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**Comparative study  
on social dialogue  
and gender equality  
in New Zealand,  
Australia and Fiji**

**Jane Parker, Tino Nemani  
James Arrowsmith, Julie Douglas**

*with*

**Rae Cooper, Nadine McDonnell**

December 2011

Industrial  
and Employment  
Relations  
Department  
(DIALOGUE)

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## Foreword

Gender equality and social dialogue are both fundamental values and cross-cutting issues for the International Labour Organisation. In 2009, the International Labour Conference concluded its discussion on “Gender equality at the heart of decent work” by reaffirming that social dialogue and tripartism are essential policy tools to advance gender equality in the world of work.

This paper is a part of a comparative research project whose objective is to demonstrate that gender equality and social dialogue are mutually beneficial and their promotion should go hand-in-hand. Despite several studies on each topic separately, there is a knowledge gap worldwide on how gender equality at work is advanced through social dialogue. The topic is examined from qualitative and quantitative aspects:

- participation on an equal footing of men and women in social dialogue, in particular in the national tripartite bodies, as well as within government units, trade unions and employers’ organisations;
- gender equality issues on the agenda of social dialogue, including collective bargaining.

This study provides comprehensive information in a comparative perspective on three countries of the Pacific: Australia, New Zealand and Fiji. This academic analysis of practical usefulness draws on both nationally-representative and case evidence in order to develop a sufficiently broad and deep understanding of developments at national and local levels. The report is a critical assessment of current trends and contains recommendations on a number of issues, such as legal reforms and challenges; paths for eliminating gender stereotypes and improving social dialogue on gender equality. The study confirms that evaluation of national level data would benefit from being more firmly placed in international comparative perspective. The report clearly concludes that the imperative of an integrated approach to legislative and workplace management policies should be encouraged by social dialogue at multiple levels and across sectors in order to progress gender equality aims.

The paper is the result of collaboration between the Industrial and Employment Relations Department, the Bureau for Gender Equality and the ILO Decent Work Technical Support Team for South Asia. Jane Parker, Tino Nemani, James Arrowsmith and Julie Douglas (with Rae Cooper and Nadine McDonnell) prepared the national study. Angelika Muller coordinated the comparative research project and national studies. Particular thanks for comments and assistance are expressed to Nielen Haspels, Annemarie Reerink and Line Begby. This paper was developed with support from the Government of Sweden.

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## 1. Introduction

The ILO defines social dialogue to include all types of negotiation, consultation or exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy. It can exist as a tripartite process, with the government as an official party to the dialogue, or as bipartite relations between representatives of labour and one or more employers. The decision-making and consultative mechanisms offered by formal tripartite bodies and collective bargaining are the most wide-spread institutionalised forms of social dialogue.

Social dialogue and collective bargaining may occur at various levels – national, sectoral, regional/ provincial and/or enterprise<sup>1</sup> – and may be more or less formalised. Successful social dialogue structures and processes have the potential to address and resolve important economic and social issues, encourage good governance, advance social and industrial stability and boost economic progress. They are widely recognised as essential policy tools to advance the ILO's objective of promoting opportunities for women and men to obtain decent and productive work in conditions of freedom, equality, security and human dignity.<sup>2</sup>

The primary objective of this report is to deepen understanding of how gender equality issues are promoted in three Pacific nations: New Zealand (NZ), Australia and Fiji. These nations were selected for comparative analysis, not just for their shared regional location. Economically, they represent a relatively large developed country (Australia), a small developed country (NZ), and a small developing nation (Fiji). Fiji is well-integrated into international trade, especially for its primary resources. Economic ties are particularly close between Australia and NZ, especially since the Australia-NZ Closer Economic Relations Trade Agreement (ANCERTA), and plans are under way to form an Australasian Single Economic Market by 2015.<sup>3</sup> The political configuration of the three countries is also interesting for cross-national analysis, encompassing a re-elected Labour leadership of a federal state (Australia); a relatively new centre-right National-coalition government (NZ); and a provisional military government that assumed power after a coup d'état in 2006 (Fiji). These economic and political differences may be expected to have implications for policy and progress in the areas of social dialogue and gender equality.

This report thus overviews the national contexts and comparatively analyses trends and developments which focus on:

- the legal and institutional frameworks for social dialogue and gender equality;
- the nature of key social dialogue bodies;
- the role of (tripartite) social dialogue bodies in promoting gender equality at work;
- how gender equality is addressed via collective bargaining; and
- key challenges in practice concerning gender equality at work.

The analysis draws on both nationally-representative and case evidence in order to develop a sufficiently broad and deep understanding of developments at national and local levels, within a comparative perspective. The report concludes by critically analysing current trends and making recommendations on a number of issues such as legal reforms and challenges; paths for eliminating gender stereotypes and improving social dialogue on gender equality; capacity building of the social partners; and concerning collaboration with international organisations, especially the ILO.<sup>4</sup>

This section briefly reviews the economic and political context relating to gender equality in the three countries. Table 1 presents basic demographic and labour market data which are discussed below.

## 2. National context

**Table 1.**  
**Demographic and labour market statistics for NZ, Australia and Fiji**

| Indices                                   | NZ           | Australia     | Fiji              |
|-------------------------------------------|--------------|---------------|-------------------|
| <b>Population (millions)</b>              | <b>4.32</b>  | <b>22.16</b>  | <b>0.85</b>       |
| Working age population (millions)         | 3.41         | 14.91         | 0.59 <sup>^</sup> |
| Labour force (millions) female (millions) | 2.32<br>1.09 | 11.71<br>5.33 | 0.33*<br>0.10+    |
| Persons in employment (millions)          | 2.17         | 11.07         | 0.30              |
| - female (millions)                       | 1.02         | 5.03          | 0.09              |
| Unemployed (millions)                     | 0.14         | 0.60          | 0.03              |
| - female (millions)                       | 0.07         | 0.28          | 0.01              |
| Labour force participation (%)            | 68.1         | 65.2          | 40.0              |
| - female (%)                              | 62.3         | 60.0          | 27.6              |
| - male (%)                                | 74.3         | 73.2          | 51.8              |
| Unemployment rate (%)                     | 6.5          | 5.1           | 8.6               |
| - female (%)                              | 6.6          | 5.4           | 12.9              |
| - male (%)                                | 6.5          | 5.7           | 6.4               |

Sources: NZ 5, 6, 7; Australia 8, 9, 10, 11, 12; Fiji 13, 14, 15, 16.

<sup>^</sup> Population over 15 years. \* Economically active. + Percentage of the economically active.

### 2.1 New Zealand

#### *Economy*

NZ is a relatively small, modern liberal-market economy. At the end of 2009, its resident population was 4,318,100, up 1.1 per cent on the previous year, with women at 50.9 per cent of the population.<sup>5</sup> In 2010, the working-age population was 3,412,100 (79 per cent of the population). The labour force was 2,317,000 or 68.1 per cent of the working-age population, and women formed 47 per cent of the labour force. Women's participation in the labour force rose to one of the highest levels in the developed world, at 62.3 per cent (compared to 74.3 per cent for men) in 2009 (Table 1). Of the 2.17 million people in employment, women form 46.8 per cent. Although the employment rate of women has also risen steadily over the last two decades, it is still highly variable by age and ethnicity. One of the groups least engaged in paid work is young Māori women (15-24 years). Their employment rate at 42 per cent is much lower than for their Pākehā (White) counterparts (64 per cent), and young Māori women are more likely to be engaged in unpaid work.<sup>6</sup> Another profound policy issue is that, in common with many other developed countries including Australia, NZ is experiencing a demographic shift towards an older population, and a higher dependency ratio with more retirees and fewer people of working age.

NZ has 140,000 unemployed persons, of whom women form nearly half (49.3 per cent).<sup>7</sup> According to the IMF, the unemployment rate was 7.2 per cent in 2010, up from 6.2 per cent in 2009, but this figure will drop to 6.5 per cent in 2011.<sup>17</sup> During the 2007-2010 financial crisis, NZ's GDP shrank for five consecutive quarters, the longest recession in over 30 years. Men's jobs were hardest hit on account of the impact in manufacturing and construction. Beyond 2011, the five-year picture is one of modest growth, partly reflecting a sustained period of structural change across the economy.<sup>18</sup> NZ has a sizeable service sector, accounting for about two-thirds of GDP (the tourism sector alone contributed 9.1 per cent to the total and accounted for 9.6 per cent of the workforce), followed by manufacturing and a highly efficient agricultural sector. However, the risk

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element is that the economy is strongly trade-oriented, particularly in agricultural products, with exports making up 24 per cent of its output.<sup>19</sup>

NZ's total GDP is estimated at US \$119,549 billion.<sup>19</sup> Despite recent economic difficulties and having a lower GDP per head than many other OECD countries (US \$31,067 per person in 2010),<sup>20</sup> New Zealanders are reported to have a high level of life satisfaction as measured by international surveys. Since 2000, NZ made substantial gains in median household income, and was ranked first in social capital and tenth in overall prosperity in the 2009 Legatum Institute Prosperity Index.<sup>21</sup>

## **Equality**

The annual Global Gender Gap (GGG) report shows NZ at fifth place out of 130 countries, with equality measured over a variety of indices. According to this research, NZ has 'closed the gap' in 78.6 per cent of equality measurements between men and women (just behind the Nordic countries which have reached more than 80 per cent). Specifically, it has eliminated the gap that existed in the field of educational attainment, and has closed over 97 per cent of the gender gap in health measures. Strong performance is also reported concerning measures of labour force participation; wage equality for similar work; income levels and numbers of managers, professional and technical workers and law and policy makers.<sup>22</sup> Further evidence indicates a progressive approach to gender equality. For example, NZ continues to prioritise OECD Official Development Assistance (ODA) activities that foster the role of women in development; a recent review of the Women in Development (WID) Plan of Action concluded that significant progress had been made in terms of gender mainstreaming.<sup>23</sup> It is also important to note that NZ has founding principles of equality with the indigenous Māori population expressed through the 1840 Treaty of Waitangi, which has current relevance as Treaty settlements continue to be negotiated and agreed. Māori numbered 653,100 in 2009 (50.9 per cent women)<sup>24</sup> and form 15.1 per cent of the total population. The country's history of Pacific and European settlement, together with recent Asian immigration, also highlights issues to do with diversity and equality.<sup>25, 26</sup>

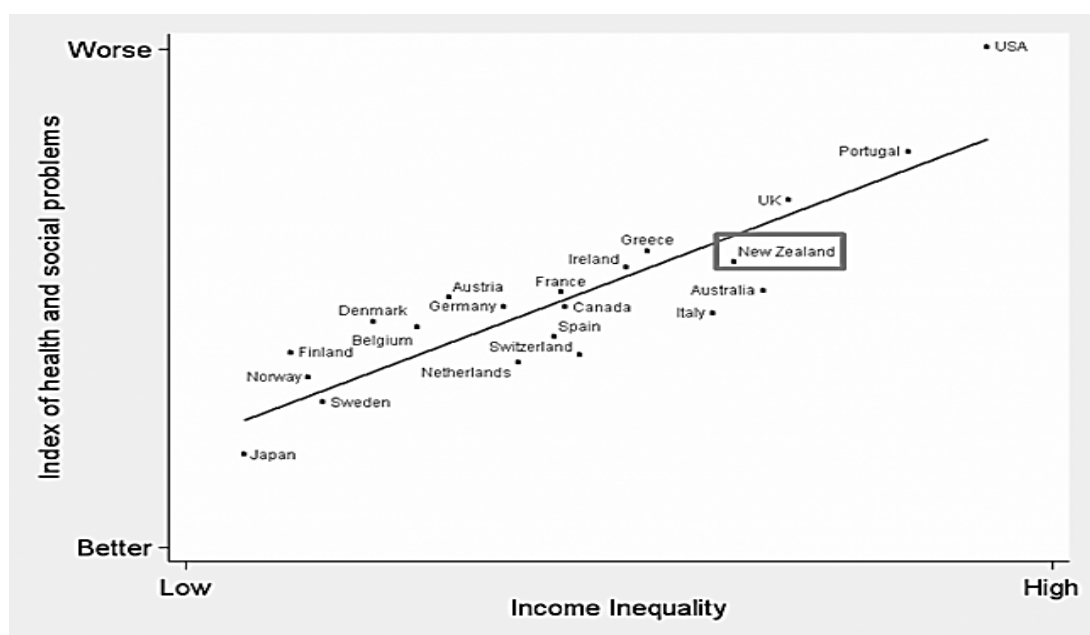
Yet broader measures of equality suggest a less rosy picture. For instance, Wilkinson and Pickett (2009) show that, relative to many industrialised nations, NZ and Australia score at the high end of income inequality, with negative implications across a broad index of social and health issues (Figure 1).<sup>27</sup> Further, gender differences emerge in relation to unpaid work in NZ. According to the country's first *Time-Use Survey 1998/99*, men and women spend about the same amount of time working, on average seven hours a day, or 49 hours a week.<sup>28</sup> However, women spend two hours a day more than men on unpaid work. The value of unpaid work in 1999 was NZ \$40 billion or 39 per cent of GDP, with work done by women accounting for 64 per cent of the total value.<sup>29</sup> This has implications for differential gender experiences of work-life balance (WLB) and stress.

## **Politics**

NZ has experienced significant changes in the political context for social partnership. In the 1980s, it radically shifted from one of the most to one of the least regulated 'Western' economies, including a programme of privatisations and industrial relations reforms which severely weakened trade union rights. However, from the late 1990s, various employment and labour market protections were reintroduced under relatively benign economic conditions by the Labour-led governments of 1999-2008. However, the conservative National Party formed a coalition government after the November 2008 election with the Māori Party and the right-wing ACT party and centrist United Future party. The current government sets great store on education and economic growth to improve the position of different groups, though more naturally favours 'voluntarist', market solutions to labour force and equality problems.<sup>30</sup>

This de-regulatory approach in industrial relations is indicated by measures such as the removal of the right to fair dismissal in the first 90 days of employment (introduced for small firms in 2009 and extended to all workplaces in 2010), and current proposals to restrict the rights of trade unions to enter workplaces.<sup>31</sup> In respect of EEO and pay equity, the government is concerned to avoid any measures which could increase costs to business and thereby limit employment, including for women. The government cancelled the previous administration's pay equity reviews. However, policy remains framed by the *Employment Relations Act 2000 (ERA 2000)*, NZ's cornerstone employment relations law, which explicitly aims to build productive employment, address the inequality of bargaining power, support collective bargaining, ensure individual choice in employment and promote mediation while reducing the need for judicial intervention.

**Figure 1.**  
Cross-national comparison of income inequality  
and health and social problems (2009)



Source: <sup>27</sup>

## 2.2 Australia

### *Economy*

Geographically and economically, Australia is by far the largest of the three countries under review. At the end of 2009, its population was 22,155,400 (Table 1) and reflected a faster rate of increase than that for NZ (up 2 per cent from 2008).<sup>32</sup> The indigenous population (Aboriginals and Torres Strait Islanders) are a much smaller minority at 517,043 in 2006 or 2.5 per cent of the total population,<sup>8, 32</sup> women form 50.2 per cent of the population.<sup>33</sup>

Compared to NZ, Australia's working-age population is a significantly smaller proportion of the total population at 67.3 per cent<sup>9</sup> though much larger in absolute terms at 14,910,584. Women formed 50.5 per cent of the working age population. A labour force of 11,713,900 makes up 78.3 per cent of the working age population,<sup>10</sup> reflecting a higher proportion of formally-defined economically active individuals than in NZ or, as we shall see, Fiji. Women form 45.5 per cent of the labour force. Approximately 11.1 million people are in employment,<sup>1</sup> with women accounting for 45.4 per cent. Over recent years, there has been a marked increase in the female labour force participation rate to 58.7 per

cent in June 2009 (several percentage points behind that for NZ but much higher than that for Fiji), and a decline in the male labour force participation rate to 72.1 per cent.<sup>11</sup>

Australia weathered the global financial and economic crisis relatively well, reflecting relatively robust banking oversight and a large government stimulus based on substantial mineral wealth.<sup>34</sup> In June 2010, Australia had 603,400 unemployed persons, down from 663,600 in August 2009. Of these, women formed nearly half (46.5 per cent). The overall unemployment rate is 5.1 per cent, down from 5.6 per cent in 2009,<sup>10</sup> breaking down into 5.7 per cent, 5.4 per cent and 16.5 per cent respectively for men, women and teenagers.<sup>12</sup> Nonetheless, job losses still swept through sectors such as mining and manufacturing,<sup>35</sup> and there were many cases of shutdowns, redundancies, wage freezes and increased uptake of paid and unpaid leave.

With a GDP at US \$1 trillion in 2009, Australia is the world's 13th largest national economy, representing about 1.7 per cent of the world economy.<sup>36</sup> Like NZ and Fiji, it is dominated by its service sector (including tourism, education and financial services) which represents 68 per cent of GDP, although the agricultural and mining sectors (10 per cent of GDP combined) account for 57 per cent of the nation's exports.<sup>37</sup> The stress on exporting commodities rather than manufactures underpinned a significant increase in Australia's terms of trade during the high commodity prices experienced since 2000. Australia is thus a comparatively prosperous nation with a high standard of living. It ranked second or 'very high' in the UN Nations 2009 Human Development (HD) Index,<sup>38</sup> sixth in Legatum's 2009 Prosperity Index,<sup>39</sup> and sixth in *The Economist's* Quality-of-Life Index for 2005.<sup>40</sup>

## Equality

The last UN HD Report also reveals that both NZ and Australia fare relatively well according to the multi-construct Gender Empowerment Measure (GEM). This is based on a series of economic and political indicators including the percentages of women who are parliamentarians or legislators; senior officials and managers; and professional and technical workers. It also utilises the ratio of female-to-male earned income; the year in which women received the vote; the year in which women received the right to stand for election; the year in which a woman became a speaker or presiding officer of parliament; and the percentage of women in ministerial positions. A similar index, the Gender-related Development Index (GDI) includes measures of female and male life expectancy at birth; female and male adult literacy rates; female and male combined gross enrolment ratio; and female and male estimated earned incomes.<sup>38</sup> Australia and NZ perform highly on both measures, with Fiji occupying a mid-ranking position (Table 2).

**Table 2.**  
**UN HD GEM and GDI for NZ, Australia and Fiji**  
**(2006 and 2007)**

| Country   | GEM ranking (out of 182 countries) |      | GDI ranking (out of 182 countries) |
|-----------|------------------------------------|------|------------------------------------|
|           | 2007                               | 2006 | 2007                               |
| NZ        | 10                                 | 20   | 18                                 |
| Australia | 7                                  | 2    | 1                                  |
| Fiji      | na                                 | na   | 90                                 |

Source: <sup>38</sup>

na – not available. Approximately a third of all countries did not provide data for this measure in the specified years.

In the 2009 GGG report, Australia occupies 20th place out of 130 countries (NZ is fifth), having closed the gender gap to 73 per cent whilst Fiji – included for the first time in the analysis – ranks 103rd out of 134 countries and has a gender gap of 64 per cent (Table 3). Like NZ, Australia has closed the gap that existed in the field of educational

attainment, and over 97 per cent of the gap in health. Similarly, economic participation stands as 75 per cent. In Fiji, the economic participation gender gap was less impressive at 53.4 per cent but the country was similar to Australia and NZ on educational attainment (99.1 per cent) and health (98 per cent) measures. Fiji also implemented several measures to sustain the education attainment score (e.g. providing free textbooks to cover all primary school children by 2012). It ranked as an ‘upper-middle’ income group, whilst Australia and NZ were categorised as ‘high income’<sup>22</sup> but Australia and NZ score at the high end of income equality and data from Fiji suggest that a substantial minority of Fijians (mainly women) earn less than the ‘poverty’ wage (FJ \$60).

The Australia Bureau of Statistics’ (ABS) *Time Use Survey 2006* (following surveys in 1992 and 1997, and a pilot in 1987) assigns unpaid work (excluding personal services) to four major groups: domestic activities, child care, purchasing goods and services, and voluntary work and care. It revealed that gender inequalities in unpaid work persisted. Men spent on average 31 hours and 51 minutes per week on paid work (up 5 per cent on 1997), nearly double the average for women (16 hours and 27 minutes, up 7 per cent). Men spent much less time on unpaid work per week (20 hours and 4 minutes) than women (36 hours and 31 minutes). Domestic activities made up just over half of the time spent on unpaid work by both men (one hour 37 minutes a day) and women (two hours and 52 minutes). Since 1997, time spent by women on domestic activities has decreased nearly an hour a week, while men spent the same amount of time. Even when both men and women worked full-time, women spent around 46 minutes a day more than men in domestic activities. They spent nearly three times the amount of time that men spent in childcare activities (averaging 59 minutes and 22 minutes per day respectively).<sup>41, 42</sup> ABS estimates the value of unpaid work for the time use surveys as a contribution of up to 64% of GDP. It also estimates that the gross opportunity cost of unpaid work in 1997 – what household members would have earned in gross wages had they spent the same time on paid work as unpaid work – was AUS \$204 billion for women, nearly twice that for men (AUS \$104 billion for men).<sup>42</sup>

**Table 3.**  
**Key indices of the GGG Index in NZ, Australia and Fiji (2009)**

| Country   | Overall GGG index | Economic participation overall and opportunity | Educational attainment | Health and survival |
|-----------|-------------------|------------------------------------------------|------------------------|---------------------|
| NZ        | 0.7880            | 0.7842                                         | 1.0000                 | 0.9745              |
| Australia | 0.7282            | 0.7477                                         | 1.0000                 | 0.9796              |
| Fiji      | 0.6414            | 0.5343                                         | 0.9910                 | 0.9796              |

Source: <sup>22</sup>

Other survey research shows that changing female and male labour force participation rates ‘have not automatically led to a radical reorganisation of the domestic division of labour, suggesting that women are adding their paid work hours to their unpaid work hours, effectively doing a ‘second shift’’.<sup>11</sup> Using data from three national (non-ABS) Australian surveys (1986, 1993 and 2005), Chesters *et al.* (2008) found that in dual, full-time earner households, the gender gap in workloads has closed. However, women in dual-earner families spend more time doing unpaid housework and males in dual earner families spend more time doing paid work. The presence of dependent children ‘increases this specialization’, with mothers spending a greater proportion of their total work hours doing housework and fathers spending a greater proportion of their total work hours doing paid work in comparison to those without dependent children.<sup>11</sup>

## Politics

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Australia is a federal nation comprising five states and one territory, though the federal government plays the major role in terms of industrial relations. Like NZ, Australia experienced a weakening of supports for tripartite and social partnership institutions from the 1980s. State support for union membership and arbitration was withdrawn in the context of neo-liberal reform.<sup>43</sup> The move from a centralised wage-fixing system towards enterprise bargaining began in the late 1980s under the Hawke Labor Government, with the cooperation of the union movement, as an attempt to decentralise the employment relations system. Howard's conservative Coalition Government brought in more radical reforms in the 1990s designed to individualise the employment relationship via statutory individual agreements (Australian Workplace Agreements) under the *Workplace Relations Act 1996*. The objective was to reduce union involvement in the workplace and their political influence,<sup>44</sup> marking the end of the 'Accord years'. This resulted in falling union density rates in the 1980/90s, as in NZ, and a decline in collective bargaining coverage. The 2005 *Work Choices* legislation was designed to complete the project of 'de-collectivisation' begun a decade earlier.<sup>45</sup> It is argued that women were particularly vulnerable to the impacts of the deregulatory project and the decentralisation and individualisation of bargaining due to their weaker labour market position overall.<sup>46</sup>

