



Human Rights
Commission

Te Kāhui Tika Tangata



Tracking Equality at
Work for Disabled People

Contents

| | |
|-----------------------------------|----|
| Foreword | 1 |
| Who are we? | 2 |
| Employment Cycle | 3 |
| Article 27 of the CRPD | 4 |
| Disabled people | 5 |
| Future action | 15 |
| Where are we now? | 16 |
| Monitoring New Zealand's progress | 32 |
| Equality at work indicators | 33 |
| What next? | 36 |

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Foreword



Disabled people in New Zealand find that getting a decent job is one of their most significant challenges. New Zealand's leadership role in the development of the United Nations Convention on the Rights of Persons with Disabilities means there is a renewed focus on the right to work of disabled people.

The urgent need to improve the participation of disabled people in the paid workforce and their accessibility to decent work is gaining traction. For example, the Disabled Persons Assembly (NZ) has led the way with the Employment Disability Forum in recognition of the need for progress given that at every level of qualification, disabled people are less likely than non-disabled people to be in the workforce. The Employers Disability Network is promoting the employment of disabled people in the public and private sectors at a time of discussion and debate about the need for behavioural and attitudinal change in society and among employers.

There is a growing public consensus of the need to address the fundamental inequalities faced by disabled people in employment that recognises the New Zealand Disability Strategy and acknowledges the Treaty of Waitangi. The time for talking is over. It is now time for action to address the barriers and discrimination faced by disabled people in accessing decent work and in retaining paid employment.

In *Tracking Equality at Work for Disabled People*, the Human Rights Commission identifies young people entering employment as a critical issue. The Commission urgently recommends a national youth-to-work strategy that includes a plan for every young New Zealander. The strategy must address the barriers faced by disabled youth, and be responsive to Māori and Pacific young people who have been a casualty of the global economic recession.

Too many young disabled graduates cannot benefit from their years of education and training and face significant under-employment, if they can find a job at all. Many do not have access to vocational services that improve their pathways to paid employment.

The Commission wants a joined-up approach to youth employment that connects young people, schools, families and whanau, communities, employers, local and national government and that operates at a regional level to take account of sector opportunities. For example, there has been a constant and continuing need for the wider availability of work experience both at after school and tertiary holiday periods for disabled people that could be addressed in a youth-to-work strategy. Transition to work has been identified as a critical issue.

In this new report the Commission is promoting equal employment opportunities for disabled people in accordance with Article 27 of the Convention on the Rights of Persons with Disabilities as it relates to work and employment.

DR JUDY MCGREGOR

EQUAL EMPLOYMENT OPPORTUNITIES COMMISSIONER
NEW ZEALAND HUMAN RIGHTS COMMISSION

Who are we?

A key feature and priority of the Commission's equal employment opportunities (EEO) programme relates to disabled people and the barriers they face in accessing and retaining paid employment. This was a focus of the *National Conversation about Work* which explored the work-related views of over 3000 New Zealanders in 16 regions and across a variety of industry sectors.

Promoting EEO is the core responsibility of the EEO Commissioner. Under section 17 of the Human Rights Act (HRA), the EEO Commissioner provides leadership and advice on EEO, develops guidelines, monitors and analyses progress in EEO and works with others promoting equal employment. The HRA makes explicit that EEO includes pay equity. A Cabinet minute dated June 2004 gives the EEO Commissioner the authority to provide guidance to Crown entities to help ensure state-sector consistency and good EEO practice including how to be a good employer. Further information on equality at work and EEO is available on the National Equal Opportunities Network website www.neon.org.nz.

The Human Rights Commission welcomes comment on the issues raised in *Tracking Equality at Work*. Contact us:

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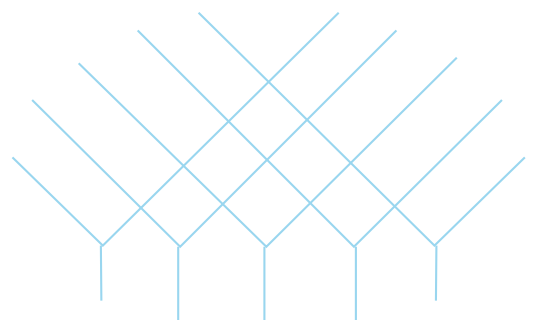
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A more comprehensive Tracking Equality at Work report is available at www.neon.org.nz/trackingequalityatwork/

- Protection from unemployment
- Migrants
- Occupational segregation and non-traditional roles
- Access to quality and affordable early childhood education
- Paid parental leave
- Low pay and the minimum wage
- Sexual orientation
- Older workers
- Literature review
- Right to work
- Review of Framework of the Future
- Employers' and employees' check lists.



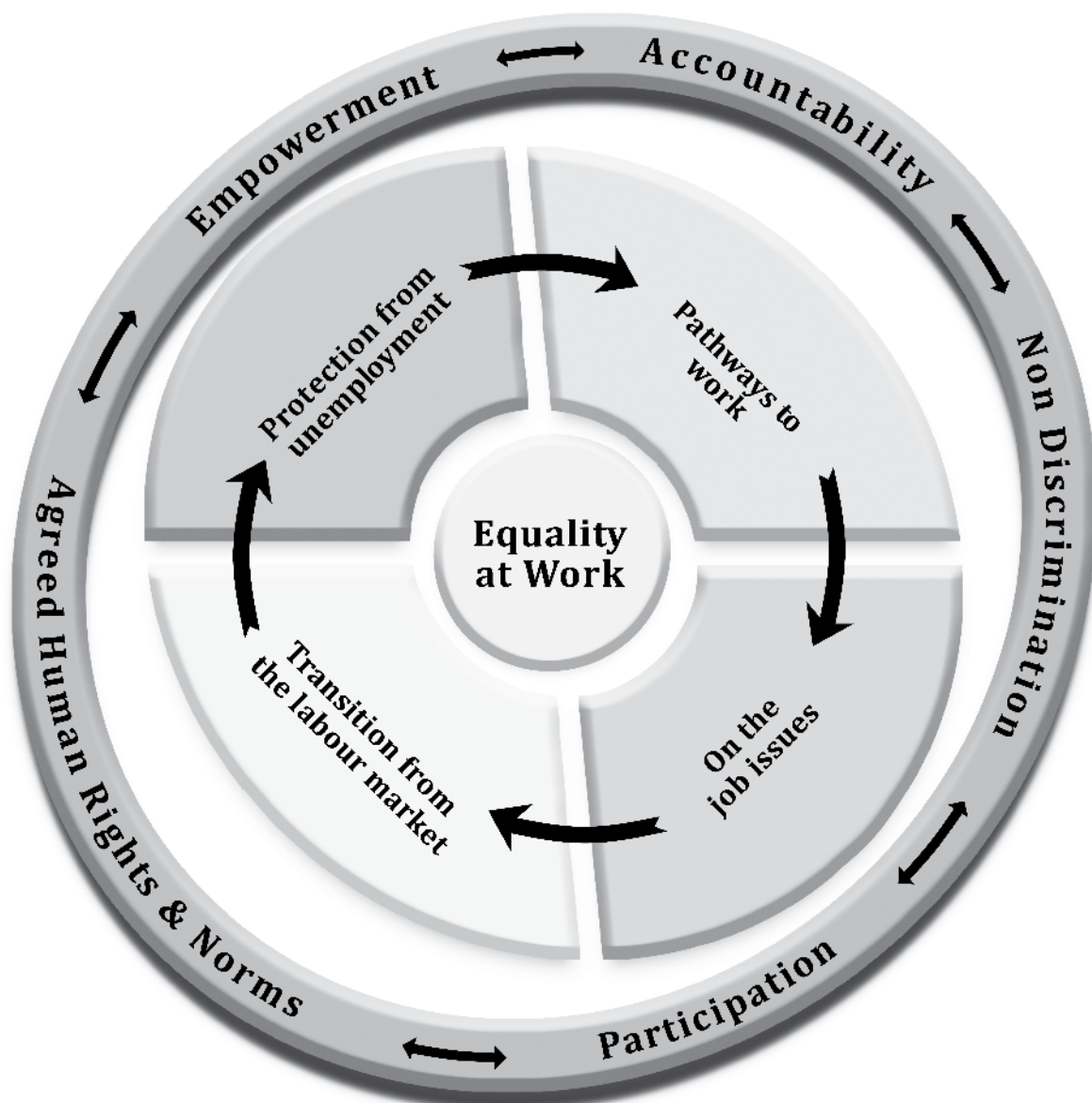
Employment cycle

The employment cycle is used by the Human Rights Commission when advocating for equality issues and the right to work for disabled and all other people. It covers the whole work experience and spans protection from unemployment and how people access work, through to their exit from the labour market.

The employment cycle links to Article 27 of the Convention on the Rights of Persons with Disabilities (CRPD) which states that disabled

people have “the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities”.

The CRPD is the most modern application of the right to work and brings together the agreed human rights and norms of disabled people. Article 27 of the CRPD brings these rights and norms together in relation to employment.



Article 27 of the CRPD

Work and employment

1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:
 - (a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;
 - (b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;
 - (c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;
 - (d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;
 - (e) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;
 - (f) Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;
 - (g) Employ persons with disabilities in the public sector;
 - (h) Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;
 - (i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;
 - (j) Promote the acquisition by persons with disabilities of work experience in the open labour market;
 - (k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.
2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.

Disabled people



Disability is the most frequent ground of enquiry and complaint to the Commission in the area of employment. Currently disabled people are estimated as having twice the level of unemployment as their non-disabled peers. However, there are a number of factors that lead the Commission to query whether or not this is an under-estimate.

Employment data for disabled people is only collected every five years in a survey conducted after the main census. It is not collected in other more regular surveys such as the Household Labour Force Survey sampled quarterly or the Income Survey sampled annually or the State Service Commission's annual human resources capability survey. Reliable statistics on the employment of disabled people are collected in the New Zealand Household Disability Survey conducted every five years after the general survey. The next New Zealand Household Disability Survey is planned for 2013, several months after the general census which was delayed because of Christchurch's earthquakes.

During the course of the *National Conversation about Work* the Commission heard that disabled people were experiencing a particularly difficult time accessing and maintaining employment. Discriminatory assumptions about what people were capable of is a significant barrier to the employment of disabled people.

Without more frequent data gathering, society is unable to monitor the situation for disabled people and also means progress cannot be tracked either. The Commission has identified the development of a full range of social statistics which measure key outcomes as an area of action to progress the rights of disabled people.¹

International obligations

New Zealand ratified the Convention on the Rights of Persons with Disabilities (CRPD) in 2008. The CRPD did not introduce any new human rights, but clarifies the obligations and legal duties of states to respect and ensure the equal enjoyment of all human rights by disabled people.

The purpose of the CRPD, expressed in Article 1 is to "promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by persons with disabilities, and to promote respect for their inherent dignity." Included in the principles that govern the CRPD are non-discrimination, full and effective participation and inclusion in society, and equality of opportunity. Article 27 (1) provides a comprehensive list of the rights of disabled people in relation to employment including the employment of people in the public sector (Art.27 (1) g), the private sector (Art.27 (1) h) and the open labour market (Art.27 (1) j).

