

Success through diversity

Report of the Ministerial Advisory Group on
Equal Employment Opportunities

May 2001

EXECUTIVE SUMMARY **III**

1.	<u>OBJECTIVES</u>	5
2.	<u>VISION</u>	7
3.	<u>WHAT IS EEO?</u>	9
4.	<u>THE BENEFITS OF ACHIEVING EEO</u>	11
	4.1 Economic and business benefits of EEO	11
	4.2 Social justice and cultural benefits of EEO	12
5.	<u>THE CURRENT SITUATION</u>	15
	5.1 The diverse workforce	15
	5.2 The nature of work	15
	5.3 The sources of disadvantage in employment	16
	5.4 The experience of disadvantage	17
	5.5 The EEO leaders	20
6.	<u>NEW ZEALAND'S EEO LAWS AND INSTITUTIONS</u>	23
	6.1 The constitutional framework	23
	6.2 The legal framework	23
	6.3 The institutions	25
7.	<u>ISSUES</u>	28
	7.1 The role of Government	28
	7.2 The legal and institutional framework	28
	7.3 Reliable data	29
	7.4 Education and training	29
	7.5 Recruitment and selection	30
	7.6 Workplace culture and practice	30
	7.7 Balance between paid work and other aspects of life	31
	7.8 Issues affecting Maori	31
8.	<u>RECOMMENDATIONS</u>	32
	8.1 The Government to lead	32
	8.1.1 EEO Minimum Code and EEO Code of Practice	33
	8.1.2 The Government as employer.....	33
	8.1.3 The Government as legislator and regulator.....	34
	8.1.4 The Government as funder	35
	8.2 Co-ordination	36
	8.2.1 An Employment Equity Commissioner	36
	8.2.2 The EEO Trust.....	39
	8.2.3 A Tangata Whenua Advisory Group.....	39

8.3	Education and training	40
8.4	Support for related initiatives	42

APPENDICES **45**

	Appendix One: Terms of reference	46
	Appendix Two: The Advisory Group	49
	Appendix Three: Bibliography	50

Executive Summary

Equal employment opportunities (EEO) will help people in New Zealand to achieve a high quality of life, and economic and social prosperity.

Accepting and promoting diversity can become a key to New Zealand's international success. It can encourage competitiveness and economic growth, while also reducing social exclusion.

To achieve this, New Zealand needs to do more than simply eliminate active discrimination in employment. It also needs to take active steps to improve equity in:

- **preparation for work:** the skills and experience people need to participate in and contribute to society through paid work
- **access to jobs:** the opportunity to find a job that matches an individual's abilities and aspirations
- **participation and success at work:** the individual's ability to make his or her maximum contribution, to receive fair pay and other benefits, and to have access to development and training.

Advancing EEO on all of those fronts requires partnerships throughout New Zealand society. The role of the Government is to foster those partnerships, while ensuring that its own policies and spending promote improved EEO outcomes.

The Advisory Group's recommendations are in four key areas.

1. Government to lead

The Advisory Group's recommends that, in its role as the country's largest employer, the Government should:

- tighten and extend the EEO requirements on public-sector employers
- enhance the State Service Commission's role in advancing EEO in the public sector

In its role as legislator and policymaker the Government should:

- enhance child care, elder care and parental leave provisions for all employees in New Zealand
- ensure that the relevant agencies improve their processes for validating professional qualifications earned overseas
- develop a more strategic approach to workforce planning and development.

In its role as funder the Government should:

- award government contracts, grants and subsidies only to organisations that demonstrate compliance with an EEO Code of Practice
- enhance the EEO-oriented advice available to Ministers.

2. Co-ordination

In order to improve the co-ordination of EEO legislation and programmes, the Advisory Group recommends that:

- an Employment Equity Commissioner be created within New Zealand's human rights framework to advise the Government on EEO issues, and to co-ordinate EEO research, monitoring, analysis and reporting
- the Employment Equity Commissioner compile and publish both an EEO Minimum Code (which brings together all existing EEO-related legislation) and a voluntary EEO Code of Practice
- the Government, as a matter of urgency, ensure that the EEO Trust is adequately resourced to achieve its roles and objectives
- an independent Maori advisory group be established (sitting alongside the EEO Trust) to work with Tangata Whenua in developing EEO programmes, raising awareness and improving EEO outcomes.

3. Education and training

The Advisory Group makes a wide range of recommendations to enhance EEO outcomes through improving workforce preparation through education and training. These include recommendations on:

- early childhood education and school civics programmes
- the recognition of prior learning
- removing barriers to lifelong learning
- improving opportunities for disabled people
- enhancing "bridging programmes" into the workplace
- mentoring programmes at the tertiary education level
- accommodating different learning styles
- English-language and cultural training for migrants
- improving EEO outcomes through the industry training system.

4. Support for other initiatives

The Advisory Group recommends that the Government support the workforce development and EEO-related aspects of a number of current reviews and initiatives. These range across disability, ageing, literacy, information and communications technology, and workforce development among Maori and Pacific peoples.

1. Objectives

The Advisory Group's objectives in this report are to:

- help define a vision of equal employment opportunities¹ for New Zealand
- advise on strategies to achieve that vision, including:
 - any legislative or policy changes required
 - any other mechanisms that might be used to achieve the vision
- create a framework for public discussion of how New Zealanders can help to achieve the vision.

In working towards these objectives, the Advisory Group has adopted the principles included in its Terms of Reference from the Government (see Appendix 1).²

- ¹ Unpaid work is recognised as vital to the wellbeing of New Zealand, and the contribution it makes to the upskilling of people is significant. However, the brief of the Advisory Group is to focus on issues relating to paid work.
- ² Issues relating to pay equity are excluded from the Terms of Reference.

2. Vision

To contribute to social and economic excellence by ensuring that everyone in New Zealand has a fair chance to develop and utilise their skills and talents to their full potential in employment.

Equal employment opportunities (EEO) will help people in New Zealand to achieve a high quality of life, and economic and social prosperity.

Accepting and promoting diversity can become a key to New Zealand's international success, encouraging competitiveness and economic growth, while also reducing social exclusion.

If New Zealand is committed to and implements EEO principles, it can become a world leader in recruiting and retaining talent. It would be a country that:

- offers a “fair go” to everyone
- thrives through diversity
- is vibrant socially, economically and culturally
- fosters workplace and national success by valuing diversity.

We will know we are moving toward equal opportunities in employment when we have reduced the disparity in labour-market outcomes and when there is progress in the following areas:

- **Preparation for work:** Everyone is able to acquire the skills and experience they need to participate in and contribute to society through paid work, and employers have access to a wider range of potential employees.
- **Access to jobs:** Everyone has the opportunity to find a job that matches their abilities and aspirations.
- **Participation and success at work:** Everyone who has a job can make his or her maximum contribution, receives fair pay and other benefits, and has equitable access to development and training.

Women's suffrage and the status of Tangata Whenua under Te Tiriti o Waitangi are examples of how New Zealand has led the world in supporting diversity and the rights of its citizens.

Equal employment opportunities can help New Zealand make use of all its talents and skills. In a global marketplace, EEO can help to develop fully the talent we have, recruit new talent through migration, retain talent, and

encourage New Zealanders living overseas to bring their skills and experience back home.

3. What is EEO?

EEO (Equal Employment Opportunities) is the elimination of barriers to ensure that:

- **people in New Zealand receive adequate preparation for their working life**
- **potential employees are fairly considered for the employment of their choice**
- **employees are supported to perform to their potential.**

In the workplace, EEO means taking steps to make the most of the growing diversity and talent among New Zealand's workforce.

In the wider society, EEO means ensuring that everyone has a fair chance to gain education, training and employment to make the most of their potential.

EEO is about creating "a fair go" for everyone so they can contribute and advance according to their individual merit.

