. At local government level, the Mayors' Task Force is actively engaged in youth employment.

Youth in the 15-to-24 age group live predominantly in urban areas (75 percent) and their individual employment aspirations and the employer expectations they face are both different from those of previous generations. Participation rates for youth decreased in 2003 (to 53 percent for 15–19-year-olds and 73.5 percent for 20–24-year-olds), reflecting study patterns in secondary and tertiary study. According to Ministry of Education figures for 2003, more young women than men are participating in formal tertiary education, but only 6.6 percent of women are participating in the flagship skills-based training programme, the Modern Apprenticeships Scheme. Again ethnicity and gender intersect. Of the 110 modern apprentices who are Pacific peoples (a tiny 1.9 percent of the total number), only 22 are female.

Some children are working long hours in unpaid work and thereby losing out on opportunities for leisure, childhood activities and education. The children's work survey (Caritas, 2003) indicates that 20 percent of children undertake home chores. Around 45 percent of the survey sample reported receiving a rate of pay below the minimum youth rate.

Disabled people

Labour participation rates for disabled people are considerably lower than for other workers. Fewer than 45 percent of the disabled population in New Zealand is employed either full-time or part-time, or are ready for work but currently unemployed. In contrast, nearly 70 percent of people of working age who do not have a disability participate in employment. Compared to people who do not experience a disability, disabled people find it more difficult to gain employment.

The Government's social policy direction is to place more emphasis on social investment to improve social well-being in the future than on social protection to provide a safety net in hard times (Lapsley, 2003). The Disabled Persons Employment Protection Act exempting sheltered workshops from minimum pay and holidays will be repealed. Vocational services funding through Work and Income (WINZ) is to be

more specifically targeted towards increasing the employment participation of disabled people. In 2002, an additional \$44 million was allocated over four years for public funding of employment support for disabled people. In general, disability employment policy has focused on entry to work; and equal attention should be paid to job retention and job protection.

Unpaid work

Unpaid work in New Zealand, as in other countries, is not widely recognised in human rights instruments. For example, many international conventions and relevant domestic employment legislation exclude unpaid household production, reproduction and services from consideration. This is despite actual time spent in unpaid work and its significant economic value.

The report *Measuring Unpaid Work 1999* (Statistics New Zealand, 2001a) shows that New Zealanders of working age spend more time in unpaid work (16.4 percent) than they do in paid work (14 percent). Unpaid work includes all productive activities people do, without payment, either inside or outside of their own household.

The *New Zealand Time Use survey* (Statistics New Zealand, 2001b) demonstrated how economically valuable the contribution of this work is to the nation's economy. 'In a year, the time spent on unpaid work in New Zealand as a primary activity equates, at 40 hours per week, to 2 million full time jobs. This compares with the equivalent of 1.7 million full time jobs in time spent in labour force activity.' On average, 60 percent of men's work is paid, but almost 70 percent of women's work is unpaid. Women spend more time in each of the four categories of unpaid work: household work, caregiving for household members, purchasing goods and services for own households, and unpaid work outside the home. Māori men recorded more time in informal unpaid work hours than both non-Māori men and Māori women. Māori women spend more time caring for household members than do non-Māori women.

Gender, age and ethnicity all intersect with unpaid work. For example, the Ministry of Women's Affairs (2002) lists valuing unpaid work as a key aspect of economic sustainability. Women ensure New Zealand's social sustainability, but their contributions are undervalued and should be both recognised and rewarded, according to participants in the Ministry's Action Plan consultation (Ministry of Women's Affairs, 2004). The Plan refers to unpaid work in the Work-Life Balance section where it proposes to gather data for trend analysis about how New Zealand women (particularly Māori, Pacific peoples and ethnic women) invest their time, and to gain support for regular implementation of the Time Use survey. The Ministry also wants to build understanding of unpaid work through the development of satellite accounts on household and non-profit organisations.