Australia's employment relations system was again overhauled following the election of a Labor government under Kevin Rudd in 2007. (Ahead of a general election, Rudd was replaced by Julia Gillard, who became the country's first female Prime Minister in June 2010 and narrowly won a federal election in late August 2010). The *Fair Work Act 2009* includes provisions on a new collective bargaining framework based at the enterprise level, both with and without union involvement. It reverses the strong emphasis on individual 'bargaining' and strengthens collective bargaining with measures such as the replacement of arbitration by 'good faith' principles and representation according to the 'will of the workforce'.<sup>47, 48</sup> Unlike in NZ, from being an automatically key bargaining actor, unions are now one of a range of possible participants or bargaining agents at enterprise level. There is no distinction between union and non-union bargaining but rather a reliance on the notion of good faith bargaining.<sup>48</sup>

## 2.3 Fiji

### *Economy*

Fiji is one of the most developed of the Pacific Island economies, but it remains a developing country, with a large subsistence agriculture sector. Fiji's Exclusive Economic Zone contains approximately 330 islands, of which 110 are permanently inhabited.<sup>49</sup> Eighty-seven percent of its people occupy two major islands, Viti Levu and Vanua Levu.<sup>14</sup> The capital is Suva, which with Lautoka, forms the country's two cities. Fiji's GDP was US \$3,084 billion in 2009 (US \$3,900 per capita).<sup>50</sup> Much of this is derived from the service sector – 77.6 per cent in 2004 compared to 13.5 per cent for industry and 8.9 per cent from agriculture. Sugar exports and a growing tourist industry are the major sources of foreign exchange; sugar cane processing makes up one-third of industrial activity. In 2006, Fiji's exports totalled US \$1.2 billion.<sup>50</sup> However, 70 per cent of the labour force is engaged in agriculture and fishing. This reflects the fact that Fiji is well endowed with forest, mineral, and fish resources, but also that sugar and garment exports have been in decline, with job losses in the garment industry in particular mostly affecting women. The unemployment of these women has been linked to an increase in prostitution, homelessness (including children) and abuse.<sup>51</sup> Many women have shifted into the 'informal sector' making clothes, artefacts and handicrafts in their homes or in small workshops, though often with poor wages, working conditions and job security.<sup>52</sup> In 2007, there were 28,014 unemployed persons with an unemployment rate of 8.6 per cent – up from 3.7 per cent in 1996. Over this period, female unemployment has remained about two times higher than that for males (Table 1).<sup>16</sup> Linked to this, about one quarter of the population exists below the poverty line (55th out of 101 countries measured in these terms).<sup>16</sup>



Fiji's population in 2009 was almost 850,000, with an annual growth of 0.6 per cent from 2000 to 2008.<sup>13</sup> By 2025, it is expected to rise to 905,000.<sup>53</sup> Women formed 49 per cent of the population in 2007.<sup>15</sup> The 'economically active' (labour force) numbered 326,988 at the 2007 Census (up 9.8 per cent since 1996) or 55 per cent of the population.<sup>16</sup> From 1996 to 2007, overall labour force participation decreased marginally to 40 per cent, breaking down into 51.8 per cent for men and just 27.6 per cent for women. The 2004-2005 *Survey of Employment and Unemployment* put the Fijian female labour force participation rate at 37 per cent, compared to 46 per cent for Mauritius, 51 per cent for Trinidad and Tobago, 60 per cent for Australia and 62.3 per cent for NZ.<sup>54</sup> Whilst this is a significant increase from 13 per cent in 1982, it still reflects a male-female ratio of 2:1. Further, between 1996 and 2007, male labour force participation grew by one percentage point whereas the female labour force participation rate fell by 11.8 percentage points. Of the total labour force in 2007, the employed formed 91.4 per cent. Women formed 32.1 per cent of the 298,974 employed, reflecting little change from 1996 when they constituted 32.2 per cent of the 286,646 employed. Women are disproportionately represented in the hotel, retail and restaurants sectors (63 per cent) and community, social and personal services (41 per cent) (Table 4). By occupation, they are better represented in clerical jobs (with a 58 per cent share), as professionals (44 per cent) and service workers (41 per cent).

## Equality

The 2004-2005 *Survey* also reveals that women form 99 per cent of household workers, the number of whom exceeds that for economically active females. Women were found to undertake 15 hours more household chores per week than men, regardless of whether they were in paid employment or not. However, estimates of hours worked by men and women in paid employment differ only by about four hours. When household work is accounted for, economically-active women work between 26 per cent and 31 per cent more than economically-active men. While women contributed only 2 per cent of the total time worked by the economically active, they contributed 76 per cent of the time devoted to household work or 52 per cent of all time worked in the economy inclusive of household work (though receiving only 27 per cent of all income earned). Household work contributes FJ \$478 million to the economy – more than the contribution to GDP from either tourism or sugar.<sup>54</sup>

**Table 4.**  
**Distribution of persons by industry and gender in Fiji (2005)**

| Industry                                | Female | Male   | All    | % Female |
|-----------------------------------------|--------|--------|--------|----------|
| Agriculture, forestry and fishing       | 19,996 | 69,527 | 89,523 | 22       |
| Mining and quarrying                    | 176    | 3,046  | 3,222  | 5        |
| Manufacturing                           | 14,192 | 28,896 | 43,088 | 33       |
| Electricity and water                   | 167    | 2,341  | 2,508  | 7        |
| Construction                            | 808    | 16,142 | 16,951 | 5        |
| Hotel, retail and restaurants           | 27,092 | 38,951 | 43,088 | 63       |
| Transport, storage and communications   | 2,878  | 19,673 | 22,550 | 13       |
| Finance, real estate and business       | 3,480  | 6,740  | 10,219 | 34       |
| Community, social and personal services | 25,528 | 36,408 | 61,936 | 41       |

Source: <sup>54</sup>, Table 7.2, p. 37

The burden of much household work falling on women reflects a cultural perception of their primary role being to support men's economic activity; traditionally, Fijian men are considered to be the head of the household. One gendered impact of this is that, whilst women in Fiji legally have equal access to bank loans and credit, men are often better

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placed to provide collateral or deposits. Moreover, whilst all women in Fiji have property rights, if a married woman moves to her husband's land, her land remains with her family (cf. NZ and Australia where the concept of the equal sharing of property amongst spouses is enshrined in law, and since 2001, all women in *de facto* relationships have received property protection in NZ). In a recent report to the UN, Fiji government officials indicated that they were working towards laws which would 'enable land owned by a couple to be registered in both their names', suggesting that at the present time title to land was held by the husband in marriage. And whilst, legally, men and women have equal rights to inheritance, tradition favours male heirs over their female counterparts.<sup>55</sup>

Ethnic differences are also significant. Indigenous Fijians have traditionally had a higher level of economic participation than Indians, who make up 42 per cent of the population, though this gap has narrowed significantly due to a decrease of Fijian participation in the subsistence sector and an increase in the Indian labour force participation of 20 to 34 year olds. However, in 2007, only one-third of economically active Indigenous Fijians was in permanent employment and received a wage or salary, and the unemployment rate of Fijians has increased much faster than that of Indians due to decline in the subsistence sector. Indigenous Fijians represent 60 per cent of agricultural workers and are also over-represented in the tourism industry since most hotels are located on native land and employ local villagers (mostly as low paid workers) as part of the lease agreement. Indo-Fijians and other ethnic groups were over-represented among occupations such as professional and technical workers (55 per cent), administrative and managerial workers (74 per cent), and sales (74 per cent).<sup>13</sup>

Fiji does not fare nearly as well as Australia or NZ on the overall GGG Gap index, particularly in terms of economic participation and opportunity, with an overall measure of 0.64 and country ranking of 103 (Table 3).<sup>22</sup> Although the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Committee recently expressed concern about inadequate health care in rural areas, health and welfare standards in Fiji are reported to be good relative to other Melanesian countries. Life expectancy for women is nearly 70 years and infant and maternal mortality is low. Essential and basic health care is provided through a free, decentralised government-run service. Reproductive health services are well integrated into the Government's primary health care system, though political instability in 1987 and 2000 led to the mass migration of health professionals from the government sector. Tuition for primary school education is also free, and there is increasing enrolment in secondary and tertiary education; at the three universities, female students outnumber males.<sup>55, 56</sup> The most significant inequalities concern employment and earnings. Although data are incomplete, many people in Fiji are in receipt of low wages,<sup>57</sup> prompting campaigning for a higher national minimum wage by the Fiji Island Council of Trade unions (FTUC). In 2008, the minimum wage in the garment sector, which has a predominantly female workforce, was just FJ \$1.26 per hour.<sup>56</sup>

## **Politics**

Many of the economic and social difficulties outlined thus far, and specifically those impacting on women in Fiji, have been largely attributed to its political turbulence in recent decades. Fiji became independent in 1970 after nearly a century as a British colony. Long-term tensions between indigenous Fijians (now 52 per cent of the population) and the Indo-Fijian community have partly centred around concern that government has been dominated by the Indian community. Competing ideologies of indigenous paramountcy and individual equality contributed to military coups in 1987, 2000 and 2006. The latter was led by Commodore Vorege Bainimarama who in January 2007 became interim prime minister.<sup>58</sup> The coups and a 1990 constitution that cemented native Melanesian control of Fiji led to heavy Indian emigration. This population loss resulted in economic difficulties which have been reinforced by international isolation and an over-reliance on the agricultural sector which has exacerbated Fiji's exposure to the economic impacts of natural disasters.

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These developments have strained Fiji's international relations and hurt business confidence and investment. It was suspended from the Commonwealth and the Pacific Forum, and the latest coup led to tense relations with donor countries like NZ and Australia. The economy contracted by 2.5 per cent in 2009 and is expected to contract further in 2010, with exports down 30 per cent from 2009. The global economic crisis reduced exports and income from tourism and overseas remittances. Further problems arose from floods in 2009 which damaged crops and the tourist infrastructure. As a result, the currency was devalued by 20 per cent in April 2009 to stem the loss of foreign exchange reserves.<sup>59</sup> The Reserve Bank of Fiji (RBF) also intensified exchange controls, including dividend payments to foreign companies. Overall, the outlook remains highly uncertain due to ongoing political uncertainty, volatile commodity prices, the risk of natural disasters, and a complex structural reform agenda. As Prasad (2010) argues, the unhealthy economic situation is unlikely to provide sustainable employment and will further disadvantage women in the workplace.<sup>60</sup> However, as we explore below, the government reported a number of initiatives to help reconstruct social dialogue and equality policy at the UN CEDAW General Assembly in July 2010, though the CEDAW Committee expressed reservations over implementation.<sup>61</sup>

## 2.4 Summary

Australia and NZ are developed and relatively prosperous countries that perform well on many equality and life satisfaction measures. Women remain over-represented in certain sectors and occupations, however, and also face vertical segregation, with implications for the gender pay gap. Women also face a greater burden on average in terms of domestic unpaid labour. Fiji is a relatively poor country where women face greater problems in accessing the labour market and remain concentrated in vulnerable employment. It has had a much more adverse experience of the global financial crisis, which has also hit women especially hard.

Both Australia and NZ have a long history of immigration, principally from Europe but also increasingly from Asia. Higher living standards and greater employment opportunities in Australia present a problem to NZ's ability to retain skilled workers. Despite a culture of egalitarianism in both countries, income inequality is relatively high, reflecting their liberal-market or 'Anglo-Saxon' traditions. NZ is especially sensitive to ethnic relations given its historic settlement with the Māori population, which remains politically relevant. In Fiji, conflict between the indigenous and Indian communities has contributed to recent military coups which have added to economic instability. The current regime has pledged to introduce a number of progressive reforms around equality and social dialogue but doubts remain about their implementation and effectiveness. State approaches to the labour market and industrial relations have also oscillated in Australia and NZ; radical deregulation in the 1980s and 1990s was followed by some re-introduction of trade union rights though these are to some extent currently under challenge in NZ.

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### 3. Legal and institutional frameworks for social dialogue and gender equality

#### 3.1 State of ratifications of relevant international UN and ILO instruments

Gender equality is an essential part of the UN's Universal Declaration of Human Rights (UDHR) of 1948. Article 23 states that 'everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment'. It also states that 'everyone, without any discrimination, has the right to equal pay for equal work'. The UN General Assembly reiterated in 2000 that one of the more powerful forces for sustainable growth and development, good governance, and the reduction of poverty, is gender equality and the empowerment of women.

**NZ** and **Australia** have ratified the relevant international UN instruments in respect of general human rights that most other countries have endorsed, whilst **Fiji** has ratified some of the core instruments (Table 5). Each of the three nations has ratified the CEDAW 1979 which not only defines what constitutes discrimination against women, but sets up international and national agenda for action to end it. Article 11 requires States to ensure that women have the right to the same employment opportunities, free choice of profession, the right to promotion, job security and training, and the right to equal remuneration in respect of work of equal value, amongst other employment benefits. Countries which ratify CEDAW are 'legally bound to put its provisions into practice, and are also committed to submit national reports, at least every four years' on the progress made in the relevant areas. Most countries have responded to CEDAW's international obligations with relevant legal and policy initiatives, designated national focal points for gender policies, and developed national action plans to implement the Beijing Plan of Action.<sup>62</sup> Further, NZ has ratified, and Australia acceded to, the CEDAW optional protocol which allows individuals to bring a complaint directly to the CEDAW Committee for it to investigate claims of serious violations, after domestic remedies have been exhausted. In contrast, in its July 2010 report to the CEDAW, Amnesty International (AI) stated that Fiji's government had failed to meet its obligations under the Convention.<sup>63</sup>

**Table 5.**  
**State of ratifications of international UN instruments by NZ, Australia and Fiji**

|                                             | UN instrument            |              |          |              |              |             |              |             |               |              |              |
|---------------------------------------------|--------------------------|--------------|----------|--------------|--------------|-------------|--------------|-------------|---------------|--------------|--------------|
| Country                                     | MWC<br>2003 <sup>1</sup> | CCPR<br>1976 | CCPR OP1 | ESCR<br>1976 | CERD<br>1969 | CRC<br>1989 | CSTP<br>1951 | CAT<br>1987 | CEDAW<br>1981 | CEDAW OP     | CPRW<br>1952 |
| NZ                                          |                          | 1979-R       | 1989-A   | 1979-R       | 1972-R       | 1993-R      |              | 1990-R*     | 1985-R        | 2000-R       | 1968-A       |
| Australia                                   |                          | 1980-R       | 1991-A   | 1976-R       | 1975-R*      | 1991-R      |              | 1989-R*     | 1983-R        | 2008-A       | 1974-A       |
| Fiji                                        |                          |              |          |              | 1973-Su      | 1993-R      |              |             | 1995-R        |              | 1972-D       |
| Total no. of<br>countries' state<br>parties | 27                       | 152          | 104      | 149          | 169          | 192         | 74           | 136         | 177           | 81<br>(2003) | 115 (2003)   |

Key: R=ratified; A=Accession; Su=Succession

<sup>1</sup> Entry into force

\* Indicates that the state party has recognised the competence to receive and process individual communications of the CERD under Article 14 or under Article 22 of CAT.

Sources: <sup>64, 65</sup>

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In terms of other relevant instruments itemised in Table 5:

- NZ and Australia have acceded to the Convention on the Political Rights of Women (CPRW) but Fiji has not;
- NZ and Australia, but not Fiji, have ratified the International Covenant on Civil and Political Rights (CCPR) and acceded to its optional protocol;
- NZ has ratified the Convention on the Elimination of All Forms of Racial Discrimination (CERD) whilst Australia and Fiji have done so in a qualified manner;
- Australia and NZ have ratified the International Covenant on Economic, Social and Cultural Rights (ESCR) and given qualified ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) whilst Fiji has done neither;
- all three countries have ratified the UN Convention on the Rights of the Child (CRC);
- none have ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC), entitling them to the same pay, hours, safety considerations, and other workplace conditions that nationals enjoy; and
- none have ratified the Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others (CSTP).

Gender equality is also of fundamental concern to the ILO, both specifically and as part of its commitment to constructive social dialogue. ILO standards regarding women address three key issues:

- the elimination of sex-based discrimination in the employment relationship;
- the balance of work and family responsibilities; and
- the protection of maternity and the health of women in order to promote effective equality.

The Declaration on Equality of Opportunity and Treatment for Women Workers adopted in 1975 sets out principles for international and national action and targets to be achieved. Further, a Resolution and Plan of Action of 1975 of the International Labour Conference laid out more concrete national and international action to be taken, specifically emphasising the importance of ratifying and applying ILO Conventions and Recommendations. The Conference later examined progress achieved in this regard and adopted a new resolution and plan of action in 1985.<sup>66</sup> The ILO Declaration on Fundamental Principles and Rights at Work, adopted in 1998, also contains the principles embodied in the standards on equal remuneration for work of equal value and non-discrimination in the employment relationship.

As with the UN instruments, NZ, Australia and Fiji have tended to ratify the relevant ILO instruments on labour and other standards concerning gender equality that most other countries have endorsed (Table 6). All three have ratified the Right to Organise and Collective Bargaining Convention (No. 98). They have also endorsed the Equal Remuneration Convention (No. 100) (and Recommendation 90) which applies to all workers in all economic sectors and set out principles for national policy on equal remuneration for men and women workers for work of equal value. All three states have ratified the Discrimination (Employment and Occupation) Convention (No. 111) and Recommendation (No. 111) which aim to eliminate discrimination in the employment relationship, including based on sex. All three have also ratified the Tripartite Consultation (International Labour Standards) Convention (No. 144).

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The situation is patchier with respect to other core industrial relations instruments which might have significance for women. Australia and Fiji, but not NZ, have ratified the Freedom of Association and Protection of the Right to Organise Convention (No. 87). However, whilst Fiji has ratified the Right to Organise and Collective Bargaining Convention and the Convention on Freedom of Association and Protection of the Right to Organise, in practice unions face difficulties when organising workers and, like other civic organisations, their freedom of speech has been restricted by the provisional government formed following the 2006 coup.<sup>67</sup> Only Australia has ratified the Workers' Representatives Convention (No. 135) and the Workers with Family Responsibilities Convention (No. 156) which seeks to create equality of opportunity and treatment in employment and occupation between men and women workers with families and those without such responsibilities. The supplementary Recommendation (No. 165) stipulates more detailed policies and appropriate measures regarding vocational training, employment (conditions), and contains additional provisions on family and childcare services as well as social security.

Australia, NZ and Fiji have not endorsed the Labour Relations (Public Service) Convention (No. 151) or the Collective Bargaining Convention (No. 154). Nor have they ratified the Maternity Protection Convention (No. 183) which sets out specific and universal provisions to ensure the health and well-being of a woman and her child during maternity (e.g. by providing health protection at work, maternity leave, social benefits, protection against dismissal and discrimination based on maternity, and breast-feeding breaks. It also provides for 14 weeks of maternity leave, while the Recommendation provides for 18 weeks in certain circumstances). Further, none of the three countries ratify the Night Work Convention (No. 171) which requires alternatives to night work for women before and after childbirth and during pregnancy, if it is deemed necessary to protect the health of the mother or child. The Night Work (Women) Convention (Revised) (No. 89) obliges States to prohibit women from working in industrial undertakings at night. The 1990 Protocol to the Convention permits variations in the duration of night work and exemptions from the prohibition of night work. In addition, the Underground Work (Women) Convention (No. 45), ratified by Fiji, prohibits the employment of women in mines, which exposes them to specific underground work hazards.

**Table 6.**  
**State of ratifications of relevant ILO instruments for women in NZ, Australia and Fiji**

| Country                    | ILO instrument                                                               |                                                           |                                   |                                                           |                                         |                                                                         |                                                  |
|----------------------------|------------------------------------------------------------------------------|-----------------------------------------------------------|-----------------------------------|-----------------------------------------------------------|-----------------------------------------|-------------------------------------------------------------------------|--------------------------------------------------|
|                            | Freedom of Association and Protection of the Right to Organise Convention 87 | Right to Organise and Collective Bargaining Convention 98 | Equal Remuneration Convention 100 | Discrimination (Employment and Occupation) Convention 111 | Workers' Representatives Convention 135 | Tripartite Consultation (International Labour Standards) Convention 144 | Labour Relations (Public Service) Convention 151 |
|                            | 1948 <sup>1</sup>                                                            | 1948                                                      | 1951 <sup>1</sup>                 | 1958                                                      | 1948                                    | 1976                                                                    | 1978                                             |
| NZ                         |                                                                              | 2003                                                      | 1983                              | 1983                                                      |                                         | 1998                                                                    |                                                  |
| Australia                  | 1973                                                                         | 1973                                                      | 1974                              | 1973                                                      | 1993                                    | 1979                                                                    |                                                  |
| Fiji                       | 2002                                                                         | 1974                                                      | 2002                              | 2002                                                      |                                         | 1987                                                                    |                                                  |
| Total no. of ratifications | 150                                                                          | 160                                                       | 168                               | 169                                                       | 83                                      | 125                                                                     | 46                                               |

<sup>1</sup> Entry into force

|                            | ILO instrument                       |                                                     |                                     |
|----------------------------|--------------------------------------|-----------------------------------------------------|-------------------------------------|
| Country                    | Collective Bargaining Convention 154 | Workers with Family Responsibilities Convention 156 | Maternity Protection Convention 183 |
|                            | 1981                                 | 1981                                                | 2000                                |
| NZ                         |                                      |                                                     |                                     |
| Australia                  |                                      | 1990                                                |                                     |
| Fiji                       |                                      |                                                     |                                     |
| Total no. of ratifications | 40                                   | 40                                                  | 18                                  |

Source: <sup>68</sup>



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Not shown in Table 6, Fiji ratified the Indigenous and Native People's Convention (No. 169) in 1998 while NZ and Australia have not. This convention stipulates that indigenous men and women shall enjoy equal opportunities and equal treatment in employment, and protection from sexual harassment. And only Fiji has endorsed the Minimum Age Convention (No. 138). All three countries have ratified the Worst Forms of Child Labour Convention (No. 182) – meaning that Fiji has ratified both core conventions on child labour – but there are important shortcomings in current law, with the Fijian government needing to strengthen legal protection from hazardous work for children and young persons.<sup>68</sup> Under current legislation, children under age 12 may not be employed except in a family-owned business or agricultural enterprise, and children between 12 and 15 years may be employed on a daily wage basis in non-industrial work not involving machinery, provided they return to parents or guardian every night. This is not in conformity with ILO Conventions. Finally, all three nations have ratified both conventions on forced labour. Although forced or compulsory labour is not considered to be a widespread phenomenon in Australia and NZ, there is some concern in Fiji about human trafficking.<sup>68</sup>

## **3.2 National legal frameworks for social dialogue and gender equality at work**

### **3.2.1 NZ legislative framework**

In NZ, the *Human Rights Act 1993* provides a general framework for the protection of human rights in general accordance with the UN covenants and conventions of human rights. The Act prohibits discrimination in employment matters, the provision of goods and services, and access to places, vehicles and facilities on 13 grounds including sex, pregnancy, childbirth, sexual orientation, race, marital status, family status and disability.<sup>69, 70</sup> For example, women are protected against sexual harassment in the workplace under this Act and the *ERA 2000*. Under the latter, if an employee believes they have been unjustifiably dismissed because he or she has made a complaint of sexual harassment, he or she may take a personal grievance against their employer. If the personal grievance is upheld, remedies may include reinstatement and financial compensation.<sup>71, 72</sup> The Human Rights Commission (HRC) is the NZ State agency which plays a central role in promoting and protecting human rights under the 1993 Act, including offering advice and support to potentially disadvantaged individuals and groups.