EEO embraces fairness and equity at work in two key dimensions:

- **Anti-discrimination rights:** EEO recognises that employees' rights are human rights, and are an essential component of an inclusive society. EEO therefore includes a commitment to identifying and eliminating barriers such as racism, sexism, homophobia, ageism and prejudice against disabled people³.
- **Proactive measures supporting diversity:** EEO programmes address policies, procedures and other institutional barriers that cause or perpetuate employment inequality.

"Giving proper recognition to EEO means making all employment-related decisions on the basis of merit, not on the basis of factors which have nothing to do with ability to perform the job."

New Zealand Employers' Federation and the EEO Trust,
A Guide for Employers on the Human Rights Act and Equal Employment Opportunities, 2nd edition, April 1997

- ³ This report uses the term “disabled people” consistently with the New Zealand Disability Strategy, which acknowledges that disability arises from barriers imposed on people with impairment.

4. The benefits of achieving EEO

The benefits of equal employment opportunities are social, cultural and economic. These benefits are mutually reinforcing.

EEO helps to achieve social, cultural and economic progress by:

- contributing to New Zealand's economic success and international attractiveness. Employers and the wider economy benefit from tapping the potential of the whole workforce. Individuals are able to make their maximum contribution and be fairly rewarded.
- contributing to New Zealand's economic success and international attractiveness. Employers and the wider economy benefit from tapping the potential of the whole workforce. Individuals are able to make their maximum contribution and be fairly rewarded.
- helping to create mutual understanding, fairness, equity and social justice in ways that also support the development of families and communities.

The social, cultural and economic benefits of EEO are mutually reinforcing.

EEO contributes directly to the Government's expressed goals of growing an inclusive and innovative economy, improving the skills of people in New Zealand, and reducing inequality in employment.⁴

4.1 Economic and business benefits of EEO

Organisations in New Zealand and overseas have reported significant business benefits from adopting active EEO policies. For example, a study in the USA rated the performance of Standard & Poor's 500 companies on equal employment factors, including the recruitment and promotion of women and minorities. It found that companies rating in the bottom 100 for equal opportunity had an average 8% return on investment. Companies rating in the top 100 had an average return of 18%.⁵

Other benefits include:⁶

- **Bigger recruitment pool:** Attracting talent from the widest possible pool is a significant advantage in the competitive economy. Many New Zealand organisations report that EEO policies have positive effects on their ability to attract employees.
- **Increased retention:** EEO policies and practices can help organisations retain staff, with significant productivity benefits and lower recruitment costs.

"We value diversity in a selfish sort of way. It is the diversity of our people that assists us in being innovative and it is through innovation that we bring real value to our clients."

Peter Scott
PricewaterhouseCoopers
in EEO Trust's *Making
the Most of a Diverse
Workforce*

- **Reduced absenteeism:** Many organisations report lower absenteeism from introducing EEO measures such as more flexible sickness, domestic and cultural leave, introducing training for supervisors in dealing with family issues, and workplace breastfeeding programmes.
- **Increased staff loyalty, morale and job satisfaction:** Firms in New Zealand and overseas have found that EEO policies reduce stress and anxiety among staff, and result in employees more willing to go the “extra mile” on behalf of the employer.
- **Access to wider markets:** Having staff from diverse ethnic backgrounds can improve organisations’ access to, and ability to serve, different markets. Different cultural perspectives can also bring new ideas and innovative practices to a workplace.
- **Improved public relations:** Being known to have good EEO practices helps employers to be seen as good corporate citizens.
- **Profitability:** Studies have correlated EEO policies with significant improvements in profitability.
- **Lowered risk of discrimination claims:** Good EEO programmes can help to ensure that discrimination does not occur, and can also be a defence that reduces liability costs.

When New Zealand organisations prosper in these ways, the whole economy benefits.

4.2 Social justice and cultural benefits of EEO

Quite apart from economic and business benefits, EEO policies and practices are justified on the grounds of social justice and cultural benefits.

Equitable access to employment and to the material benefits of work contributes to social justice in a way that is consistent with New Zealand’s historical commitment to a “fair go” for everyone.

Overcoming discrimination – direct and indirect – can help to reduce marginalisation and social exclusion. EEO can help to eliminate some of the sources of unemployment, gaps between rich and poor, and the cycles of disadvantage that lead to successive generations of welfare dependence.

EEO in workplaces can provide models of co-operation and diversity, with spin-offs for the rest of the community. It encourages harmony, tolerance and high morale, which improve the quality of life in families and communities – not just at work. For example, EEO policies can reduce the homophobia that contributes to high rates of suicide and suicide attempts among gay and lesbian youth.

Further, New Zealand’s profile as a respected and influential member of the international human rights community is compromised if our own performance is less than exemplary.

New Zealand will be a more successful country, and will be a more interesting and rewarding place to live, when everyone has access to workplace opportunities without barriers based on irrelevant factors.

-
- ⁴ New Zealand Government, *Key Government Goals to Guide Public Sector Policy and Performance*, April 2001.
- ⁵ “Fair Play is Better Business”, Pru Goward, Head of the Office of the Status of Women, reported in *The Age*, Melbourne Online, 1 March 1999.
- ⁶ The business benefits of EEO are explained more fully in *An Employer’s Guide to EEO - Making the Most of a Diverse Workforce*, published by the EEO Trust, October 2000, in other EEO Trust publications and on its website.

5. The current situation

There are significant barriers to fairness in access to opportunities in New Zealand workplaces.

As a result, New Zealand wastes talent.

5.1 The diverse workforce

New Zealand has a diverse and changing workforce. In that environment, “treating everyone the same” does not necessarily lead to fair opportunities for every individual. Nor does it enable employers to gain the most benefit from the pool of potential employees.

Growing numbers of women in New Zealand continue to take up paid employment, and their level of educational achievement continues to rise. The labour force participation rate of men has been falling, though it remains higher than that of women.

The proportion of older workers is expected to increase. By 2005 half the workforce will be over 40 years old, compared with 36% in 1994.

Disabled people made up 22% of the total adult population in 1996.

Family structures are changing. The ratio of dependants to people in work is projected to rise significantly after the year 2010, which is likely to accelerate the existing pressures on finding the right balance between work and family obligations.

The population of Maori and Pacific peoples is projected to grow at a faster pace than the rest of the population.

The population is becoming more racially and culturally diverse, with increasing numbers of Asian and other ethnic groups.

Up to 10% of the population are lesbian, gay or bisexual.

5.2 The nature of work

While the character and needs of the New Zealand workforce change, the nature of work itself is also evolving in complex ways.

Changes in technology are creating new ways of working. This makes it possible for more people to enter the workforce (with technology helping to overcome some disabilities, for example) and creates new opportunities for employers and workers to meet each other's needs.

‘I don’t want my differences tolerated or excused. I want my distinctiveness accepted and my skills valued. Then I’ll be able to contribute fully.’

Person who uses a wheelchair, quoted in the EEO Trust’s, *Making the Most of a Diverse Workforce*

Globalisation and technological change are creating unprecedented demands for people to continue learning throughout their careers. New opportunities and new conflicts arise from the increasing demand for 24-hour, seven-day service. Gaps are arising between the “job-rich” (those with greater hours and intensity of paid work) and the “job poor” (those who are excluded from paid employment).

Good EEO practices and policies can help New Zealand to overcome these challenges and to thrive as the economy changes. Organisations will increasingly need more imagination, creativity and flexibility. The innovation, skills, knowledge and experience of a diverse workforce can help them succeed.

5.3 The sources of disadvantage in employment

Research shows that members of some groups often face disadvantage in employment opportunities because they do not fit the pattern of the traditional, “typical” employee.

The term “designated groups” is commonly used to refer to people who encounter unfair discrimination at work. In New Zealand today, these include women, Maori, Pacific peoples, other ethnic groups such as Asian workers, disabled people, lesbians, gay men, bisexuals, migrants, employees with family responsibilities, and people discriminated against on the grounds of their age.

People who belong to more than one designated group may encounter more barriers to employment than other people.

Examples are Maori women, or disabled people who also have family responsibilities.