New Zealand legislation

Disabled people have the same rights and legal entitlements as other New Zealanders. The Human Rights Act 1993 (HRA) and the New Zealand Bill of Rights Act 1990 (BoRA) protect the right of disabled people to freedom from discrimination. Both rely on the HRA definition of disability:

- physical disability or impairment
- physical illness
- psychiatric illness
- intellectual or psychological disability or impairment
- any other loss or abnormality of psychological or anatomical structure or function
- reliance on a guide dog, wheelchair or other remedial means
- the presence in the body of organisms capable of causing illness.

¹ P278 *Rights of Disabled People* Human Rights in New Zealand 2010. Human Rights Commission

Reasonable accommodation

Reasonable accommodation is a term used to describe the creation of an environment that will ensure equality of opportunity for disabled people, family commitments or particular religious practices. It is most commonly used in the provision of goods and services and employment. The CRPD states that “Reasonable accommodation” means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms. The denial of reasonable accommodation is a form of discrimination, according to the Convention.

Employers find the legal concept of reasonable accommodation in the Human Rights Act difficult, while disability advocates believe that there are myths about the employment needs of disabled people that need to be countered. Grant Cleland, Chief Executive of Workbridge has observed that most disabled people do not require additional accommodation and the most commonly sought accommodation of those people who do require it, is flexible work hours. Another point made by disability advocates is that every employee requires accommodation of some sort or another, whether it is a desk, chair, or lighting.

In the employment context reasonable accommodation applies to changes to a workplace which are made to ensure that a person who has a disability, family commitments or religious requirements can do a job. This may be as simple as swapping shifts with another employee to accommodate religious observance or installing a ramp for a person in a wheelchair. Whether an employer must make such changes is balanced against the unreasonable cost that may result.

In relation to the provision of services for disabled people, the Court of Appeal has said that there is a presumption that a provider will provide the necessary accommodation unless it is unreasonable. If a person requires special services or facilities (for example, relocation of an office) that it is not reasonable to provide, then the employer or service provider is not obliged to provide them.

² CRPD Article 27 (1) g

In addition, if there is a risk of harm to the individual or others, but measures can be taken to reduce the risk without unreasonable disruption, then the provider or employer should take those measures. If it is not reasonable to take the risk, or the measures necessary to reduce the risk to a normal level are unreasonable, then an employer or provider may be justified in discriminating.

Disability advocates have observed that health and safety concerns based on incorrect assumptions can become a barrier to the employment of disabled people. For example, the Commission heard that a person had been dismissed from his job collecting trolleys in a supermarket carpark because a Labour Inspector said he was unsafe around moving cars because of his learning disability. The trolley attendant had been working at the supermarket without incident for many years. A similar point was made by a group of Deaf who had sought employment that included driving. They said that a significant barrier was the assumption that because they did not hear traffic noise they were less safe than hearing drivers. This assumption ignored their heightened awareness of the visual environment.

State sector

Legislation

The State Sector Act “covers human resource management and general management practice, including requiring State services employers to be ‘good employers’, to promote equal employment opportunities and efficiency in the organisations that make up the service, and to ensure that employees are imbued with the spirit of service to the community. The CRPD also requires State parties to “employ persons with disabilities in the public sector.”²

The wider state sector such as Crown entities and local government are also required to be good employers, have equal opportunities programmes and recognise the employment requirements of disabled people.

The public service was seen as not fulfilling its leadership role as an employer by some disabled people in the *National Conversation about Work* report.

The Commission heard that the public service was “going backwards as a model employer” for disabled people and that the situation was even more difficult in the current environment of public service cuts.

Data

The State Services Commission (SSC) no longer collects disability data in the annual Human Resource Capability Survey (HRCS). In the 2005 report the SSC stated, “The collection of disability data in the Public Service is currently under review and disability statistics collected by the survey have not been published since 2002 because of concerns about data quality.”

The HRCS reports on the employment of other equal employment opportunities (EEO) target groups, such as Māori, other ethnic and minority groups and women, and includes representation at senior management levels. Information about the employment of disabled people in the public service comes from the 2006 Household Disability Survey (Statistics New Zealand) and the 2005 Career Progression and Development Survey. *Enabling Ability*,³ a 2008 report from the SSC on disabled people in the public service reported:

“The Statistics NZ 2006 Disability Survey indicates that 10.4% of the Public Service proxy group workforce has a disability, compared with 11.2% of the total employed labour force.”

Mainstream Programme

The Mainstream Programme provides a package of subsidies, training, and other support to help people with significant disabilities gain work experience in the State sector. The programme offers a 100% salary subsidy for the first year of employment, and 50% of the salary for the second year as well as funding to meet participants’ adaptive technology or specialised assistance costs, training for participants and their supervisors and follow up support.

Currently 221 participants are in the programme, which places over a hundred a year. Mainstream workers are employed in schools and in the public service. The programme leads to permanent work for 41% of participants on average, although not all of the jobs are full-time.

Mainstream participants placed in a school are more likely to get permanent work, but that work is more likely to be part-time. Public sector jobs tend to be better paid and for more hours, either fulltime or 30 hours or more a week.

Mixed views were expressed about Mainstream. The Commission heard about a blind person with a law degree who was employed as a judge’s clerk through the Mainstream programme. One view is that it is a good programme and “almost the only mechanism for disabled people to get employment”. Another is that Mainstream signals, incorrectly, that people are not being employed on merit.

Private Sector

Legislation

The private sector is required to comply with the Human Rights Act and not discriminate on the grounds of disability. There is no positive duty toward disadvantaged groups to be ‘good employers’ including having an equal employment opportunities programme like there is in the public sector. It is the Commission’s view that mechanisms to address systemic discrimination and disadvantage should be strengthened in both the public and private sectors. Extending the “good employer legislation” to the private sector is one such mechanism.

The CRPD also refers to the private sector specifically in Article 27 (1) (h) which states:

Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures.

There are other general sections in the Convention that apply equally to the private and public sectors including career advancement as well as assistance in finding and returning to work, self employment and starting a business, ensuring reasonable accommodation, promoting work experience in the open labour market and promoting vocational and professional rehabilitation and return-to-work programmes.

³ http://www.ssc.govt.nz/upload/downloadable_files/Enabling-Ability.pdf

Employers' Networks

The EEO Trust promotes equal employment opportunities in the private sector for all target groups and the Employers Disability Network (EDN) provides leadership and specifically encourages and supports disabled people. The network emphasises both the business case for employing disabled people and a rights-based approach. EDN is based on the UK Employers' Forum on Disability and the Australian Network on Disability and is a not-for-profit network of organisations sharing best practice on working with disability in all areas of business. Patron Dr Roderick Deane writes:⁴

"The EDN is a group of employers dedicated to ensuring that disabled people get the same opportunities in life as the rest of us and, in particular, have access to jobs and work. The EDN aims to help employers understand ways in which jobs can be created for disabled people and to encourage welcoming and accepting attitudes to those with disabilities, it believes that disability is simply part of the diversity of our society and that disabled people should not be disadvantaged in seeking work but rather be positively encouraged to do so. For this to happen, employers must have a welcoming and inclusive culture.

The EDN aims to encourage and foster this sort of positive attitude and make it work in practice throughout New Zealand."

The Ministry of Social Development provides secretariat support. To date EDN has set up a website, offering support and advice to employers.

Minimum Wage Exemptions

Legislative background

The Minimum Wage Amendment Act 2007 was enacted after the repeal of the Disabled Persons Employment Promotion Act (DPEP). The DPEP had been regarded by many disabled people as "utterly improper and an abuse of human rights", according to a submission by the Disabled Persons Assembly (DPA).

At the time, it was argued that the changes in the legislation would see disabled people's employment brought into line with New Zealand and international human rights norms.

The then Minister of Disability Issues, Ruth Dyson said: "The repeal will mean that all sheltered workshops will have to pay everyone they employ at least the minimum wage, unless an individual worker has an exemption. It will also mean that all people who work in sheltered workshops will have access to holiday and sick leave entitlements. To counter concerns about the continuing financial viability of sheltered workshops, the ministry has put in place a system of individual minimum wage exemption permits for workers who are 'significantly and demonstrably limited' in their work."

DPA said that this means disabled workers can be subject to minimum wage payment provisions on the basis of productivity. "In this context, productivity is about comparing a disabled employee's output with another employee doing the same job and, if it is considered that the disabled employee's productivity is lower, paying them at a lower rate. It is not a concept used elsewhere in the employment sector."

The DPEP Act along with the 1983 Minimum Wage Act had allowed for blanket minimum wage exemptions to be given to workplaces that employed disabled people. These workplaces were commonly known as 'sheltered workshops.' The law change meant that the individual employee, following an assessment, had to be issued with a permit from the Department of Labour that entitled their employer to pay them a particular amount less than the minimum wage.

The Minimum Wage Exemption Act enables a Labour Inspector to issue a minimum wage exemption permit to a worker if the Inspector is satisfied that –

- (a) the worker is significantly and demonstrably limited by a disability in carrying out the requirements of his or her work; and
- (b) any reasonable accommodations that could have been made to facilitate carrying out the requirements of the work have been considered by the employer and the worker; and
- (c) it is reasonable and appropriate to grant the permit.

⁴ <http://edn.org.nz/>

Various wage assessment tools are accepted for the purpose of exemptions. Before accepting a Minimum Wage assessment tool, Labour Inspectors have to consider it against set criteria. For example a tool should be balanced and look at both productivity and individual competencies. The tool should be transparent and clearly show how the assessment is linked to wage rates and how the wage rate is calculated. Disability advocates have advised the Commission that the tools used do not appear to be consistent.

National Conversation about Work

In its largest workplace project, the Commission visited 'business enterprises' in Invercargill, Dunedin and Christchurch which provide employment for disabled people who would be unable to compete for work in the open labour market. The Commission also heard from disability advocacy groups about the very low rate of pay received by some disabled workers (as low as 15c an hour). They believe that while business enterprises which operate like sheltered workshops remained an option, supported work opportunities in the open labour market were not being fully implemented. Forms of assistance include supported employment (such as job coaches). Supported employment is usually provided on the assumption that the person will increase their skill levels and competence and that support can be gradually phased out.

Other employment options include micro-financing small business ventures, a mixture of education/training and work and narrowing job descriptions to a range of tasks that the disabled person can manage.

Business enterprises came into being after the repeal of the DPEP Act, which resulted in the closure of sheltered workshops. In reality, people receiving a wage below the minimum have their income supplemented by a social welfare benefit.

The employment of disabled people at rates below the minimum wage is controversial. The Commission heard all sides of the argument - from employers and employees, from business enterprises, from disability advocacy groups and from family members. Opponents of the exemption system say that it is discriminatory and alternate processes that support disabled people to work in the open labour market are necessary. Proponents argue that workers in business enterprises would not otherwise be employed and that working supports social inclusion and promotes well-being.

Facts and figures

Greater transparency around the process of determining minimum wage exemptions has been called for by the disability community. Disability advocates reported difficulty in accessing information from the Department of Labour. The Human Rights Commission wrote to the department asking for information about the number of people receiving exemption permits, rates of pay and about whether or not there was a standardised method of assessing payment rates.

Currently 1076 people receive a minimum wage exemption permit under s8 of the Minimum Wage Exemption Act.⁵ In 2001, under the DPEP Act, approximately 5400 people were employed in sheltered workshops. There are 136 employers across New Zealand who employ people who have a minimum wage exemption. Some but not all, are business enterprises.

