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Submission on the National Universal Periodic Review Report on Human Rights

Axing Pay & Employment Equity Inquiries Blights New Zealand's Human Rights Record

The Women's Studies Association (WSANZ) welcomes the opportunity to comment on the government's draft Report on New Zealand's Human Rights Record. This opportunity is timely in view of the government's decision not to address gender discrimination in the state sector.

Our members were shocked at the announcement that the new government is ditching inquiries currently in progress into pay and employment equity for two state sector occupations employing predominantly women: social workers employed by Child, Youth and Family and special education support workers employed in schools. We must presume from this that it is also ditching all future action under the Pay and Employment Equity Plan for the state sector.

We understand that the pay and employment equity assessment for the special education support workers has been completed but not yet made public. What the government is ditching in this case is its responsibility for addressing the findings. We anticipate – based on outcomes of completed assessments to date and an extensive international literature showing consistent undervaluing of the skills involved in low paid female jobs involving children – that this report has identified pay issues to be addressed. This is confirmed by the Minister for State Services' reference to 'remuneration pressures'¹. This means the policy change is a deliberate act of discrimination against women in employment.

The policy change by the government is:

1. Contrary to the aims and actions reported in the government's own draft report to the UN
2. Contrary to the Convention on the Elimination of (All Forms of) Discrimination against Women (CEDAW) (ratified by New Zealand in January 1985)
3. Contrary to New Zealand's obligations under ILO Convention 100 on Equal Remuneration (ratified by New Zealand in 1983)
4. Contrary to the ILO's 'Fundamental Rights at Work' (adopted by ILO in 1998)
5. Contrary to the ILO's 2008-2009 campaign declaring 'Gender equality at the heart of decent work'
6. Illegal under New Zealand's Human Rights Act which prohibits discrimination in employment on grounds of sex, including specifically discrimination by government or its authorised agents.

¹ P. Glower (2009) Government kills pay-equity inquiries. *NZ Herald*, Friday February 20.

1. Contrary to government report to the UN on human rights

Human Rights Council Resolution 5/1 requires the government to report on New Zealand's human rights record and actions to fulfil its international obligations at home and abroad. The government's draft national report (Consultation Draft 16 February 2009) reports on its promotion and protection of human rights in regard to gender, specifically including the pay and employment equity enquiry process:

The Government's five-year *Pay and Employment Equity Plan of Action* aims to ensure that remuneration, job choice, and job opportunities in the public service, public health, and public education sectors are not affected by gender. This plan has since been extended, on a voluntary basis, to include local government bodies, state-owned enterprises, and government entities.

Three days after the date of this Consultation Draft, the Minister for the State Sector announced that the two current inquiries as part of this Plan of Action would be axed as 'unaffordable in the current economic and fiscal environment' and as part of relieving remuneration pressure in the state sector in 'fairness to the taxpayer'.

That is, the Minister has chosen to exercise pay restraint at the expense of equity for his low paid tax-paying women employees and in disregard for the government's international obligations for equity and human rights in employment for New Zealand women.

In the government's draft report, the section about New Zealand's international commitments includes CEDAW but omits to mention its commitments under ILO Conventions 100 and 111. New Zealand's Human Rights Act is a key mechanism for fulfilling New Zealand's obligations under these Conventions, together with the Equal Pay Act 1972 and the Government Service Equal Pay Act 1960.

2. Contrary to obligations under CEDAW

3. Contrary to obligations under ILO 100 Equal Remuneration

The government's draft report on human rights notes New Zealand's commitments under CEDAW. CEDAW was adopted by the UN in 1979 and ratified by New Zealand in 1985. In referring to this, the government's draft report on human rights notes that New Zealand law specifically prohibits discrimination on the basis of sex.

In fact, CEDAW is more specific than that in requiring governments to take action on equality in employment for women. S.11 requires that:

Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular...
....(d) the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;...

ILO convention 100 on Equal Remuneration, adopted by the UN in 1951 and finally ratified by New Zealand in 1983, requires members:

...to ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value...

Where such action will assist in giving effect to the provisions of this convention, measures shall be taken to promote objective appraisal of jobs on the basis of the work to be performed.