Disadvantage in employment can occur through either direct or indirect discrimination:

- **Direct discrimination:** Overt discrimination in employment occurs whenever factors or personal characteristics that are not relevant to the job are used. This can include, for example, refusing to hire staff from a particular ethnic group or with a disability.
- **Indirect discrimination:** The most common form of discrimination involves policies, practices or workplace cultures that appear to treat people alike, but that unfairly prevent people from obtaining work, or from reaching their full potential at work. Examples include irrelevant height restrictions that tend to exclude people from certain ethnic groups, or holding job interviews in a venue that is not accessible by wheelchair.

Experience shows that EEO policies can increase the proportion of people from designated groups who get a “fair go” and who therefore do not experience disadvantage in employment.

“Treating everyone the same” does not necessarily lead to fair opportunities for every individual. Nor does it enable employers to gain the most benefit from the pool of potential employees.

5.4 The experience of disadvantage

Research studies, as well as practical experience, demonstrate that individuals in the designated groups are likely to experience disadvantage in employment. Examples include:⁷

- A recent study found that 95% of recruitment consultants and human resource managers believe that some groups in New Zealand experience discrimination in employment. Those most likely to be discriminated against are older people, those with a non-New Zealand accent, and disabled people.
- Less than 40% of disabled people are in the labour force, compared with 70% for the rest of the population. About 45% of disabled people have no formal educational qualifications, compared with 28% of people without disabilities.⁸
- People with impairments are likely to encounter a disabling workplace “that assumes we can all see signs, read directions, hear announcements, reach buttons, have the strength to open heavy doors and have stable moods and perceptions”.⁹
- Women are more likely to have family commitments that affect their ability to participate in paid work.
- Maori may encounter a workplace culture and practices that make it difficult for them to practise as whanau, hapu and iwi – lack of flexibility for whanau to provide support at interviews, for example.
- Workplace discrimination and harassment have negative impacts on lesbian, gay and bisexual workers’ experience of paid employment. Often these workers are further isolated because of employer’s and co-workers’ limited knowledge about or commitment to addressing homophobia.
- People receiving benefits often experience financial disincentives and barriers when attempting to move into the paid workforce.
- Migrants are likely to experience discrimination in employment. A study¹⁰ has found that almost half of Sri Lankan migrants experience such discrimination, despite having skills that are in short supply in New Zealand.
- The employment opportunities of otherwise qualified migrants are at times also restricted because their overseas qualifications and experience are not recognised in New Zealand¹¹.

“Disability is not something individuals have. What individuals have are impairments. They may be physical, sensory, neurological, psychiatric, intellectual or other impairments. Disability is the process which happens when one group of people create barriers by designing a world only for their way of living, taking no account of the impairments other people have.”

Minister for Disability
Issues
Making a World of Difference
The New Zealand
Disability Strategy
April 2001

- Pacific peoples face similar barriers, often compounded by language and cultural issues. Human resource policies, particularly training and performance assessment processes that are not to the different learning styles of Pacific people, can affect their access to development and promotion opportunities.
- Many employees face difficulties enhancing their formal qualifications while employed full time. This can become a barrier to employment progress over their lifetimes, even allowing for the value of on-the-job experience.
- Younger workers are more likely to be sexually harassed at work, and to lack the information, experience and confidence to assert their employment rights.¹²
- Older workers may face adverse perceptions about their supposed loss of productivity or vitality. Conversely, their superior experience and skills can be stereotyped as making them “overqualified”.
- Access to child care is a major barrier to Maori and Pacific women entering the workforce and succeeding at work.¹³
- Many groups face disadvantage when non-formal qualifications (for example, work experience as opposed to formal training) is not recognised by employers. This particularly affects older employees, women returning to the workforce after a break for family commitments, and members of designated groups with lower educational attainment.

Designated groups

Human rights legislation, research and experience identify that people who experience disadvantage in employment frequently belong to one or more of the following groups:

- women – particularly in areas of non-traditional employment
- disabled people
- Maori, Pacific peoples and those of other non-Pakeha ethnic origins
- older workers
- younger workers
- migrants
- people with family responsibilities
- lesbians, gay men, bisexuals and transgender people.

Not everyone who is a member of these groups experiences discrimination or other disadvantage in employment. Equally, discrimination and disadvantage can have other sources, and can change with trends in society.

Over the last 10 years or so, EEO legislation in some countries has moved away from focusing on “designated groups” and instead promotes “best practice”.

Whatever form they take, the purpose of EEO programmes is to ensure that decisions about individuals are not based on irrelevant factors. The goal is to ensure that in employment decisions everyone is treated according to

5.5 The EEO leaders

Despite the issues outlined above, it is important to note that New Zealand has made significant progress in equal employment opportunities in the last few years. For example:¹⁴

- The proportion of Maori students in tertiary education has more than doubled since 1997, and in the five years to 1998 the number of Maori who achieved a tertiary qualification grew by more than half.
- The proportion of women participating in tertiary education has increased significantly, although progress is still needed in non-traditional areas of study such as engineering.
- The proportion of Pacific peoples and Asian people in tertiary education and industry training is also rising.
- Women, Maori and disabled people are increasing as a proportion of top management.

The public service has generally produced better-than-average EEO outcomes. For example:¹⁵

- The proportion of staff from EEO ethnic groups is higher in the public service than in the labour force as a whole.
- Pay gaps are smaller in the public service than in the labour force overall. For example, on average women in the public service earn 92% as much as men, compared with 85% in the labour force overall. Maori and Pacific peoples in the public service earn about 95% of the average for all staff.

People from diverse backgrounds bring more than just knowledge of the group to which they belong. They also “bring different, important and competitively relevant knowledge and perspectives about how to actually *do work* – how to design processes, reach goals, frame tasks, create effective teams, communicate ideas and lead.”

David Thomas and Robin Ely, “Making Differences Matter: A New Paradigm for Managing Diversity”, *Harvard Business Review*, Sept-Oct 1996, pp.79-90.

There are examples of good performance among employers more generally. An EEO Trust survey¹⁶ found that:

- Around 80% of the employers who responded said they had formal EEO policies (although a significantly smaller proportion had EEO plans).
- Similarly high proportions of employers said they allowed flexible working hours to enable staff to balance their work and home responsibilities.

This survey found a significantly better EEO performance among the 300 members of the EEO Employers Group convened by the EEO Trust than

among non-members. These organisations are more than twice as likely to identify and work towards EEO goals. They are more likely to have work-and-life-balance strategies, and to have a top management team that is diverse. They also report a much higher level of awareness and acceptance of EEO and diversity than non-members.

Prohibited grounds for discrimination

The Human Rights Act 1993 prohibits discrimination in employment and other areas on the grounds of:

- Sex, including pregnancy and childbirth
- Religious belief
- Colour
- Ethnic or national origins
- Age
- Family status
- Sexual orientation
- Marital status
- Ethical belief
- Race
- Disability
- Political opinion
- Employment status

Such grounds may further develop over time. In New Zealand, for example, consideration has been given to extending the grounds to cover transgender people; trade union membership or activity; or previous criminal convictions.

⁷ Except where noted, the examples that follow are from: EEO Trust, *Recruiting Talent: A Research Report*, research conducted by Janice Burns of Top Drawer Consultants, November 2000.

⁸ Statistics New Zealand, *Disability Counts*, 1998.

⁹ Minister for Disability Issues, *The New Zealand Disability Strategy; Making A World Of Difference, Whakanui Oranga*, published by the Ministry of Health, April 2001, p.7

¹⁰ This study is summarised on the EEO Trust website at www.eeotrust.org.nz

- ¹¹ Unpublished letter to the Advisory Group from the Office of the Race Relations Conciliator, April 2001.
- ¹² Human Right Commission, *Unwelcome and Offensive: A Study of Sexual Harassment Complaints to the Human Rights Commission 1995 – 2000*, 2000, p.3.
- ¹³ New Zealand Government, *Workforce 2010: A document to inform public debate on the future of the labour market in New Zealand*, March 2001, p.17, and Department of Labour and National Advisory Council on the Employment of Women, *Childcare, Families & Work: The New Zealand Childcare Survey 1998*.
- ¹⁴ EEO Trust, *Diversity Index 2000*, November 2000.
- ¹⁵ State Services Commission, *EEO Progress in the Public Service as at 30 June 2000*, 2000.
- ¹⁶ EEO Trust, *Ibid*.