Rates of pay vary from just under the minimum wage to less than a \$1.00 an hour.⁶

⁵ Data provided by Department of Labour March 2011

⁶ *ibid*

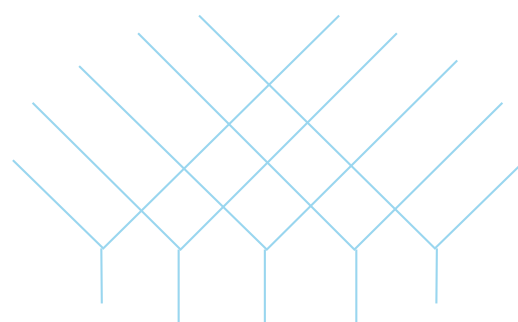


Table 1 / Minimum wage exemptions

| PAY RANGE | NUMBER OF PERMITS |
|-------------------|-------------------------|
| More than \$10.00 | 37 |
| \$5 - \$9.99 | 260 |
| \$3.00 - \$4.99 | 213 |
| \$2.00 - \$2.99 | 179 |
| \$1.00 - \$1.99 | 364 |
| Less than \$1.00 | 53 |
| Total | 1106⁷ |

The majority (54%) of people with minimum wage exemption permits earn less than \$3.00 an hour.

All disabled employees on one site the Commission visited had minimum wage exemption permits and this helped “to keep the place going”, management said. “Raising wages to the minimum wage would have a huge effect on staff numbers. We would have to let a lot of people go, we’d only end up employing about 20 or 30 if that happened”.

Another business the Commission met supports a small specialist work team at a large industrial plant in the area. This collaboration has been successful for eleven years and workers in this team earn above the minimum wage and are an integral part of the plant’s workforce.

Disclosure of mental health

From the National Conversation about Work

Staff working with people with mental disabilities told the Commission there were many perceived and significant barriers for people finding work. These included past bad experiences with disabled people, lack of knowledge and understanding, prejudice, and an unwillingness to make accommodations.

There was support for a social marketing campaign similar to *Like Minds Like Mine* to promote the employment of disabled people. The group said that the attitude of employers to mental illness such as depression had changed as a result of *Like Minds* and that a focus on the workplace and other disabilities would be helpful.

A particularly vexed issue is whether or not to disclose experience of mental illness. People with experience of mental health issues told the Commission that disclosure on application forms or unexplained gaps in CVs meant they were unlikely to be offered a job interview.

However, non-disclosure carried the risk that their needs will not be accommodated should they become unwell, and in extreme cases be dismissed for dishonesty.

Legal considerations include the appropriateness of questions in the application form and the steps taken to avoid discriminatory practices. One participant with experience of mental illness said, “The crux of the argument around disclosure is that there is still a lot of stigma around employability - there’s the myth that if you’ve got a mental illness you’re actually not employable. You can’t handle stress, you’re potentially dangerous to yourself and to others, you are a lot of extra work, you’re unreliable, you will take lots of time off.”

⁷ Some people have more than one exemption

There were risks either way, disclose and risk not being considered for the job, not disclose and risk being unsupported or being dismissed should you become unwell.

A further meeting with mental health advocates attempted to tease out what advice the Commission could usefully provide to prospective employers and employees.

The group suggested that the focus should come off disclosing experience of mental health and onto equality for any worker and their employer. Their advice was to not make it about mental health but ensuring the best person for the job by:

- Focussing on what an individual can do, not do but could learn, and what is outside their capability.
- Challenging discriminatory assumptions about ability based on diagnostic labels.
- Having conversations throughout any person's employment about their needs and support required to do a job well, regardless of labels and assumptions.

Ensuring best fit requires detailed job descriptions and person specifications that are inclusionary.

The Employers' Disability Network suggests that employers concentrate on what needs to be done rather than how the work should be done, for example it is better to ask, "this job involves working under pressure to tight deadlines. Tell us about situations where you've been under pressure and how you ensured you met deadlines" rather than "how will the pressure of tight deadlines affect your disability?"⁸

Conversations about how to meet people's needs or to support them to develop their performance at work is good practice for all employees. However, honest engagement requires a safe and supportive work environment. This conversation could include meeting out-of-work needs such as childcare and in-work needs like professional development needs as well as being responsive to individual needs related to health. The group discussed the mutual obligations inherent in acting in "good faith."

The employee should be able to say, "this is what I'll do to keep well at work" and the employer needs to be able to say "this is what I can do if concerns arise." This does not mean the employer takes on a social work role, rather that there is a plan such as someone to contact. The group commented that these discussions should be held after a 90 day trial period to ensure both employer and employee are confident in their ability to do the job and disclosure can be made without fear of prejudice or discrimination.

There is a cost to employers if employees are afraid to disclose. For example, if medication has been identified by the individual as a useful part of their recovery planning, the employee may stop taking this medication if drug screening might reveal a condition that they have not disclosed and which is not accepted by the organisation. Presenteeism and absenteeism may occur if a person does not feel confident to request sick leave to become well. The Commission heard that having experience of mental health issues could not be an excuse for lack of productivity "If you can't do the job, you can't do the job. Both parties need to be fair and reasonable".

Experience of mental health issues is common in New Zealand.⁹ Almost half (46.6%) of the population are "predicted to meet criteria for a disorder at some time in their lives, with 39.5% having already done so and 20.7% having a disorder in the past 12 months."¹⁰

Legislation

Discrimination

Because disability, which includes "mental illness", is a prohibited ground under the Human Rights Act 1993 an employer should not seek general information about a job applicant's medical or ACC history. Employers can ask whether or not a job applicant has the abilities needed for the job. This includes establishing whether or not an applicant has any medical conditions or disabilities that might mean the work could not be satisfactorily carried out.

⁸ See *Manager's Guide: A best practice approach to working with disabled employees*, Employers Forum on Disability and Workbridge 2007. This guide has been adapted for New Zealand and is available from Workbridge or Employers' Disability Network.

⁹ Oakley Browne, M. A., Wells, J. E., & Scotts, K. M. (Eds). (2006). *Te Rau Hinengaro: The New Zealand Mental Health Survey*. Wellington: Ministry of Health.

¹⁰ Ibid

A job applicant should first be made aware of the job's requirements and then asked about any medical conditions or disabilities that might prevent them from carrying out the work satisfactorily.

Without the context of a full job description the following question could be construed as an intention to discriminate:

Do you have, or have you ever had, a medical condition caused by an injury, illness, disability or gradual process that the tasks of the position may aggravate or contribute to, or that may affect your ability to carry out the work of the position applied for?

If confronted with such a question the applicant could answer "No", if they believe that any medical condition will not affect their work. Alternatively the applicant could say, "On the limited information available to me my answer is 'No'". If the answer is "Yes" the applicant could then describe what they will do to keep well at work and what the employer could do.

However, once a full job description is given, questions about a person's ability to meet specific job requirements are legitimate. In some instances, where a medical condition makes performance of the job unsafe (for example, a driving job when medication causes drowsiness) then the applicant has a responsibility to declare the medical condition.

A guidebook for job seekers¹¹ with experience of mental health issues advised that there are two situations in which a job seeker must disclose:

1. If your disability or health condition would pose a risk to yourself or others in the workplace. (e.g. if you were applying for a job as a truck driver but you were on medication that made you very drowsy making it unsafe for you to drive).
2. If your disability or health condition meant you would not be able to satisfactorily perform the tasks required in the job AND would be unreasonable to accommodate (e.g. if you were applying for a job in sales with lots of customer contact, but you had a social phobia and couldn't talk to strangers."

The guidebook goes on to say, "if either of these applies, you need to ask yourself: "Is this the right job for me?"

Good faith

Under the Employment Relations Act both employee and employer are required to act in good faith. The Department of Labour explains good faith in the following way:

"Employers and employees are obliged to deal with each other at all times fairly, reasonably and in good faith.

In broad terms, this means that both employers and employees must:

- act honestly, openly, and without hidden or ulterior motives
- raise issues in a fair and timely way
- be constructive and cooperative
- be proactive in providing each other with relevant information and consider all information provided
- respond promptly and thoroughly to reasonable requests and concerns
- keep an open mind, listen to each other and be prepared to change opinion about a particular situation or behaviour, and
- treat each other respectfully.

Good faith generally involves using practical common sense. Acting in good faith reduces the risk of conflict and problems. It is also a minimum requirement of the Employment Relations Act 2000."¹²

Legal cases

In 2002 the Employment Court ruled that a question on a pre-employment form - *Do you have any medical problems of any kind?* - was unlawful in light of s. 23 of the Human Rights Act which prohibits questions that indicate or could reasonably be understood as indicating an intention to unlawfully discriminate against an applicant for employment. The question would enable an employer to reject an applicant on the basis of a condition which would have minimal or no impact on work performance.

¹¹ *Taking the first step: A guidebook for job seekers with experience of mental health issues*. LEAP Like Minds Employment Advocacy Project 2005

¹² <http://dol.govt.nz/er/solvingproblems/keyprinciples/goodfaith.asp>

In this case the employee answered “yes” to the question and gave details of one condition; but she did not mention several other medical conditions. After time off work because of illnesses the employer ascertained that she suffered from several medical conditions which she had not disclosed. The employer dismissed her because of her failure to disclose her full medical situation. The court decided that she was not obliged to disclose all her medical conditions.¹³

In 2009 the Employment Relations Authority considered a situation where an employee had not disclosed her bi-polar condition on two separate occasions when her failure to do so provided an inaccurate answer. The employer subsequently failed to accommodate her condition. The applicant was able to establish that her condition was one that her employer needed to reasonably accommodate but had failed to do so. The Authority deducted 25% from the damages as the employee's failure to disclose contributed to the discrimination grievance arising.¹⁴

In 2010 the Authority upheld a decision by an employer to dismiss an employee who failed to disclose on a pre-employment questionnaire that he had a pre-existing mental health condition. Of critical importance to the Authority's decision was the employer's practice in assessing the information about physical and mental health provided by applicants. The information is considered by a different person to that who assesses work history and standard CV-type information. The employer considers in detail an applicant's medical history before making a decision whether to employ or arrange a suitable programme to facilitate employment.

The Authority concluded that the separate consideration of the detailed medical information from other aspects of the recruitment process indicated that the medical information was requested for the purposes of assessing an applicant's physical and mental fitness to perform the role and duties. It was part of assessing whether the person was qualified for the job. The Authority did not accept that the form could reasonably be taken as indicating an intention to unlawfully discriminate.

The employee said that such questions should only be asked after the initial assessment had determined that an applicant was otherwise suitable for employment. Otherwise there is a risk that a suitable applicant, who is entitled to reasonable accommodation, might be discriminated against.

The Authority said that employer was entitled to assess its legal obligations. It can only do that by asking appropriate questions to elicit the necessary information from the applicant and, if necessary, seeking expert reports. The Authority noted that there was evidence of the employer continuing to employ people who suffer from mental illness and the employer does not discriminate against people with a mental illness. The evidence supported the employer's claim that it needs to know about the nature of a person's illness in order to assess whether it can reasonably and safely be accommodated so as to continue or permit the person's employment.