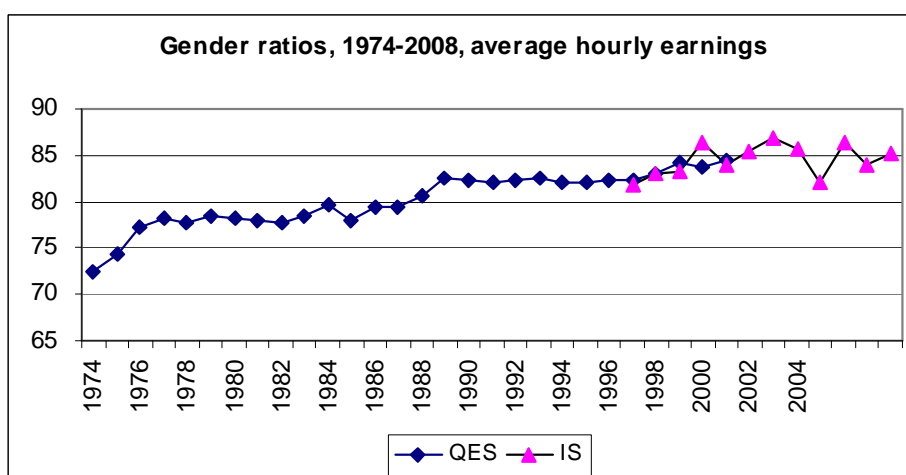
New Zealand ratified both these conventions on the basis of existing legislation – the Government Services Equal Pay Act 1960 and the Equal Pay Act 1972 – considered to provide for both equal pay and

equal pay for work of equal value.² Pay claims and wage adjustments in the 1970s had implemented equal pay for women and men in the same job but had not in fact addressed the latter. Following a Labour Court case in 1985-6, the Employment Equity Act 1990 was passed, then rapidly repealed following a change of government. It is striking that in both 1990 and 2009 incoming National governments have taken actions discriminating against lower paid women as one of their first initiatives on assuming office.

The Conventions leave open how government shall address pay equity principles. The last government chose non-legislative measures to investigate and address gender discrimination in state sector wage rates for the public service, health and education only. This was the Pay and Employment Equity Plan of Action. Discriminatory occupational wages rates are a key focus of reviews and pay investigations under the Plan, as occupational differences had been identified as a major factor in the gender gap between women's and men's average earnings both in the state sector and in the labour market as a whole.³ In its *Indicators for Change* report, the Ministry of Women Affairs continues to see the under-valuing of female-dominated occupations as a major challenge.

This Association strongly supports the Pay & Employment Equity Action Plan and the work of the Department of Labour's Pay & Employment Equity Unit, although we have long pointed out what a minimalist government equity policy this is. The slow programme of assessing and adjusting certain occupations in the public service, health and education is certainly benefiting women in those occupations. It appears to be having little impact on the gender gap between women's and men's average hourly and weekly earnings in the labour market as a whole – unless it is perhaps slowing deterioration.

New Zealand's progress in delivering pay equity for women is measured by Statistics NZ's analysis of Income Survey data each June. Average hourly earnings is the standard indicator used since 1974 to monitor progress under the Equal Pay Act. (For technical reasons, data from the Income Survey fluctuates more than the formerly used Quarterly Employment Survey.) In June 2008 women's average hourly pay was 85 percent of male average wage, and for Maori and Pacific Islands women this ratio was 75 percent and 71 percent respectively. The following chart shows lack of progress for women through most of the 1990s, a slight improvement, then little change on average over the past decade.



² Orr, Elizabeth (2003) A re-examination of the pay equity story. Papers of the Women's Studies Conference 'Celebrating All Women', Palmerston North, 21-23 November.

³ Dixon, Sylvia (2000) *Pay inequality between men and women in New Zealand*. Occasional Paper 35(2). Wellington: Labour Market Policy Group, Department of Labour; Gosse, Michelle (2002) *The Gender Pay Gap in the New Zealand Public Service*. Wellington: State Services Commission.

In this Association's view, nothing changes if little is done. As overseas experts pointed out at the National Advisory Council on the Employment of Women's 2004 Conference, making progress requires legislation action that supports wage bargaining based on gender equity for predominantly female occupations across the whole labour market.

4. Contrary to ILO's Fundamental Rights at Work

5. Contrary to ILO's 2009 Gender Equality campaign

In 1998 the ILO highlighted its key Conventions by declaring them the 'Four Fundamental Rights at Work'. This ranked the elimination of discrimination in the workplace alongside freedom of association and collective bargaining, and the elimination of forced labour and of child labour as high priority issues to be addressed by member countries. Each Right was based on two Conventions – in regard to discrimination, on Convention 100 on Equal Remuneration and Convention 111 on Equal Employment Opportunity.

To highlight freedom from discrimination at work as a fundamental right, the ILO launched a gender equity action plan. This year, 2009, is the tenth anniversary of that action plan and the ILO is conducting a global campaign on 'gender equality and the world of work'. The 2009 International Labour Conference will hold a general discussion on 'Gender Equality at the Heart of Decent Work'.