With respect to labour law, the first gender equality provisions date back to the *Government Service Equal Pay Act 1960*, with equal pay provisions extended to the private sector in 1972. The *Equal Pay Act 1972* requires employers to introduce salary and wage classifications based on work performed in which there is no differentiation based on sex, but which allows differentiation in terms of skill, effort, responsibility and working conditions.<sup>73</sup> The penultimate Labour Government also introduced the *Pay and Employment Equity Act 1990*, NZ's only legislation to embrace both pay equity and employment equity aims. However, six months after its introduction, the Act was repealed by the incoming National government<sup>73</sup> although unions representing large numbers of women members had already managed to lodge 10 pay equity claims under the Act with the Employment Equity Commission.<sup>74</sup>

The *Equal Pay Act 1972*, *Human Rights Act 1993* and *ERA 2000* only provide complaints processes for individual employees who have evidence of discrimination on the grounds of sex. There is currently no legal provision to assist women and their unions to raise, investigate or negotiate equal pay for work of equal value in different jobs or occupations requiring similar levels of skill, qualifications, responsibility and effort. Nor do the extant laws put the onus on employers to assess or demonstrate equitable employment or pay. In 2008, the ILO Committee of Experts on the Application of

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Conventions and Recommendations (CEACR) urged the NZ government to consider amending its equal pay legislation to address pay discrimination that occurs in situations where men and women perform different work of equal value.<sup>75</sup>

Current government policy means there is no direct State support for equity reviews and other pay and employment equity (PaEE) processes. The PaEE review process, established in 2005 under the Labour-led administration, involved job evaluation and gender equity assessment of female-dominated occupations, but was terminated by the current Government in 2009 partly because of recession. The Department of Labour's (DoL) PaEE Unit was disestablished in June 2009 and there has been a lack of commitment to implementing the PaEE reviews in the core public health and education sectors. This was arguably not only in breach of NZ's obligations under CEDAW but also its obligations under the ratified core ILO conventions No. 100 (Equal Remuneration) and No. 111 (EEO) and the UN UDHR. The Unit's closure directly removed the support required for the implementation of response plans, advice, training, resources, more reviews and continuing the next phase of the Action Plan.

However, public sector employers are statutorily required to be 'good employers'. The *State-Owned Enterprises Act 1986* obliges each State-owned enterprise (SOE) to be such, taking account of social responsibilities where practicable, and to implement an EEO programme, though this is not defined. The *State Services Act 1988* extends these provisions, recognising the needs of Māori people, women and persons with disabilities and requiring the appointment of an executive who will promote EEO; almost identical provisions were applied to local government following legislation in 1989, though with less onerous reporting requirements.<sup>73</sup>

All women in NZ are guaranteed the right to paid parental leave (PPL) under the *Parental Leave and Employment Protection Act 1987*. If a mother has worked for the same employer for 12 months for an average of 10 hours a week and no less than one hour in every week, and her partner has worked the same hours, the mother is entitled to 10 days of special leave, 14 weeks of PPL and 52 weeks of unpaid parental leave. A mother is entitled to transfer up to 14 weeks of PPL to her partner and the partner is entitled to share the remaining unpaid leave up to a total of 52 weeks.<sup>76</sup> The *Amendment Act 2004* increased the period of paid maternity/paternity leave. It also extended the benefit of paid leave to those parents employed in the same job for at least six months' service and for an average of 10 hours per week. The *Amendment Act 2005* clarifies the eligibility of a parent under the Act by inserting after the word 'spouses' the words 'or partner'. Before leaving office, the Labour-led government also amended the *ERA 2000* to provide for minimum meal and rest breaks, and for employers to provide, where reasonable and practicable, facilities and breaks for breast feeding. Other relevant legislation includes the *Health and Safety in Employment Act 1992* which provides protection for women against reproductive hazards. The DoL has also given direction, under the health and safety framework, on providing for breastfeeding in the workplace.

On social assistance, women have the same rights as men to receive government benefits, including the Unemployment Benefit, Domestic Purposes Benefit and NZ superannuation. The *Domestic Purposes Benefit* was introduced in 1973 for all parents caring for dependent children without the support of a partner; around 91 per cent of those in receipt of this benefit are female.<sup>77</sup> There are also two benefits that are only available to women. The Widow Benefit is available to some women whose husband or partner has died, and the Domestic Purposes Benefit: Women Alone is available to some single women aged over 50 years. People who are not eligible for these benefits may apply for the Emergency Benefit if they experience hardship,<sup>78</sup> The *Accident Compensation Amendment Act 1993* extends compensation to non-earners, particularly benefiting women who perform full-time, unpaid work in the home. Finally, since 1 April 2010, NZ's national minimum wage for employees aged 16 years and over has been NZ \$12.75 an hour before tax<sup>79</sup> and the training wage NZ \$10.20 an hour before tax. Minimum wages particularly favour the disproportionately large number of women in low-paid work.

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Less formal initiatives with the potential to progress gender equality include the recent establishment of the NZ Global Women Network, a not-for-profit organisation whose members comprise accomplished women leaders from various disciplines, government agencies and industries. The network aims to expand the national and international impact of women leaders, develop and assure leadership opportunities for qualified women, and mentor and shape emerging leaders.<sup>80</sup> The EEO Trust has also been pivotal in encouraging social dialogue on gender equality matters.

### 3.2.2 Australia's legislative framework

In **Australia**, similar to NZ, there have been three main regulatory approaches to advancing gender equality at work: via specific anti-discrimination legislation, the prohibition of sex and other forms of discrimination in industrial relations legislation, and voluntary affirmative action.<sup>81</sup> Australia also has well-established institutional support through the Human Rights and Equal Opportunity Commission (now the *Australian Human Rights Commission (AHRC)*), an independent statutory body established under the *Human Rights Commission Act 1986*. Amongst other matters, the AHRC addresses sex discrimination and has a Sex Discrimination Commissioner.<sup>82</sup> As well as State organisations and departments which deal with women's affairs, the Commonwealth, State, Territory and NZ Ministers' Conference on the Status of Women (MINCO) has an international remit and meets annually. Its objectives are to:

- provide a Commonwealth/State mechanism for the coordination and development of policies which affect the status of women, especially on those issues which cross Commonwealth/State, Territory and NZ borders;
- facilitate action on matters of mutual concern; and
- refer and/or present agreed issues and strategies to other Ministerial groupings.<sup>83</sup>

In law, the *Sex Discrimination Act 1984* gives effect to Australia's obligations under the CEDAW and certain aspects of the Workers with Family Responsibilities Convention (No. 156) (Section 3.1). Further, individuals can lodge complaints of sex discrimination and sexual harassment with the AHRC. The Act uses a conception of gender equality that emphasises EO for women measured in terms of 'less favourable' treatment where women and men are similarly situated. The *Equal Opportunity for Women in the Workplace Act 1999* (EOWW Act, which replaced the *Affirmative Action Act 1986*) also seeks to:

- promote the principle that employment for women should be dealt with on the basis of merit;
- promote the elimination of direct and indirect discrimination, and the provision of EEO for women in relation to employment matters among employers; and
- foster workplace consultation between employers on EO concerns for women in employment.<sup>84</sup>

The Equal Opportunity for Women in the Workplace Agency (EOWA), part of the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), administers this statute.<sup>85</sup> Another body, the Office for Women (OfW) advises on legislative issues related to women, runs programmes including those to combat domestic violence and sexual assault, coordinates consultation between the women's sector and government, and represents government at national and international fora on women's issues.<sup>86, 87</sup>

A recent legislative change (for which the Australian union movement strongly campaigned) is the *Fair Work Act 2009* (Section 2). On gender pay equality, the new law improves the equal remuneration provisions contained in the former *Workplace Relations Act 1996* by removing the requirement for a comparator and the need to show that discrimination had caused the gender pay gap; this followed a 2009 report by the Employment and Workplace Relations (EWR) Committee on women's pay which made 63

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legislative and administrative recommendations to reduce pay inequity.<sup>88</sup> The *Act 2009* also provides for a low pay, multi-employer bargaining stream which could be of disproportionate significance to women who form the bulk of the low paid in Australia and typically fall outside of collective bargaining arrangements.<sup>89</sup> This unique provision is designed to break ‘the cycle of no bargaining’.<sup>45</sup> The Act also includes provisions on a new collective bargaining framework and 10 National Employment Standards (NES) or minimum standards. In combination with the modern awards, the NES form a minimum safety net for employees. This is not the first time that Australia has had direct legislation of minimum standards, but the NES reflects a significant move from indirect arbitral traditions of industrial regulation.<sup>34</sup> Certain NES look likely to have particular benefits for working women (Section 6.4).

Australia’s first *Paid Parental Leave (PPL)* legislation followed 30 years of campaigning, particularly by unions and women’s groups<sup>90</sup> – the government committed to PPL in its May 2009 budget, based on the Australian Productivity Commission’s recommendations.<sup>91</sup> The legislation was passed on 17 June and will provide 18 weeks’ government-funded parental leave pay at the national minimum wage for eligible parents of children born or adopted on or after 1 January 2011. To be eligible, the primary carer must be in paid work and have been engaged in work continuously for at least 10 of the 13 months prior to the expected birth or adoption of a child; and to have undertaken at least 330 hours’ paid work in the 10 month period (an average of around one day of paid work per week).

### **3.2.3 Fiji’s legislative framework**

In **Fiji**, the legal and institutional framework is partly shaped by its status as a former British Colony, though complicated by various ethnic and clan rights. In particular, in 1909, the British Government established the basic structure for land ownership and administration which continues to this day; 87 per cent of the land is owned by indigenous Fijians under collective ownership of traditional clans. Colonial governments also attempted to incorporate traditional forms of authority and established the Great Council of Chiefs whose legal powers have varied over the years and under different constitutional arrangements. Also villages and districts, as well as extended family networks with their own chiefs and councils, have enjoyed different legal powers.

Generally, a woman’s status in Fiji is closely dependent on her ethnic heritage and family position as well as the law. From the late 1960s a number of NGOs such as the YWCA also actively promoted women’s rights as part of wider social movements which saw the move towards independence, protests against nuclear testing in the Pacific and the founding of the University of the South Pacific. In 1998, Fiji established an Inter-Ministerial Committee on Women, and an EEO Policy was initiated by the Public Services Commission in 1989. The Policy provides guidelines and benchmarks from which the various ministries and departments are expected to formulate their own EEO policies. However, since then, the political situation following each coup has made participation in the political process difficult, especially for those advocating institutional and legal change to improve the status of women. Campaigns continue, via groups such as the YWCA, femLINK Pacific, Fiji Women’s Rights Movement (FWRM) and Fiji Women’s Crisis Centre (FWCC), but the effectiveness of women’s voice has diminished.<sup>92, 93, 94</sup>

More generally, although Fiji ratified the CEDAW in 1995, progress was set-back by the attempted coup in 2000 and ensuing political instability. Following the coup in 2009, the country’s 1997 *Constitution* was abrogated and the judiciary dismissed. Chapter 5 of the 1997 Constitution addressed ‘social justice and affirmative action’ and specifically ordered Parliament to legislate for programmes or special measures for groups of persons ‘who are disadvantaged’, for example, with regard to access to education and training, land and housing and participation in commerce and service of the State (Section 44(1)). Subsection (6) ensured a results-based approach by requiring monitoring by reference to specified performance indicators, with the Minister required to make an annual report to

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Parliament on these the findings.<sup>95</sup> Further, Section 42 established a three-member Human Rights Commission (HRC), further defined by the *Human Rights Commission Act 1999*. The Act lists the various areas related to employment where direct or indirect adverse discrimination or harassment is banned. Part 3 contains provisions regarding unfair discrimination in employment accreditation, training, the provision of goods, services or facilities, public access, land, housing or other accommodation and education. It also prohibits sexual harassment, discrimination in employment applications, and victimisation of persons because of their actions on behalf of their rights under the Bill of Rights. The HRC is empowered to investigate alleged contraventions of human rights and unfair discrimination, of its own volition or on complaint, and to resolve complaints by conciliation or refer unresolved complaints to the courts.<sup>95</sup>

The *Social Justice Act, No. 5 of 2001*, also aims to implement the social justice provisions of the Constitution by establishing programmes of affirmative action. These are ‘(s)tate policies to assist groups or categories of persons who are disadvantaged, so as to enable them to achieve equality of access with groups or categories who are not disadvantaged’. Any programme or measure relating to access to land and housing is not to be construed as providing equality of access to any existing rights, interest or entitlement to ownership of land. The Act repeats the Constitution’s monitoring provisions. Section 8 declares that all affirmative action programmes listed in the Schedule to the Act as existing at its commencement, are deemed to be in compliance with the Constitution.<sup>95</sup>

Of major significance for industrial relations was the comprehensive *Employment Relations Promulgation* which was adopted in 2007 following a tripartite consultation process.<sup>95</sup> All workers are covered by the Promulgation except the uniformed services, and it requires that all employment relationships be covered by written contracts. In line with Fiji’s ratification of the ILO conventions on Equal Remuneration and Discrimination (Employment and Occupation), the *Promulgation* provides that ‘every employer shall pay male and female workers equal remuneration for work of equal value’. Part 9 further provides for EO in employment by:

- prohibiting discrimination on particular grounds of actual or supposed personal characteristics or circumstances;
- ensuring equal rates of remuneration for work of equal value for all workers; and
- specifying lawful discrimination.<sup>96</sup>

Section 78 provides that ‘an employer must not refuse or omit to offer or afford a person the same rates of remuneration as are made for persons of the same or substantially similar qualifications employed in the same or substantially similar circumstances on work of that description for any reason including the gender of that person’. However, according to the ILO CEACR, the concept of ‘work of equal value’ includes but goes beyond equal remuneration for equal, same or similar work, and should also encompass work that is of an entirely different nature, which is nevertheless of equal value. It asked the Fijian government to amend Section 78 so as to bring it into conformity with the equal remuneration Convention.<sup>68</sup>

The *Promulgation* also defines discrimination to include both direct and indirect discrimination, and Section 75 lists 18 grounds including gender, ethnic origin, age, disability, HIV/AIDS and sexual orientation. Section 76 further requires employers to develop and maintain a policy to prevent sexual harassment in the workplace. It addresses sexual harassment by the employer or its representative, as well as by co-workers and covers both *quid pro quo* and hostile environment harassment. A National Policy on Sexual Harassment has been developed by the Employment Relations Advisory Board (ERAB) under the Promulgation and is one of its accompanying laws.<sup>68</sup> Section 8 created the tripartite ERAB, and empowers it, among other things, to prescribe certain conditions for employment.<sup>95</sup> Part 20 created the Employment Relations Tribunal and Employment Relations Court (ERC), which are available for compulsory arbitration.

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Finally, Part 11 seeks to ensure that women are not disadvantaged when taking maternity leave. A working woman who is expecting is entitled to maternity leave can abstain from work for a period of 84 consecutive days, subject to providing her employer with a certificate from a registered medical practitioner or nurse specifying the possible date-of-birth. A woman is entitled to paid maternity leave for the first three births to her normal level of remuneration; and for the fourth and subsequent births to half the normal remuneration she would have received at work. If, during the three months immediately before the birth of her child, a woman was employed for a period of or periods totalling not less than 150 days during the nine months before the birth of her child, she is entitled to paid maternity leave. If there is more than one employer from whom the woman would be entitled to claim wages under this section, the Permanent Secretary, labour officer or labour inspector must determine the amount of wages that must be paid by each employer. A woman who returns to her employment after maternity leave must be appointed to the same or equivalent position held prior to taking maternity leave, without any loss of salary, wages, benefits and seniority; or may be appointed to a higher position.<sup>97</sup> No woman must be terminated from employment on the ground of pregnancy. If, after three months from the expiration of her maternity leave, a woman remains absent from work, as a result of illness arising out of her pregnancy or the birth of her child rendering her unfit for work, her employer may give her notice of termination.

Other gender-relevant law includes the *Public Service Act 1999* which requires the public service to provide an environment that is free from discrimination, and the *Training and Productivity Authority of Fiji Act 2002* which re-established the Fiji National Training Council as the tripartite Training and Productivity Authority of Fiji (TPAF). The *Wages Regulation Order 2009* was also said to have helped boost minimum wages by 20 per cent. Further, the Fijian representative to the UN CSW recently reported that the government was working towards gender equality in employment, as well as pay equity, maternity leave, policies on sexual harassment in workplace and provisions for domestic workers to receive maternity and sick leave.<sup>56</sup>

Whilst the *Promulgation 2007* has brought about a commitment to much fairer employment practices, the Government has acknowledged that it needs to work harder to strengthen its laws and regulatory frameworks. According to its delegation at the UN General Assembly of the CEDAW on 14 July 2010, Fiji was also working with a series of newly-established decrees (including the Domestic Violence Decree, the HRC Decree (which provides for the creation of the HRC and for investigating complaints, and prohibits unlawful discrimination based on gender), the Crimes Decree, the Criminal Procedure Decree and the proposed promulgation of the HIV and STIs Prevention, Care and Support Decree 2010)<sup>61</sup> to ensure that women's rights are protected. However, the CEDAW Committee noted that the Government had failed to report on the implementation or outcomes of the recent Decrees.<sup>61</sup> It also voiced concern about human trafficking, the lack of health-care facilities for rural women and victims of sexual violence, women's insufficient access to credit, and the pervasiveness of patriarchal attitudes that produced a bias against women in Fiji, as well as the application and enforcement of existing regulations. The Minister for Social Welfare, Women and Poverty Alleviation (Dr Jiko Luvini) admitted there are shortcomings with regard to Fiji's international obligations, and acknowledged that the country had work to do to expand the advancement of women. Referring to the abrogation, the government also said it had not removed the right to gender equality or the right of ordinary persons to challenge discrimination before the Fiji HRC and the High Court. However, the Cabinet had deferred the ratification of the CEDAW Optional Protocol in April 2009 in order to enable Fiji, during this time of reform, to focus on strengthening its laws and institutions that allow complaints of unfair discrimination within its borders.

Another reported development since then has been the re-establishment of an independent judiciary, and workshops to train the judiciary, prosecutors, police and legal aid lawyers on the extent of the laws, to empower judges to enforce human rights laws, and

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to ‘implement them in a gender-sensitive way’ to help apply the Domestic Violence Decree. Further, the Government intended to ratify all outside human rights treaties within a 10-year period.<sup>61</sup>

### **3.2 Instruments in charge of individual and collective disputes resolution**

In **NZ**, the court of final appeal is the Supreme Court which sits in the capital, Wellington. Beneath this sit the Court of Appeal, the High Court and District Courts. There are also a number of specialist courts and tribunals, including the Employment Court and Employment Relations Authority (ERA). In terms of employment law, the *ERA 2000* (Part 9) encourages self-resolution (a form of local ‘social dialogue’) as the first step to resolve an employment dispute. The next stage is to involve a Labour Inspector, who can investigate some employment problems relating to minimum employment rights, or to make recourse to the DoL’s free mediation service. The Act promotes mediation as the primary problem-solving mechanism when employment relationship problems occur. The majority of matters that come to the mediation services are personal grievances, where the employment relationship has effectively ended.<sup>71</sup>

If the problem cannot be fully resolved the parties can apply to the ERA for a decision. Set up under the *ERA 2000*, the Authority is an investigative body which makes its decision on the merits of the matter, rather than on technicalities. It may direct the parties to mediation at any point in its investigation. It can also issue a determination. For all new ERA applications, there is a fee of NZ \$70. Should a matter be referred to a hearing, the first day is free. Subsequent days are charged at NZ \$150 per half day and NZ \$300 per full day. This, and the prospect of court costs if the dispute remains unresolved, may be relatively more significant for women employees who constitute the bulk of those in low-paid jobs and without union representation.

If the matter is still unresolved, the dispute process may then involve specialised and ordinary courts. The parties can challenge an ERA determination in, or the ERA can choose to refer matters to, the Employment Court. The latter situation might arise if there are highly technical legal issues or questions of law, especially if they may be of general significance. The Court can give opinions on the issues of law and refer the matter back to the ERA, or it can also make a judgement. The parties to the dispute can opt to appeal this judgement in the Court of Appeal. A further appeal on questions of law may be taken to the Supreme Court. After delivering a judgement, the Court of Appeal or the Supreme Court may direct the matter back to the Employment Court to deal with ‘lower level’ or factual issues.<sup>72</sup> In the case of individual disputes (e.g. a personal grievance), the primary remedy is reinstatement which takes effect immediately, though this is often not a practical option. Other remedies include reimbursement and recommendations from the ERA to an employer to prevent similar problems from recurring.<sup>71</sup>

Employers and union representatives reportedly regard the principles of dispute resolution under the Act positively.<sup>97</sup> However, the effectiveness of mediation was widely considered to depend on the skills and experience of the mediator involved, and views are mixed on the impact of mediation on collective bargaining outcomes. Since the Act, few of the cases heard by the ERA (and even fewer in the Employment Court) have related to collective bargaining issues. It is not known to what extent this reflects better dispute resolution at lower levels, an unwillingness to engage with these agencies or a preference for other means of dispute resolution particularly on the part of unions. Employer and union representatives’ views of their experience with the ERA vary but the cost and length of time it takes to get a decision and the quality of the Court’s decisions are often criticized.<sup>97</sup>

In **Australia**, Fair Work Australia (FWA) is the national workplace relations tribunal. It is an independent body which can carry out a range of functions relating to minimum

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wages and employment conditions; enterprise bargaining; industrial action; dispute resolution; termination of employment and other workplace matters. FWA commenced in July 2009, replacing the Australian Industrial Relations Commission (AIRC), the Australian Fair Pay Commission (AFPC) and the Workplace Authority. It can assist in resolving disputes involving employers, employees, unions and employer associations who are covered by the national workplace relations system. The main types of disputes that can be referred to FWA are: i) disputes under the terms of an award or a collective or enterprise agreement; ii) bargaining disputes; and iii) disputes arising under the general protections provisions of the *Fair Work Act 2009*.<sup>98, 99</sup> FWA first attempts to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation. If it cannot, it may then arbitrate the dispute and make a determination that is binding on the parties.<sup>100</sup> Otherwise, if the dispute remains unresolved, the applicant can apply to a court to deal with the matter. The FWA also plays a role in ensuring that the collective bargaining process, and any associated industrial action, occurs according to law. Bargaining representatives of employees wishing to take industrial action to support their claims must first seek an order from FWA for a protected action ballot authorising the industrial action. The tribunal has the power to suspend or terminate protected industrial action. It may also make legally-enforceable orders to stop or prevent unprotected industrial action.<sup>101</sup>

In **Fiji**, the formal court system is similar to NZ. There are four levels: the High Court is Fiji's court of originating jurisdiction, with a right of appeal available to the Court of Appeal and a further right of appeal available, with special leave, to the Supreme Court. Less serious criminal matters and certain civil matters are dealt with by the Magistrates Court.<sup>102</sup> Like the other two countries, the court system is shaped by the English common law and adversarial traditions, and supplemented by a number of specialist courts and tribunals. These include the Tax Tribunal, the Employment Tribunal (established under the *Promulgation 2007* to resolve employment disputes), and the Sugar Industry, Agricultural, and Small Claims tribunals.<sup>102</sup>

The *Promulgation 2007* (Part 17) deals with employment disputes. A dispute may be reported to the Permanent Secretary by an employer or registered union who is party to the dispute. The Permanent Secretary can accept or reject this reported dispute, and must give reasons for rejection. If accepted, the Secretary must either refer the dispute to the Employment Tribunal if the dispute relates to interpretation, application or operation of an employment contract, or in any other case, refer it to the Mediation Service. This service was established under Section 193, Part 20 of the *Promulgation* and is the primary conflict-resolution institution at the national level which must first be exhausted by the disputing or aggrieved parties before the secondary institutions of the Employment Relations Tribunal or ERC can be activated. As in NZ and Australia, in this manner, the Mediation Service is basically the continuation of the dialogue between the parties at the enterprise level, consistent with the duty and principles of good faith under the *Promulgation 2007* and the *Code of Good Faith for Collective Bargaining 2008*.<sup>103</sup> The engagement of the Mediation Service is voluntary and provides disputing parties with the chance to resolve disputes themselves. It is also the first stage for all employment-related problems and all reasonable attempts are made by mediators to resolve the disputes and grievances under the good faith obligation. Any decision agreed to by the parties and endorsed by the Mediator is final and binding.<sup>103</sup>

If employment disputes or grievances are not resolved at the Mediation Service, the Tribunal assists the parties by adjudicating and determining any grievance or dispute between them. The Tribunal must make its decision on a matter referred to it, and this decision may have retrospective effect. The Tribunal strives to settle disputes amicably and culminating in a written and binding award or decision. In adjudication proceedings, there is also a requirement on the Tribunal to provide mediation assistance to the disputing parties when the need arises. If the Permanent Secretary rejects a dispute, the aggrieved



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party may appeal to the Tribunal. Any party aggrieved by a Tribunal decision may appeal to the Employment Court.