The Authority commented on the employee's evidence that he had been advised by an advocate to say that his false answers resulted from miscalculation rather than a deliberate decision to withhold information because of his fear of discrimination:

“The statutory obligation is for those in an employment relationship to deal with one another in good faith which includes not misleading one another. Acting on advice, [the employee] breached that obligation ... That leads on to a point made by counsel about the stigma attached to mental illness. It might be understandable that a young man such as ... would think he should hide his mental health history to avoid any risk of discrimination. There will be differing views on that. In doing so, however, [the employee] exposed himself to the risk of adverse consequences should his employer later discover his falsehood. His other option was to properly answer the questions asked and rely on the anti-discrimination provisions in the Human Rights Act, and the remedies available for a proven breach of that Act if necessary.”¹⁵

¹³ Imperial Enterprises Ltd v. Attwood [2002] 2 ERNZ 740.

¹⁴ Atley v Southland District Health Board (2009) 8 HRNZ 888; (2010) 9 NZELC 93,427.

¹⁵ Lidiard v New Zealand Fire Service Commission ERA Christchurch CA51/10, 8 March 2010.

Disabled people and employment

Disabled people the Commission spoke to as part of its *National Conversation about Work* indicated that successfully gaining employment or indeed an interview is a major challenge.

The Commission met with a New Plymouth disabilities group and disability support agencies. Mixed stories emerged of examples where some disabled people were well supported into and at work. Conversely there were other stories where disabled people felt let down and in some cases totally unsupported by agencies.

One participant was extremely “happy” with the level of support he received and viewed his work as essential to keeping a positive daily focus and being active. Another participant spoke of her struggle to keep her job as a consequence of being unsupported and having to educate managers about her disability. She found this very hard to cope with.

Employers appeared to be unwilling to give disabled people a go and were apprehensive about what employing a disabled person might entail. A Christchurch group told us that a critical task is to “reduce the fear about what disability might mean for employers. Accommodating special needs doesn’t have to be a big deal, everyone has special needs.”

A group of Deaf in Hawke’s Bay talked about the multiple barriers inherent in the recruitment process. They talked about assistance needed for preparing curricula vitae (CVs), phoning prospective employers and organising an interpreter for the rare occasions when they got a job interview. There is no resident sign interpreter in Hawke’s Bay. Sadly the interpreter was often perceived by prospective employers as a support person rather than as an impartial interpreter.

When disabled staff were asked what they like about work, they spoke about the social aspect of being with friends and also the immense satisfaction gained from applying technical skills such as those required for sign-writing and wood turning.

Everyone the Commission spoke to said work “gives you something to get up for” and “I need something to do to keep me occupied”.

Without work, disabled staff overwhelmingly said that they would be “bored and annoyed” and would probably “just sit there” at home. The Commission learned that employment was a more desirable alternative to community participation programmes or unemployment. “There is dignity in labour” the Commission was told. Income from work paid below the minimum wage was supplemented by benefits.

Incorrect assumptions were made about what an individual disabled person might need to make employment work. Conversations about the practical implications of employment were avoided. For example, a group of blind people meeting in Wellington told the Commission that interviewers did not ask about how guide dogs might behave at work and instead assumed that the dog would be as boisterous and disruptive as their family pet.

Many have noticed a change in employer attitudes with increased societal awareness but believed the following things still needed to happen to change attitudes:

- Greater recognition of employers that employ disabled people
- Testimonials from employers that have found disabled people to be great workers
- Encouragement of other employers to take on disabled staff
- Greater education and awareness raising around disabilities.

“The focus for employers should be on education, retention of disabled staff, employment rights and the loyalty shown by people with disabilities”, we were told.

One participant summed up the need for attitudinal change by employers when he said, “If we were to look at [disabled] people as an investment rather than look at them as a pathology or as a disability and if we were to look at people’s abilities rather than disabilities, I think we would be in a different spot”.

Future action



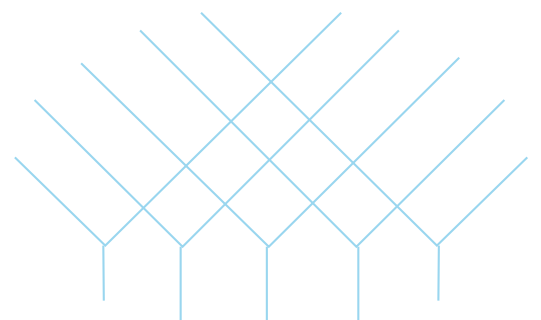
The Commission believes that there is a number of urgent future actions that will help improve labour force participation and the employment outcomes of disabled people. These are:

- Urgent action is required in the state sector, led by the State Services Commission which includes:
 - Adequate data capture so that progress can be monitored and is transparent
 - Special measures (affirmative action programmes) with targets to increase the numbers of disabled people into decent employment in the public service.
 - Target setting for major public service departments to improve the employment of disabled people. This is required by Article 27 (1) (g) by the CRPD that New Zealand has ratified which reads, *Employ persons with disabilities in the public sector.*
- Promote inclusive employment practice in the private sector through organisations such as the newly-formed Employers' Disability Network.
- Amend the Employment Relations Act 2000 to include a positive duty to be a good employer to the private sector in addition to the public sector.
- Review the implementation of the minimum wage exemption legislation in consultation with the disability community and make transparent its current operation through annual disclosures by the Department of Labour. The review should include: assessment of eligibility and rate; numbers of exemptions; pay rates determined; Human Rights implications of the policy and its implementation; the extent to which employment in open settings is being supported and; employers issues.

- Provide guidance on the disclosure of mental health issues to employers, employees and job seekers through the Commission's widely-distributed *Getting a job: An A to Z for employers and employees, Pre-employment guidelines.*

The next section of the report looks at the overall labour market in New Zealand and refers to disabled people where the data is available. However, in important areas such as youth unemployment, ethnicity figures are available but disability statistics are not.

The collection of statistics about disabled people is very important and warrants action by government agencies. Article 31 of the CRPD states that the government must collect statistical and research data to develop and implement policies. It should provide for confidentiality and respect the privacy of disabled people. The information should be disaggregated and help to identify and address the barriers to disabled people in exercising their rights. The statistics should be made accessible to disabled people and others.



Where are we now?

In general it is difficult to find good employment data related to disabled people. Where disabled-specific data is unavailable, general data sets for example in age, ethnicity and gender are inclusive of disabled people.

In compiling employment information for key demographic variables: gender, ethnicity, disabled people, young and old, the Commission was struck by a number of points.

- The number of people out of the labour force. This number includes people who are “not actively seeking work” as defined by Statistics New Zealand, as well as parents caring for dependent children and those who have retired.
- That employment data related to disabled people is only sampled every five years after the census.
- That there is no national statistical database regarding gay, lesbian, bi-sexual, transgender and intersex (GLBTI) people.
- The level of unemployment of Māori and Pacific youth.
- The level of unemployment of young Pacific women.
- The higher level of unemployment and the lower rate of youth participation in Auckland than in other regions.

Information has been obtained from two main sources; Statistics New Zealand and complaints and enquiries data from the Human Rights Commission. Employment statistics quoted are unemployment rates and participation rates.

Statistical data was purchased from Statistics New Zealand and is broken down from the Household Labour Force Survey December 2010.¹⁶ Where statistics are broken down to this extent, group samples can get quite small and may not be representative of the group as a whole. Apparent differences may be due to sampling errors rather than actual differences between the groups. Another caution is that in employment there may be several factors acting and the dominant factor may not be readily apparent. The statistics however, do point to areas of concern and at the least warrant further investigation.

Unemployment rate¹⁷

People are counted as unemployed if they are of working-age (over 15) who during the reference week were without a paid job, available for work, and had either actively sought work in the past four weeks, or had a new job to start within the next four weeks. Those who are without a job and have not actively sought work recently are not considered to be unemployed and are not in the labour force. The unemployment rate is the number of unemployed persons expressed as a percentage of the labour force.

Labour force participation¹⁸

The total labour force is expressed as a percentage of the working-age population. Because New Zealand has no compulsory retirement age and many workers stay in the labour force beyond 65, the figures include those aged 15 years and over with no upper limit. The total labour force is those people who meet the criteria for being employed or unemployed. A paid job of one hour a week or more is considered to be employed.

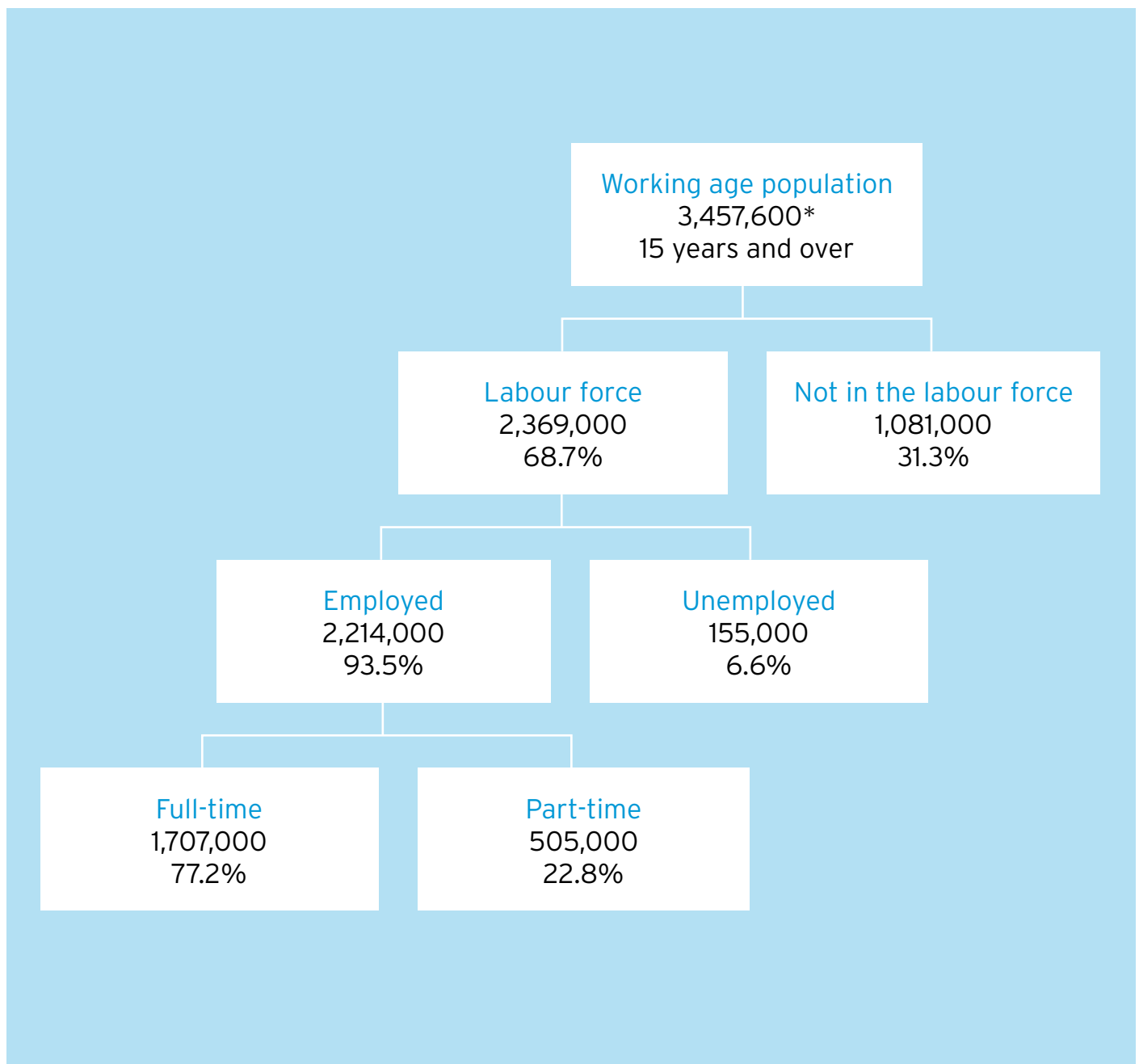
¹⁶ This work is based on/includes Statistics New Zealand's data which are licensed by Statistics New Zealand for re-use under the Creative Commons Attribution-Noncommercial 3.0 New Zealand licence. The data is from the Household Labour Force Survey December 2010

¹⁷ Statistics New Zealand Household Labour Force Survey 2010 December quarter Technical notes

¹⁸ Ibid



Table 2 / Structure of the Labour Market: March 2011 quarter
(seasonally adjusted)¹⁹



* Not seasonally adjusted

¹⁹ Reproduced from the Department of Labour report on the Household Labour Force Survey

Discrimination Complaints to the Human Rights Commission

The most commonly cited ground in employment or pre-employment complaints is disability, followed by sex, then race. The percentage of each of the grounds over the last five years is shown in Table 3 (totals do not add up to 100% because it is common for more than one ground to be cited).