Care of older family/whanau members is another component of unpaid work that may increase with an ageing population. Waring (forthcoming) states that no one knows how many people receiving New Zealand superannuation are full-time carers of family members who are sick or infirm. More older Pacific peoples, particularly women, are assuming the unpaid care of children in families facing serious income pressures (Ministry of Women's Affairs, 2002). The greater involvement of Pacific women in unpaid work can be explained by the greater number of children and the fact that households include members of extended families. In 2001, 33 percent of Pacific children were living in families that included four or more dependent children, almost twice the proportion across the nation (Mintrom & True, forthcoming).

The Human Rights Commission receives a variety of complaints and enquiries relating to unpaid work, including unpaid full-time caring for older people and children, and residential care of children with disabilities.

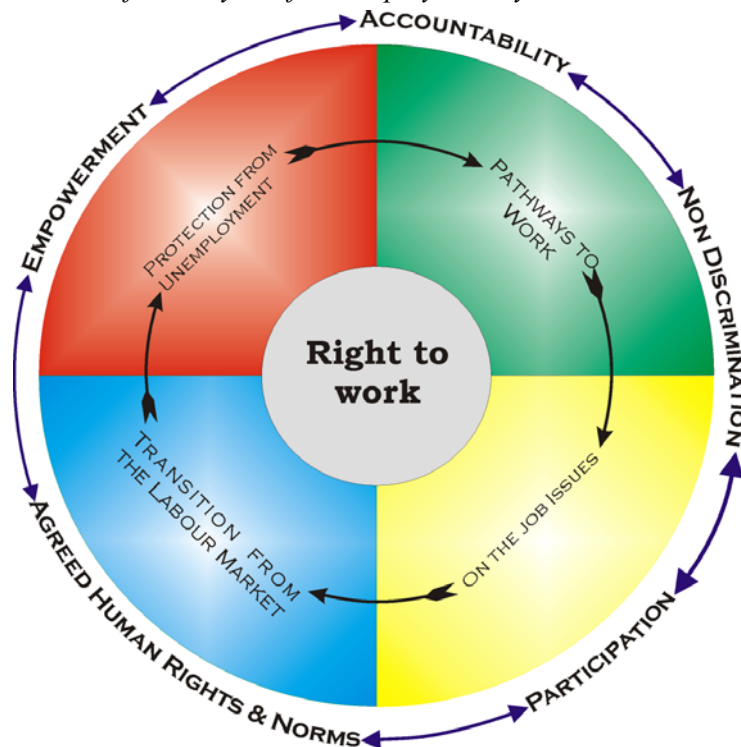
5. Consultation - Kōkiri

The employment environment described above forms a backdrop to information collected in two separate projects in 2003. The first was a specific outreach project undertaken by the Commission involving 551 participants, and the second was the general public consultation undertaken for the Action Plan.

Both participation exercises were aimed at ‘taking the pulse’ of what New Zealanders felt about the ‘right to work’ from their own experiences. This information was then analysed against the cycle of employment from entry to exit using the following human-rights elements:

- **Empowerment:** empowers individuals and groups by using their voice in decision-making, allowing them to use rights as leverage for action.
- **Accountability:** introduces accountability for actions and decisions, which can allow individuals and groups to complain about decisions, policies and practices that affect them adversely.
- **Non-discrimination:** seeks non-discrimination among individuals and groups through the equal enjoyment of rights and obligations by all individuals.
- **Participation:** emphasises participation of individuals and groups in decision-making.
- **Agreed human rights and norms:** links decision-making to the agreed human rights norms as set out in the various human rights covenants and treaties.

Figure 1: Framework for analysis of the employment cycle



Protection from unemployment

A surprising finding of this consultation, given its timing – with the country enjoying record labour market participation – was the emphasis that a broad spectrum of New Zealanders interested in employment issues placed on job creation. Job creation was referred to by employment specialists, local body officers, politicians, industry spokespeople and unionists.