The Employment Relations Tribunal was established under Section 202 of the Promulgation 2007 and its jurisdiction is much wider than that of the former Arbitration Tribunal.<sup>103</sup> The ERC was also established under the Promulgation as a division of the High Court. Similar to the High Court, it has a very wide jurisdiction to hear and determine aspects of law relating to employment matters including appeals, offences, all actions for the recovery of penalties, compliance orders and other functions or powers conferred on it by the Promulgation or any other written law. Any appeal from this Court is directed to the Court of Appeal.<sup>103</sup>

In the complicated setting of a recently abrogated Constitution and with the judiciary dismissed, two female judges and an indigenous Fijian sat for the first time to sit on the Court of Appeal in 2008,<sup>104</sup> responding to Section 134 of the Constitution which requires the judiciary to be of the highest quality and represent ethnic and gender balance.<sup>103</sup> The appointments were criticised by Fijian women's organisations as they were made by the interim regime.<sup>105</sup> In its July 2010 CEDAW report, the Government reported that the Administration of Justice Decree had re-established the judiciary and its functions, and training was being given, among other matters, to empower the judges to enforce human rights laws, and encourage gender-sensitivity in implementing the Domestic Violence Decree. However, AI has alleged that the continuing and increasing use of extra-judicial forms of settlement (such as seeking traditional forgiveness or 'bulubulu') in cases of violence against women resulted in perpetrators receiving minimal punishment.<sup>63</sup>

### **3.4 Summary**

Formal legal entitlements and mechanisms of adjudication and enforcement bear certain similarities in the three countries. Each has ratified the principal ILO and UN standards concerning sex equality and anti-discrimination and, to a lesser extent, those relating to industrial relations and collective bargaining. This has translated into a series of national statutes and regulations covering equality of opportunity and treatment. There are also similarities between the countries in that they employ a multi-level legal system involving specialist tribunals as well as ultimate recourse to the mainstream courts, and that arrangements in each country place a strong emphasis on mediation.

## **4. Key social partners**

### **4.1 Key social partners and their approaches to gender equality**

Relevant actors in the three countries include government agencies, employer and professional groups and employee representative groups plus a variety of 'think tanks' and other policy bodies, and voluntary organisations and coalitions. Size is a factor in the array and complexity of such representation, reinforced in the case of Australia by multiple tiers of governance under its federal system, plus recent industrial relations reforms. Table 7 overviews key mechanisms in each country.

**Table 7.**  
**Key social partners engaged in social dialogue on gender equality**  
**in NZ, Australia and Fiji**

| <b>Social partner</b>                                          | <b>NZ</b>                                                                                                                                                                        | <b>Australia</b>                                                                                                                                                                                                                         | <b>Fiji</b>                                                                                                                                                                                                                                                                        |
|----------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Government agencies, commissions and centres                   | DoL, MWA, Ministry of Social Development (MSD), Ministry of Economic Development, Families Commission, DoL Partnership Resource Centre (PRC)                                     | DEERW, FWA, the Fair Work Ombudsman (sic), House of Representatives Standing Committee of EWR, EOWA, OfW, MINCO, AHRC                                                                                                                    | Ministry of Labour, Industrial Relations and Employment; Ministry for Social Welfare, Women and Poverty Alleviation; Department for Women; Labour Policy and Productivity Service; Labour Compliance Service, 10 tripartite Wages Councils, ERAB, HRC, FWRM                        |
| Employer and professional groups                               | Business NZ, Employers and Manufacturers' Association (EMA), Institute of Directors in NZ (IOD), Human Resources Institute of NZ (HRINZ)                                         | Australian Industry Group (AiGroup), Business Council of Australia (BCA), Australian Chamber of Commerce and Industry (ACCI), Australian Federation of Employers and Industries (AFEI), Australian Institute of Company Directors (AICD) | Fiji Employers' Federation (FEF)                                                                                                                                                                                                                                                   |
| Employee representative groups                                 | CTU, Public Services Association (PSA), Engineering, Printing and Manufacturing Union (EPMU)                                                                                     | Australian Council of Trade Unions (ACTU), Australian Workers' Union, National Union of Workers (NUW), Australian Manufacturing Workers' Union (AMWU), Transport Workers' Union (TWU), Australian Services Union (ASU)                   | FTUC, Fiji Islands Council of Trade Unions (FICTU), Fiji Public Service Association, Fiji Teachers' Union, Fiji Sugar and General Workers' Union, National Union of Hospitality, Catering and Tourism Industries Employees, National Union of Factory and Commercial Workers Union |
| Think tanks and policy bodies                                  | Centre for Strategic Studies, Institute of Policy Studies (IPS), NZ Institute of Economic Research (NZIER), National Advisory Council for the Employment of Women (NACEW), BRT   | Australian National University Centre for Economic Policy Research, the Australia Institute, National Centre for Social and Economic Modelling (NATSEM) at Canberra University                                                           |                                                                                                                                                                                                                                                                                    |
| Voluntary organisations, women's groups, and charitable trusts | National Council of Women (NCW), Māori Women's Welfare League, Rural Women NZ, Pacifica, NZ Federation of Business and Professional Women (BPW), NZ Federation of Graduate Women | National Foundation for Australian Women (NFAW), Australian Centre for Leadership for Women, Women's Electoral Lobby, Australian Women's Coalition, National Rural Women's Network, Womenspeak                                           | FWRM, Fiji Women's Federation, National Council of Women, FWCC, women's centres                                                                                                                                                                                                    |
| Coalitions                                                     | Pay Equity Coalition which includes women's groups, trade unions, BPW, Working Women's Resource Centre, Coalition for Equal Value and Equal Pay (CEVEP) and CTU <sup>119</sup>   | Equal Pay Alliance, National Pay Equity Coalition                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                    |

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As well as variety in the number of organisations, there are also differences in the scope and depth of their activity around gender equality and the degree to which they may collaborate. In NZ, Business New Zealand (formerly the Employers' Federation) is the most representative organisation of employers. It contributes to tripartite working parties and international bodies and debate. It was a lead advocate at the 2009 International Labour Conference (ILC) discussion on 'Gender equality at the heart of decent work' wherein the ILO framed gender equality along various dimensions in the context of decent work.<sup>106</sup> It also endorsed the conclusions of the ILO Report of the Committee of Gender Equality (2009) on the need for social dialogue and tripartism as essential policy tools to advance gender equality at work, and for increased women's participation in leadership roles in social partner organisations for effective social dialogue.

Business NZ has a central policy-making body with four regional business organisations composed of employers of all sizes. It also has a 54-member Affiliated Industries Group comprising most national trade and industry associations, giving it access to the views of over 76,000 employers and businesses.<sup>107</sup> It has been active in this area for some time, especially in an awareness-raising role. In 1982, as the NZEF, it adopted an EO policy which encouraged 'positive' action to promote EO, avoiding the 'affirmative action' approach then popular in some parts of the US. The Federation established an Advisory Group to assist in the production of guidelines relating to EO policies and programmes, and a Positive Action manual was published in 1985. Guidelines on the employment of people with disabilities followed in 1987, and in 1990 simplified EEO guidelines and a guide on employing people with HIV/AIDS were published. In 1993, with the addition of further prohibited grounds of discrimination added to human rights legislation (Section 3.2), the Federation prepared new employer guidelines on the enlarged HRC Act, incorporating a guide to EEO and its earlier guidelines on employing people with HIV/AIDS. Subsequent amendments have accommodated legislative changes. Further, NZEF guidelines on dealing with sexual harassment (endorsed by the HRC) have been available since 1997 and it has issued a guide to the employment of older employees since 1998.<sup>108</sup> In addition, Business NZ's regional organisations hold seminars and training sessions in which attention is paid to EEO matters. Employers' obligations are spelled out and the benefits of EEO emphasised.

Business NZ also takes part in initiatives aimed at encouraging women's participation in the paid workforce such as helping to organise seminars on employer-assisted childcare; assisting in a study of family-friendly workplace policies; and helping with the Labour-led government's inquiry into WLB and the Government's *Work, family and parenting* study.<sup>108</sup> The employer body has also worked with the union movement on a number of initiatives, such as widening access to workplace-based learning. However, it has also lobbied against certain 'active' initiatives, for example when it opposed the Labour-led government's legislation requiring compulsory EEO policies and pay equity initiatives, introduced towards the end of 1990. However, the organisation and its affiliates report that they advocate a mainstreaming approach to all labour market issues via dialogue and activity with other social partners.<sup>109, 110</sup> Business NZ belongs to and supports the work of lead organisations such as the HRC and the EEO Trust. Like the CTU, it is represented on the NACEW.

The peak union body, the CTU, brings together 350,000 union members in 40 affiliated unions. Like Business NZ, its influence and operations extend to international, national and more local arrangements. It has been party to the implementation of a number of tripartite and social dialogue instruments concerned with gender equality. Internationally, the peak body and affiliates link with the ITUC Women, International Confederation of Free Trade Unions (ICFTU) Women, Public Services International Women, Education International Women, and the Union Network of International Women. Further, alongside Business NZ and the Government, the CTU has engaged with the ILO campaign 'Gender Equality at the Heart of Decent Work'. A case in point is the DoL PRC

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whose team of independent associates help unions and employers build positive relationships and work together in partnership.<sup>111</sup>

Nationally, union representatives on the Ministerial EEO Advisory Group (set up under the Labour-led government in 2001 with the task of advising on the nature and scope of EEO legislation) successfully called for the establishment of an EEO Commissioner within the HRC. The CTU and its affiliates have lobbied government and made formal submissions relating to gender equality initiatives, such as an increased minimum wage (it estimates that of the 91,000 workers for whom the increase in April 2008 to NZ \$12 per hour directly led to a pay rise, 61,000 were women). The CTU has also campaigned around parental leave,<sup>112</sup> and recently made a submission on income-splitting where the tax paid by a couple is calculated based on half of their shared income in recognition of its gendered impacts.<sup>113</sup>

Whilst union revival strategies have only stemmed declining membership and political influence,<sup>114, 115</sup> collective bargaining remains a key mechanism through which unions in NZ seek to influence terms and conditions of employment (Section 6.2.2). The CTU trains union delegates to this end, including dealing with gender issues in the workplace. Unions also campaign around gender equality matters more generally; for instance, several have taken part in the international ‘Unions for Women, Women for Unions Campaign’ which focuses on women working in the informal economy and export processing zones, female migrant workers and young women workers.<sup>116</sup> Unions have also addressed issues around mainstreaming gender equality and democracy via their own internal organisation and via strategies with CTU women’s structures and other social partners.<sup>113, 115, 117</sup>

Other relevant bodies include the EEO Trust which is a not-for-profit organisation funded by Government and private sector contributions as well as membership subscriptions and sponsorship (Section 5.2). The NCW is a more diverse organisation which has increasingly developed a specific interest in employment matters, including parental leave, working hours and WLB policies, and the employment of children. It recently recommended that the Government apply ‘a robust model’ of gender analysis for all policy development,<sup>118</sup> and has commissioned research to support debate and policy development (Section 7.1).

In **Australia**, the AiGroup is a leading business association comprising members of various size employing around 750,000 staff in a wide range of industries. It is affiliated with more than 50 other employer groups in Australia alone and directly manages a number of those organisations. It provides practical information, advice and assistance to help members run their businesses more effectively. Via policy leadership, AiGroup also tries to ensure that members have a voice at all levels of government. It has formal, long-standing links with more than 80 overseas employer organizations.<sup>119</sup>

The ACTU and its 46 affiliates, representing 1.8 million workers, have long been central to campaigns for better employment conditions and worker rights, including those specifically for women. For example, Sharan Burrow, former ACTU President, delivered the keynote address to the first World Women’s Conference, ‘Decent Work, Decent Life for Women’, hosted by the ITUC in 2009. This two-year Global Campaign advocates decent work for women and gender equality in labour policies and agreements. It also seeks gender equality in trade union structures, policies and activities and a significant increase in the number of women union members and women in elected positions.<sup>120</sup> Within Australia, unions have contributed support for a number of legal initiatives including the 1986 *Affirmative Action Act* (EEO for Women), the 1999 *EOWW Act*, and maternity leave provisions (Section 3.2). The ACTU and unions’ role in social dialogue has also been underscored via their submissions to government on gender equality issues (e.g. PPL), and their annual claim for a pay rise for workers through the *Minimum Wages Case*. Like their NZ counterparts, many ACTU unions host women’s networks and structures which also engage with the ACTU Women’s Committee and other relevant organisations and activities.<sup>121, 122</sup>

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The OfW is a key organ of the State for promoting women's rights, mainly at national and international levels. It is part of the FaHCSIA which in turn aims to help advance women through programmes, services and funding, and is charged with engaging with women's organisations, international women's day, and increasing women's leadership and representation opportunities. On international matters affecting women, the OfW provides policy advice and reports on Australia's progress to international agencies concerning treaties and gender action plans.<sup>123</sup> Community consultation is an essential preparatory component of this.<sup>124</sup> In 2010, *Australia's National Statement* to the UN CSW highlighted key initiatives taken over the past five years to strengthen gender equality and called upon the international community to work together toward gender equality and women's advancement.<sup>125</sup> It also coordinates tripartite teams to APEC's Women Leaders' Network and its Gender Focal Point Network, as does its NZ equivalent; and like both NZ and Fiji, it contributes to the *Commonwealth Plan of Action for Gender Equality 2005-2015*<sup>126</sup> and Commonwealth Women's Affairs Minister's Meetings.<sup>127</sup>

The OfW has recently strengthened its role in advising Government agencies and Cabinet Ministers, to ensure gender equality is considered in the early stages of policy development.<sup>127, 128</sup> In terms of other inter-government liaison, the OfW provides secretariat services to bodies like the Women's Advisors Meeting and MINCO. Priority areas are: (i) the reduction of violence against women and their children; (ii) improvements to women's economic independence and financial security; and (iii) the promotion of women's equality and leadership in all aspects of society. It also advises on legislative issues related to women, and administers programmes including those to combat domestic violence and sexual assault.<sup>129</sup> It also made a submission to the House of Representatives' 2008 pay equity review, based on recommendations from two roundtables that it hosted.<sup>130</sup>

The EOWA's primary role is to administer the *EOWW Act 1999* (Section 3.2). Like NZ's EEO Trust, it works with employers to improve EO outcomes for working women by delivering practical solutions, building strategic partnerships, and leading public debate. This includes, via education, assisting organisations to develop a workplace EEO plan and to report annually to the EOWA.<sup>85</sup> As of July 2009, 2,803 organisations, covering 2.6 million or 23 per cent of Australian employees, had reported to the EOWA for evaluation, on behalf of 8,500 organisations (however, there are another 4,500 organisations covered by the Act which have not made themselves known to the EOWA).<sup>85</sup> Further, the OfW, the EOWA and the Sex Discrimination Commissioner within the AHRC carry out and commission significant gender analysis across a range of policy issues (e.g. such as the recent gender pay research undertaken by the NATSEM). Reviews of the EOWA and its underlying legislation were also undertaken recently (Section 7.2.1).

In **Fiji**, the FEF, established in 1960, addresses matters concerned with Fiji's economic development.<sup>131</sup> Its membership is broader than the employer bodies of other countries, including government statutory bodies and state-owned corporations as well as large and small private sector employers. FEF is recognised by Government as being the most representative private sector employer organisation, and as such regularly consults it on a wide range of subjects. Its nominees appear on many government statutory bodies and special interest Advisory Boards and organizations.<sup>132</sup> The FEF is a member of the IOE.

One of two peak union bodies, the FTUC is an ITUC affiliate, has a close relationship with the Fijian Labour Party, and continues its efforts to re-establish democracy in Fiji. Like the ACTU and NZCTU, it is a member of the ICFTU. The FTUC has 30 affiliates, covering the public and private sectors.<sup>133</sup> Fiji's Constitution allows workers to form trade unions to protect their interests and empowers them to engage in collective bargaining for fair wages and better employment conditions; as noted above the Government has ratified the ILO Conventions on the Right to Organise and Collective Bargaining, and on the Freedom of Association and Protection of the Right to Organise (Section 3). However, unions still face difficulties when organising workers and freedom of speech has been restricted by the provisional government.

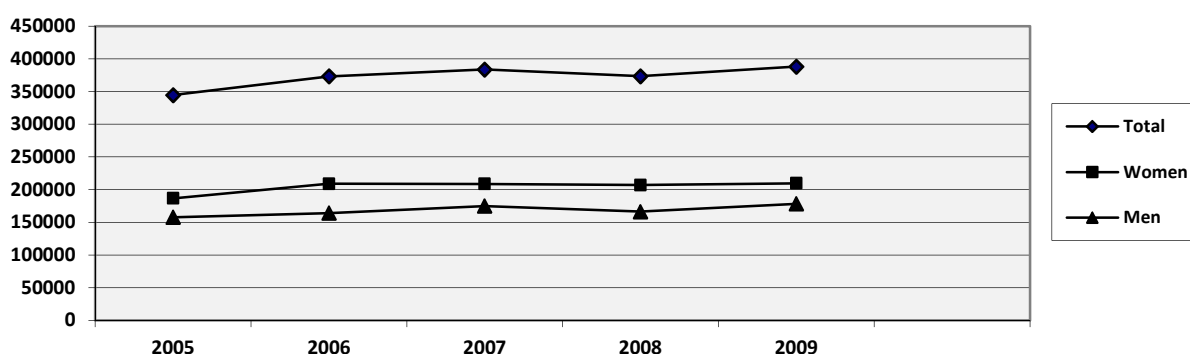
The Department for Women has an important role in developing and implementing government policy, including the Cabinet-endorsed *Women's Plan of Action 2010-2019*. This has five broad areas of concern: formal sector employment and livelihood, equal participation in decision-making, the elimination of violence against women and children, access to basic services, and women and law (Section 7.2.1). In order to build bridges to NGOs, the Department created the Fiji Women's Federation in May 2010. Participation in the Federation is voluntary and members of its Advisory Committee are heads of umbrella NGOs including the National Council of Women, the National Catholic Women's League and Soqosoqo Vakamarama, an indigenous women's organisation. The managers of the two rural women's centres have been invited to serve on the Advisory Committee and the Department is working with development partners to construct further centres in 14 provinces and semi-urban settlements.<sup>67</sup> The plan is to empower rural women by enhancing their leadership and programme management skills and providing a venue for meetings, training activities, women's health clinics and other exercises to build their capacity.<sup>61</sup>

The FWRM, established in 1986, aims to address issues affecting women's human rights, status and opportunity within Fiji including cultural, domestic, legal, social, health, economic, employment, religious and political situations. It also seeks to advise on policy and legislation, promote equal access to services, and provide leadership and networking opportunities to women. Of particular concern to the FWRM has been the strengthening of laws designed to help protect women.<sup>134</sup>

## 4.2 Women's participation in trade unions and employer organisations

In NZ, women form 54 per cent of union membership with around 200,000 workers (Figure 2), even though they constitute 47 per cent of the labour force. This is largely attributable to a higher representation in the public sector and the decline of male-dominated manufacturing industries.<sup>114</sup> However, vulnerable workers in small firms and high labour-turnover sectors, which disproportionately include women, are disadvantaged in terms of union representation by the current structure of enterprise bargaining.<sup>115</sup>

Figure 2.  
Trade union membership by sex in NZ (2005-2009)



Adapted from: <sup>135</sup>

Three of the four senior leadership positions in the CTU are held by women (president, secretary and vice-president), with Helen Kelly the first female president. However, a recent CTU survey, completed by 30 of 38 affiliated unions (representing 92 per cent of the affiliate membership), showed that, following overseas trends, progress in terms of women's participation in union affiliates has occurred unevenly. Women are well

represented in leadership positions at workplace level, forming 65 per cent of workplace delegates and at affiliate level the number of women representatives reflects the proportion of women members. Although slight progress has been made in the composition of union national executives, there has been little change in women's representation as national presidents and a smaller percentage of women have been elected as vice-presidents since the 2006 HRC census. Also, the proportion of women appointed as national secretaries has dropped from 34.4 per cent to 22.2 per cent but more women occupy assistant secretary posts at 42.6 per cent. Taken together, women comprise 35.1 per cent of the senior posts in CTU affiliates (Table 8).<sup>117</sup>

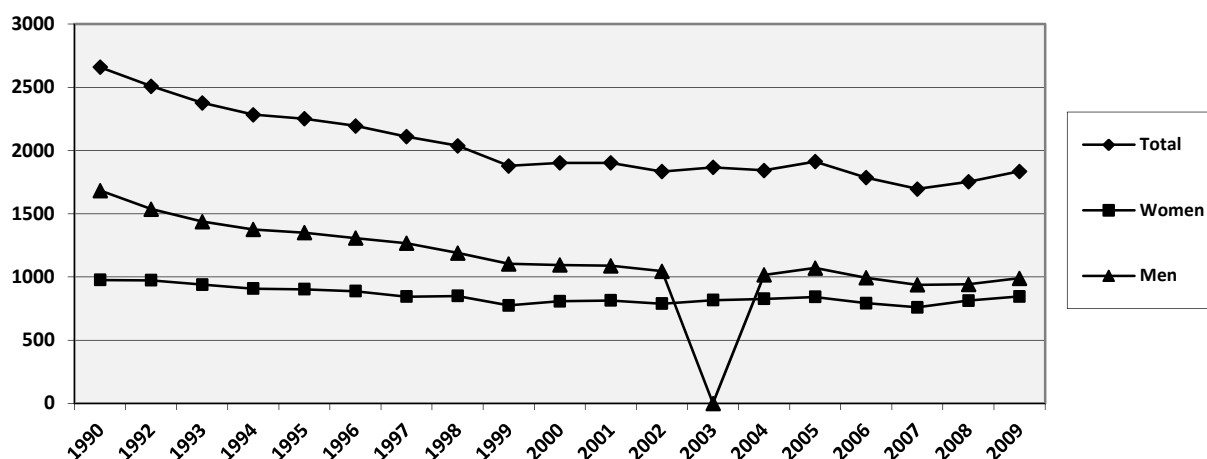
**Table 8.**  
**Largest CTU affiliates by gender representation in NZ (2008)**

| CTU affiliates                                     | Members total | Members % women | Delegates % women | National executive % women | National and Asst Nat Sec % Women |
|----------------------------------------------------|---------------|-----------------|-------------------|----------------------------|-----------------------------------|
| PSA (Public Service Association)                   | 55,340        | 68              | 61                | 45                         | 33                                |
| NZEI (NZ Educational Institute)                    | 46,751        | 88              | 88                | 75                         | 57                                |
| EPMU (Engineering, Printing & Manufacturing Union) | 45,177        | 23              | 15                | 8                          | 0                                 |
| NZNO (NZ Nurses Organisation)                      | 40,499        | 94              | 94                | 80                         | 50                                |
| NZMWU (NZ Meat Workers Union)                      | 23,000        | 10              | 14                | 9                          | 0                                 |
| SFWU (Service & Food Workers Union)                | 22,068        | 67              | 66                | 87                         | 57                                |
| NDU (National Distribution Union)                  | 19,768        | 38              | 38                | 36                         | 62                                |
| PPTA (Post Primary Teachers Association)           | 17,653        | 58              | 61                | 58                         | 33                                |
| DWU (Dairy Workers Union)                          | 6,800         | 21              | 23                | 9                          | 0                                 |
| (former) Polytech staff                            | 6,688         | 51              | 46                | 43                         | 100                               |

Source: <sup>117</sup> Table 40, p. 83

In **Australia**, women comprised 46.1 per cent of the ACTU affiliate membership in 2009, and female membership levels have remained stable compared to men (Figure 3). In terms of post holding, the ACTU President is a woman and, whilst men fill the Secretary and two Assistant Secretary posts on the ACTU Executive, three of the five Vice-Presidents are women.<sup>136</sup> In October 2000, the peak body made history when its affirmative action policies resulted in the election of an executive comprised of 50 per cent women in line with ACTU Congress targets,<sup>137</sup> making it the most gender representative forum in the Australian union movement. ACTU survey data also indicate that, as in NZ,<sup>115</sup> women's representation has improved but progress has been uneven and overall, women remain under-represented, especially in the private sector.<sup>138</sup> There has been more progress with the development of gender equality policies than with women's representation on union structures and changes to union structures themselves to facilitate gender equality.