Table 3 / Employment discrimination complaints 2005-2010

| | OVERALL |
|----------------------------|---------|
| Disability | 24.9% |
| Sex | 15.8% |
| Race | 14.9% |
| Ethnic or national origins | 12.6% |
| Sexual harassment | 12.4% |
| Age | 10.5% |
| Racial harassment | 7% |
| Family status | 6.1% |
| Religious belief | 4% |
| Sexual orientation | 2.4% |
| Marital status | 1.7% |
| Victimisation | 1.2% |
| Employment status | 1.1% |
| Colour | <1% |
| Ethical belief | <1% |
| Political opinion | <1% |
| Racial disharmony | <1% |

Disabled people

Statistics on employment²⁰

The only reliable national survey of outcomes for disabled people is the New Zealand Household Disability Survey conducted every five years. Although the New Zealand General Social Survey is described as a biennial survey of social and economic outcomes for all New Zealanders aged 15 and over, it does not provide disaggregated data for disabled people. Other more regular surveys, such as the Household Labour Force Survey, do not provide data on disabled people.

Table 4 / Unemployment rate 2006, Disability Survey

| | DISABLED | NON-DISABLED |
|--------|----------|--------------|
| Male | 5% | 3% |
| Female | 9% | 5% |

²⁰ http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/02-Dec-2010_15-51-46_HRNZ_10_DisabilityCh5.html

As with the total population there is a positive association with educational attainment and labour force participation. At every level of qualification, however, disabled people are less likely than non-disabled people to be in the workforce. The participation rate of disabled people with post school qualifications (76%) is about the same as that of non-disabled people with no qualifications.

The likelihood of being in the labour force is greater for some types of disability than others. People with a vision or hearing impairment are most likely to be in the labour force, while people with an intellectual impairment or experience of mental illness are the least likely.

Disability discrimination complaints

Complaints recorded under the ground of disability include permanent disabilities as well as temporary injuries or illnesses. The most commonly received type of complaint relates to the termination of employment (including the threat or perceived threat of termination) which the complainant believes is related to disability/injury/illness. Complaints relating to being declined roles were also high for people citing disability as a ground of complaint. Numbers of complaints relating to termination of employment have been steady over the last three years, while numbers of complaints relating to problems obtaining employment have dropped slightly in the last two years.

Table 5 / Disability and employment complaints

| | DISABILITY COMPLAINTS | PROPORTION OF DISABILITY COMPLAINTS |
|---------------------------|-----------------------|--|
| Termination of employment | 166 | 26% |
| Declined role | 149 | 23% |
| Discrimination at work | 92 | 14% |
| Accommodation at work | 69 | 11% |
| Sick leave | 30 | 5% |

Regions

Up-to-date labour market information is critical to monitoring current and historic trends in regional economies, projecting future trends, assessing the impacts of developments on regional economies and developing regional strategies. It is also important for quantitative analysis of social conditions and living standards of particular groups and communities, research into income distribution and interactions with other aspects of social policy.

Participants the Commission met with as part of the *National Conversation about Work* said the provision of adequate labour market information for local employment and economic planning purposes was more limited since the Department of Labour ceased providing dedicated labour information staff in the regions. The Commission raised the issue with Economic Development Agencies New Zealand (EDANZ) who agree labour market information is an issue for some regions but not all.

Tables 6 to 13 compare labour market participation rates and unemployment rates across regions.²¹ There are limited regional differences in participation and unemployment rates for Europeans. There appear to be lower participation rates for Māori in Auckland and Waikato than in Wellington and Canterbury, and a lower participation rate for Pacific peoples in Auckland and Canterbury than in other regions. Unemployment rates for Māori and Pacific peoples are higher across all regions than for Europeans.

The population in the Auckland region is considerably larger than any other region and accounts for 31% of the national working age population (15 years and older). The Auckland region is home to 71% of all working age Pacific peoples. One third of all Māori of working age live in Auckland and the only region that has a higher number of Māori is the rest of the North Island, that is, all of the North Island except Auckland, Waikato and the Wellington region.

The percentage of youth labour force participation is the lowest in Auckland of all regions and for all ethnicities, although the difference for European youth compared to other regions is slight. Auckland has the highest unemployment rate for both youth (19.4%) and across all age groups at 7.8%.

In the North Island the unemployment rate for Māori and Pacific youth is of particular concern.

The figures for 25-44 year olds across all regions show much higher participation in the labour force and much lower rates of unemployment across all regions and all ethnic groups. Differences between ethnic groups appear to be stronger than regional differences.

Both participation rates and unemployment rates reduce across the country as older people exit the labour market. Numbers are too small to observe regional differences in unemployment or participation rates.²² Ethnic differences in labour market participation in Auckland, Waikato and Canterbury warrant further exploration. The Canterbury labour market will have changed considerably in the next quarter.

Table 6 / Participation rate: Under 25 yrs by ethnicity

| REGION | EUROPEAN | MĀORI | PACIFIC PEOPLES | ASIAN/ MELAA ²³ /OTHER | TOTAL |
|----------------------|----------|-------|-----------------|--------------------------------------|-------|
| Auckland | 63.6% | 46.6% | 43.6% | 49.5% | 55.2% |
| Waikato | 65.0% | 51.9% | 70.4% | 60.7% | 60.4% |
| Wellington | 72.9% | 66.4% | 59.9% | 72.5% | 70.2% |
| Canterbury | 72.1% | 70.6% | ..S | 52.7% | 68.9% |
| Rest of North Island | 65.1% | 59.1% | 66.4% | 55.9% | 62.8% |
| Rest of South Island | 69.5% | 52.7% | ..S | 54.5% | 67.7% |

²¹ Regional data separated for age and ethnicity was made available from Statistics New Zealand based on the HLFS survey information December 2010. Regional data was available by Auckland, Waikato, Wellington, the rest of the North Island, Canterbury and the rest of the South Island.

²² Estimates less than 1000 are suppressed (..S) as they are subject to sampling errors too high for most practical purposes

²³ Middle Eastern, Latin American and African

Table 7 / Unemployment rate: Under 25 yrs by ethnicity

| REGION | EUROPEAN | MĀORI | PACIFIC PEOPLES | ASIAN/ MELAA/OTHER | TOTAL |
|----------------------|----------|-------|-----------------|--------------------|-------|
| Auckland | 16.6% | 28.2% | 25.9% | 19.0% | 19.4% |
| Waikato | 14.2% | 29.5% | ..S | ..S | 17.9% |
| Wellington | 12.3% | 23.6% | ..S | ..S | 14.1% |
| Canterbury | 10.5% | 16.5% | ..S | 26.2% | 12.4% |
| Rest of North Island | 15.0% | 31.2% | 41.6% | ..S | 19.3% |
| Rest of South Island | 12.8% | ..S | ..S | ..S | 13.6% |

Table 8 / Participation rate: 25-44 year olds by region and ethnicity

| REGION | EUROPEAN | MĀORI | PACIFIC PEOPLES | ASIAN/ MELAA/OTHER | TOTAL |
|----------------------|----------|-------|-----------------|--------------------|-------|
| Auckland | 85.7% | 75.0% | 73.3% | 78.6% | 81.1% |
| Waikato | 83.8% | 77.4% | 78.6% | 86.5% | 83.1% |
| Wellington | 88.0% | 85.0% | 81.9% | 85.0% | 87.1% |
| Canterbury | 85.9% | 76.9% | 82.8% | 80.3% | 84.6% |
| Rest of North Island | 83.1% | 73.2% | 77.5% | 85.7% | 81.3% |
| Rest of South Island | 84.8% | 76.0% | 86.9% | 86.1% | 84.9% |

Table 9 / Unemployment rate: 25-44 year olds by region and ethnicity

| REGION | EUROPEAN | MĀORI | PACIFIC PEOPLES | ASIAN/ MELAA/OTHER | TOTAL |
|----------------------|----------|-------|-----------------|--------------------|-------|
| Auckland | 4.2% | 8.0% | 8.6% | 9.2% | 6.4% |
| Waikato | 3.5% | 11.9% | ..S | ..S | 5.2% |
| Wellington | 2.3% | 9.5% | 16.3% | ..S | 3.9% |
| Canterbury | 5.7% | ..S | ..S | 9.5% | 6.0% |
| Rest of North Island | 4.1% | 11.4% | ..S | ..S | 5.6% |
| Rest of South Island | 3.9% | ..S | ..S | ..S | 3.9% |

Table 10 / Participation rate: 45 and over by region and ethnicity

| REGION | EUROPEAN | MĀORI | PACIFIC PEOPLES | ASIAN/ MELAA/OTHER | TOTAL |
|----------------------|----------|-------|-----------------|-----------------------|-------|
| Auckland | 63.2% | 70.3% | 54.0% | 55.9% | 61.0% |
| Waikato | 62.8% | 57.7% | 70.3% | 64.0% | 61.8% |
| Wellington | 62.8% | 62.5% | 67.2% | 60.1% | 62.8% |
| Canterbury | 62.9% | 73.5% | 52.3% | 53.8% | 62.1% |
| Rest of North Island | 57.1% | 61.9% | 72.2% | 65.6% | 57.9% |
| Rest of South Island | 60.9% | 71.1% | ..S | 61.9% | 61.2% |

Table 11 / Unemployment rate: 45 and over by region and ethnicity

| REGION | EUROPEAN | MĀORI | PACIFIC PEOPLES | ASIAN/ MELAA/OTHER | TOTAL |
|----------------------|----------|-------|-----------------|-----------------------|-------|
| Auckland | 3.4% | 7.4% | 8.0% | 5.1% | 4.2% |
| Waikato | 2.0% | 8.8% | ..S | ..S | 2.8% |
| Wellington | 3.1% | ..S | ..S | ..S | 3.4% |
| Canterbury | 3.0% | ..S | ..S | ..S | 3.4% |
| Rest of North Island | 3.0% | 8.4% | ..S | ..S | 3.9% |
| Rest of South Island | 2.4% | ..S | ..S | ..S | 2.9% |