6. New Zealand's EEO laws and institutions

New Zealand has in place a range of laws and institutions designed to promote EEO.

It is important to understand this existing framework before considering whether other steps are required.

6.1 The constitutional framework

The Bill of Rights Act 1990 protects a broad range of civil and political rights for all people in New Zealand and requires the Government to justify any act of discrimination.

Te Tiriti o Waitangi acknowledges the specific relationship between Maori as tangata whenua and the Crown, including a guarantee in Article 3 of equal citizenship rights. In addition, EEO as the expression of fairness, justice and equity at work sits alongside Maori concepts of whanaungatanga, the importance of people, and the recognition and acknowledgement of difference.¹⁷ The Ministry of Justice recently observed that “there is a strong case for improving understanding of the linkages between the Treaty and human rights”.¹⁸

In addition, New Zealand has a “special relationship” with Pacific peoples, arising from history and international law. This requires New Zealand to protect and foster Pacific cultures and identities, and to ensure that Pacific peoples have equal socio-economic opportunities.¹⁹

6.2 The legal framework²⁰

Private-sector employers in New Zealand are covered by general anti-discrimination provisions, but are not required to implement EEO programmes, nor to demonstrate positive EEO outcomes. Most public-sector organisations are required to be more active in EEO matters, but inconsistent standards apply across the public sector, often without apparent reason.

Two types of laws deal with fairness in New Zealand workplaces.

- **Anti-discrimination legislation:** Both the Human Rights Act 1993 (HRA) and the Employment Relations Act 2000 (ERA) contain anti-discrimination provisions.

The enforcement provisions in these statutes are “complaints-driven”, meaning that an individual may initiate a formal complaint about alleged discrimination. They do not require employers to work proactively to prevent such discrimination, nor to take steps to create an EEO culture in workplaces.

The Human Rights Commission (HRC) may investigate, on its own motion, any matter that appears to breach the grounds of unlawful discrimination in the HRA, or that has the effect of giving different treatment to any group of people against whom discrimination is unlawful.²¹

The Human Rights Commission's (HRC) Complaints Division is a sub-committee of the HRC and focuses on investigation and conciliation of complaints. The Complaints Division can refer complaints of unlawful discrimination to the Proceedings Commissioner, who can take civil proceedings for unlawful discrimination. Such proceedings are heard by an independent Complaints Review Tribunal, which has the powers to make orders, award damages and behave as a court. Appeals may be made to the High Court and to the Court of Appeal.

The HRA allows complaints on behalf of groups or classes of people where discrimination is alleged to be systematic. However, such actions are difficult in practice, especially as individuals can bear high costs in pursuing such complaints on behalf of a larger group.

The HRC also has the power to inquire generally into any matter (including employment law, practice and procedure) whether governmental or non-governmental, if it appears to the Commission that human rights are, or may be, infringed by it.²² This power of inquiry cannot result in judicial legal enforcement.

Resource constraints may limit the Commission's ability to fully use all of its powers.

The HRA's mandate also includes promoting, by education and publicly, respect for and observance of human rights. The HRC can, among other things, co-ordinate information programmes, release guidelines, consult with people and organisations and make public statements about human rights.

The Employment Relations Act 2000 provides rights and procedures for employees to address employment relationship problems relating to discrimination in employment, through mediation services and the employment institutions.²³

- **Legislation covering EEO responsibilities:** In New Zealand, legislation that specifically promotes EEO applies only within the public sector.

The State Sector Act (SSA) sets out provisions that apply in the public service. It defines EEO programmes, and requires each public service Chief Executive to develop and publish an EEO programme and to report against that programme in the annual report. The SSA also requires the State Services Commissioner to promote, develop and monitor EEO policies and programmes for the public service.

Other state-owned organisations are covered by a variety of apparently inconsistent EEO provisions. For example:

- Outside the core public service, active EEO monitoring occurs only in some parts of the education sector.

- There is enormous variation in the EEO requirements on Crown Entities, ranging from the full good employer and EEO provisions in the State Sector Act (more than 20 Crown Entities) through to none at all (about 25 Crown Entities).
- State-owned Enterprises have a general “good employer” provision, including the requirement to have an equal employment opportunities programme, but there are no references to the need to address the specific employment requirements of groups of staff or to publish and report on their EEO programme.
- The Local Government Act has essentially the same good employer and EEO provisions as are found in the State Sector Act .

The Crown Entities Bill, which is currently on hold, would standardise the EEO provisions covering Crown Entities within a good employer clause, with reporting on good employer provisions including the EEO programme in the Annual Report.

6.3 The institutions

A number of institutions are active in supporting EEO in New Zealand. Their roles range from assisting with EEO implementation to enforcing EEO and related legislation.

The Human Rights Commissioner and the Race Relations Conciliator are statutory officers who implement the anti-discrimination provisions of the Human Rights Act, including those covering employment, and also have a role in public education relating to human rights.

As described above, the State Services Commission influences EEO performance in the core public service, primarily through its oversight of the performance of Chief Executives and also through its policy development and promotion activities. The Commission has no statutory responsibilities for EEO in the wider public sector (local government, Crown Entities and State-owned Enterprises, for example).

The Ministry of Education and Education Review Office monitor EEO performance in the primary, secondary and tertiary education sectors, and have some ability to require compliance.

The EEO Trust is jointly funded by employer members (from the public, private and not-for-profit sectors) and by the government. It has a Board of government appointees and private-sector trustees, reflecting the partnership between the Government and employers. The EEO Trust acts as an information broker and catalyst for EEO. Its objectives include increasing EEO awareness, acceptance and activity.

A significant proportion of the EEO Trust’s services are provided to the wider community (for example, information, referrals, resources and advice for people, including members of designated groups, who have experienced problems getting a job or at work). The 300 members of the Trust’s EEO Employers Group commit to a charter that includes

developing and implementing an EEO policy, and reporting to shareholders and staff on EEO outcomes.

The EEO Trust conducts research, develops and promotes resources, runs annual awards and other educational and promotional activities.

However, the Advisory Group notes that the EEO Trust has been under-resourced, as identified in two reviews and in submissions to Ministers. It is also noted that the EEO Trust cannot continue to operate as it does currently without urgent and significant additional funding.

The Government's recent proposals for a Ministry of Social Development (MSD) create another institution with a potentially significant role in advancing EEO in New Zealand. As the Government's primary adviser on strategic and cross-sectoral social policy, EEO is potentially a high priority for MSD.

-
- ¹⁷ Raukawa Trust Board, *EEO for Maori Women in Maori Organisations*, 1999.
- ¹⁸ Ministry of Justice, *Re-evaluation of the Human Rights Protections in New Zealand*, October 2000, p.38.
- ¹⁹ Ministry of Justice, *Pacific Peoples' Constitution Report*, September 2000.
- ²⁰ This section is based in part on an unpublished paper provided to the Advisory Group by the Department of Labour and the State Services Commission, which was based on *EEO: The Role of Legislation*, a paper prepared for the Department of Labour by Top Drawer Consultants.
- ²¹ Section 75(d) and (e) of the Human Rights Act 1993.
- ²² Section 5 of the Human Rights Act 1993.
- ²³ Parts 9 and 10 of the Employment Relations Act 2000.

7. Issues

The Advisory Group considered a number of issues before developing and finalising its recommendations.

7.1 The role of Government

The Advisory Group observes that the Government is the main “driver” of EEO in New Zealand and that there is significant potential for the public sector to take an even larger role in promoting EEO.

As the country’s largest employer, the public sector can lead by example:

- by ensuring that positive EEO culture and policies are practised throughout the government sector
- by being, and being seen to be, an EEO employer that simultaneously achieves fairness and operational success.