There is an implicit assumption, perhaps, in the notion of the ‘right to work’ that employment should be currently available and universal. However, the right to work comprises several aspects and, while it may fall short of a guarantee of full employment, it includes the idea that New Zealand should strive for full employment, the availability of work for everyone able and willing to work ‘by all reasonable means’ (Van Dooren, 2003). Moving towards full employment is conditional upon economic development and a broad degree of consensus among Government, employers and workers about the role of work. The private sector is crucial to job creation and helps shape national and social policy. Trade unions have acted as a traditional mainstay of tripartite activities with Government and employers, and are vital to workers’ protection and participation.

Major Government strategy documents about employment, such as the Employment Strategy, and policy analysis such as *Work Trends* acknowledge in a variety of ways that a revolution is occurring in the world of work in relation to the way we work, work-based technologies, and the types of work we do. The challenge is to ensure that, in the rapidly changing labour market, currently disadvantaged groups are not further marginalised in terms of access, participation and pay, in the information society. While there has been progressive improvement in data collection relating to employment, data disaggregated by the various prohibited grounds of discrimination must be available for the measurement and comparison of vulnerable groups.

Consultation, particularly in regions such as Taranaki, Dunedin and Rotorua and in industry sectors such as wood processing in the Bay of Plenty, shows that some New Zealanders feel they have a much greater voice in regional employment strategies – through local government processes and specific, individual job programmes – than they do in influencing nation-wide Government policies. However, the same participants are keenly aware of the influence of job creation on economic sustainability and social cohesion in their communities. Debate about job creation could usefully focus on the interrelationships between national, local and industry sector strategies.

Pathways to work

Free choice of employment is a core element of the right to work, but for certain groups in New Zealand society this choice is greatly hindered because of who they are. For many disadvantaged groups, the decision to participate in work is not enough to gain access to the labour market. New migrants, Māori and Pacific peoples, unskilled youth and mature workers trying to re-enter the workplace and women returning from family responsibilities are groups that systematically struggle to gain employment in comparison with other groups. Disabled people are even more at risk of exclusion. These groups face systemic employment disadvantage, even in a buoyant labour market.

Discussing pathways to work necessarily involves examining achievement in education and training in preparation for work. Significantly, Māori initiatives in

education, such as kohanga reo, kura kaupapa and wananga, may be helping to close the gaps in employment outcomes for Māori.

The Action Plan research shows that three factors are critical in accessing good employment for traditionally disadvantaged groups.

They are:

1. overcoming stereotypes
2. job readiness
3. intensive case management.

Stereotypes, which usually involve covert bias against potential job applicants or groups of people who might present for work, exist at societal, employer and employee levels and were freely talked about as a human rights issue. Positive evidence from this study showed that indirect, subconscious discrimination can be overcome when employers give people different from themselves a fair chance.

Employers spoken to emphasised their need, given the fast-paced and competitive nature of industry, for job-ready applicants. This requires both relevant entry skills and education, and an increasing need for on-the-job training throughout working life. Data collected about the importance of job readiness also highlighted motivation, flexibility and an ability to take personal responsibility for work.

Intensive case management emerged from our research, in relation to migrant workers, youth at risk, mature workers and local government initiatives, as an essential element in matching at-risk potential workers with employment at a time when it is increasingly a focus of Government intervention. It involved a number of features such as making connections between job seekers and available opportunities, reducing the risk of failure, providing confidence and support for both employer and employee.

On-the-job issues

The right to rest and leisure and reasonable limitation of working hours was a dominant theme in this study. The tension between an individual's work responsibilities and those outside of work, known as work-life balance, was for many participants both an individual and organisational concern and, for employers, the subject of their EEO initiatives.

Work-life balance is now part of public thinking and Government and institutional responses are currently aimed at finding realistic solutions in an increasingly demanding work environment. The level of priority placed on work-life balance issues, however, remains patterned along the lines of gender. Working women, still shouldering the majority of the care for dependent family members, find harmonising work and family responsibilities less achievable than do working men. Gender-specific problems sometimes require gender-specific solutions, in spite of the work-life balance struggle being relatively universal.

A prerequisite for providing 'just and favourable' work conditions for all workers is to create work environments free from harassment. Despite organisational acknowledgement of sexual harassment, it endures as a problem for many workers. Bullying, which also involves abuse of workplace and societal power, is becoming increasingly recognised by employers as a destructive human resource issue. The

good news is that organisations acknowledge these problems. Some fresh approaches are needed to ensure strategies for prevention match their current form.