Table 12 / Participation rate: Total by region and ethnicity

| REGION | EUROPEAN | MĀORI | PACIFIC PEOPLES | ASIAN/ MELAA/OTHER | TOTAL |
|----------------------|----------|-------|-----------------|-----------------------|-------|
| Auckland | 70.7% | 64.8% | 58.7% | 64.4% | 67.3% |
| Waikato | 69.9% | 63.1% | 73.1% | 74.4% | 68.7% |
| Wellington | 72.8% | 73.8% | 70.7% | 74.1% | 72.7% |
| Canterbury | 71.7% | 73.8% | 53.3% | 65.5% | 70.7% |
| Rest of North Island | 65.8% | 65.0% | 72.7% | 71.3% | 65.8% |
| Rest of South Island | 69.7% | 67.9% | 67.3% | 69.8% | 69.7% |

Table 13 / Unemployment rate: Total by region and ethnicity

| REGION | EUROPEAN | MĀORI | PACIFIC PEOPLES | ASIAN/ MELAA/OTHER | TOTAL |
|----------------------|----------|-------|-----------------|--------------------|-------|
| Auckland | 5.9% | 12.2% | 12.4% | 9.9% | 7.8% |
| Waikato | 4.4% | 14.7% | 19.1% | 6.5% | 6.1% |
| Wellington | 4.3% | 12.6% | 16.7% | 4.1% | 5.4% |
| Canterbury | 5.3% | 8.6% | ..S | 11.4% | 6.0% |
| Rest of North Island | 5.3% | 15.3% | 18.7% | 5.3% | 7.1% |
| Rest of South Island | 4.7% | 10.7% | ..S | 4.7% | 5.0% |

Younger and older workers

In this section we refer to young workers as those under 25, and have separated those under and over 20 years old where possible. We have defined older workers as those over 65, for the purpose of this analysis. Internationally, 55 years and over and sometimes 45 years and over constitute “older workers”.

Unemployment rates for young people, especially for those under 20 years old, are currently very high. These unemployment rates refer to those people who do not have a job, and are actively seeking work. Pacific youth, Māori and people from other ethnic minorities are much more likely to be unemployed than young Europeans. Tables 14 and 15 demonstrate the double disadvantage of age and ethnicity.

Participation rates reflect engagement in the labour force and many young people are participating in education, training or caregiving and so it is expected that the younger group (under 20 years) will have lower participation rates. The rate of young people who are disengaged from the labour market, that is, not in employment, education, training or caregiving (NEET) is of concern, and again is higher among Māori and Pacific youth. Young men have a slightly higher NEET rate than young women.

Workers over 65 years have a much lower participation rate than younger cohorts but the rate in New Zealand is high compared to other OECD countries and is increasing. Interestingly, Māori have the highest proportion of over 65 years in the workforce by ethnicity. Participation rates of younger “older” workers (i.e. 45-55 years) are very high and unemployment low.

Employment statistics

Table 14 / Participation rate by age and ethnicity

| ETHNICITY | 15-19 | 20-24 | 65 AND OVER | TOTAL 15 AND OVER |
|-------------------|--------------|--------------|--------------|-------------------|
| European | 54.6% | 80.7% | 18.1% | 69.8% |
| Māori | 45.4% | 69.7% | 20.2% | 66.4% |
| Pacific peoples | 33.8% | 68.8% | 13.1% | 61.6% |
| Asian/MELAA/Other | 34.5% | 66.0% | 15.3% | 66.9% |
| Total | 48.5% | 75.9% | 17.8% | 68.5% |

Table 15 / Unemployment rate by age and ethnicity

| ETHNICITY | 15-19 | 20-24 | 65 AND OVER | TOTAL 15 AND OVER |
|-------------------|--------------|--------------|-------------|-------------------|
| European | 20.4% | 9.3% | 2.2% | 5.1% |
| Māori | 38.2% | 18.8% | ..S | 13.4% |
| Pacific peoples | 40.9% | 17.2% | ..S | 13.6% |
| Asian/MELAA/Other | 33.5% | 12.2% | ..S | 8.5% |
| Total | 25.5% | 11.2% | 2.2% | 6.6% |

Table 16 / Gender participation rate by age

| GENDER | 15-19 | 20-24 | 65 AND OVER | TOTAL 15 AND OVER |
|--------------|--------------|--------------|--------------|-------------------|
| Male | 48.6% | 80.2% | 23.5% | 74.9% |
| Female | 48.4% | 71.3% | 12.9% | 62.5% |
| Total | 48.5% | 75.9% | 17.8% | 68.5% |

Table 17 / Gender unemployment rate by age

| GENDER | 15-19 | 20-24 | 65 AND OVER | TOTAL 15 AND OVER |
|--------------|--------------|--------------|-------------|-------------------|
| Male | 24.8% | 11.6% | 2.5% | 6.4% |
| Female | 26.3% | 10.8% | ..S | 6.8% |
| Total | 25.5% | 11.2% | 2.2% | 6.6% |

Older workers are sometimes categorised as those over 45. Table 18 shows participation rates start to reduce in the late fifties and early sixties but reduce sharply at 65 years.

Table 18 / Participation and unemployment of older workers

| OLDER WORKERS | PARTICIPATION | UNEMPLOYMENT |
|---------------|---------------|--------------|
| 45-49 | 87% | 4.0% |
| 50-54 | 86.3% | 3.8% |
| 55-59 | 81.4% | 3.7% |
| 60-64 | 70% | 3.3% |
| 65 | 17.8% | 2.2% |

Not in Education, Employment or Training (NEET)

“Over recent years, the proportion of young people in New Zealand who are not engaged in employment, education, training or caregiving (NEET) has been monitored as an indicator of youth engagement in training and employment. It serves as a good alternative to the traditional labour force participation rate, which is less relevant for youth given the high numbers of youth out of the labour force because they are at school or in tertiary study. Those youth who are categorised as NEET are disengaged from both formal learning and work, and as such, are considered to be missing the opportunity to develop their potential at an age that heavily influences future outcomes. While the NEET measure does not count young people involved in other activities that could contribute to their well-being, or are ‘in between’ activities for a short period of time (for example, just returned from or about to leave for overseas, or on holiday from work or study), it is still a particularly useful indicator of youth disengagement.”²⁴

As at March 2011, in the 15-19 years age group, just under one in ten (9.3%) of males were NEET, compared with 7.6% of females. The school leaving age is now 16.

Among those aged 20-24, 12.3% of men and 10.4% of young women were NEET. Young Māori aged 15-24 have the highest NEET rates, at 17%, followed by Pacific youth at 14.5% and European youth at 8.2%.

Employment-related age complaints

The following section summarises complaints received by the Human Rights Commission in relation to employment and age issues. The most common theme of age discrimination complaints in the last five years involves explicit or perceived age preferences in pre-employment. This includes complaints from people who have been told that they are either too old or too young for jobs, as well as people who believe that age is the reason for being declined employment. Of those who stated that they were told they were ‘too old’ or ‘too young’ for a role, most had been told they were too old for a role. Being considered ‘too old’ affected people in all age groups, including a complainant aged under 20 who was considered too old for a role in which the employer wanted to pay youth rates. Retirement complaints largely involve older workers claiming pressure to retire by their employers.

Table 19 / Age employment complaints

| | NUMBER OF AGE COMPLAINTS | PROPORTION OF AGE COMPLAINTS |
|-------------------------------------|-----------------------------|---------------------------------|
| Age preference in pre-employment | 109 | 40% |
| Pre-employment questions | 32 | 12% |
| Retirement | 29 | 11% |
| Different entitlements based on age | 13 | 4% |

²⁴ http://www.dol.govt.nz/publications/lmr/youth/in-the-labour-market/youth-2009_07.asp

Gender

Employment Statistics

Tables 20 to 23 show gender differences by age and ethnicity which warrant further investigation. While there is little difference in the participation rates of young European men and women, there is a substantial difference in the participation rates between young Māori men and women and between young Pacific men and women. In the 25-44 age range, the participation rates of men is greater than women across all ethnic groups.

This is also true of those 45 and over, but not so markedly. There is also a substantial difference in unemployment rates between young Pacific men and women.

Tables 24 and 25 demonstrate the double disadvantage of gender and ethnicity. The gender pay gap between the highest hourly rate (European men) and the lowest (Pacific women) is 24.4%.

Table 20 / Male participation by age and ethnicity

| | UNDER 25 YRS | 25-44 YRS | 45 AND OVER | TOTAL |
|-------------------|--------------|--------------|--------------|--------------|
| European | 69.3% | 93.9% | 67.3% | 76.0% |
| Māori | 61.7% | 84.7% | 68.6% | 72.3% |
| Pacific peoples | 52.7% | 87.4% | 63.5% | 69.3% |
| Asian/MELAA/Other | 54.6% | 91.3% | 65.6% | 73.5% |
| Total | 64.3% | 92.1% | 67.0% | 74.9% |

Table 21 / Female participation by age and ethnicity

| | UNDER 25 YRS | 25-44 YRS | 45 AND OVER | TOTAL |
|-------------------|--------------|--------------|--------------|--------------|
| European | 65.7% | 76.9% | 55.6% | 63.9% |
| Māori | 50.9% | 68.5% | 61.0% | 61.1% |
| Pacific peoples | 43.0% | 64.3% | 52.3% | 54.5% |
| Asian/MELAA/Other | 51.4% | 71.9% | 51.6% | 60.8% |
| Total | 59.8% | 74.5% | 54.9% | 62.5% |

Table 22 / Male unemployment by age and ethnicity

| | UNDER 25 YRS | 25-44 YRS | 45 AND OVER | TOTAL |
|-------------------|--------------|-------------|-------------|-------------|
| European | 13.3% | 3.8% | 3.2% | 5.0% |
| Māori | 27.2% | 8.9% | 9.7% | 13.8% |
| Pacific peoples | 22.9% | 7.6% | 10.3% | 12.1% |
| Asian/MELAA/Other | 18.2% | 5.4% | 5.0% | 7.7% |
| Total | 16.6% | 4.7% | 4.0% | 6.4% |

Table 23 / Female unemployment by age and ethnicity

| | UNDER 25 YRS | 25-44 YRS | 45 AND OVER | TOTAL |
|-------------------|--------------|-------------|-------------|-------------|
| European | 14.4% | 4.4% | 2.6% | 5.3% |
| Māori | 27.7% | 10.7% | 6.1% | 12.9% |
| Pacific peoples | 32.7% | 13.3% | ..5 | 15.2% |
| Asian/MELAA/Other | 17.3% | 9.7% | 4.6% | 9.4% |
| Total | 17.1% | 6.4% | 3.1% | 6.8% |

Table 24 / Median hourly rate²⁵

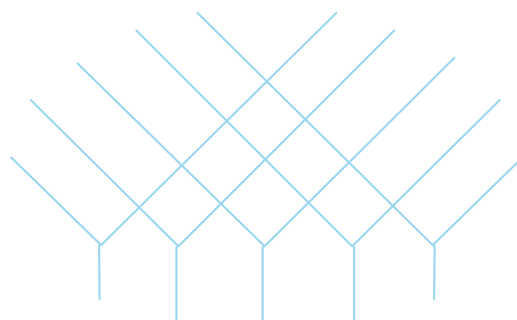
| | ALL | FULL-TIME | PART-TIME |
|--------------|----------------|----------------|----------------|
| Men | \$21.25 | \$22.12 | \$14.50 |
| Women | \$19.00 | \$20.62 | \$15.33 |
| Total | \$20.00 | \$21.58 | \$15.00 |

Table 25 / Median hourly rate by gender and ethnicity²⁶

| | MEN | WOMEN |
|----------------|---------|---------|
| European | \$22.06 | \$19.33 |
| Māori | \$18.00 | \$17.00 |
| Pacific People | \$17.88 | \$16.68 |
| Asian | \$19.18 | \$18.00 |
| MELAA | \$22.00 | \$20.00 |
| Other | \$22.06 | \$18.00 |

²⁵ The annual Income Survey from Statistics in New Zealand (June 2010) provides the following comparative pay data.