6. Illegal under New Zealand's Human Rights Act

The Human Rights Act prohibits discrimination in employment on grounds of sex by employers generally whether in the public or private sector, and complaints may be taken against this. The Act also specifies the right to freedom from discrimination in employment (S.22) on grounds of sex (S.21(1)) by 'government, related persons and bodies, or persons or bodies acting with legal authority' (Part 1A), based on the NZ Bill of Rights Act. The Human Rights Act makes clear that sex discrimination in government employment is covered under both Acts. Together the acts allow for differential treatment to assist or advance people disadvantaged by illegal discrimination – but that is certainly not what the government is doing here. On the contrary, the discontinuation of the two pay investigations is an act of deliberate discrimination by the government against its own women employees.

In the case of the Child Youth and Family Services social workers, the department had already undertaken a Pay and Employment Equity review which had identified pay anomalies and underpayment. The requirement since 2003 for a social work degree qualification at entry level had not led to pay adjustment, and there were gender disparities in median rates and in advancement, regardless of qualifications and experience. The Chief Executive and the union had signed off on a plan of action which included an independent pay investigation. The Plan and a summary of the review were made public in June 2008.⁴ The pay investigation began on 1 August 2008, looking at anomalies in detail and also at current levels of reward in state sector occupations with comparable qualification requirements, skills and responsibilities that are not female dominated. It was anticipated that outcomes would be considered at the next negotiating round of the collective employment agreement.

⁴ Summary of Findings: Report of the Child, Youth and Family Pay and Employment Equity Review (June 2008) and the Response Plan: Report of the Child, Youth and Family Pay and Employment Equity Review (June 2008).

In the case of Special Education Support Workers, the pay investigation has already been completed and the independent pay investigation report is available.⁵ Using remuneration surveys, job size evaluations and comparisons with similar sized and smaller job categories, it confirmed that these education support work positions were undervalued in terms of the actual skills, responsibilities, demands and working conditions required in the role. Fixed term and tenuous employment also had a negative impact on pay. Also within the job category, on average men performing the same job with less service were being more highly paid than women. This situation had not yet been addressed in wage negotiations when the Minister of State Services chose to pull the plug on the whole process of redress.

The department Chief Executives, the State Services Commission and the government know that the women social workers they employ have discriminatory pay rates and, in the case of women education workers, they know the exact measure of that pay discrimination. Yet the discrimination is to continue, by order of the government.

If these women continue to be paid pay rates that are known to be discriminatory, it would be the task of the Human Rights Commission to decide whether the act of discrimination is being committed by:

- The government and its Minister for State Services who have made the decision not to address the results of the assessment for special education support workers or continue the assessment for social workers and, presumably, other assessments due under the Pay & Employment Equity Action Plan, or
- the State Services Commission responsible for all state sector employment and for the State Sector Act including its 'good employer' and EEO requirements, or
- the Ministry of Social Development, as direct employer of the social workers in Child, Youth and Family, and
- the Department of Education and the School Boards of Trustees, who are responsible for different aspects of hiring, promotion and pay negotiations for special education support workers.

If the government persists in its decision not to address pay discrimination against its women employees, or to prevent bodies with delegated authority from addressing pay investigation outcomes, this is, we believe, a direct and deliberate act of discrimination against women employees under the Human Rights Act.

National Universal Periodic Review Report on Human Rights

In the light of the government's decision to discontinue the employment equity assessments and in the light of government's legal and international obligations, as noted above, the draft report on human rights is currently out of date or inaccurate and is in need of revision.

Discontinuing these investigations and, we must assume, the rest of the pay and employment equity plan of action, constitutes flagrant disregard for New Zealand's obligations under the international conventions that we have ratified to protect women's human and employment rights.

A better course would be for the government to rethink its hasty policy change and stand behind its Action Plan on Pay & Employment Equity.

⁵ Top Drawer and Pulse HR, Pay Investigation for Special Education Support Workers, Report for the Pay Investigation Steering Group, 2008.

Persons with disabilities

New Zealand ratified the Convention on the Rights of Persons with Disabilities in September 2008 and has been bound by the Convention since that date. Disability was included in the grounds for discrimination prohibited by the Human Rights Act. In January 2009 the Human Rights Council adopted a Thematic Study by the Office of the United Nations High Commissioner for Human Rights on enhancing awareness and understanding of the Convention on the Rights of Persons with Disabilities. This Association would like to see the government's final report on human rights acknowledge this study and its recommendations and report on how this Convention and its implications are being publicised in New Zealand and what all branches of government will do to adopt its provisions.

Our members continue to raise concerns about human rights for women with disability and mental illnesses, including failures of informed consent processes, particularly in regard to drugging and electroconvulsive shock practices. The section of the draft consultation report on mental health reports on publicity campaigns to reduce discrimination by members of the public but does not report any policy or action in regard to human rights issues arising in the course of treatment and other health care.

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