Figure 3.  
Trade union membership by main job and sex in Australia (1990-2009)



Adapted from: <sup>139</sup>

Ministry of Labour and Industrial Relations figures (2007) show that 33 per cent of **Fiji's** total paid workforce (or 40,000) were union members, concentrated in the public sector (around 80 per cent) and in state-owned enterprises. According to one source, the number has depleted over the last three years, mainly due to the Government's State Service Decree 2009 (Decree No. 6) which reduced the retirement age of civil servants from 60 to 55 years, meaning that a substantial number of union members were lost as most are aged between 30 to 60 years. The Decree has affected about 2,500 workers, 90 per cent of whom were union members and thus a substantial proportion of the 15,000 unionised government employees. The Government has also introduced the recruitment of all new officers on individual contracts, and most private sector industries are following suit in accordance with the *Promulgation 2007*. Further, government officers who are promoted will automatically go onto an individual contract. Private sector union membership has remained relatively intact although, as in Australia and NZ, density is much lower than in the public sector (around 80 per cent).

In 2006, there were 72 registered unions.<sup>140</sup> Of the FTUC's 32,000-strong affiliate membership, one-third are women. Figures on women's representation and participation in the peak union bodies and affiliates are not collected, and only two of the 67 registered unions whose officials include women conduct collective bargaining (i.e. Fiji Nurses' Association (FNA) and USP Staff Union). Independent analysis of the FTUC leadership reveals a very weak female presence though the Executive had provided for at least three women members on the 25-member council and the peak body houses a women's committee.<sup>141</sup> Further, in 2006, the Fijian Hotel Union elected Liviana Qoro as its President; this is thought to be the first time a woman has led a private sector union in Fiji.<sup>142</sup> The general secretary of the FNA is also female. More generally, women's under-representation in leadership roles on the peak body partly reflects union under-representation in 'women's industries', and union density has been declining, especially in the feminised manufacturing sector. Also, large MNC garment/textile companies have commonly not favoured a union presence, disproportionately affecting women who comprise 90 per cent of their workforce.

In terms of women's participation in employer bodies, figures are not generally maintained. However, independent comparative analysis found a mixture picture. In NZ, only one of Business NZ's current 16-strong Council is female.<sup>143</sup> This echoes women's



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weak representation in the boardrooms of NZ's top businesses and the recent finding that only about one in every 12 company directors is a woman.<sup>117</sup> The IOD has a membership organisation of around 4,800 individuals representing the spectrum of private and public sector enterprise in NZ.<sup>144</sup> Its Chief executive is female but all five IOD Distinguished Fellows for 2007 were male. Further, its Director Accreditation Programme began in 2005 and figures show that as at November 2007, 120 members were accredited and just 15 of them were women. Of a further 51 provisionally accredited members, only 15 were women. By contrast, nearly half (49 per cent) of the respondents to a recent HRINZ survey identified themselves as senior HR practitioners, and 76 per cent of respondents were women,<sup>145</sup> reflecting the situation more generally wherein HR has typically been female-dominated field.

Analysis also found that women remain under-represented at leadership levels in **Australian** employer and business groups. Only three of the 10 ACCI Executive are female.<sup>146</sup> AiGroup comprises CEO Heather Ridout and three other female Directors; the remaining 14 Directors are men.<sup>147</sup> In the BCA, the Chief Executive and Deputy Chief Executive are women, and they comprise half of the four women who make up its six top-level staff. However, all but one of the Council's board members are male. Of its six task forces, only one (on education, skills and innovation) contains a single woman member.<sup>148</sup> This reflects constraints at company level, with the 2008 EOWA *Australian Census of Women in Leadership* referring to an 'enduring glass ceiling'.<sup>149</sup> From 2006 to 2008, the number of board seats in ASX200 companies rose from 1,487 to 1,505 but the number of seats held by women fell from an already low level of 129 to 125 (8.3 per cent). Although women hold 34 per cent of senior executive positions in the public sector, they comprise 57 per cent of the workforce.<sup>150</sup>

In **Fiji**, in 2005, Sageeta Niranjana, an Indo-Fijian businesswoman and President of the Fiji Motor Traders' Association, became the first woman to be elected President of the FEF, an election which the then prime minister said reflected a national effort to bring about greater sex equality. However, Niranjana resigned later that year.<sup>151</sup> Generally, women's participation in employers' organisations is extremely limited. This is because very few of the qualified and experienced women in Fiji hold executive posts in organisations, and it was reported that the route to senior positions is usually made more difficult for women than for men.<sup>152</sup>

### 4.3 Summary

There are well-established mechanisms of social partnership in each of the three countries involving recognised bipartite and tripartite actors. However, there are clear similarities between the situations in Australia and NZ, and differences between these countries and Fiji, in the representation and activities of key social partners, especially business and unions. First, business bodies in Australia and NZ adopt a meritocratic view of equality and are active in terms of gender equality issues, including awareness-raising amongst member firms, though they also lobby against State initiatives that are perceived to raise costs. They are also involved in systematic consultation and advisory processes with government departments and agencies, including overseas. The role of their Fiji equivalents tends to be more passive and consultative by comparison. Second, unions are proactive about women's issues in NZ and Australia, including concerning internal representation, reflecting the increasing significance of female membership. They have also successfully lobbied for gains relating to women's rights. In contrast, Fijian unions are limited in their membership base, both in overall numbers and given declining female membership, and face political obstacles to effective workplace representation and influence on policy.

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## 5. Role of tripartite social dialogue bodies

### 5.1 Level and activity of social dialogue bodies

Formal social dialogue and consultation is chiefly conducted at national level in each of the three countries, though the sector and (local) state is also relevant in Australia, reflecting its greater size and federal structure. Table 9 cites key examples of social dialogue and related activity at different levels.

Two major developments are noteworthy. First, in NZ, social dialogue concerning employment relations matters was long institutionalised in the form of national, binding awards, negotiated in a tri- or bi-partite manner, until the *Employment Contracts Act 1991 (ECA)* replaced this with enterprise or individual bargaining<sup>73</sup>. It also had the effect of substantially reducing the coverage of collective agreements, particularly in the private sector.<sup>153</sup> For working women, who form a disproportionate number of those not covered by collective arrangements, this has implications for employment protection and advancement of gender equality aims.

**Table 9.**  
**Examples of (tripartite) social dialogue activity**  
**on gender equality at different levels**

| Level of activity               | NZ                                                                                                                                                                                                                                                                                                                                                                                         | Australia                                                                                                                                                                                                                                                                                                                                                                                                    | Fiji                                                                                                                                                                                                                                                                                                                                                                   |
|---------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| National-international          | Regular government department, CTU and Business NZ engagement on ILO issues, providing the former with information on international labour practices and trade agreements with reference to ILO core standards                                                                                                                                                                             | Regular government department (particularly EOWA, OfW), ACTU and AiGroup engagement, as for NZ<br><br>MINCO                                                                                                                                                                                                                                                                                                  | Limited government department (including Ministry of Labour, Industrial Relations and Employment; Ministry for Social Welfare, Women and Poverty Alleviation; and Department for Women) engagement with other social partners                                                                                                                                          |
| National                        | Government departments including the DoL, CTU and Business NZ on initiatives such as the <i>WLB Project</i> and the <i>Workplace Productivity Group</i> , <sup>171</sup> and the former PaEE Steering Group (Section 3.2).<br><br>NACEW, a tripartite advisory body to the Minister of Labour, examines issues including pay equity and Māori and Pacific women's employment opportunities | Government departments including the EOWA, the OfW, the ACTU and AiGroup at federal level<br><br>FWA, AHRC<br><br>TUTA                                                                                                                                                                                                                                                                                       | Some government departments including MSWWPA, Ministry of Labour, Industrial Relations and Employment, and the Department for Women have adopted a formal position on gender equality matters but Fiji's military council is currently responsible for advising the cabinet.<br><br>Other key social partners (e.g. Tripartite Forum) play a limited or no active role |
| National-intermediate/<br>local | DoL tripartite Sector Labour Market Development group addresses skills and productivity issues relating to particular industries <sup>172</sup><br><br>DOL's PRC; Partnership for Quality and Public Service Tripartite forum.<br><br>CTU-led 'Fairness at Work' coalition campaign<br><br>Community groups and trusts engage in direct dialogue and submissions                           | Government departments including the EOWA, the OfW, the ACTU and AiGroup at state, territorial and local levels<br><br>Women Tasmania<br><br>Looser forms of social dialogue involving broadly-based coalitions and campaigns (e.g. Equal Pay Alliance, National Pay Equity Coalition)<br><br>Longer-term campaigning by various NGOs have been encouraged by recent reviews of legislation and institutions | Limited government department interface (e.g. with FWF, local women's centres)                                                                                                                                                                                                                                                                                         |

Second, Fiji now maintains a heavily-centralised and strictly-controlled system of social dialogue since the 2006 military coup. Key social partners, including the national Tripartite Forum, the FEF, FTUC, FICTU, unions and other civil society organisations such as the FWRM and Citizenship Council Forum (CCF) take part in either very restricted or no level social dialogue on gender equality issues. The same applies in respect of national programmes for promoting policy development and dialogue. For example, while the Fiji regime has talked about the People's Charter (for Change, Peace and Progress)<sup>154</sup> as a mechanism for dialogue, it has excluded mainstream political parties, the FWRM, NGOs and other notable civil-society partners from the process. However, in June 2009, the Ministry of Labour's CEO reaffirmed the government's commitment to re-activating the Tripartite Forum, establishing a National Employment Bureau, and planning to address other pressing labour issues such as child labour laws and creating training initiatives.<sup>155</sup>

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## 5.2 Promotion of gender equality at work

In NZ, all employers are, required to meet obligations under relevant law such as the *Equal Pay Act 1972*, the *NZ Bill of Rights Act 1990*, and the *ERA 2000*. These obligations are often extended via collective bargaining or organisational HRM policies. A commitment to EEO is also required of the core public service, part of the state sector and local government.

Unions have been at the forefront of a number of campaigns which have successfully influenced government over equality initiatives such as PPL, flexible working time and improvements to hours of work, breaks and pay equity investigations. As noted above, the political context has been less favourable since 2008. In late 2009, the CTU spearheaded a national Pay Equity Challenge campaign, involving a broad coalition of community, employer, union and academic groups, which ‘challenges’ the government to outline its plans to close the gender pay gap and put pay equity back on its agenda, working with employers and unions to this end.<sup>156</sup> At the end of 2009, there were also low pay rallies around the country, suggesting that increasing the minimum wage could be a key pay equity strategy. The government has demonstrated little openness to this; rather it recently announced 32 proposed changes to the ERA which might adversely impact on vulnerable, including:

- extension of the 90-day trial period of employment to firms with 20 or more employees;
- the need for unions to gain employer consent, which ‘cannot be unreasonably withheld’, to access workplaces;
- removal of reinstatement as the primary remedy in dismissal cases;
- proof of sickness being required on request for employees taking days off; and
- trading of up to one week’s annual holidays for cash.<sup>157</sup>

Like the current government, Business NZ stresses a voluntary, merit-based approach to EEO and diversity and opposition to quota systems and affirmative action for women at work (recently recommended by the Human Rights Council in Geneva, given the persistence of women’s under-representation in senior posts in NZ). Nonetheless, it actively promotes its guidelines and advisory services to member companies (Section 4.1). Seminars and training sessions also address EEO matters, as do a number of research projects (e.g. on family-friendly workplace policies) with ‘employers’ obligations ... spelled out and the benefits of EEO emphasized’.<sup>108</sup>

Another significant actor is the EEO Trust, now the major provider of EEO advice and information.<sup>109</sup> In order to move employers from acceptance of EEO principles to action based on those principles, the Trust has identified four platforms:

- strategic partnerships between the Trust, employers, Government, unions and other allies;
- research (alternating annually between a Diversity Survey and a Work-Life Survey);
- best practice dissemination, for example, via annual EEO Trust *Work and Life Awards* since 1998, workplace toolkits and guidelines on EEO, and liaison with its Employers’ Group to promote attitudes and workplace policies and practices to achieve EEO; and
- providing information to increase awareness of the business benefits of diversity.

The Trust and the HRC have also founded a National Equal Opportunities Network (NEON) which provides profiles of EEO groups, information about national and international EEO issues, advice for Crown entities on being a ‘good employer’, and research and case studies. NZ might also be seen to encourage gender equality at work via

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its ‘National Conversation’ forum wherein the HRC elicits the views of workers, employers, unions, community groups and others about equality at work.<sup>158</sup>

In **Australia**, EEO policies are mandatory across the federal and state public sectors, i.e. public-sector organisations are required to have EEO plans and to monitor EEO progress. Further, all states have an independent statutory commission dedicated to promoting EEO principles in public-sector employment and handling discrimination complaints. Many private sector organisations have also developed EEO policies, often due to the *EOWW Act 1999* which requires organisations with more than 100 employees to develop a workplace programme to remove barriers to women entering and advancing in their organisation.

The EOWA also works to promote EO by educating organisations to assist women. Like NZ’s EEO Trust, it works with employers to develop practical interventions, build strategic partnerships, and lead public debate. This includes, via education, assisting organisations to develop a workplace EEO plan and to report annually to the EOWA<sup>86</sup> though there are issues around non-reporting (Section 4.1). It has also released an *Employer of Choice for Women* list since 2001. In 2010, there were 95 successful organisations, up from 55 organisations in 2001,<sup>158</sup> from a range of industries.<sup>160</sup>

The peak employer body, AiGroup, offers an array of anti-discrimination information, training programmes and publications concerning EEO and gender equality in the workplace.<sup>161</sup> In 2009, it surveyed its members to provide information about their experiences with the EOWA reporting arrangements, and these data were used to inform AiGroup’s submissions as part of the above review.<sup>162</sup>

Like their NZ counterparts, the ACTU and unions promote gender equality at work through workplace and public campaigns and by lobbying government. The peak union body’s recent submission on the Governmental review of the *EOWW Act 1999* and the EOWA<sup>163</sup> includes recommendations encourage the coordination and effectiveness of gender equality institutions, regulations and activities, for example:

- a stronger and mandatory reporting regime for relevant employers under the Act;
- broadening the scope of the Act to include federal and state public sector organisations and, over time, employers with fewer than 100 employees;
- re-building employee and stakeholder engagement in the reporting process;
- developing appropriate minimum EEO standards, and education and support for employers to build their capacity to meet their reporting obligations to an appropriate standard;
- requiring organisations to identify and develop targets and action plans in the reporting process;
- effective advocacy of EEO including an enhanced relationship between the *EOWW Act*, industrial and anti-discrimination legislation;
- an enhanced system of review and analysis of reports;
- an enhanced compliance framework including penalties for breaches of the Act, published performance league tables and government incentives; and
- ongoing monitoring of the effectiveness of the overall EEO framework.

In **Fiji**, there is little information on workplace initiatives around gender equality. However, the Cabinet approved the *Women’s Plan of Action 2010-2019* which aims to provide direction for actions to be taken by the Women’s Division in partnership with other line ministries and partners (including employers) to promote gender equality and upscale women’s participation in the national development process. The programme also aligns with Fiji’s *Roadmap 2009-2014*. Moreover, the FEF has stated that ‘true equality for women can be achieved by working toward women’s political, economic and social

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empowerment’ via ‘solid tripartite partnership and dedicated resources’ so that ‘a win for women is a win for all’. It is concerned with the absence of pay equality between men and women and women’s under-representation in business or politics. It also called for parents to invest in their children’s education so that they have better employment opportunities. It noted more proactive participation by women in its activities and board presentations.<sup>164</sup>

### **5.3 Rate of women’s participation in social dialogue bodies**

Data on female participation in social dialogue bodies is hard to come by, though there is some evidence of the under-representation of women in leadership positions in politics, business and trade unions. In NZ, the last HRC Census of Women’s Participation referred to a ‘worrying report card’ for gender equality in terms of women’s leadership representation (Table 10). The CEDAW committee has also urged NZ to do better across a range of areas for women, including leadership, politics and public life, and for better data capture by public agencies on the position and status of Māori, Pacific and ethnic minority women. Its recommendations in the *Agenda for Change 2008* included that:

- the Government by 2010 fulfils the promise made internationally and outlined in the *2004 Action Plan for NZ Women* of 50 per cent on women on statutory boards (not achieved);
- the 60 top 100 companies listed on the NZSX without a single woman on their boards prioritise female appointments when a vacancy arises;
- the Attorney-General responds to the Committee’s request and outlines a programme of concrete action, goals and time frames to increase the number of female judges;
- the MWA works with other public agencies to ensure gender disaggregated data are available to show the participation and representation of Māori, Pacific and ethnic minority women in government-appointed statutory bodies;
- the Minister of State Services sets a benchmark for the State Services Commission (SSC) to achieve gender parity in chief executive appointments in five years;
- the State Services Commissioner makes chief executives accountable through performance management processes for increased female representation in senior management posts;
- local government audit appointment procedures to ensure women are appointed to and equally represented on council-controlled organisations; and
- women’s groups such as the NCW, the Māori Women’s Welfare League, Rural Women NZ, Pacifica and the BPW commit to specific strategies to promote women’s leadership.<sup>117</sup>

**Table 10.**  
**Women's representation in public bodies and companies in NZ (2008)**

| Body/position                                                | % women |
|--------------------------------------------------------------|---------|
| Ministerial appointments on government boards and committees | 42.0    |
| Members of Parliament (MPs)                                  | 33.0    |
| Directors of crown companies                                 | 34.7    |
| District health boards                                       | 43.4    |
| Public service chief executives                              | 23.0    |
| Local government                                             | 27.0    |
| Judges                                                       | 25.8    |
| Trade union national secretaries                             | 22.2    |
| Trade union national executive members                       | 43.2    |
| CTU affiliate membership                                     | 57.0    |
| Directors of listed companies                                | 8.65    |

Source: <sup>117</sup>

In **Australia**, women's representation looks slightly better (Table 11). In 2010, in politics, 35.9 per cent of all parliamentarians are women, with 30.1 per cent at national level. On Government boards and bodies, women form 33.4 per cent of sitting members and hold 20.3 per cent of Chair and Deputy Chair roles. Similar to NZ, in 2008-2009, women in Australia held 37 per cent of all senior executive service positions in the public service (although they form 57.8 per cent of the public service workforce). However, women's representation on boards of private companies was low at 9.2 per cent (NZ is 7.5 per cent) in 2010.

**Table 11.**  
**Women's representation in public bodies and companies in Australia (2008)**

| Body/position                                         | % women |
|-------------------------------------------------------|---------|
| Parliamentarians                                      | 35.9    |
| Government boards                                     | 33.4    |
| Public service senior executives                      | 37.0    |
| Local government elected representatives              | 30.0    |
| Local management senior managers                      | 20.0    |
| Local management chief executives or general managers | 7.0     |
| Federal Court judges                                  | 16.3    |
| Women on private company boards                       | 9.2     |
| Private company chief executives or                   | 2.0     |
| Private company executive managers                    | 10.7    |

Adapted from: <sup>165</sup>

In **Fiji**, women's representation and participation is comparatively weaker. Less than 25 per cent of local government employees and only 16 per cent of local government CEOs are women. The average number of women on government boards and committees is less than 20 per cent.<sup>93</sup> Data on female representation is difficult to obtain but some indicative data are provided by Table 12.

**Table 12.**  
**Women's representation in public bodies in Fiji (2008)**

| <b>Body/position</b>                      | <b>% women</b> |
|-------------------------------------------|----------------|
| Parliamentarians                          | 12.6           |
| Court of Appeal judges (six in total)     | 33.3           |
| Local government chief executive officers | 16.6           |
| Local government senior managers          | 8.0            |
| Local government elected councillors      | 14.5           |
| Local government field staff              | 2.0            |

Adapted from: <sup>93, 94</sup>

## 5.4 Summary

Tripartite and social dialogue bodies are well established and utilised in Australia and NZ. This operates mainly at national level. Social dialogue over employment matters is weaker since radical industrial relations reforms in both countries weakened the role of multi-employer bargaining at sector level. In Fiji, effective social dialogue has largely been neutralised since the military coup of December 2006, despite assurances that the government wants to restore social dialogue mechanisms.

Legislation is the main vehicle for promoting gender equality at work in each of the three countries, though in Australia and NZ, employer bodies and unions also play an active role in developing, implementing and extending EEO policy. Employers generally favour a meritocratic view of equality and focus on awareness raising and progressive human resource management initiatives; trade unions tend to adopt an outcomes-oriented social equality view. In Fiji, data relating to women's participation in social dialogue bodies are scarce but what evidence there is points to relatively greater under-representation in leadership positions.

## 6. Gender equality in collective bargaining

### 6.1 Main levels of and sectors for collective bargaining

In NZ, collective bargaining principally takes place at the enterprise level, since the enactment of the ECA 1991. Single employer, single union agreements predominate, covering 59 per cent of employees and accounting for 2,288 of the 2,684 collective agreements. Multi-employer collective agreements (MECAs) reached 33 per cent of all collectivised employees by 2006 but fell to 26 per cent in 2008. There are few multi-union, multi-employer collective agreements (MUMECAs) – 1 per cent of collective agreements in 2008 – and those in existence have resulted from government encouragement (e.g. in the health sector).