²⁶ Ibid



Sex discrimination complaints

The most common type of complaint on the ground of sex was in relation to pregnancy accounting for 31% of the sex complaints in employment (Table 26) in the last five years. Pregnancy complaints include women being made redundant or having their roles otherwise terminated shortly after advising of pregnancy (34 complaints), being declined roles (12) or other pre-employment problems (10), and poor treatment after advising of pregnancy (16).

Related to the pregnancy complaints were a further 23 complaints about parental leave, including problems with jobs not being held open for people returning from parental leave. Sexual harassment is included as a separate form of discrimination in the HRA and remains persistently high.

Table 26 / Sex discrimination and employment complaints

| | NUMBER OF SEX COMPLAINTS | PROPORTION OF SEX COMPLAINTS |
|-------------------------------------|--------------------------|------------------------------|
| Pregnancy | 128 | 31% |
| Gender preference in pre-employment | 95 | 23% |
| Parental leave | 23 | 6% |

Table 27 / Sexual harassment complaints

| | NUMBER OF SEXUAL HARASSMENT COMPLAINTS | PROPORTION OF SEXUAL HARASSMENT COMPLAINTS |
|--|--|--|
| Harassment (by colleague or not specified) | 184 | 57% |
| Harassment by person in senior role | 113 | 35% |



Ethnicity

Employment Statistics

Tables 28 and 29 indicate the acuteness of Māori and Pacific youth unemployment. More than one in four Māori and one in four Pacific youth in the labour market are unemployed.

For all under 25 year olds, 9.3% of Europeans, 15.4% of Māori, 13.1% of Pacific youth and 9.5% of Asian/MELAA/other are unemployed.²⁷ The different participation rates leads to questions as to what those people are doing – and for under 25s many will be in education.

Unemployment rates by qualification (Tables 30 to 32) suggest that while higher education levels reduce the likelihood of unemployment, Māori, Pacific people and other people from ethnic minorities with a post secondary school diploma have higher rates of unemployment than Europeans with no qualifications.²⁸

Table 28 / Participation rates

| | UNDER 25 YRS | 25-44 YRS | 45 AND OVER | TOTAL |
|-------------------|--------------|--------------|--------------|--------------|
| European | 67.5% | 85.2% | 61.3% | 69.8% |
| Māori | 56.3% | 76.1% | 64.5% | 66.4% |
| Pacific peoples | 48.0% | 75.3% | 57.5% | 61.6% |
| Asian/MELAA/Other | 53.2% | 80.9% | 58.2% | 66.9% |
| Total | 62.1% | 83.0% | 60.7% | 68.5% |

Table 29 / Unemployment rates

| | UNDER 25 YRS | 25-44 YRS | 45 AND OVER | TOTAL |
|-------------------|--------------|-------------|-------------|-------------|
| European | 13.8% | 4.1% | 2.9% | 5.1% |
| Māori | 27.4% | 9.7% | 7.8% | 13.4% |
| Pacific peoples | 27.2% | 10.2% | 7.5% | 13.6% |
| Asian/MELAA/Other | 17.8% | 7.5% | 4.8% | 8.5% |
| Total | 16.8% | 5.5% | 3.6% | 6.6% |

²⁷ Calculated by multiplying the percentage unemployed by the participation rate.

²⁸ Other factors such as age may be at play here, for example are Europeans with no qualifications older on average than Māori workers with no qualifications? Sampling errors may also account for the difference. The issue needs further investigation.

Qualifications and unemployment

Table 30 / Male unemployment rates by educational qualification and ethnicity

| ETHNICITY | NONE | SCHOOL QUAL | POST SCHOOL (DIPLOMA) | BACHELOR | NOT SPECIFIED | TOTAL |
|-------------------|--------------|-------------|-----------------------|-------------|---------------|-------------|
| European | 8.6% | 6.5% | 4.1% | 2.6% | ..S | 5.0% |
| Māori | 22.6% | 12.5% | 8.8% | ..S | ..S | 13.8% |
| Pacific | 14.2% | 15.8% | 10.4% | ..S | ..S | 12.1% |
| Asian/MELAA/Other | ..S | 12.4% | 8.9% | 4.8% | ..S | 7.7% |
| Total | 11.0% | 8.3% | 5.2% | 3.1% | ..S | 6.4% |

Table 31 / Female unemployment rates by educational qualification and ethnicity

| ETHNICITY | NONE | SCHOOL QUAL | POST SCHOOL (DIPLOMA) | BACHELOR | NOT SPECIFIED | TOTAL |
|-------------------|--------------|-------------|-----------------------|-------------|---------------|-------------|
| European | 7.9% | 7.3% | 4.8% | 2.4% | ..S | 5.3% |
| Māori | 18.9% | 15.1% | 11.8% | ..S | ..S | 12.9% |
| Pacific | 16.3% | 17.0% | 16.1% | ..S | ..S | 15.2% |
| Asian/MELAA/Other | 7.3% | 12.3% | 11.4% | 7.5% | ..S | 9.4% |
| Total | 10.1% | 8.5% | 6.6% | 3.7% | ..S | 6.8% |

Table 32 / Total unemployment rates by educational qualification and ethnicity

| ETHNICITY | NONE | SCHOOL QUAL | POST SCHOOL (DIPLOMA) | BACHELOR | NOT SPECIFIED | TOTAL |
|-------------------|--------------|-------------|-----------------------|-------------|---------------|-------------|
| European | 8.3% | 6.9% | 4.4% | 2.5% | 3.0% | 5.1% |
| Māori | 21.0% | 13.8% | 10.2% | 4.2% | ..S | 13.4% |
| Pacific | 15.0% | 16.4% | 13.1% | ..S | ..S | 13.6% |
| Asian/MELAA/Other | 6.0% | 12.3% | 10.0% | 6.1% | ..S | 8.5% |
| Total | 10.6% | 8.4% | 5.8% | 3.4% | 3.4% | 6.6% |

Employment and pre-employment race-related complaints

The five race-related grounds (race, racial harassment, racial disharmony, colour, and ethnic and national origins) are commonly combined in Commission reporting. The combined overall proportion of race-related employment complaints in the five year period 2006-10 was 28.1%.

The most commonly cited themes of race-related complaints are shown in Table 33.

Table 33 / Race and employment complaints

| | NUMBER OF RACE-RELATED COMPLAINTS | PROPORTION OF RACE-RELATED COMPLAINTS |
|---------------------------|-----------------------------------|---------------------------------------|
| Discrimination | 168 | 23% |
| Racist abuse/comments | 162 | 22% |
| Language in the workplace | 93 | 13% |
| Harassment | 89 | 12% |
| Declined role | 40 | 5% |
| Ethnic targeting of roles | 40 | 5% |

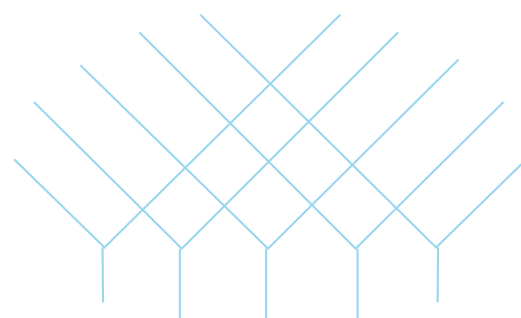
'Discrimination' is something of a catch all category and is when the complainant either used the word 'discrimination', or described a situation where a person was being treated differently allegedly due to race-related reasons, and when the complaint did not fit into another common theme category. Similarly 'harassment' complaints are when the complainant used the word 'harassment' to describe the complaint, and when it did not fit in any of the other common themes.

Complaints of racist comments or abuse were the most common single issue (other than the broad 'discrimination'), accounting for 22% of race-related complaints.

'Language' complaints are of two main types: issues around languages other than English being spoken in the workplace, and English language ability or accent:

- 49 complaints were about languages other than English being spoken in workplaces, including 8 relating to prohibitions on the use of te reo Māori at work and 3 other Māori language issues.
- 29 complaints were about people having trouble gaining work, or problems with colleagues because of their accent or lack of English language skills.
- 15 complaints were about job advertisements which specified a first language command of English (11 complaints) or the ability to speak another specified language (4 complaints).

Numbers of each type of complaint have fluctuated in the last five years, and there is no evidence of an increase in any of the specific themes in the last two years.



Monitoring New Zealand's progress

New Zealand's ratification of the Convention was followed by the establishment of an independent mechanism to promote, protect and monitor the implementation of the CRPD and periodically report to the United Nations on progress. It consists of three independent organisations working in partnership to achieve the results, the Disability Convention Coalition, the Office of the Ombudsmen and the Human Rights Commission.

Role of the independent mechanism

The role of the independent mechanism is to:

- Develop a monitoring framework including indicators of progress
- Provide the United Nations CRPD Committee with an issues paper to coincide with the Government's periodic report on the implementation of the CRPD
- Advise the government and civil society on any legislation, policy or practice with an impact on the daily lives of disabled New Zealanders
- Inform the United Nations of progress on particular issues of interest
- Inquire into any issue that may involve an infringement of human rights.

The three partners involved in the independent mechanism are proposing to provide an annual report to Parliament.

Role and activities of the Human Rights Commission

The Human Rights Commission has been given the role of coordinating the activities of the independent mechanism.

The Commission's Statement of Intent 2011-2014 identifies the major initiatives in the disability rights area for the current year as:

- Promote knowledge of, and use of, the CRPD by disabled people and their organisations
- Provide an issues report to the United Nations CRPD Committee identifying the main human rights issues and recommendations for government action
- Monitor and report on progress on key human rights issues including inclusive education, access to New Zealand Sign Language, accessible official information and the removal of barriers in the built environment.

The Commission's role in attempting to resolve human rights disputes suggests that a number of issues will be crucial in the next year including the captioning of advertisements and other material associated with the general election.

To date the Commission has:

- Undertaken an extensive community engagement with disabled people to understand which human rights issues are most important to them. This will inform the Commission's ongoing work and contribute to the issues report to the United Nations
- Produced an information brochure on the CRPD in a variety of alternative formats
- Developed a draft monitoring framework
- Undertaken research and policy development work on three access issues: accessible local and national elections, access to the built environment and accessible information. These will form the basis of a consultation document later in the year.

Equality at work indicators



Given New Zealand's current labour market situation, how can we make progress? First, we need to be able to track progress. What gets counted often gets done.

In the development of a new set of indicators we have used disability as a prominent measure. For example, looking at unemployment rates, we need to know how many disabled people are not working but seeking work, just as we do with other groups.

New Zealand has never had a method of objectively benchmarking EEO. This set of Equality at Work indicators has been developed by the Commission working with experts and using overseas examples. It provides time series data and aims for an objective progress report on how New Zealand is doing that can be used by government, policy agencies, industry sectors, employers, trade unions, researchers and civil society.