The Government can also influence EEO behaviours and outcomes through the way it spends its money. It could decide, for example, to subsidise or reward EEO in organisations, or to award government contracts and other funding only to organisations with good EEO policies and procedures.

As policy- and law-maker, the Government has a range of tools (current and potential) to require, monitor and enforce EEO compliance. Any use of these powers should balance the benefits of EEO against anticipated compliance costs (as required in the Terms of Reference, Appendix 1). Small employers, who are the majority of New Zealand employers, would be likely to find it hardest to accommodate new procedures, costs or risks.

7.2 The legal and institutional framework

The Advisory Group has considered a number of issues involving New Zealand’s human rights laws and institutions as they affect EEO. These include:

- a) Is the different treatment of the public and private sectors appropriate? Are there good reasons for the public sector to impose stricter EEO standards on itself than are imposed on the private sector?
- b) Is there good reason for the wide divergence in the EEO obligations of public-sector employers?
- c) Can the existing EEO-related legislation be amalgamated into a more coherent form?
- d) Are there gaps in the current legislation?
- e) Is the current legislation too limited?
- f) Is the current legislation being used to its full potential?

- g) Should the ability to take EEO-related “class action” legal cases be clarified?
- h) Should there be an ability for an institution to initiate EEO-related investigations in a judicial form, in order to create legal precedent?
- i) Do the existing EEO-oriented institutions (in particular the EEO Trust) have sufficient resources to fulfil their mandates?
- j) Are there EEO-related gaps or overlaps among existing institutions?
- k) Where the Advisory Group recommends new policies and programmes, are the existing institutions appropriate and sufficient for implementing them, or is something new required?
- l) Are there potential links between EEO obligations within current legislation and the “good faith provisions” of the Employment Relations Act 2000?

7.3 Reliable data

The Advisory Group has found that reliable and consistent EEO data is limited, making it difficult to identify and analyse accurately the extent of EEO progress in New Zealand. There is a need for more comprehensive, higher-quality and consistent data to establish benchmarks against which to measure the success of specific programmes and to measure progress more generally.

7.4 Education and training

While EEO is generally seen to focus on the workplace, the Advisory Group notes that education and training are key elements of the “preparation” phase that leads to success in employment. Education and training are EEO issues when they affect the ability of individuals to reach their full potential and make their maximum contribution.

Issues considered include:

- a) Whether enhanced formal recognition of prior learning would tend to assist EEO designated groups, and if so how this could be achieved.
- b) How to ensure that people at all stages of their working lives can continue their formal education while working.
- c) The potential to enhance the school-to-employment links fostered by organisations like the Partners New Zealand Trust, which helps a diverse range of young people to better understand employment, business, enterprise and job possibilities.
- d) Whether the school curriculum and teaching styles adequately encompass EEO issues, including information about employment and civic rights. For example, does the curriculum contribute to positive attitudes to diversity and to the concept of citizenship? Do teaching methods accommodate cultures that prefer different learning styles?

- e) What barriers there may be to people gaining and continuing an education that adequately equips them for achieving equitable access to, and success in, employment.
- f) What opportunities new technology may provide for addressing EEO issues including life-long learning (particularly for disabled people and those in rural areas). How can it be ensured that people on low incomes, including many Maori and Pacific peoples, have equitable access to such technologies?

7.5 Recruitment and selection

The Advisory Group considered a number of recruitment and selection issues affecting the ability of people in New Zealand to obtain the jobs that are available. These include:

- a) the difficulties migrants frequently experience in having their overseas training and qualifications recognised
- b) the difficulty many people face in having their prior learning (including on-the-job and life experience) recognised in formal qualifications
- c) discrimination, including racism
- d) language barriers
- e) client pressure on recruitment consultants to engage in discriminatory practices
- f) poor EEO practices, awareness and training among people making job decisions, including employers and recruitment consultants.

7.6 Workplace culture and practice

The Advisory Group considered the improvements that would result from employers and employees taking a more active role in ensuring EEO in their workplaces. Issues considered include:

- a) The extent of any further role for Government in requiring employers to adopt EEO policies and practices, including the compliance costs and incentive effects of such measures.
- b) Whether there are opportunities to better inform organisations in New Zealand about the competitive and financial benefits of implementing EEO practices.
- c) Whether there are opportunities to improve the education of workers on their employment (including EEO) rights in a way that would improve EEO outcomes.
- d) Whether there are opportunities to enhance the EEO education and training of employers (and senior managers in particular), and if so how they can be realised.
- e) Whether there are opportunities to improve the quality of human resources and employment practices (promotion, training, performance appraisal and job evaluation systems, for example) in order to improve EEO outcomes.

- f) What lessons can be learned from mentoring programmes for designated groups that have been established in the public sector?

7.7 Balance between paid work and other aspects of life

The Advisory Group considered the increasing trend for people to seek a better balance between work and the rest of life, and possible measures including:

- a) better availability of and access to child care and elder care
- b) improved flexibility of working hours in, for example, leave policies and rostering systems
- c) creating work environments that better support diverse cultural needs, for example through improved recognition of cultural festivals and days of religious significance
- d) creating work environments that better support disabled people, for example through greater flexibility in working hours and job allocation
- e) parental leave policies
- f) dissemination of information about work and family issues including family friendly provisions in collective employment agreements

“A child cannot be ignored; a parent with Alzheimer’s cannot be left alone; a dissolving marriage cannot but interface with concentration and performance; a teenager with a drug problem demands parental attention.”

Don Edgar, “The Future of Work and Family”, Australian Bulletin of Labour, Vol.25, No.3, Sept 1999. p.218

7.8 Issues affecting Maori

The Advisory Group is aware of many EEO issues that particularly affect Maori people. These include:

- a) opportunities for training to address the self-confidence, self-esteem and dignity of Maori job-seekers and employees
- b) the need for bias-free recruitment and selections
- c) the need to address expectations, attitudes, stereotypes and racism in some workplaces
- d) legal and financial constraints that restrict iwi and other Maori organisations from fully utilising their resources
- e) opportunities for Maori to increase knowledge of their employment rights
- f) the stock of goodwill, energy, expertise and skills among Maori that are an important national resource.

8. Recommendations

While much progress has been made in EEO in New Zealand, there is still a great deal to be done to enhance EEO outcomes and thereby improve New Zealand's social, economic and cultural outcomes.

To make further progress towards the EEO vision, New Zealand needs:

- the Government to be an EEO leader
- independent co-ordination of EEO measures
- further use of education and training as EEO measures.

In accordance with its Terms of Reference, the Advisory Group has been mindful both of the benefits and of the costs of its recommendations. Implementing the recommendations that follow would:

- significantly enhance equity and social justice in New Zealand, and improve business and economic outcomes, in ways that in the view of the Advisory Group more than compensate for any costs
- have minimal compliance and fiscal costs in the public sector, as many parts of it already comply with the recommendations
- have compliance costs only on those parts of the private sector which seek government-funded work and that do not currently employ EEO policies and practices.

The Advisory Group considers that the following recommendations can and should be adopted in the term of this Government – that is, by the end of 2002.

8.1 The Government to lead

The Government should continue to be the chief champion of EEO in New Zealand.

There is a significant role for the Government to advance EEO by fostering partnerships between itself and other groups, and to facilitate those groups to work with each other to advance EEO. Such groups include employers and their organisations, workers and their unions, iwi and other Maori organisations, Pacific peoples, Asian and other ethnic communities, women and organisations that represent them, disabled people and their organisations, and other regional organisations and community groups.

At a strategic level, EEO objectives should be included prominently in the Government's strategic vision and goals. At a practical level, the Government can lead equal employment opportunities in New Zealand through its roles as employer, legislator and funder.

In order to promote actual change in the workplace, legislation needs to be supported by political will, leadership and sufficient resources.

8.1.1 EEO Minimum Code and EEO Code of Practice

A number of recommendations below refer to the development of an EEO Minimum Code and an EEO Code of Practice, which would formalise and bring together current EEO legislation, policy and practices. Both documents would be drawn up and monitored by a proposed Employment Equity Commissioner.