**Table 13.**  
**Types of collective agreement in NZ, 1996, 2002 and 2008**

| Year<br>(June) | Multi-employer  |                  | Single-employer              |                 |                  | IEA<br>(%) | Coverage<br>(000s) |
|----------------|-----------------|------------------|------------------------------|-----------------|------------------|------------|--------------------|
|                | Multi-union (%) | Single-union (%) | Multi-employer, no union (%) | Multi-union (%) | Single-union (%) |            |                    |
| 1996           | 3               | 16               | 4                            | 16              | 58               | 3          | 403.0              |
| 2002           | 5               | 19               | 0                            | 16              | 55               | 5          | 399.1              |
| 2008           | 1               | 25               | 0                            | 15              | 59               | 0          | 331.8              |

Adapted from: <sup>166</sup>, Table 2, p. 2

The public sector continued to account for the majority of employees under collective agreements (over 54 per cent of the Victoria University of Wellington's Industrial Relation Centre's (IRC) representative sample). Only 9 per cent of collectivised private sector employees work under MECAs; the main concentration of MECA coverage being in central government, accounting for 46 per cent of all employees on MECAs. In terms of employees covered, the main sectors for collective bargaining in 2008 were: education (75,000), health (51,300), government administration (33,000) and food manufacturing (24,000). As in the past, the majority of collectivised agreements are in large organisations (500+ employees); just 92 agreements in larger organisations accounted for 62 per cent (205,430) of all employees covered by collective bargaining.<sup>166</sup>

The emphasis has also shifted towards enterprise-level bargaining in **Australia** (Section 2). However, as suggested by Table 14 (based on data collected just prior to the implementation of *Work Choices*), awards formed the most significant form of bargaining and underpinned many company arrangements. As in NZ, unions are less likely to be present in small workplaces (reflecting the transaction costs of organising them). This might impact on women as female employees are more likely to be employed in workplaces with 100 or fewer employees (71 per cent compared to 65 per cent of male employees).<sup>167</sup>

There is also a gender effect in the patterns of awards. More female than male employees said that they rely on the award for their pay and conditions (47 per cent compared to 36 per cent), and women were more likely to report *basic* award conditions rather than over-award rates. Nearly half of women (46 per cent) employed in high-skilled occupations rely on award arrangements, compared to only 35 per cent of men; as van Wanrooy (2009) observes, it is often assumed that awards primarily serve to provide a minimum safety net for low paid and low skilled workers but the extent to which women in higher-qualified positions rely on awards is noteworthy. Under the *Fair Wage Act 2009*, all states except Western Australia have transferred their industrial relations powers to the federal level, thus expanding its coverage to most private sector employees.<sup>34</sup> More than 4,000 state and federal awards and associated instruments were reviewed and 122 'modern awards' were created, based on industry or occupation and with only 10 award-specific matters.<sup>168, 169</sup>

**Table 14.**  
**Percentage of self-reported agreements in Australia (2007)**

| Agreement type               | Men     | Women   | Total |
|------------------------------|---------|---------|-------|
|                              | n=3,242 | n=3,193 | 6,435 |
|                              | %       | %       | %     |
| Award                        | 27      | 37      | 32    |
| Over-award                   | 9       | 10      | 9.5   |
| Collective with a union      | 15      | 13      | 14    |
| Collective without a union   | 7       | 5       | 6     |
| Collective – union not known | 2       | 2       | 2     |
| AWA                          | 6       | 5       | 5.5   |
| Individual common law        | 22      | 15      | 18.5  |
| No agreement                 | 5       | 5       | 5     |
| Don't know/refused           | 7       | 8       | 7.5   |
| Total                        | 100     | 100     | 100   |

Adapted from: <sup>167</sup>, Table 6, p. 625

In **Fiji**, it is hard to find data on collective bargaining. However, the 2007 *Promulgation* encourages collective bargaining and, as in Australia and NZ, there is a duty of good faith on both the union and an employer bargaining for a collective agreement. Under Section 152, the Minister may direct the ERAB to develop a Code of Good Faith to provide guidance on the application of this duty in relation to collective bargaining.<sup>96</sup>

In sectors where no collective agreements exist (mostly due to the absence of unions), wages are determined by Wage Orders enacted by the Minister of Labour on the recommendation of the tripartite Wages Councils.<sup>95</sup> The Employment Tribunal or Court may, in determining whether or not the parties to a collective bargaining have dealt with each other in good faith in bargaining for a collective agreement, have regard to any such Code<sup>96</sup>. According to the Ministry of Labour's Annual Report for 2007, 95 collective agreements were received by the Registrar for vetting and registration in 2007.<sup>170</sup> This compares with the 145 collective agreements registered in 2003.<sup>95</sup> Reflecting the tumultuous political context, membership of the 10 Wages Councils was suspended by Cabinet in 2007, and the Labour Administration Service continued with the administration work of the Wages Council. The previous year, only six Wages Councils were able to conduct meetings. Three new Wages Regulation Orders were gazetted.<sup>170</sup>

## 6.2 Percentage of workforce covered by collective agreements

Union density in **NZ** is 20.8 per cent, but there is a stark difference between the private and public sectors at 7 per cent and 54 per cent respectively.<sup>115</sup> Density levels have declined in recent decades, particularly in the private sector since the ECA 1991. While the ERA 2000 restored some support for collective bargaining, the level of coverage has remained low. According to a 2008 representative sample of collective agreements, 331,800 people were covered by 2,684 collective agreements in 2008. This breaks down into 150,400 private sector employees on 2,033 collective agreements, and 182,600 public sector employees on 652 collective agreements. In 2007, 86 public and private sector organisations accounted for over 60 per cent of all employees on a collective agreement.<sup>166</sup> **Australia's** overall union density was similar to **NZ** at 19.7 per cent in 2009 but this represents six times more union members (1,835,000).<sup>139</sup> By gender, 20.1 per cent of male employees (or 989,400)

and 19.2 per cent of female employees (845,700) were unionised (Table 15; equivalent NZ figures are not collected), levels that have been stable in recent years (Figure 4). Unionisation has been rising, albeit modestly, in the public sector since 2007 to 46.3 per cent in 2009, and though there was a slight decline in private sector density in 2008, absolute numbers have increased by 50,000 since 2007 to 13.8 per cent density.

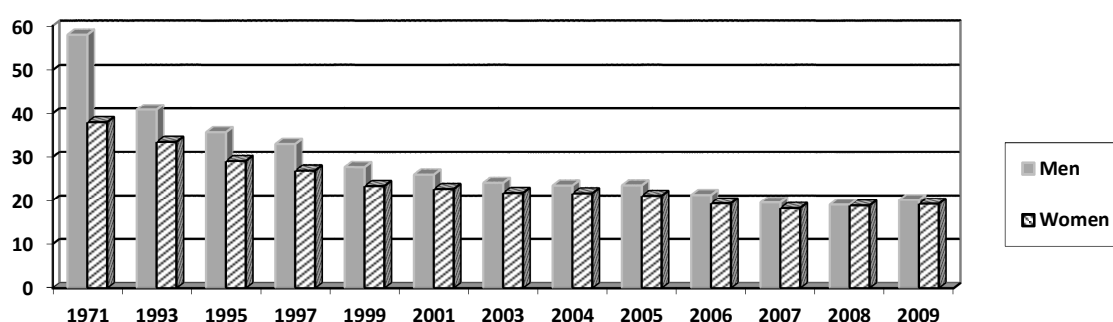
In **Fiji**, union density is relatively high at 30 per cent of the employed labour force, though this translates into just 40,000 members. However, of the 32,000-strong FTUC membership, only about one-third are women (compared to around half in NZ and Australia).

**Table 15.**  
Trade union membership in main job by sex, sector  
and job status in Australia (2006-2009)

|                    | Aug. 2006 |      | Aug. 2007 |      | Aug. 2008 |      | Aug. 2009 |      | All employees<br>(Aug. 2009) |
|--------------------|-----------|------|-----------|------|-----------|------|-----------|------|------------------------------|
|                    | (000s)    | %    | (000s)    | %    | (000s)    | %    | (000s)    | %    | (000s)                       |
| Sex                |           |      |           |      |           |      |           |      |                              |
| Male               | 993.6     | 21.3 | 937.1     | 19.5 | 940.8     | 19.0 | 989.4     | 20.1 | 4,927.7                      |
| Female             | 792.4     | 19.3 | 759.3     | 18.2 | 812.2     | 18.8 | 845.7     | 19.2 | 4,400.6                      |
| Sector of main job |           |      |           |      |           |      |           |      |                              |
| Public             | 706.2     | 42.6 | 696.0     | 41.1 | 732.5     | 41.9 | 783.7     | 46.3 | 1,693.2                      |
| Private            | 1,079.8   | 15.2 | 1,000.4   | 13.7 | 1,020.4   | 13.6 | 1,051.4   | 13.8 | 7,635.1                      |
| Main job status    |           |      |           |      |           |      |           |      |                              |
| Full-time          | 1,384.5   | 22.4 | 1,318.1   | 20.8 | 1,360.8   | 20.7 | 1,418.1   | 21.9 | 6,467.5                      |
| Part-time          | 401.5     | 15.5 | 378.3     | 14.3 | 392.1     | 14.6 | 417.0     | 14.6 | 2,860.7                      |
| Total              | 1,786.0   | 20.3 | 1,696.4   | 18.9 | 1,752.9   | 18.9 | 1,835.1   | 19.7 | 9,328.3                      |

Adapted from: <sup>139</sup>, Table 11, p. 27

**Figure 4.**  
Trade union density by sex in Australia (1971-2009)



Source: <sup>139</sup>

### 6.3 International framework agreements between MNCs and global trade unions

International framework agreements (IFAs) are a relatively new feature in industrial relations. Of the existing 68 such agreements, only five were concluded before the year

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2000.<sup>171</sup> Almost all (61) were signed with European-based companies; of the remaining seven, two are headquartered in South Africa and one each in Russia, Canada, the US, **NZ** and **Australia**.<sup>172</sup> The NZ case involved Fonterra and the Australian case the banking group NAG; no cases were identified involving **Fiji**.

In April 2002, an IFA was signed by the global dairy products producer, Fonterra Cooperative Group Limited, all subsidiary companies, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) and the NZ Dairy Workers' Union Incorporated (NZDWU).<sup>173</sup> Fonterra undertakes to respect the principles of ILO conventions 87 and 98 (freedom of association and collective bargaining, and the right to form and join trade unions), 29, 105, 138, 182, 100 (Equal Remuneration) and 111 (Discrimination in Employment and Occupation) (Section 2). It also aims not to discriminate or take prejudicial action against any employees on the grounds of their being a member of or legitimately representing a union, and commits itself to share any relevant information about the company while engaged in collective bargaining. It is also committed to providing healthy and safe working conditions for all its personnel. The agreement also stipulates the appointment of a review committee with representatives from the union and the company which meets at least once a year to monitor the application of the agreement. Fonterra also commits to inform its joint venture partners of its obligations under the agreement.<sup>173</sup> The agreement also promoted increasing liaison between trade unions. Since 2005, for example, the NZDWU has also been a signatory to a cooperation agreement with the Argentinean Association of Dairy Industry Workers and the IUF's Latin American division, Rel-UITA. One of the clauses of this agreement refers to monitoring compliance in Latin America with the April 2002 above-noted IFA.<sup>174</sup>

Another prominent example concerns the bank National Australia Group (NAG; now NAB) which operates in Australia, NZ, the UK and USA. It signed an IFA with UNI-Finance in 2006 which established an Employee Advisory Council involving company and union representatives and meeting annually. The agreement ensures that basic labour rights are respected and that staff have an opportunity to join and participate in unions.<sup>175</sup> It has also directly led to gender-related initiatives; for example, under this framework, the company and the Finance Sector Union of Australia (FSU) agreed to undertake a pay equity audit and further joint work in the area. Furthermore, on 7 October 2008, UNI and UNI-Finance acknowledged the contribution made by NAG to 'decent work' via their IFAs with an UNI Decent Work Company Award.

## 6.4 Gender equality issues in collective agreements

In addition to the Fonterra-IUF-NZDWU initiative, independent analysis of the 2008 IRC collective employment agreements (CEAs) database reveals a slow widening of coverage of specific gender equality matters, often reflecting wider legislative requirements. Key areas are parental leave and flexible working, and less frequently human rights and anti-discrimination policies. On *parental leave*, 97 per cent of employees have some level of entitlement under CEAs in 2009. For most, this provision is based on reference to the *Parental Leave and Employment Protection Act 1987*. However, 15 per cent of collective agreements include further detailed parental leave entitlements. Public-sector employers are more likely to provide benefits in excess of the statutory minima. The survey began to examine *flexible working* arrangements in 2006 in response to increased public focus on WLB issues. Under the *Employment Relations (Flexible Working Arrangements) Amendment Act 2007*, effective 1 July 2008, workers with children under five years (and disabled children up to 18 years) can request more flexible hours of work. Eligible employees need to have worked for their employer for at least six months. However, collective agreements were more likely to contain provisions on extended leave without pay (38 per cent) and flexible hours (16 per cent) than the right to work part-time (3 per cent), job share (5 per cent) or remote working (only one agreement).<sup>166</sup> In 2008, collective

agreements were also assessed for any reference to *human rights and/or anti-discrimination policies*. Anti-discrimination principles were covered by virtually all collective agreements, with EEO provisions mentioned specifically in 39 per cent (up from 33 per cent in 2007).

Again, in **Australia**, the IFA involving NAG and UNI-Finance broaches gender equality concerns as does the partnership between the Australian FSU and the company on a pay equity audit (Section 6.3). More generally, the *Fair Work Act 2009* can be expected to have implications in this area but it is too early to assess. As noted, women are more reliant on the award system and tribunals with respect to dealing with pay and related equity issues on account of their clustering in lower paid jobs. The Act provides for a new stream of bargaining for low paid employees and those who have not historically had access to collective bargaining (Section 3.2). After an employee bargaining representative makes an application to make a multi-employer agreement, the FWA decides whether to grant a low pay authorisation, based on various factors (e.g. it is in the public interest, employees' bargaining strength, industry type). It also takes account of matters relating to the likely success of collective bargaining (e.g. whether granting authorisation would assist in identifying improvements to productivity and service delivery at the enterprises to which the agreement relates). FWA can issue bargaining orders in this stream, with the same effect as in 'mainstream' bargaining. If parties cannot reach agreement and other preconditions are met, it can make a low paid workplace determination.<sup>45</sup> This system is significant since research indicates that women are far less likely to collectively negotiate, even when differences in skill, pay, part-time hours, female-dominated industries and union membership are accounted for.<sup>175</sup> Hence, there is greater reliance on tribunals and awards to deal with pay equity issues, providing a key argument for the retention and (more frequent) updating of the award system (the Government has only committed to updating the award safety net every four years).<sup>177</sup> Further, women are more represented in sectors with a low union presence (e.g. casual or part-time sales, hospitality and food). Many of the 10 NES introduced by the Act thus have the potential to impact in a gendered fashion insofar as women trail men in their workplace conditions (Table 16) though many of them still exclude precarious workers (e.g. casuals, those without 12 months' service with the same employer).

**Table 16.**  
**10 NES of the Fair Work Act 2009, Australia**

| NES                                            | Meaning                                                                               |
|------------------------------------------------|---------------------------------------------------------------------------------------|
| Maximum weekly hours of work                   | 38 hours                                                                              |
| Request for flexible working arrangements      | For parents of under school age children and parents of children with a disability    |
| Parental leave and related entitlements        | 12 months unpaid and right to request further 12 months (unpaid)                      |
| Annual leave                                   | 4 weeks per year and extra week for some shift workers                                |
| Personal/carer's leave and compassionate leave | 10 days and 2 days respectively                                                       |
| Community service leave                        | For emergency services and jury duty                                                  |
| Long service leave                             | National long service leave standard in development                                   |
| Public holidays                                | A paid day off on a public holiday, except when reasonably requested to work that day |
| Notice of termination and redundancy pay       | Up to 5 weeks notice, up to 16 weeks redundancy pay depending on service              |
| Fair Work Information Statement                | Provided to all new employees by their employer outlining rights and responsibilities |

Source: <sup>34</sup>, Table 2, p. 267

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In **Fiji**, in contrast to the other two countries, there is no central repository of data on the collective agreement provisions which cover one-third of employees. With union membership covering a third of paid workers, and women constituting just one-third of these, most working women do not have access to the collective organising and bargaining. As noted earlier, other statistics suggest that, overall, women tend to have an inferior experience of the labour market. Moreover, the ITUC recently reported that although legislation prohibits discrimination in the labour market, in practice women earn less than their male counterparts and are over-represented in informal and unprotected work.<sup>67</sup> It recommends that the government invests in increased efforts to tackle gender discrimination in employment and remuneration.

## 6.5 Negotiation skills training

As might be expected, it is trade unions that lead the way in terms of skills training in collective bargaining both generally and, occasionally, specifically for women. **NZ's** CTU established an Organising Centre in Auckland in 2000 which delivers a national programme of cross-union education for delegates, activists and union staff.<sup>17</sup> Examples of negotiation skills training include a two-day 'Advocacy at the Table' course for full-time officials; a 'Complex Bargaining' course for officials; and a 'Leadership Development for Women Workers' course.<sup>179</sup> A number of CTU affiliates (and also some employers), typically the larger, also run their own negotiation/bargaining skills training programmes, many of which are approved under the ERA 2000 by the DoL. For instance, the PSA operates an 'Involving Members in the Bargaining Process' course to help ensure that delegates understand the process for bargaining a collective agreement and the environment (legal and strategic) in which it is conducted.<sup>180</sup>

In **Australia**, the ACTU operates similar courses. Its Organising, Education and Campaign Centre programmes include specialist models on 'Bargaining under the Fair Work Act' for organisers with direct responsibilities for bargaining, and 'Negotiation Skills' for experienced organisers, industrial staff or other officials who regularly deal with grievances and collective bargaining. Delegates and activists can also request a course on 'Negotiation Skills for Enterprise Bargaining Agreements and Collective Agreements'.<sup>181</sup> It also funds the (new) Trade Union Training Authority which offers relevant training courses and which NZ representatives sometimes attend.<sup>182</sup> There are also courses on negotiations at federal, state and local union levels.

In **Fiji**, the FTUC has long been active in training union officials and representatives.<sup>183</sup> Over the last decade, FTUC training programmes have concentrated on responding to labour law reforms. However, workers have also been trained on issues such as organising and recruiting in the informal sector, union leadership for women, increasing women's participation in union activities, gender equality and awareness in the workplace, union leadership for youth, and international labour standards. To this end, the FTUC has sought international and local donor support via financial and technical assistance. It has also prioritised education opportunities for women members to promote gender balance in union activities<sup>184</sup> though this is constrained by qualified personnel to conduct such programmes. On negotiations training, the FTUC has advocated greater union education for activists, leaders and shop stewards, including on issues such as collective bargaining democracy, union rights, equality, HIV/AIDS and OSH.<sup>184</sup>

## 6.6 Social partners, collective agreement negotiations and job and enterprise security

There is no legislative mandate in the three countries for organisations to collectively negotiate the saving of jobs and enterprises. Moreover, anecdotal evidence suggests that this is not a widespread practice.

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However, the IFA involving Fonterra, IUF and the NZDWU agrees that the company will inform the union if there are any major changes that may result in the loss of jobs. It will also consult with the union regarding options to minimise the impact of such and mitigate the negative effects on any dismissed worker. Another example concerns the bank Westpac NZ which in 2009 agreed not to offshore work and to endeavour to preserve existing job numbers for a year in a collective agreement with the finance workers' union Finsec. More common are disputes over job cuts, e.g. off-shoring by the Australia NZ (ANZ) National Bank Limited<sup>185</sup> and at Open Country Cheese in 2009,<sup>186</sup> encouraging more unions to seek job security or staff redeployment clauses in collective agreements. For example the PSA wants reassurances on restructuring included in a collective agreement with Housing NZ, including a commitment that 'any new jobs created as part of a restructuring should be offered to the affected members prior to this being advertised further internally or externally'. It also wants redundancy compensation increased to a maximum of NZ \$50,000, and provisions made for staff relocation.<sup>187</sup>

The issue has been perhaps more high profile in Australia. Although the country weathered the global financial crisis relatively well, it has been observed that '(i)f closures and job losses were avoided, it was often due to unions negotiating reduced hours and taking of leave'.<sup>35</sup> For example, at the auto firm Holden, negotiations focused on protecting jobs via various flexible work arrangements (e.g. reduced shifts, rotating shorter working weeks, and half-pay for 'non-production' days). At the Qantas airline company, 1,750 jobs were cut in 2009 but job losses were minimised during discussions with the unions and the ACTU about flexible work options (e.g. taking of unpaid leave, annual and long service leave; part-time work and job-sharing). Certainly, job security and income protection were flagged as top priorities at the ACTU triennial national congress in June 2009, where former ACTU President Sharan Burrow said: 'We have worked tirelessly to keep workers in employment and prevent job losses ... at Congress, we will be calling for reforms to guarantee 100 per cent of workers' entitlements when companies collapse. Unions will also outline their long-term vision of a new deal for job security and income protection. The response to economic downturn needs to be more sophisticated than just laying workers off'.<sup>188</sup> The new Act 2009 was generally regarded by union leaders as a significant step towards to this end by helping to restore rights in the workplace and a safety net to underpin jobs, protection from unfair dismissal and an emphasis on collective bargaining.

In **Fiji**, as noted earlier, job cuts and insecurity increased considerably in the context of global financial crisis and the military regime take-over.<sup>189</sup> In the public service, many senior officials were suspended or terminated by the interim government (although the Public Service Commission chair stressed in 2007 that such action was only taken when it was 'in the public interest' and conducted in the correct procedural fashion in accordance with the Constitution and the Public Service Act).<sup>190</sup> However, the terminations were widely regarded as unsubstantiated and contrary to the principles and procedures established by the *Promulgation 2007*. Moreover, the Government has passed a decree to nullify any court cases against the regime for terminating an employee.<sup>191</sup> In addition, it should be noted that the position of unions is further weakened as there are currently no enforceable provisions that require the reinstatement of workers who have been sacked for carrying out union activities, nor are there provisions prohibiting employers from hiring strike-breakers.

## 6.7 Summary

There has been a significant shift to enterprise-level bargaining in NZ and Australia which has weakened trade unions, though certain rights have been restored and the awards system in Australia provides some underpinning for industrial relations processes and outcomes. Less information is available about dynamics in Fiji. Formally, at least, legislation in all three countries commits the parties to collective bargaining to engage with each other in 'good faith'. The coverage of collective agreements is relatively low in the three countries,

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especially outside of the public sector. Trade union density is also low; it is around 50 per cent higher in Fiji than in Australia and NZ though this is low in absolute terms.

IFAs are rare, not least since these are a recent innovation, though it might reflect the incidence and type of MNC presence in the three countries. The examples identified in NZ and Australia are significant, however, and have delivered progress in gender equality areas. They might also come to have a wider influence beyond the companies concerned as unions promote 'best practice'. Gender equality concerns are also becoming increasingly prominent in collective agreements generally, helped by a range of legislative developments which provide a benchmark and platform for company negotiators.

Unions are active in providing skills training for their officials, activists and negotiators, which also includes courses tailored for women. Fijian unions have been particularly active, often with international assistance. Job security has also become an increasingly important agenda item due to international recession. Unions in NZ and, in particular Australia, have been able to negotiate alternatives to redundancy involving for example more flexible working time schemes and staff redeployment, though in general union defensiveness in the face of corporate restructuring limits what most can realistically hope to achieve.

## **7. Gender equality at work: challenges in practice**

### **7.1 Gender equality problems in enterprises**

In NZ, a number of enduring gender equality issues in enterprises are identifiable, including: women's representation at senior workplace levels, occupational segregation, pay (in)equity and low pay, lower starting salaries for women, WLB difficulties, career development barriers, income-splitting, PPL, job security, infant feeding at work, (domestic) violence, (sexual) harassment and working conditions for 'atypical' workers.