The Human Rights Commission will use these indicators to monitor progress for both national and international reporting purposes. Making progress visible will encourage greater efforts to achieve equality, including for disabled people.

The 20 indicators have been selected to reflect all aspects of the employment cycle used by the Human Rights Commission in promoting the right to work. Measures are described for each indicator, alongside the grounds on which equality will be determined such as age, gender, ethnicity and disability which reflect human rights discrimination.

Other sources of inequality in employment such as regional variation are also included. Finally, the availability of data for each indicator is detailed. This has been included to assist monitoring, and to highlight data gaps.

In most cases data is publically available from government agencies or is available for purchase. However, data on equality in employment for disabled people is scant and up-to-date information is not available. The most comprehensive and reliable source of employment data for disabled people is the Disability Survey conducted as a supplement after the New Zealand Census conducted every five years. The 2011 Census has been postponed as a result of the Christchurch earthquake and will now be held in 2013. Data on sexual orientation and employment is not available and submissions to Statistics New Zealand to include sexual orientation questions in the 2011 Census were not successful.

The indicators are developed from similar equality indicators from other jurisdictions, including the Canadian Human Rights Commission's *Framework for Documenting Equality Rights 2010*.



Top 20 indicators

| INDICATORS | MEASURE | GROUNDS | DATA AVAILABILITY |
|--|--|---|---|
| 1 Unemployment rates | <ul style="list-style-type: none"> Disaggregated unemployment rates from Household Labour Force Survey (HLFS). | <ul style="list-style-type: none"> Age Sex/Gender Ethnicity Disability Region Sexual Orientation | <ul style="list-style-type: none"> Collected and can be purchased from Stats NZ except for disability data which is collected in the Census disability survey only. Sexual orientation data is not collected by HLFS or Census |
| 2 People on benefits long term (more than a year) | <ul style="list-style-type: none"> Disaggregated long term beneficiary data from WINZ | <ul style="list-style-type: none"> Age Sex/Gender Ethnicity Disability | <ul style="list-style-type: none"> Aggregated data available from MSD Disaggregated data could be requested |
| 3 Adequacy of unemployment benefit | <ul style="list-style-type: none"> Ratio of unemployment benefit to median wage as a percentage | N/A | <ul style="list-style-type: none"> Calculated from HLFS and WINZ data |
| 4 Underemployment rates | <ul style="list-style-type: none"> Disaggregated data from HLFS | <ul style="list-style-type: none"> Age Sex/Gender Ethnicity Disability | <ul style="list-style-type: none"> Stats NZ except for disability data which is collected in the Census disability survey only |
| 5 Rates of people not engaged in education, employment or training (NEET) | <ul style="list-style-type: none"> Disaggregated data from HLFS | <ul style="list-style-type: none"> Age Sex/Gender Ethnicity Disability Region | <ul style="list-style-type: none"> Stats NZ except for disability data which is collected in the Census disability survey only |
| 6 Complaints about discrimination at job entry | <ul style="list-style-type: none"> Discrimination data from Human Rights Commission (HRC) Survey of Discrimination in NZ | <ul style="list-style-type: none"> Age Sex/Gender Ethnicity Disability Sexual Orientation Family Status | <ul style="list-style-type: none"> Data is recorded and analysed by HRC UMR Annual Survey commissioned by HRC |
| 7 Gender stereotyping in tertiary education courses, industry training and apprenticeships | <ul style="list-style-type: none"> Disaggregated data for Modern Apprentices Disaggregated data for fields of study at university | <ul style="list-style-type: none"> Age Sex/Gender Ethnicity | <ul style="list-style-type: none"> Data available from Tertiary Education Commission (TEC) and Ministry of Education |
| 8 Uptake of paid parental leave (PPL) | <ul style="list-style-type: none"> Disaggregated data of parents accessing PPL Complaints data from those excluded from PPL | <ul style="list-style-type: none"> Sex/Gender Employment status | <ul style="list-style-type: none"> Not published but could be requested from IRD Data is recorded and analysed by HRC |
| 9 Access to Early Childhood Education (ECE) | <ul style="list-style-type: none"> Waiting times for ECE Affordability of ECE Participation of children in ECE | <ul style="list-style-type: none"> Ethnicity Region | <ul style="list-style-type: none"> Data available from TEC and Ministry of Education |
| 10 Occupational segregation | <ul style="list-style-type: none"> Disaggregated data from occupational classification tables Early childhood teachers Modern Apprenticeships | <ul style="list-style-type: none"> Sex/Gender Ethnicity | <ul style="list-style-type: none"> Quarterly Employment Survey (QES) data from Stats NZ Early Childhood Education, Ministry of Education. TEC |



| INDICATORS | MEASURE | GROUNDS | DATA AVAILABILITY |
|---|---|---|--|
| 11 Labour force participation | <ul style="list-style-type: none"> Disaggregated data from HLFS | <ul style="list-style-type: none"> Age Sex/Gender Ethnicity Disability Sexual Orientation | <ul style="list-style-type: none"> Purchased from Stats NZ except for disability data (which is collected in the Census disability survey only). Sexual orientation data is not collected by HLFS or Census |
| 12 Leadership rates in senior management and governance roles | <ul style="list-style-type: none"> Diversity in senior management roles Diversity on boards | <ul style="list-style-type: none"> Sex/Gender Ethnicity Disability | <ul style="list-style-type: none"> SSC data on public service Ministry of Women's Affairs data on public sector boards HRC's Census of Women's Participation for board membership and management in private sector (top listed companies) Disability data is not currently being collected |
| 13 Gender pay gap | <ul style="list-style-type: none"> Pay gap | <ul style="list-style-type: none"> Sex/Gender Ethnicity | <ul style="list-style-type: none"> Stats NZ data across labour force SSC data across the public service |
| 14 Minimum wage | <ul style="list-style-type: none"> Minimum wage as a percentage of median and mean wage Disaggregated data on minimum wage jobs | <ul style="list-style-type: none"> Sex/Gender Ethnicity | <ul style="list-style-type: none"> Annual Review of minimum wage by Department of Labour |
| 15 Minimum wage exemptions | <ul style="list-style-type: none"> Number of employees receiving minimum wage exemptions | <ul style="list-style-type: none"> Disability | <ul style="list-style-type: none"> On request to Department of Labour |
| 16 Harassment complaints | <ul style="list-style-type: none"> Complaints received by the Human Rights Commission | <ul style="list-style-type: none"> Age Sex/Gender Ethnicity Disability Sexual orientation | <ul style="list-style-type: none"> Data is recorded and analysed by the HRC |
| 17 Discrimination at work complaints | <ul style="list-style-type: none"> Complaints received by the Human Rights Commission | <ul style="list-style-type: none"> Age Sex/Gender Ethnicity Disability Sexual Orientation Family status | <ul style="list-style-type: none"> Data is recorded and analysed by the HRC |
| 18 Flexible work opportunities | <ul style="list-style-type: none"> Quality of working life survey | <ul style="list-style-type: none"> Age Sex/Gender | <ul style="list-style-type: none"> Stats NZ 3-yearly survey (Dec 2011 is next due date) |
| 19 Trade union membership | <ul style="list-style-type: none"> Unionisation rate | <ul style="list-style-type: none"> Sex/Gender Ethnicity | <ul style="list-style-type: none"> Dept of Labour Annual Union Membership Return Report |
| 20 Transparency of pay rates (including starting rates) | <ul style="list-style-type: none"> Company websites include pay bands for each occupational group Companies report starting rates for each occupation | <ul style="list-style-type: none"> Sex/Gender | <ul style="list-style-type: none"> Research required, not generally available currently |

What next?

The Commission believes that to push on with equality in workplaces and to assist employers and employees, the following needs to happen. These recommendations represent the top areas for action that will advance equal employment opportunities in New Zealand.

For the Commission

Recommendation 1: Monitor and report on the new equality indicators to track progress in achieving equality at work in New Zealand.

Recommendation 2: Promote the Pay Equality Bill with Government, other political parties, trade unions, employers and the broader public, and prompt political and public discussion about realising the right to gender equality in pay.

Recommendation 3: Promote the new equality framework with New Zealand businesses and employers to reinforce the case for greater equality, diversity and equal treatment at work.

Recommendation 4: Advocate for the promotion and protection of equality at work with trade unions and community/stakeholder groups.

Recommendation 5: Continue efforts to eliminate discrimination and barriers to employment for disadvantaged groups through increased monitoring, further development of guidelines and tools, and advocacy to prevent complaints.

For the Government

Recommendation 6: Develop a national youth-to-work strategy that includes a plan for every young New Zealander that has cross-party support and sufficient long-term funding security. The strategy must be responsive to the needs of Māori, Pacific and disabled youth.

Recommendation 7: Renew efforts to ensure that public sector departments exhibit exemplary EEO practice and are properly monitored. Urgently review the role the State Services Commission plays in providing 'good employer' advice to Chief Executives and monitoring EEO in the public sector.

Recommendation 8: Amend the Employment Relations Act 2000 to include a positive duty to be a 'good employer' to the private sector, in addition to the statutory obligation in the public sector.

Recommendation 9: Ratify the outstanding two core ILO standards 87 - Freedom of Association and Protection of the Right to Organise and 138 - Minimum Age; and support the development of new ILO standards including for domestic workers.

Recommendation 10: Improve labour market information at the regional and sub-regional level and the provision of labour market information for disabled people.

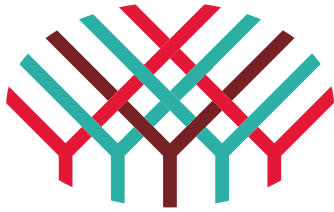


Other resources

The Human Rights Commission has published a number of tool kits and other resources to encourage, promote and monitor EEO. These are available on-line at **www.neon.org.nz** and includes the comprehensive Tracking Equality at Work report available at **www.neon.org.nz/trackingequalityatwork**

Other disability resources are available at:

- Human Rights Commission - *Disabled people*
<http://www.hrc.co.nz/disabled-people/>
- Human Rights Commission - *The rights of disabled people*
http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/15-Dec-2010_12-41-59_Chapter_17pp258-279.pdf
- CCS disability action
<http://www.ccsdisabilityaction.org.nz/>
- Deaf Aotearoa New Zealand
<http://www.deaf.co.nz/>
- Department of Labour - *Minimum wage exemptions*
<http://www.dol.govt.nz/er/pay/exemptions/disabilitiesemployers.asp>
- Disability support network - *Disabled people in employment - The Way Forward*
<http://www.nzdsn.org.nz/Blogs/147/60/disabled-people-in-employment-paper-presents-the-way-forward/>
- DPA - *The national assembly of people with disabilities*
<http://www.dpa.org.nz/>
- EEO Trust - *Employing disabled people*
<http://www.eeotrust.org.nz/toolkits/disability.cfm>
- Employers Disability Network
<http://www.edn.org.nz/>
- Ministry of Social Development - *Mainstream programme*
<http://www.msd.govt.nz/what-we-can-do/disability-services/mainstream/>
- Office for Disability Issues (ODI)
<http://www.odi.govt.nz/about-us/index.html>
- People First - *Resources (including for employment)*
<http://www.peoplefirst.org.nz/Resources/tabid/81/Default.aspx>
- Workbridge - *Why employ disabled persons?*
<http://www.workbridge.co.nz/?page=1331>



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