Participants cited abolition of gender disparities in pay and employment opportunities as fundamental to decent work conditions. There is no shortage of language in the international human rights conventions about the centrality of ‘equal pay for work of equal value’ in realising human rights at work. Most recently, the CEDAW Committee urged greater efforts to eliminate occupational segregation that disadvantages women. But many employers, especially those of casualised workers, are far from ready or able to wrestle with the complexity of the gender pay gap. When a pay scheme has been negotiated within their organisation, as part of a Collective Employment Agreement and with union input, employers are legitimately assured that the scheme is free from gender and race bias. Indirect and even unconscious discrimination in setting women’s pay rates, and historical devaluation of women’s work – factors not typically addressed in an organisation’s pay scheme – are not fully understood by employers as factors contributing to the gender pay gap. A business information campaign would stimulate private sector debate about pay equity and gain impetus from the work of the Pay and Employment Equity Task Force. A Pay and Employment Equity Unit is being created within the Department of Labour to support the implementation of a five-year Government plan of action.

The right to work relies in part on the willingness and ability of not only Governments, but society as a whole to respect and help fulfil these rights. In New Zealand, many medium and large companies tend to be involved in social and community outcomes in addition to traditional financial outcomes. Strong ties to their local people through sponsorships, community-based employment programmes, and the support of local activities weave the organisation into a symbiotic relationship with its region that relies on the strength of both parties. When one strand becomes strained because of the impact of global business, economic hardship, population decline, or social instability, the other is also affected. A better understanding of the interconnections between business and communities may go a long way towards ensuring the well-being of both. The growth of corporate social responsiveness in New Zealand is to be welcomed.

Māori businesses in this study indicated that both ideas and capacity for starting a business grew directly out of whanau, hapū and community needs, an organic process that was reliant on the expertise, goodwill, and close family connections of the Māori locations where the businesses were based. This grassroots-up approach to business development was in contrast to the corporate model of social responsibility observed in larger companies, where businesses were created and sustained alongside, not within, the community.

Transition from the labour market

Transition is likely to increase, not decrease, as a feature of the labour market. Two groups of vulnerable workers are most obviously at risk: women returning to the workforce and older workers. Women returning to the labour market from family responsibilities have benefited from the Government’s paid parental leave – the majority resume employment with the same employer. However, those men and women who exit the labour market for longer periods because of family responsibilities often struggle to re-enter the workplace under the same conditions and with the same status. Some work part-time, even if they want longer hours, as step towards full-time employment.

Older workers are especially vulnerable in times of economic recession and industry change. Economic restructuring in New Zealand in the 1990s saw middle level management, mainly men in their mid 50s, lose their jobs and become mature job-seekers. Mature job-seekers face pervasive societal stereotyping that indirectly discriminates against employment opportunities (McGregor & Gray, 2001).

The rights of older people in relation to work are increasingly a focus of attention (ILO Recommendation 162 (1980)). While age is a prohibited ground of discrimination, there is a need for more active consideration of means for preventing discrimination on the grounds of employment and occupation. Employers, too, would like a rethink about the blunt instrument of performance management in negotiating the transition from the work force of older workers at the end of otherwise valuable working lives. The right to the “enjoyment of just and favourable conditions of work” (ICESC, article 7) has particular significance for the health and safety and working conditions of older workers.

What does this mean for the right to work?

International understanding of what benchmarks should be used to assess aspects of the right to work (such as what constitutes ‘full employment’) is still developing. In New Zealand the right to work is expressed in a broad range of international instruments and domestic statutes. In addition, a number of government department strategies impinging on employment are guiding policy, and individual initiatives around decent work and pay equity are influencing practice. At the level of the workplace, though, the significant drop in unionisation, with its accompanying loss of organised employee advancement and protection presents new problems from a right-to-work perspective: how can full understanding of employment rights by employers and employees who are outside of organised coverage be achieved beyond minimal legislative compliance? The promotion of the right to collectively bargain and the right to freedom of association is essential for a strong trade union movement.