The EEO Minimum Code

Section 6.2 above describes current New Zealand legislation that deals with fairness at work (anti-discrimination rights and requirements to promote EEO). The Advisory Group uses the broader term “EEO Minimum Code” to include all the existing legislative provisions that apply to all workplaces and that are designed to enhance people’s ability to have a “fair go” at work (including, for example, parental leave).

The Advisory Group sees it as a priority that these existing rights and obligations be viewed and monitored holistically as an “EEO Minimum Code” in order to make them more transparent. Doing so will highlight the priority New Zealand gives to fairness and equity at work, make it easier for people to access and fulfil those rights, and help to identify any gaps in the current provisions.

The EEO Code of Practice

A wide range of non-legislated EEO policies and practices can make a real difference to people’s lives at work. The Advisory Group recommends the development of an EEO Code of Practice that documents the positive EEO lessons that have been learned in workplaces all over New Zealand.

Such a Code of Practice would identify both the experiences common to all workplaces and designated groups, as well as the needs of specific groups of workers or employers.

In Recommendations 9 and 10 below, the Advisory Group recommends that government contracts, grants and subsidies should (possibly depending on an organisation’s size) be available only to organisations that can demonstrate compliance with such a Code of Practice.

Relationship between the Minimum Code and the Code of Practice

In order to progress EEO in New Zealand, it is essential that both the EEO Minimum Code and EEO Code of Practice reflect and support the evolving needs of an increasingly diverse workforce. Therefore both should be reviewed annually, to identify ways in which they could be strengthened and made more effective.

8.1.2 The Government as employer

The Government should set the goal of being, and being seen to be, a model employer. The following recommendations should be applied as broadly and consistently as possible throughout the public sector.

Recommendation 1:

The Government should expand the list of designated groups covered by the State Sector Act's EEO provisions, initially to match those in the Human Rights Act and then progressively to meet international norms.

Recommendation 2:

All public-sector employers, including Crown Entities and State-owned Enterprises, should be subject to the same EEO requirements as contained in the State Sector Act, except where there is a demonstrated reason to do otherwise. This requires amendments to the legislation covering Crown Entities, State-owned Enterprises, and the health, education and local government sectors.

Recommendation 3:

The Government should clarify and strengthen the EEO requirements in the State Sector Act 1998, including:

- a) the "good employer" definition
- b) the requirements on the State Services Commissioner to promote, develop and monitor EEO throughout the public sector, which should be specified in the Commissioner's performance agreement and should include:
 - strengthening the requirements on public-sector Chief Executives to establish and further develop EEO policies and practices in line with the policy aims in *EEO Policy to 2010*⁴
 - responsibility for obtaining and publishing more comprehensive and consistent EEO data across the public sector, and providing that information to the proposed Employment Equity Commissioner (see Recommendation 14 below).

Recommendation 4:

The Government should ensure that the State Services Commission has the mandate and resources to conduct EEO best-practice studies of public-sector employers. These studies can be used to assist individual public-sector organisations to assess and improve their EEO practices, and can be published as case studies for the benefit of all employers, both public and private.

8.1.3 The Government as legislator and regulator

The Advisory Group notes that substantial EEO-promoting measures exist in current legislation. It is recommended below (see Recommendation 15) that these be brought together in a more transparent form.

In the meantime, there is potential for the Government to use its law-making powers to enhance EEO outcomes further.

Recommendation 5:

The Government should review mechanisms to ensure improved provision of and access to high-quality, affordable child care and elder care.

Recommendation 6:

The Government should legislate to ensure 14 weeks' paid parental leave in line with the International Labour Organisation's Maternity Protection Convention 2000.

Recommendation 7:

The Government should require the New Zealand Qualifications Authority (NZQA) and other statutory registration bodies to identify standards for considering applications for overseas qualifications to be accepted in New Zealand, and for those standards to:

- a) meet the needs of job-seekers (particularly migrants) and employers
- b) include specified timeframes
- c) be published
- d) be monitored and enforced, with the results published
- e) be included in the performance agreements of the Chief Executive of NZQA and, where appropriate, other relevant agencies.

Recommendation 8:

Mindful of issues raised in Workforce 2010,²⁵ the Government should develop a more strategic approach to workforce planning and development to ensure that opportunities are available for all designated groups to utilise fully their workforce potential.

8.1.4 The Government as funder

The Government can help achieve the social and economic benefits of better EEO outcomes through the way it spends public money.

Recommendation 9:

The Government should award taxpayer-funded contracts only to organisations that demonstrate compliance with the EEO Code of Practice to be developed by the proposed Employment Equity Commissioner (see Recommendation 16).

Recommendation 10:

The Government should award grants and subsidies only to organisations that comply with the proposed EEO Code of Practice.

Note on Recommendations 9 and 10: The Advisory Group considered whether limits are necessary to the application of Recommendations 9 and 10 (by, for example, exempting organisations below a certain number of employees), in view of the possible compliance costs of meeting the requirements of the EEO Code of Practice.

The Group did not reach a conclusion on this.

In practice, further consideration of this issue will fall to the Employment Equity Commissioner within its monitoring and advisory function.

Recommendation 11:

All Government agencies should ensure that the human resources and recruitment consultants they employ (for example, to advise on performance pay and job evaluation systems) are required to demonstrate how their processes and outputs will meet the EEO standards expected in the state sector.

Recommendation 12:

The Chief Executive of the proposed Ministry of Social Development should be required to report annually on the extent to which the Government's integration of social policies is improving co-ordination of employment equity issues and EEO outcomes.

Recommendation 13:

The Department of Prime Minister and Cabinet should have a dedicated senior adviser on EEO issues.

8.2 Co-ordination

The Advisory Group's recommendations create a need for oversight and co-ordination of current and future EEO initiatives. There is also a need to consolidate fragmented resources and legislation.

In recommending the structure for that oversight and co-ordination, the Advisory Group is mindful that employment is essential to individuals' ability to participate in and contribute to society, and to achieve a good quality of life.

EEO is therefore a key human rights issue. In accordance with the Paris Principles,²⁶ a national institution that protects and promotes human rights should be independent of Government.

8.2.1 An Employment Equity Commissioner

Recommendation 14:

An Employment Equity Commissioner should be created within the proposed new National Human Rights Institution. The Commissioner should be an integral part of New Zealand's overarching human rights framework, serving alongside the other Commissioners (currently the Human Rights Commissioner and the Race Relations Conciliator).

The Employment Equity Commissioner should have oversight of EEO practices and legislation in New Zealand, and should:

- advise the Government on the appropriate EEO strategies to ensure equity in preparation for, access to, and participation and success in paid employment

- initiate, undertake and co-ordinate EEO research
- monitor, analyse and report on New Zealand's progress in EEO
- maintain international links with similar organisations to ensure that New Zealand maintains access to EEO best practice around the world
- work in partnership with the EEO Trust and public-sector organisations in order to avoid duplication of effort in advancing EEO.

The Employment Equity Commissioner would have status and roles equivalent to those of the current Human Rights Commissioner and Race Relations Conciliator. The Advisory Group also supports the strengthened independence of the Proceedings Commissioner, as foreshadowed in the re-evaluation of current human rights institutions.²⁷

Recommendation 15:

The Employment Equity Commissioner should develop and publish an EEO Minimum Code that identifies the EEO rights and obligations that exist *within current legislation*.

Recommendation 16:

The Employment Equity Commissioner should develop, publish and monitor a voluntary EEO Code of Practice that is consistent with, for example, the EEO Charter currently used by the EEO Employers Group within the EEO Trust. Under such a Code of Practice, employers would:

- a) develop and publish a policy endorsing EEO principles
- b) develop, implement and monitor an EEO programme in the workplace (such as bias-free recruitment and promotion policies and EEO training for managers)
- c) identify a senior staff member with accountability for implementing the EEO principles, and to be the organisation's champion for EEO
- d) report annually to employees and shareholders on EEO outcomes, using existing mechanisms such as the organisation's annual report and existing internal communications channels.