To elaborate, the corporate sector's performance in *appointing women to the boardroom* remains poor (Section 4.2). Although the public sector revealed better progress for women, this has now stalled. In 2008, the Government had less than two years to deliver promises made internationally of 50 per cent gender parity in government-appointed bodies, but women's representation only rose 1 per cent between the 2006 and 2008 HRC Census reports (to 42 per cent). NZ is also struggling to meet the Commonwealth target of 30 per cent for women's representation in local government, the judiciary and other areas of public life.<sup>117</sup>

Although some progress has been made recently, particularly through better education, access to professional service work, and a closing of the gender pay gap, *gender segmentation* remains acute in many industries and occupations. Women are over-represented in all service industries except wholesale trade, and are particularly dominant in health and community services (82.2 per cent) and education (72 per cent), reflecting their traditional predominance in nursing and teaching, and the facilitation of female participation by part-time employment. Typically, however, they remain over-represented in lower status positions.<sup>25</sup> European and Asian women are more likely to work in legislative, administrative, managerial and professional occupations, whilst Māori and Pacific women – despite their higher overall participation in tertiary education – are more likely to work in semi- and low-skilled, manual occupations, and in receipt of lower pay.<sup>25</sup> A substantial proportion of Māori and Pacific women thus remain vulnerable to changing economic conditions.

There has been some narrowing of the *gender pay gap*, due in part to real wage growth or employment changes.<sup>192</sup> Nonetheless, the pay gap persists at around 12 per cent,



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explained in part by the fact that women take more time out of the workforce (as primary caregivers), tend to be concentrated in lower paid jobs, and are less likely to be in senior management roles.<sup>193</sup> It also reflects *women's overall lower starting salaries*, which reflects different patterns of negotiation and prior education and qualifications. There have been significant advances in women's educational attainment in NZ and Australia, with more women than men now likely to participate in and graduate from tertiary education (e.g. 62 per cent of bachelors' graduates in 2006 were women)<sup>194</sup> but this 'obscures the strong gendered patterns in educational choices which influence future earning potential'.<sup>195</sup> Further, a recent *NZ University Graduate Report* found that 48.8 per cent of female bachelor's degree graduates who had started working were earning NZ \$35,000 or less six months after graduating compared to only 33.3 per cent of males (cf. Scott's (2009) finding of a lower gender differential at degree level).<sup>196</sup> An MWA report also shows that female graduates earned significantly less than their male counterparts five years after graduating in the same fields, whatever the area of study.<sup>194</sup>

WLB, particularly with relation to unpaid caring work and working time, has also received increased attention in social dialogue.<sup>197</sup> Research by the Families Commission found that the benefits of flexible work for families included reduced stress levels and improved quality of time with families. However, substantial numbers reported that they did not have the flexibility they wanted (Section 6.4) while others experienced a trade-off of flexibility for lower pay and status. Workplace culture played a significant role in whether or not staff felt able to seek flexible work arrangements, with negative attitudes of managers and colleagues the main barrier, even when there were, theoretically, formally supportive policies in place.<sup>198</sup> Moreover, a cut in funding for early childhood education of an estimated NZ \$400 million will take effect from February 2011, creating a delay in implementing requirements for qualified teachers, and an indefinite deferral of planned improvements in child to teacher ratios. The cuts may lead to lower quality for less advantaged children, reduced access and increased costs which will in turn affect women workers disproportionately including mothers' labour market participation.

As noted, *job insecurity* is a significant concern. Government plans to amend employment law (Section 2) could increase uncertainty for women in particular as they form the bulk of vulnerable and low paid employees.<sup>25</sup> In respect of *violence against women* at work and beyond, it is difficult to obtain a true picture, as much goes unreported. Nevertheless, research shows that within each ethnic group, the life-time incidence of violence by heterosexual partners was higher for women (26 per cent) than for men (18 per cent), and was very much higher for Māori women (49 per cent) than for European women (26 per cent).<sup>199</sup> The impacts are likely to be considerable in terms of curtailing employee productivity and women's capacity to fully engage in paid work. Further, a new study of 1,728 workers has found that *bullying and harassment* are widespread in NZ workplaces, particularly in the health and education sectors. The problems are attributed to a wide range of organisational factors including ineffective leadership, resourcing problems, poor work organisation, HRM practices, and organisational strategies for the management of psychosocial hazards.<sup>200</sup>

Finally, on 'non-standard' working which engages many female workers, the NCW found that part-time workers have better conditions of employment than those in casual work; a high percentage of respondents undertook part-time or casual work by choice; and many respondents found their place of work sympathetic to their family needs and their employers generally supportive. However, almost half of the comments made by 46 per cent of 616 respondents included negative issues associated with part-time or casual work. A number of women found juggling job and family commitments stressful, often in association with poor pay and irregular hours.<sup>201</sup>

In **Australia**, social dialogue bodies have cited many similar concerns. A recent study of 121 low paid women workers highlighted that many problems were exacerbated under *Work Choices*.<sup>46</sup> As in NZ, women are more likely than men to work in *low paid occupations and industries*. The low paid include cleaners, retail and hospitality staff, child

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carers, farm labourers and some factory workers, as well as large numbers of women and part-time or casual workers employed in the private sector in lower-skilled positions. Low paid women in particular also hold many *precarious employment positions*, often in smaller workplaces where unions are less likely to be organized.<sup>81</sup> Women, more than men, depend on minimum standards for the determination of their wages and conditions. As in NZ, Australian women are now more likely to have a tertiary qualification than men but female graduates will earn AUS \$2,000 less than male graduates and AUS \$7,500 less by the fifth year after graduation.<sup>202</sup>

Further, Australia's *gender pay gap* has actually widened in recent years. It stood at 17.2 per cent in 2009,<sup>203</sup> higher if managerial employees were included, and 5 per cent higher than that for NZ. Although widespread, pay inequity is highest in industries with fewer female employees including mining, construction and electricity, and gas and water supply, as well as for employees paid under a registered individual agreement (38.4 per cent), and lowest for award-dependent employees (18.5 per cent).<sup>204</sup> A NATSEM study found that the gender pay gap is attributable to women's choices of careers, jobs, qualifications and work hours, consideration of caring responsibilities, work motivations, bargaining power and discrimination against women at work; industrial segregation; labour force history; and under-representation of women in large firms.<sup>205</sup> Much of this might be due to *Work Choices*, which introduced less transparency in wages and conditions (e.g. via the confidential nature of the now-prohibited individual AWAs; the *Fair Work Act 2009* has only limited provisions of individual negotiation through Individual Flexibility Agreement provisions in awards and agreements). As a result, 'equity between workers undertaking similar work [was] obscured'.<sup>46</sup> More generally, the widening gender pay gap has been attributed largely to the advent of enterprise bargaining, and in particular, non-union collective agreements. This disadvantaged women because of the lower union membership density in female-dominated industries and the need for union advocacy in the valuation of women's skills. The scaling-back of the award system is also likely to have had adverse consequences for women who have traditionally relied more than men on this for settling their pay and conditions. Although *Fair Work* improves the equal remuneration provisions contained in the *Workplace Relations Act 1996* by removing the requirement for a comparator and the need to show that discrimination had caused the gender pay gap, the on-going problem of pay inequity was highlighted in the EWR Committee's (2009) report on women's pay, with 63 recommendations covering legislative and administrative reforms.<sup>88</sup>

Further, *Work Choices* removed protection against unfair dismissal for employees in workplaces with fewer than 101 employees, with significant impacts on *job (in)security*. This was acutely felt in the low paid (and largely feminised) parts of the labour market, with significant impacts on *pay*, *voice at work*, *capacity to act collectively or involve unions*, and *access to timely and clear information about rights and obligations*.<sup>46</sup> For instance, outcomes around the amount of wages and hours; receiving pay on time; receiving monies owed on dismissal; receiving legislated minimum pay; and receiving a predictable income were less certain for women. Moreover, *Work Choices* facilitated reductions in income for some (e.g. in terms of lost penalty rates, loadings and allowances). Underpayment of low paid workers was exacerbated by confusion and lack of knowledge about how to claim for such, and women's concern that employers would retaliate against complaints or queries. Many women, low paid particularly, expressed concern about their *ability to negotiate* directly with their employer, as Government advocated. Further, many faced reduced incomes when new workplace agreements were introduced.<sup>46, 206</sup>

Under *Work Choices*, the absence of or diminished power to negotiate also affected some women's ability to manage their *WLB* as a 'reduction in protections around working hours has enabled the employers of these workers to increase their flexible deployment of labour, at workers' expense'.<sup>46</sup> Research findings also suggested a 'hardening' of some employers' attitudes to accommodating work and family (e.g. for those employed on

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casual terms). Again, many women have had more limited access to ‘family-friendly’ measures through industrial relations mechanisms such as awards and enterprise agreements because of their location in poor quality jobs.<sup>207</sup>

Another issue observed in Australia concerns *unpaid overtime*. In 2006, 37 per cent of Australian employees (2.9 million) engaged in overtime; 48 per cent of them were not paid for these extra hours, 43 per cent worked paid overtime only, and 9 per cent worked a combination (in total, foregoing AUS \$72 billion in wages or 6 per cent of GDP).<sup>208</sup> An Australia Institute survey of 1,000 people also found that of 626 respondents in paid work, 45 per cent worked more hours than they were paid for on a typical workday. This broke down into 55 per cent of full-time workers, 35 per cent of part-timers and 28 per cent of casual workers. Unpaid overtime was much more common among white-collar workers (50 per cent) than blue-collar workers (24 per cent). Men worked unpaid overtime more than women (50 per cent versus 41 per cent) whilst people with young children (46 per cent) were only slightly more likely than people without young children (45 per cent) to work unpaid overtime. However, fathers of young children tended to work *more* overtime, whereas mothers of young children tended to work *less*.<sup>209</sup> Around one in three people who work unpaid overtime said that it moderately or severely affects their life outside of work. When asked what would happen if they did not work unpaid overtime, most said that ‘the work wouldn’t get done’, suggesting unreasonable work demands on employees. Further, the qualitative study of low-paid women workers found that many, particularly those working full-time, worked additional unpaid hours – ‘(n)either their pay rate nor their promotional opportunities are such that they can expect reward for their longer hours – beyond the hope that it reduces their risk of dismissal’.<sup>46</sup>

All Australian workers have the right to their own *superannuation* account, and universal or compulsory ‘super’ was introduced in the early 1990s. Unions set up Industry Super Funds to look after the retirement savings of their members, and these funds now cater for the needs of more than 4.7 million workers and control assets of more than AUS \$200 billion.<sup>210</sup> However, retirement incomes are still inadequate for many and employer contributions have remained at 9 per cent since 2002 though this is much higher than in NZ (where there is no compulsory retirement savings). In particular, the system is deficient for women, casuals and part-timers due to low contributions and interrupted saving period. On average, women have only around 60 per cent of the superannuation balances of men,<sup>211</sup> reflecting their lower average incomes and shorter working careers.

Although women in Australia now have equal access to education (in 2006, 54.8 per cent of tertiary education students and 47.5 per cent of students enrolled in vocational education and training courses were women), as in NZ this has not translated into gender equality of starting and later pay. Further, there is a gendered approach to the subjects selected by women and men. The majority of women are enrolled in management and commerce, society and culture, and food, hospitality and personal services courses, but as in NZ, they are not well represented in engineering and related technologies or architecture and building courses (4.6 per cent of all women enrolled).<sup>212</sup> Finally, around one in three Australian women experience physical violence and almost one in five experiences sexual violence during their life time. Much of this violence is domestic or family violence but is increasingly recognised as relevant to work – two-thirds of women reporting recent domestic violence are in paid employment.<sup>213</sup>

In **Fiji**, key concerns for women both encompass and go beyond many of those cited for NZ and Australia. They include: gender stereotypes and access to paid employment, personal development and higher-level jobs (including executive roles); low pay; gender-based violence; poverty and economic status; non-equal participation in decision-making and leadership at work and beyond; and the formal retirement age.

Research suggests that *gender stereotypes* continue to impede women’s access to promotion, leadership, educational and training opportunities.<sup>214</sup> Notwithstanding some progress, women remain, to a great extent, under-represented in decision-making bodies

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and high-level public positions (Section 5.3). Despite their contribution to economic and domestic life, many women's primary role is still often regarded as one where they support men's economic activity (Section 2) and take care of the family and home. In bearing an unequal burden of household work, they are less able to contribute to economic activity or pursue professional development and other income-generating opportunities<sup>215</sup> which has a gendered financial impact.<sup>54</sup>

Further, *discrimination, harassment and violence against women* at home and in the workplace is a huge concern. Both the Government and international agencies have reported high rates of domestic violence against women, including violence against women's rights activists and sex workers,<sup>51, 57</sup> with implications for women's economic participation and opportunities. There is also considerable social pressure for women to remain in violent relationships. The OECD SIGI refers to a study which suggests that Fijian women share with Samoan women the highest suicide rate in the world and that, in 1992, 41 per cent of all suicides were related to domestic violence.<sup>55</sup> There are also no government shelters for domestic violence, and an over-reliance on the Women's Crisis Centre in Suva. Indeed, in July 2010, the CEDAW Committee cited concerns about the lack of legislation around violence against women – and the lack of support services for women as victims of violence.<sup>61</sup> The Fijian Representative noted these concerns and acknowledged that more needed to be done on this area by the Government after a Domestic Violence decree was made in 2009 (Section 3.2).

Research findings on *sexual harassment* are concerning. According to a FWRM-commissioned survey, one in three women interviewed (33 per cent) claimed to have been sexually harassed in the workplace. Sexual harassment of women at work is also likely to involve multiple incidents and cuts across all workplace types, affecting women from various socio-demographic groups. In addition, women are as much affected by their *economic status* as they are by their gender. They often experience poverty and have inadequate access to both general and reproductive health care. Women constitute greater numbers of the poor.<sup>216, 217</sup>

Another gender equality concern is that of women generally being *paid less* than men in Fiji, notwithstanding ratification of the ILO Equal Remuneration Convention 100 and its enactment (notably, the *Promulgation 2007*). Problems are compounded by only 30 per cent of the economically active female population being engaged in the formal economy, i.e. they are over-represented in unprotected and semi-subsistence work.<sup>62</sup> Some 44 per cent of the female workforce earn a salary below the poverty line (FJ \$60 per week), compared with 32 per cent of the male workforce. The income disparity is also apparent across ethnic groups, though indigenous Fijians are over-represented in rural, low-paid work.<sup>54</sup> According to a 1997 UNDP Poverty Report Indigenous Fijian households earned 30 per cent less than Indo-Fijian households.<sup>57</sup>

In integrating unpaid household work into economic analysis for the first time, the *2004-2005 Survey* shows that economically active women in Fiji work fewer hours per day and for fewer days per year, and are far more under-employed and effectively unemployed than men. Combining formal unemployment level and effective rate of under-employment (Table 17), the effective rate of unemployment for women (35 per cent) is much higher than that for economically active men (22 per cent). Further, female family workers, self-employed and community workers have such high rates of effective unemployment as to be in virtually 'disguised' unemployment.

**Table 17.**  
**Effective rates of under-employment and unemployment**  
**by gender in Fiji (2005)**

|                                | Women | Men  | All  | %GG  |
|--------------------------------|-------|------|------|------|
| Rate of formal unemployment    | 6.5   | 3.5  | 4.5  | 84   |
| Rate of under-employment       | 31.0  | 19.0 | 23.0 | 63.0 |
| Effective rate of unemployment | 35.0  | 22.0 | 26.0 | 62.0 |

Source: <sup>54</sup>

## 7.2 Good practices for dealing with gender inequality at work

### 7.2.1 Via social dialogue

As noted in Section 4, **NZ** and **Australia**, and to a lesser extent **Fiji**, exhibit ‘good practice’ via their participation in various international and regional fora around gender equality issues. This section focuses on the good practices of dealing with gender inequality at work which have emerged from national and sub-national dialogue, which is also often linked to international developments.

Under the last Labour-led government, NZ adopted several ‘framework’ programmes and initiatives resulting from social dialogue. These have since translated into workplace considerations and practices for mainstreaming gender equality goals. They are: the *Action Plan for NZ Women*; the ILO-linked *Decent Work NZ Programme*, and the related campaign ‘Gender Equality at the Heart of Decent Work’. In addition, the current government has initiated a *Workforce 2020* programme.<sup>218</sup>

Launched in 2004, the *Action Plan* was a five-year, whole-of-government initiative to improve the circumstances of women in NZ. Its three goals concerned women’s: i) well-being, ii) capacity to attain economic independence, and iii) attainment of their preferred WLB arrangements. The programme addressed gender inequality via its attention to:

- improving access to PPL;
- improving the accessibility, quality and affordability of childcare;
- social assistance changes;
- WLB initiatives; and
- a PaEE Plan of Action.<sup>219</sup>

Initiatives designed to facilitate or maintain women’s labour force participation when they have childcare responsibilities included amendments to the *Parental Leave and Employment Protection Act 2002* which increased the leave period from 12 to 14 weeks (helping the statute to meet the ILO Maternity Protection Convention No. 183 but still behind the 18 weeks of Australia’s new statute); extended eligibility to employees who had six months’ service or more with the same employer; and widened the provisions for 14 weeks’ pay to self-employed parents. The former government also increased investment in childcare programmes including early childhood education and out-of-school care.<sup>25</sup>

However, the CTU notes that an estimated 10 per cent of women who should be eligible for PPL are excluded because of their employment status. It wrote to the Ministry of Labour in December 2009, asserting that any review of the Act should address this as a first priority. Also excluded from access to the scheme are seasonal workers and casual workers, who are more likely to be low paid women, and workers who have changed employers within six months of applying for PPL leave. The review of the Act has been delayed on cost grounds. The CTU would also like to see a progressive extension of PPL

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entitlement to 52 paid weeks for the eligible parent and an additional four weeks paid paternity/partner leave.

The EEO Trust, Families Commission and the DoL are notable for their role in social dialogue around family-friendly workplaces and policies. The primary function of the DoL-led WLB Steering Group, established in 2003, was to develop related policies and practices. Following its report, the DoL began a three-year work programme including research, policy, analysis, awareness raising and development of a demonstration project, the *WLB Workplace Project*, which was directly concerned with partnering workplaces.<sup>220</sup> Just before leaving office, the Labour-led administration also passed the much lobbied-for *Employment Relations (Flexible Working Arrangements) Amendment Act 2007*. Research implies that more employers are offering flexible hours because of the law and that almost all offer flexibility of some kind<sup>221</sup> though Business NZ argues that employers have always been progressive in offering flexible hours.

The PaEE Plan of Action was introduced with a five-year strategy aimed at addressing the gender pay gap and promoting equal pay for work of equal value in the public services. The DoL's PaEE Unit, supervised by a tripartite steering group, led the implementation of the Plan which addressed concerns such as working conditions for government-funded workers on contract; monitoring gender pay equity via a PaEE review tool; and promoting workplace initiatives between the social partners. Many reviews had found evidence of gender inequality on various counts. For instance, part-timers – most of whom are women – were shown to be disadvantaged in terms of training, development and career progression. Women were also more likely to be employed on temporary contracts. They were more likely than men to report fairness and respect issues and to lack confidence that the organisation would effectively address these. Other common findings were: women and men received unequal starting salaries for the same job, female-dominated jobs were lower paid than male-dominated jobs; gender inequalities were found in pay progression and performance pay; women predominated in the lowest paid staff and were a minority of those in the best paid jobs; and women had a smaller share of additional rewards, such as employer-funded superannuation, premia and bonuses. However, the disestablishment of the Unit and the suspension of pay reviews in 2009 stress the current government's essentially voluntarist approach to EEO and pay equity.

A notable initiative was the convening of a roundtable of union leaders, business representatives, government and policy agencies and women's organisations in August 2009. One of its planned outcomes is a monitoring framework developed by the HRC to ensure that the health, education and wider public service sectors take action on delivering PaEE for all workers.<sup>199</sup> Moreover, after the closure of the PaEE Unit, the government committed NZ \$2 million over four years to the MWA to continue further research and policy work on PaEE. More specifically, this will entail a four work-stream project, effective between 2009 and 2012. The first work-stream is designed to better understand and address the causes of the gender pay gap. The findings of the remaining three work-streams – focused on occupational segregation, career pathways for women in low-paid occupations, and the business case for flexible working – will have significant implications for women in the service and other sectors.<sup>222</sup> The MWA is a small policy ministry and cannot provide the hands-on, practical support to implement PaEE in workplaces that was formerly provided by the PaEE Unit. However, it seeks to ensure that women have a strong voice in Cabinet and that government considers the impact on women whenever it is developing new policies or programmes.

Intersecting with the Action Plan, *Decent Work NZ*, initiated in 2004, has taken on renewed significance in the aftermath of the global recession. The CTU, Business NZ and the DoL are co-signatories to a tripartite statement of support for a multi-agency programme based on the conclusions of the 2001 ILO Asian Regional Meeting for member states.<sup>25</sup> Its vision statement, 'high skill, high wage, highly productive work', is underpinned by four objectives: (i) to promote and realise standards and fundamental principles and rights at work; (ii) to enhance the coverage and effectiveness of social

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protection for all; (iii) to create greater opportunities for women and men to secure decent employment and income; and (iv) to strengthen tripartism and social dialogue.<sup>223, 224</sup>

‘Critical success factors’ have been elaborated, from macro-level commitments like a comprehensive and appropriate legislative framework, including a minimum employment code, tripartism and social dialogue, through to micro-goals (e.g. investment in technology). Policies, practices and research activities of significance for working women under Decent Work include:

- DoL’s collaborative development of strategies and action plans to address skills, productivity and participation issues at sector level, involving sector bodies, local government, business/industry market development associations, economic development agencies, training providers, unions and other government agencies<sup>225</sup>;
- NACEW/DoL provision of an Executive Officer and advisory support to assist the development and implementation of their work programme via three sub-groups focusing on precarious employment and particularly public contracting, PaEE issues, Māori and Pacific women in enterprise and a joint DoL/NACEW decision-making project on balancing work and caring responsibilities;
- Ministry of Pacific Island Affairs’ Pacific Women’s Economic Development Plan which seeks to contribute to four goals: education, workforce development, business development and leadership;
- MSD’s Working for Families package which focuses on tax credits administered by Inland Revenue, and accommodation supplement and childcare assistance administered by Work and Income;
- CTU affiliates’ participation in and lead training around pay equity reviews and pay investigations in the core public, health and education sectors. The CTU also makes submissions on gender equity and reviews trends in the gender pay gap;
- CTU collaboration with the DoL to ensure the successful removal of minimum wage exemptions for disabled people working in business enterprises, and with disabled persons groups on its implementation;
- Tertiary Education Commission’s (TEC) Skill Enhancement programme which offers vocational training for young Māori and Pacific people via a range of delivery styles, learning environments, occupations, industries and locations (including rural and socio-economic considerations); and
- MWA Nominations Service aims to improve women’s participation in decision-making; the Ministry’s research projects on occupational segregation and emerging industries (above); and its research into the extent to which gender affects young people’s decision-making about careers in gender-segregated occupations.<sup>25</sup>

Cutting across the *Action Plan* and *Decent Work NZ* frameworks are government strategies concerning disabled, migrant and Māori and Pacific employees. These include the *NZ Disability Strategy* (adoption of the Convention on the Rights of Persons with Disabilities by the UN on 13 December 2006, with NZ signing in 2007, was followed by the passage of necessary changes in legislation for compliance prior to ratification); the *NZ Settlement Strategy*; the *Pacific Workforce Development Strategy*; the DoL labour market and employment strategy, *Better Work, Working Better*, which are underwritten by various initiatives. The need to address disparities in the labour market for specific groups of women is highlighted by some of these. For instance, services to support women who own or operate small businesses include NZ Trade and Enterprise mentoring, training and professional advice, with some of this tailored for women (e.g. the Women in Technology project). There are also programmes targeting specific groups of women such as the Māori Women’s Development Fund and the Pacific Business Trust.<sup>25</sup>

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The DoL's *Workforce 2020* programme is designed to help build an evidence base to generate awareness and stimulate debate on future labour market issues. This evidence will support a range of strategies fostering the development of employment and skills. 'Forces for Change' represents the first step in the programme, intended to stimulate debate on future labour market challenges, opportunities, threats and likely developments related to forces such as population shifts, globalisation, changing technology and skills, and resource pressures. The programme will provide government, stakeholders and individuals with a greater understanding of how key drivers for change will impact on working lives in the future. The DoL will use this work to inform policy responses for improving the performance of the labour market,<sup>226</sup> including better harnessing women's currently under-utilised skills.