New Zealand is obliged to respect, promote, protect and fulfil the right to work. While definition of the right to work and its evaluation may be incomplete, elements such as the free choice of employment, protection against unemployment, anti-discrimination, equal pay, and just and favourable work conditions are widely understood and accepted. New Zealand has some flexibility in how it fulfils these within its social and economic environment. In taking the pulse of New Zealanders about employment issues at a time when the economy was buoyant, the two consultation projects showed that, overall, most people felt New Zealand was positively and progressively realising the right to work. They were equally emphatic, however, about the challenges posed by systemic and structural disadvantages in the labour market, and demonstrated willingness to improve them.

Findings from consultation

New Zealanders involved in the consultation process provided feedback on positive achievements in relation to the right to work and also the areas that needed attention. In some cases, contradictory ideas were expressed, particularly about the role of Government in the employment relationship.

Positive comments were received about:

- minimum wage rates, particularly for youth
- well policed work standards
- occupational safety and health standards

- paid parental leave
- trade union activity
- legislation that ‘enables workers ... to be protected from the excesses of the free market’
- the openness of the job market
- Government’s lack of interference in who can get a job.

Identified areas for improvement were:

- lack of employment opportunities
- casualisation
- rates of pay, especially for women
- a work culture of long hours
- poor quality on-the-job training
- protection for unemployed people
- discrimination against older workers and new migrants
- tax disadvantages for single income families
- employers’ attitudes to union membership
- lack of information about, and the complexity of, grievance processes
- legislation impinging on individual freedom of choice and contract.

6. Conclusions - Ngā whakamutunga

Where New Zealand does well - Ngā mahi pai e oti nei i Aotearoa

- There is widespread acknowledgement by the Government, local authorities, employers, trade unions and the public of the benefits of a job-rich economy, and that decent and meaningful employment underpins the economic growth and social cohesion of New Zealand and the individual well-being of New Zealanders.
- There is both a strong international context of employment rights and a strong domestic framework of legislation that recognises the rights of employers and employees in relation to pay, safe working conditions, employment protection and protection from discrimination.
- The status of EEO groups in employment is improving through:
 - increasing participation of women in the labour force
 - upskilling of Māori, with over half the recent increase in Māori employment being in professional and associated occupations
 - increasing participation and declining unemployment of Pacific peoples
 - legislative change so that disabled people in sheltered workshops may receive minimum pay and holidays
 - local government initiatives for migrant workers and the Mayors’ Taskforce for Jobs youth employment initiatives
 - Government’s youth transition policies linking school leavers to jobs or education and training.
- Initiatives by Government to develop work-life balance and a variety of family-friendly and flexible working arrangements by business and industry are positive

responses to the new and additional pressures imposed by the changing nature of work and the time and productivity demands of the ‘knowledge economy’.

Where we need to do better - Kia piki ake te pai i roto i enei wahanga

- New Zealand has not ratified the two fundamental International Labour Organisation Conventions, 87 on Freedom of Association and Protection of the Right to Organise and 138 on Minimum Age for Employment. Given the importance of core labour standards, this ratification is urgently needed.
- As noted by the CEDAW Committee, New Zealand does not comply substantially with the pay equity requirements of Article 11, ‘the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work’.
- The status of unpaid work is not widely recognised in the human rights framework. Unpaid workers, particularly caregivers, are undervalued, not recognised and often inequitably treated, despite their economic and social contributions.
- Structural disadvantage still exists in the New Zealand labour market in terms of both participation and outcomes and includes:
 - higher unemployment rates for Māori and Pacific peoples, even when unemployment is low
 - difficulties faced by migrants in accessing appropriate employment
 - prejudice influencing the appointment, retention and promotion of older workers
 - difficulties faced by women returning to the workforce after time away from work for family responsibilities
 - the enduring stigma and discrimination against disabled people in the labour market
 - difficulties faced by young people entering the labour market.