Recommendation 17:

The Employment Equity Commissioner should annually review the EEO Minimum Code and EEO Code of Practice to identify:

- a) any gaps in current provisions
- b) how both documents could be strengthened and made more effective
- c) the relationship between the two documents.

Recommendation 18:

The Employment Equity Commissioner should have the authority and resources to support and/or fund class-action legal cases on EEO matters where such cases are strategically important in his or her opinion.

Recommendation 19:

The Employment Equity Commissioner should have a policy advice role to the Government. That role should entail regularly reviewing all human rights, anti-discrimination, employment and state sector legislation to:

- a) ensure that EEO rights are adequately protected and enhanced in all such legislation, with the overall objective of co-ordinating and strengthening current provisions
- b) ensure that the interests of all designated groups are adequately protected and promoted in the employment context
- c) assess any developments in the relationship between the “good employer” obligations (defined in the State Sector Act 1988 and consequential amendments) and the “good faith” requirements of the Employment Relations Act 2000
- d) review and clarify the relationship between Te Tiriti o Waitangi and EEO rights and obligations, in consultation with Maori.

Recommendation 20:

The Employment Equity Commissioner should have a research and analysis function including:

- a) co-ordinating the development of consistent EEO data across all sectors (in conjunction with, for example, the State Services Commission, the Department of Labour, employers and their organisations, unions and the EEO Trust)
- b) the ability to conduct research and inquiries (including, but not limited to, pay audits) in strategic areas, and to publish and publicise the results. This would be funded both directly by the Government, and through contestable research funds.

Recommendation 21:

The Employment Equity Commissioner should have an awareness-raising and advocacy role to promote EEO. This might include:

- a) publication of an annual “report card” measuring New Zealand’s progress in achieving the EEO vision, and to promote opportunities for further progress. Such a report could rely on international data and comparisons, as well as organisational surveys, data gathered by Statistics New Zealand, public-sector data from the State Services Commission, and information from EEO Trust surveys.
- b) publicly supporting evidence that EEO makes good business sense as well as being socially responsible
- c) monitoring international best practice in EEO and, in consultation with other organisations, ensure that this is publicised
- d) assisting with worker education about employment rights and EEO
- e) creating a national “EEO Leaders Group” comprising a cross section of community, professional, union, iwi and other ethnic, and migrant people to:
 - champion and promote success through EEO
 - develop active partnerships with designated groups
 - foster EEO partnerships in regional communities.

8.2.2 The EEO Trust

The Advisory Group notes the valuable work done by the EEO Trust for its members and for the wider community, and the current financial issues that confront it (as detailed in section 6.3 above). It notes the importance of an institution that formalises a Government-employer partnership in line with international moves to advance EEO.

Recommendation 22:

The Government should, as a matter of urgency, ensure that the EEO Trust is adequately resourced to achieve its roles and objectives.

8.2.3 A Tangata Whenua Advisory Group

Recommendation 23:

An independent Maori advisory group should be established to work with Tangata Whenua in developing EEO programmes, raising awareness and improving EEO outcomes. This group should sit alongside the EEO Trust, work in partnership with it and share resources. The Maori advisory group and the EEO Trust should be resourced to fulfil these functions.

8.3 Education and training

A necessary component of any long-term EEO strategy is to improve the capacity of individuals before they seek employment, and to ensure they are able to improve their skills and education once they are in the workplace.

Recommendation 24:

The Government should require the Ministry of Education (and other public-sector education bodies, including the proposed Tertiary Education Commission), in consultation with the Employment Equity Commissioner, to:

- a) ensure that early childhood education promotes children's understanding and appreciation of diversity
- b) strengthen and promote the EEO content of the school civics curriculum (including employment rights and the prevention of harassment)
- c) enhance the formal recognition of prior learning (for example, on-the-job experience and unpaid work) in the tertiary education sector and in the workplace
- d) remove barriers to lifelong learning both in and out of employment, including for young people and for older people returning to the workforce
- e) ensure disabled people of all ages, and in particular children, have access to all forms of education and training
- f) improve the opportunities for people in the workplace to obtain post-school qualifications
- g) enhance the "bridging programmes" that enable people to, for example, move more easily from secondary education into tertiary studies, ex-prisoners to succeed in the workforce, and people from lower socio-economic backgrounds to succeed in higher education
- h) provide incentives for tertiary education institutions to develop and implement mentoring programmes for graduate students from designated groups, in partnership with employers and other agencies
- i) encourage schools and other educational organisations from early childhood through to the tertiary sector to accommodate different learning styles according to the cultural needs of Pacific peoples and other ethnic groups.

Recommendation 25:

The Government should promote and, where possible, support financially, the following initiatives that will improve EEO outcomes:

- a) the development of effective EEO education and training designed specifically for Chief Executives and other senior managers
- b) subsidies to encourage employers to offer English-language tuition and workplace culture training for migrants and others with English as a second language
- c) simplifying and clarifying the English-language training available to migrants, and ensure that as a minimum they should have access to approximately 500 free hours of such training in line with the practice in Australia
- d) meeting the challenge outlined in the Industry Training Review discussion paper²⁸ to ensure that the industry training system of the future becomes more accessible and responsive to all groups in the

workforce, including Maori, Pacific peoples, women, disabled people and migrants by:

- working in partnership with Industry Training Organisations, employers, workers and their unions to address EEO issues in industry training
- directing Skill New Zealand to report annually to the Employment Equity Commissioner on progress in meeting this challenge

e) building on the existing school-to-employment initiatives of, for example, the Partners New Zealand Trust.

8.4 Support for related initiatives

The Advisory Group notes that the Government is sponsoring a number of reviews and initiatives with potential to improve EEO outcomes.

Recommendation 26:

The Government should support the workforce development and EEO-related aspects of the following:

- a) the New Zealand Disability Strategy²⁹
- b) the New Zealand Positive Ageing Strategy³⁰
- c) the New Zealand Adult Literacy Strategy (designed to ensure that New Zealanders can "enjoy a level of literacy which enables them to participate fully in all aspects of life, including work, family and the community" ³¹)
- d) initiatives to address the "digital divide", such as the relevant portions of LIANZ's national information strategy³² and proposals to enhance internet access along the lines proposed in the draft *Closing the Digital Divide* report³³
- e) encouraging employers to provide computer and internet access to their employees, and reviewing disincentives such as Fringe Benefit Tax that may discourage employers to provide such access
- f) the Maori workforce development recommendations in the Maori Health Strategy Discussion document³⁴
- g) the relevant employment- and education-related actions of the Pacific Capacity-Building Strategy.

²⁴ State Services Commission, *EEO Policy to 2010: Future Directions of EEO in the New Zealand Public Service*, November 1997.

²⁵ New Zealand Government, *Workforce 2010: A document to inform public debate on the future of the labour market in New Zealand*, March 2001.

²⁶ Commission on Human Rights, *Principles Relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights (Paris Principles)*, 1992.

²⁷ Ministry of Justice, *Re-evaluation of the Human Rights Protections in New Zealand*, October 2000.

- ²⁸ Office of the Associate Minister of Education (Tertiary Education), *Skills for a Knowledge Economy: Nga mohiotanga mo te kohanga whai matauranga - a review of industry training in New Zealand*, 2001, p.6.
- ²⁹ Minister for Disability Issues, *The New Zealand Disability Strategy; Making A World Of Difference, Whakanui Oranga*, published by the Ministry of Health, April 2001.
- ³⁰ Ministry of Social Policy, *The New Zealand Positive Ageing Strategy*, April 2001.
- ³¹ Ministry of Education, *More Than Words: The New Zealand Adult Literacy Strategy*, May 2001.

- ³² Library and Information Association of New Zealand Aotearoa (LIANZA), *Towards a National Information Strategy*, February 2001.
- ³³ Interdepartmental Working Group on Closing the Digital Divide, *Closing the Digital Divide: Draft Summary of Stakeholder Discussions*, unpublished, 2001.
- ³⁴ Ministry of Health, *He Korowai Oranga - Maori Health Strategy Discussion Document*, April 2001.

Appendices

Appendix One: Terms of reference

Equal Employment Opportunities Ministerial Advisory Group

Purpose of the Advisory Group

The Advisory Group will advise the Government on the nature and scope of equal employment opportunities (EEO) legislation to improve labour market outcomes for those groups currently disadvantaged in the labour market.

The Group will conduct its work in two phases:

- information identification and gathering;
- assessment of policy options and report to Minister.

Information identification and gathering

The Advisory Group will identify what information it requires to carry out its functions, and the range of stakeholder groups to be consulted with. Without limiting the Advisory Group, these will include

- individuals and organisations with an interest in, and knowledge and experience of, current EEO practices within New Zealand workplaces.
- current practice in New Zealand workplaces;
- the strategies and practices used internationally to address EEO issues;
- international standards and conventions on EEO issues.

Assessment of policy options and report to Minister

The Advisory Group will provide a report to the Minister to identify the nature and scope of EEO legislation. This report will, *inter alia*, draw on:

- the principles agreed to by Cabinet to underpin EEO legislation (see below);
- consultation undertaken and information gathered by the Group;
- information provided by the environmental scan of EEO issues and strategies to be undertaken by Top Drawer Consultants for the Department of Labour.
- Without limiting the advisory group, the following issues will be considered in the group's final report:
 - the most effective and appropriate methods for promoting the development and implementation of EEO policies and programmes in New Zealand workplaces;
 - the nature and scope of any obligation on employers to develop and implement EEO programmes and policies;

- whether an obligation to develop and implement EEO programmes and policies should be limited to employers of a certain size;
- the appropriate institutional structure to underpin EEO legislation, and its location;
- the role and function of any institutional structure;
- the role of employees in developing and implementing EEO programmes and policies;
- the use of Codes of Practice as a guideline for employers in EEO best practice;
- other non-legislative policy interventions for advancing EEO in New Zealand workplaces.

The advisory group will adopt the following principles in making recommendations to Government:

- i. that the objective of EEO policies is to promote proactive and positive measures to ensure that all employment decisions (whether about access to employment, or advancement within the workplace) are made on the basis of individual merit. This requires overcoming barriers and discriminatory attitudes and behaviours;
- ii. that this objective can be achieved through a range of policy interventions, including legislation that facilitates best practice;
- iii. that interventions to support the achievement of EEO objectives should encourage employers, in consultation with employees and their unions, to develop and implement EEO policies that are suitable for their workplace, and provide them with incentives for these plans to be observed;
- iv. that policy interventions recognise current labour market arrangements (including other legislative interventions) and management practices, and in particular the desire of the Government to minimise compliance costs wherever possible;
- v. that policy interventions should be consistent with the Government's wider labour market objectives of improving both capacity and opportunity, and with Government's broader social, economic and fiscal policies;
- vi. that the implications for the EEO Trust, the Human Rights Commission, and the Race Relations Office be considered as part of any recommended change in institutional structures to ensure that duplication of functions does not occur.

Reporting

The Chair will be responsible for ensuring that the Minister of Labour is kept informed of the progress of the Advisory Group through regular reports. The final report of the Advisory Group shall contain recommendations to the Minister of Labour.

Within a month of being appointed, the Advisory Group will meet to:

- confirm its terms of reference;
- design a work programme, including a timetable for consultation with relevant interest groups, and draft and final reports to the Minister; and
- have terms of reference and work programme approved by Minister of Labour.

Public Consultation

Following consideration of the Group's report by Ministers, a timetable will be set for a process of public consultation, involving preparation of a discussion document, and Cabinet approval.

Appendix Two: The Advisory Group

Dr Judith Aitken (Chair; 19 December 2000 – 20 March 2001)	Chief Executive, Education Review Office
Anske Janssen (Chair; 3 April 2001 – present)	New Zealand Country Manager, Shell Services International (NZ) Ltd
Diane Black	Chairperson, Counties/Manukau Maori District Council; Executive Member, National Maori District Council (Maori Business Network nominee)
Barbara Burton	Legal Adviser, Business New Zealand (New Zealand Employers' Federation nominee)
Judith Byrne	Policy Analyst, NZ Council of Trade Unions (NZCTU nominee)
Anna Fitzgibbon	Partner, LawWorks (other nominee)
Marilyn Kohlhase	Management Consultant (Ministry of Pacific Island Affairs nominee)
Cecelia Lashlie	Consultant (State Services Commission nominee)
Margaret Ledgerton	Policy Analyst, Association of University Staff (NZCTU nominee)
Robyn Leeming	President, New Zealand Employers' Federation (New Zealand Employers Federation nominee)
Trudie McNaughton	Executive Director, EEO Trust (EEO Trust nominee)
Sue Merrilees	Student (Disabled Persons Assembly nominee)
Secretariat	
Employment Relations Service	Department of Labour
Nikitin Sallee	Writer, True Colours Communications

Appendix Three: Bibliography

Australian Council of Trade Unions, *Working Families in the new Millennium: An ACTU Action Plan for Balancing Work and Family Life 2000-2003*, 2000.

Bryson, Jane, Janice Burns, Margaret Hanson, Huia-ngarangi Lambie and Rose Ryan, *Performance pay systems and equity: An analysis in five New Zealand organisations*, Ministry of Women's Affairs, Wellington, 1999.

Community and Voluntary Sector Working Party, *Communities and Government: Potential for Partnership*, Ministry of Social Policy, April 2001.

Community and Voluntary Sector Working Party, *Communities and Government: Potential for Partnership*, Ministry of Social Policy, April 2001.

Department of Labour and National Advisory Council on the Employment of Women, *Childcare, Families and Work: The New Zealand Childcare Survey*, 1998.

EEO Trust, *An Employer's Guide to EEO: Making the Most of a Diverse Workforce*, October 2000.

EEO Trust, *Diversity Index 1999*, 1999.

EEO Trust, *Diversity Index 2000*, 2000.

EEO Trust, *Recruiting Talent: A Research Report*, research conducted by Janice Burns of Top Drawer Consultants, November 2000.

Interdepartmental Working Group on Closing the Digital Divide, *Closing the Digital Divide: Draft Summary of Stakeholder Discussions*, (unpublished), 2001.

Library and Information Association of New Zealand Aotearoa (LIANZA), *Towards a National Information Strategy*, February 2001.

Minister for Disability Issues, *The New Zealand Disability Strategy; Making A World Of Difference, Whakanui Oranga*, published by the Ministry of Health, April 2001.

Ministry of Education, *More Than Words: The New Zealand Adult Literacy Strategy*, May 2001.

Ministry of Health, *He Korowai Oranga - Maori Health Strategy Discussion Document*, April 2001.

Ministry of Justice, *Pacific Peoples' Constitution Report*, September 2000.

Ministry of Justice, *Re-evaluation of the Human Rights Protections in New Zealand*, October 2000.

Ministry of Pacific Island Affairs, *Pacific Vision Status Report Series*, June/July 1999.

Ministry of Social Policy, *The New Zealand Positive Ageing Strategy*, April 2001.

Ministry of Youth Affairs, *Supporting the Positive Development of Young People in New Zealand: A discussion document for consultation on a Youth Development Strategy Aotearoa*, April 2001.

New Zealand Government, *Workforce 2010: A document to inform public debate on the future of the labour market in New Zealand*, March 2001.

Office of the Associate Minister of Education (Tertiary Education), *Skills for a Knowledge Economy: Nga mohiotanga mo te kohanga whai matauranga - a review of industry training in New Zealand*, 2001.

Raukawa Trust Board, *EEO for Maori Women in Maori Organisations*, 1999.

State Services Commission, *EEO Policy to 2010: Future directions of EEO in the New Zealand Public Service*, November 1997.

State Services Commission, *The Emerging Agenda: EEO in the New Zealand Public Service*, October 1997.

Statistics New Zealand, *Disability Counts*, 1998.

Top Drawer Consultants, *Remuneration: Making it fair - Making it work*, 2001.