Relative to NZ, **Australia** has shown greater political and industrial will via recent social dialogue, regulation, policy and some social partnership and coalition activity to address workplace gender equality problems, providing a setting which may become more conducive to pursuing gender equality via collective bargaining and work/HRM initiatives. In delivering *Australia's National statement* at the last UN CSW, it recognised the need to address inequality 'in an integrated and comprehensive way', underscoring the significance of assimilating international framework documents such as the CEDAW, Beijing Platform for Action and Millennium Development Goals into national work, underpinned by robust institutional mechanisms.<sup>125</sup>

Reflective of commitment levels to such, the OfW held community consultations in every capital city, and met with more than 100 state, territory and national organisations in preparing Australia's 2008 CEDAW report. Four roundtable discussions with women with disabilities, from migrant and refugee backgrounds, from rural and regional areas, and Aboriginal and Torres Strait Islander women were held to gain greater insight into the views and concerns held by these groups.<sup>123</sup>

Australia, like NZ, is a signatory to the ILO Decent Work programme. Similarly, multiple government and NGO agencies are promoting Decent Work in relation to gender equality in Australia. Nationally, these include the OfW, the EOWA which works proactively with the private sector, and the advocacy activity of the Sex Discrimination Commissioner, as well as similar mechanisms at state and territory government level for promoting and seeking to protect women's rights at work. At its 2009 Congress, the ACTU specifically endorsed a Decent Work policy for the first time, focusing on seven objectives central to improving the quality and dignity of work in Australia:

- an inclusive workforce;
- satisfying jobs;
- friendly workplaces;
- reasonable working hours;
- fair treatment at work;
- freedom, equality and dignity at work; and
- progressive use of technology.<sup>227</sup>

The ACTU and affiliates, like their NZ counterparts, and in conjunction with other social partners, will promote the Decent Work agenda over coming years via enterprise bargaining and agreements. They also intend to continue to lobby governments and sponsor research.<sup>227</sup>

The 2010-11 women's budget statement underscored the OFW's priorities by indicating that there are new initiatives contained within the federal Budget which complement on-going efforts for gender equality since Labor assumed office, including: *superannuation* reforms which should enhance the pension system and deliver substantial improvements in women's retirement savings; plans to introduce legislation to strengthen



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and extend the protections from discrimination provided by the *Sex Discrimination Act 1984*; providing greater protection from sexual harassment for students and workers; and extending protection from discrimination on the ground of family responsibilities to both women and men in employment. In March 2010, the Government also announced funding of AUS \$3.6 million over three years for six National Women's Alliances which will engage actively with it on policy issues as part of more informed and representative dialogue between women and government. The Alliances, made up of more than 100 women's organisations as well as individual members, are encouraged to build collaborative networks to ensure more effective representation for women in the policy-making process.<sup>228</sup>

As noted, in terms of regulation, the *1984 Act*, prompted by Australia's ratification of CEDAW, emphasises EO for women measured in terms of 'less favourable' treatment where women and men are similarly situated. Limitations of the Act (Section 3.2) helped to prompt a recent review.<sup>229</sup> There have also been recent reviews of the *EOWW Act* (10 years after its last review) and of the Agency, to examine the effectiveness and efficiency of the Act, and to consider practical ways to improve the EO framework to deliver better outcomes for women. Social partners and interested parties were encouraged to make a submission to the review. In addition, five roundtables were held, individual interviews conducted with key stakeholders, and survey responses received from 774 reporting organisations and 859 employees.<sup>230</sup>

There has also been dialogue, and policy development, around other areas of central concern for gender equality, setting the scene for good work practices. The country's first *PPL* scheme in 2009 was the culmination of much, often coalition-based lobbying (Section 3.2). With respect to *women in decision-making and leadership roles*, in late 2008, the BCA called for gender quotas and subsequently a group of influential business women started to draw attention to the problem. By the end of 2009, the Sex Discrimination Commissioner was advocating three and five year targets for gender equality on company boards and in senior leadership, and that companies publicly report on progress in their annual reports.<sup>231</sup> Moreover, in November 2009, the AICD introduced a range of measures to achieve greater representation of women on boards and in senior executive positions. Soon after, the ASX Corporate Governance Council recommended targets be set and reported annually on an 'if not, why not' basis.<sup>206</sup> Additionally, the Productivity Commission's report on executive pay supported pressure on companies to appoint more female members to their boards and to develop the 'pipeline' so that more women could be appointed to board positions.<sup>232</sup> The Government also celebrated and promoted the advancement of women into public-sector senior management roles as part of its Year of Women in Local Government in 2010.

In **Fiji**, social dialogue has been constrained by political and economic events (Section 4). The current government introduced an 'emergency regulation decree', limiting not only key social partners' activities but those of various social, work and religious groups. The decree prohibits people from gathering in common places, and restricts freedom of speech. The new Media Industry Development Decree imposed in June 2010 reinforces the censorship that has been in force since 'temporary' emergency regulations were imposed in April 2009. It has been condemned by the International Federation of Journalists, among others.<sup>233</sup>

Hence there is little open and progressive dialogue on workplace matters such as gender equality, pay equity, WLB and EEO by social stakeholders despite legislative provisions for such. In addition, all strikes are now illegal and union membership is in decline, often as a result of employer opposition. Such developments challenge the Ministry of Labour's own objectives, notably *Promulgation 2007* (to create and promote 'good faith' relationship between workers and their employers), and current stated plans to revive the tripartite forum and establish a National Employment Bureau.

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However, it is instructive to examine ‘good practice’ social dialogue activity prior to, as well as following, the latest suspension of democracy. The Fiji Government’s *Strategic Development Plan 2007-2011* began the implementation of the CEDAW and clearly states its commitment to ‘enable women to participate fully in the socio-economic development of the country’. It was noted that Government had given its commitment to eight major international programmes of action on gender equality and the advancement of women, including: CEDAW, Beijing Platform of Action, Millennium Development Goals (MDGs), UN Security Council Resolution 1325 (Women, Peace and Security); the *Commonwealth Plan of Action*; and *Pacific Plan of Action*. The latest UNIFEM report also stated that the Ministry of Social Welfare highlighted its work on a range of areas to help women, including: encouraging girls to engage in non-traditional academic subjects such as engineering and carpentry; establishing programmes to help rural women earn incomes; and targeting women via a micro-enterprise scheme (of 24,000 beneficiaries of the Small and Micro Finance Scheme, most were women).<sup>55</sup> Women have also benefited from credit and training programmes, as the majority of loans approved for business enterprises and commercial activities were granted to women.<sup>56</sup>

The Department for Women continued its role as the Government’s primary adviser on women’s development and gender issues. The Cabinet endorsed the implementation of the new *Women’s Plan of Action 2010-2019*. The Department would implement measures on five areas of concern: formal sector employment and livelihood; equal participation in decision-making; elimination of violence against women and children; access to basic services; and women and law. Its Federation also reportedly captured the action plans for implementation from the Strategic Development Plan and developed work plans for women’s centres and other groups, suggesting a ‘clear articulation’ of how implementation of the CEDAW trickled down to the community level.<sup>234</sup> While there were no Government facilities for women victims of domestic violence, the Women’s Crisis Centre (an NGO) provided relevant care, the Government brought in a Domestic Violence Decree, and training for police in that area.

It is perhaps also illustrative of ‘best practice’ that, despite curbs on their wider activity, a number of the social dialogue groups within Fiji like the FWRM, CCF, CSO have persevered to advocate and organise workshops and programmes to outline strategies to effectively address gender equality. Nationally and internationally, the FWRM has long campaigned for anti-discrimination legislation, with sex discrimination against women becoming unlawful in the 1990 Constitution. Its work has also included:

- demystifying the language of family law in Fiji’s three vernacular languages (now used as a prototype in other Pacific island countries);
- hosting regional seminars and training workshops (e.g. Women and the Law in the Pacific 1994, Pacific Women in Politics Regional Roundtable 1994);
- campaigning for the ratification of the CEDAW;
- mobilising public opinion to change the citizenship laws of Fiji which discriminated against women (equality in citizenship rights came into effect with the new Constitution in July 1998);
- drafting a Sexual Offences Bill and campaigning for the support of 16 women’s organisations (the Fiji Law Reform Commission is currently reviewing this draft legislation, to be tabled in Parliament);
- participating in international networks in support of women’s rights (e.g. 16 Days of Action Against Violence, the ILO Working Group on Women Workers, Steering Council of Asia Pacific Forum on Women, Law and Development (APWLD); and
- researching and publishing information to raise public awareness and debate on women’s legal and human rights (e.g. Labouring Under the Law, Family Law and Legal Literacy, Women’s Economic and Employment Rights brochures).

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### 7.2.2 Collective bargaining

As noted above, union density and collective bargaining coverage have declined in each country, reflecting sectoral economic change and also various political reforms and events. However, unions remain active in promoting gender equality at work.

An example in **NZ** is the public-sector union, the PSA, which launched a PaEE Agenda in 2003 to improve the position of low paid workers and to close the gap in earnings between men and women.<sup>235</sup> It successfully called for a taskforce to determine how to close the gender pay gap in the public service and health and education sectors, as well as a five-year PaEE plan of action (Section 7.1). The union reflects ‘good practice’ by incorporating PaEE into its bargaining strategies in the public sectors, aiming to ensure regular PaEE reviews are undertaken, and that the outcomes are factored into bargaining. It also wants to ensure that the Equitable Job Evaluation system is widely used.<sup>236</sup> The medium-size NZEI union has also achieved progress on the gender pay gap by maintaining collective bargaining and awareness campaigns.<sup>237</sup> For example, following a strong campaign by the NZEI for fairer pay levels and skills recognition, the largely-female group of school support staff voted in favour of a collective employment agreement in February 2010 that increased starting pay rates, gave a small pay increase and included a commitment to progress a workforce equality strategy.

The nurses and midwives’ collective agreement provides a further example of a union addressing PaEE through collective bargaining and campaigning, and the tertiary education unions also advanced their pay agenda with the previous government, appointing a tripartite body and extra funding for three years (rescinded by the current government). Although the tertiary sector ambitions to create a sector-wide MUMECA failed, the Tertiary Education Union still uses a national bargaining agenda. Included in national claims is the call for all universities to complete a PaEE audit in each organisation so as to identify and then address gender inequality and inequity. The recently-settled primary health care nurses’ MECA (2008-2011) also comprises evidence of negotiated flexible working and family-friendly arrangements (Section 6.4) under a broad commitment – ‘(e)mployers and employees recognise the value of whānau/family and will endeavour to promote whānau/family friendly policies’.<sup>238</sup> The NZNO/District Health Boards’ Nursing and Midwifery MECA (2007-10) can also be regarded as good practice, stating that ‘(t)he employer recognises the importance of family-friendly practices in the workplace and will work with the union to develop an environment where family-friendly policies are practised’. Provisions extend to employees’ application for preferential re-appointment after absence due to childcare; and childcare facilities, with employers also encouraged to provide facilities for mothers to feed infants.<sup>249</sup> The primary health care MECA might also be regarded as a starting template for bargaining elsewhere in terms of its provisions on staff education and development (e.g. related leave of up to 40 hours per calendar year for full-time employees and *pro-rata* for part-timers) – particularly significant in a female-dominant sector and for reducing barriers to career development; harassment (broadly defined); and parental leave as per legislative provisions.<sup>248</sup> Indeed, the CTU has argued that ‘the MECA can be used ... to develop industry practice’ including training standards through bargaining, addressing issues like flexible working hours, PPL and pay equity as well as to make work attractive and retain workers in an area of extreme skill shortage. It could also encourage the development of a career structure which encourages nurses to keep training and mobile.<sup>124</sup> Certainly, a positive approach currently taken by unions is to negotiate flexible work arrangements in collective employment agreements.

In **Australia**, unions are reportedly facing less opposition to collective bargaining.<sup>35</sup> Membership has also stopped its decline; indeed, between 2006 and 2009, women’s union membership rose from 792,400 to 845,700 (up 6.7 per cent, Table 15). Gender issues remain prominent; not least with a landmark equal pay case by unions currently underway<sup>239</sup> (Section 6.2.1). Public rallies have been held across the country, with more than 20 unions supporting the campaign.<sup>240</sup> Notwithstanding the recent increase in their union numbers, many women, by virtue of their location in part-time, casual, low qualified

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and/or low paid jobs, have traditionally been ‘locked out’ of collective negotiations for better employment outcomes. Unions organised a high-profile campaign for low paid employees, and there are claims that the low-paid, multi-employer stream of the 2009 Act could result in better wages and conditions for up to 20 per cent of the workforce.<sup>45, 241</sup> However the AiGroup has called for its abolition, arguing that the arbitral requirement will undermine Australia’s enterprise bargaining system and add another layer of arbitrated employment conditions above the safety net<sup>45</sup>. Employer groups likely to be directly affected by the stream (e.g. the Australian Hotels Association) were similarly opposed.<sup>242, 243</sup>

New PPL legislation (Section 2) also reflects long-term campaigning by working women and unions. In early 2008, the Government asked the Productivity Commission to conduct an inquiry into paid maternity leave. Unions rallied supporters and activists and built a sustained national campaign involving community events, petitions and lobbying. The ACTU argued in its submission to the Commission inquiry that maternity leave must be judged as a long-term economic and social measure to boost women’s workforce participation, keep productivity on track and build a healthy and prosperous community.<sup>244</sup> It also noted during the campaign that two-thirds of working women had no paid maternity leave, and that Australia and the US were the only two OECD countries that do not offer paid maternity leave.<sup>245</sup>

On WLB, the ACTU achieved some success for working families through the Work and Family Test Case in 2005. This delivered significant new rights in industrial awards for all workers with caring responsibilities including: extra unpaid parental leave after the birth of a child – from 12 to 24 months if parents request it; a right for parents to request flexible working hours or part-time work until their children are at school; a corresponding obligation on employers to consider such requests; access to family emergency leave for all employees including casuals; and personal/carer’s leave as a minimum standard of employment to apply to all employees.<sup>246</sup> Although these gains were short-lived when *Work Choices* was introduced in 2006, severely limiting the award safety net, they have been restored by the *Fair Work* laws. As in NZ, unions are expected to continue to pursue WLB issues in their collective bargaining with employers. Finally, the ACTU is also campaigning for a lift in employer *superannuation* contributions from the current minimum of 9 per cent to 12 per cent by 2012 and 15 per cent by 2015. Unions also oppose proposals (believed to be under consideration by the Henry Review into Retirement Incomes) to raise the age at which workers can access their preserved (employer-contributed) superannuation savings to 67 years.<sup>227</sup>

In **Fiji**, collective bargaining coverage has shrunk and many union activities have been effectively suppressed. Nonetheless, gender inequality at work remains a live union concern. Recently, for example, the FTUC took up women’s relatively low wages as a key issue. Its President, Daniel Urai, commented to affiliate representatives on International Women’s Day in a two-day workshop that the Congress will raise the issue of equal work and equal pay for women. He acknowledged that this was covered in the *Promulgation 2007* but that employers had ‘made it difficult for women to be recognised equally’. Women were also encouraged into the FTUC leadership which has representatives for women in the ITUC. The FTUC also had a workshop for men to help them better understand women’s roles at work and home.<sup>247</sup> At affiliate level, the FNA is Fiji’s second largest women’s dialogue group. Like the FWRM, it provides advice and training to members and is the recognised representative for nurses in collective bargaining. However, it has received little government attention on equal pay or pay equity. In 2005, the union organised a strike, demanding equal and just pay for equal work; however, this lasted two weeks without any resolution of its claims.

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## 7.3 Summary

Gender equality problems at enterprise level are common across the countries and include absolute and relatively low pay (and extensive poverty pay in Fiji); horizontal and vertical occupational segregation, leading to a gender gap in terms of female representation at senior levels; inadequate attention to WLB issues; and job insecurity. There is also increasing awareness of issues such as sexual harassment and the employment as well as social effects of domestic violence.

There is much good practice in terms of social dialogue. In NZ and Australia, this is often conducted under the auspices of government initiatives and action plans to do with, for example, equal pay and the ILO's Decent Work agenda. More specific issues include PPL and rights around flexible working. In Fiji, effective social dialogue lapsed under the military regime, though the government has also developed initiatives around gender inequality. In all three countries, trade unions remain active at local (workplace) level, often in alliance with voluntary and community groups. Collective bargaining is also an important vehicle for delivering on issues such as pay reviews and WLB, often informed by national political developments. Collective bargaining has been in decline, however, especially in the private sector of the three countries. This is largely the result of reforms in NZ and Australia that withdrew legislative support, though recent governments have made some modest restoration of union rights. The situation in Fiji is more hostile to unions and collective bargaining, notwithstanding official provisions to the contrary, owing to the suspension of democratic rule.

## 8. Conclusions and recommendations

### 8.1 Current themes and trends and implications for law

There have been a number of improvements to women's situation in the workplace and beyond in recent decades. These include a high and still-rising labour force participation rate for women in NZ and Australia. Women's participation in education has been steadily rising in all three nations. Further, the countries have each ratified a range of relevant international instruments. NZ and Australia lead Fiji on this although the latter's formal legislative response to international instruments and recommendations provides for anti-discrimination and EEO on a number of counts.

However, a range of gender equality problems persists in each country. These include a gender pay gap, gendered horizontal and vertical segregation of occupations and industries, and women's weak representation in governance. There remains no doubt that many gender equality goals, as provided for in international instruments and recommendations, have proved elusive. In Fiji, the 'departure points' for women's inequality at work and beyond are often worse than in NZ and Australia, reflecting its status as a developing country with much of its population living in poverty and a context where there are relatively few (currently) meaningful mechanisms for social dialogue.

Indeed, a key theme to emerge is the significance of political context. This influences the extent to which Fiji, NZ and Australia have engaged in international social dialogue and adhered to international labour standards on gender equality. It also shapes, and is shaped by, the balance of power between social partners such as unions and employer associations and their influence over government. NZ, a country associated with a number of 'firsts' for working women, has recently seen several gender equality achievements and projects originating from social dialogue or social partner lobbying be contested or moderated, re-emphasising the non-linear route of gender equality progress. The disestablishment of the country's PaEE Unit and pay equity reviews in 2009 and an

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absence of legislative mechanisms to operationalise and implement the principle of pay equity is a case in point, reflecting current government and employer preferences for ‘soft’ regulation and voluntary measures in such areas. In Fiji, despite the recent introduction of a legislative framework which displays elements of a progressive response to international instruments, political turmoil has severely limited its implementation and relevance. Fiji also experienced greater economic problems as a result of the global economic crisis, which also undermined women’s employment rights. In Australia, the current Labor administration has reformed the regulatory environment with certain features that could raise the profile of gender equality and diversity concerns.

The difficulty of predicting gender equality progress – and of preserving extant equality ‘gains’ – is related to and compounded by shifting levels of institutional support in each country. A common challenge for equality advocates is thus to encourage the sustainability of such, irrespective of which political party is in power. Further, state and other EO agencies need to develop greater capacity themselves to fulfil existing and future gender equality remits. Indeed, even with limited resources, NGOs such as unions, women’s and community groups in Fiji, Australia and NZ have proved pivotal to the achievement of advances for working women. In the latter two countries, this has also been due in no small part to a feminisation of many union memberships and service sector workplaces; in all three countries, it has reflected sustained grass-roots activism. A particular problem for unions in each country, however, has been declining density and collective bargaining coverage, particularly in the private sector where many of the poorest quality jobs are located, which in large part reflects a withdrawal of state institutional support for, or even opposition to, union recognition and rights to collective bargaining. This has served to restrict union influence and resources at workplace level, reinforcing the tendency to focus on political lobbying.

A more fundamental issue is the structural and enduring nature of many gender equality problems. In part, this reflects the agency issue referred to above, but also growing recognition of the challenge of long-term social dynamics such as changes in family structures which impact on women’s labour force participation levels and patterns. Moreover, in each country – Fiji in particular – ethnicity is an important compounding factor of gender disadvantage, with indigenous and other ethnic minority women more likely to experience poorer socio-economic outcomes than women as a whole. The coupling of emerging and enduring gender equality issues highlights the need to seek to go beyond efforts which aim for gender equality mainstreaming to those which address the nuanced character of inequality for different constituent groups of women at work and beyond. The social partners therefore need to address a broader equality agenda than that defined solely by the workplace, which might include initiatives to feminise and diversity their own leadership ranks.

So far, however, in each country under examination, legislative and policy frameworks to do with gender equality are shaped by formal or liberal equality ideals. Equality has been largely addressed on the basis of meritocratic assumptions, underpinned by a primary concern for economic and labour market efficiency over distributive justice. This has translated into a HRM discourse around ‘norms’ which stress advocacy and the encouragement of essentially individualist and ultimately ‘gender neutral’ EEO and anti-discrimination policies, awareness-raising and ‘best practice’. Equally, voluntary, individualised action by employers, particularly in the context of declining union density, has widely substituted for harder forms of regulatory action around labour standards, quotas or other affirmative action programmes.<sup>81</sup> A key challenge is thus the development of a framework approach in each country which recognises and responds effectively to gendered and *group*-based diversity or intersectional interests,<sup>248</sup> and both business objectives *and* wider societal needs.

This suggests that for sustained change to occur in gender relations at work, as well as truly meet international standards, NZ, Australia and Fiji’s legislative and policy frameworks need to more actively encourage, rather than ‘permit’, gender equality

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initiatives at workplace, sectoral and tripartite levels. This is not currently on the agenda in any of the countries, though a positive development in all three are attempts to (periodically) adopt coherent ‘whole-of-government’ approaches to gender inequality problems at work, monitoring and co-ordinating initiatives across government departments. However, the absence of democratic government in Fiji continues to limit what is realisable in equality terms in practice; it remains to be seen how far the *Women’s Action Plan 2010-2019* will deliver (Section 5.2).

A final consideration is that strengthening employment protection for vulnerable and low-paid workers benefits women, who comprise a higher proportion of disadvantaged workforce groups. Minimum wage legislation, for example, whilst on the surface gender-neutral, can be an important tool for advancing gender equality. Also relevant are rights for part-time and temporary workers, and measures to improve the reconciliation of work and family life, which have been advanced in particular in NZ and Australia.

## **8.2 Eliminating gender stereotypes and improving social dialogue on gender equality**

As discussed, a reorientation from the prevailing equality approaches which underpin legislative and policy frameworks to those which reflect greater awareness of group-based diversity could help address gender stereotypes at work and beyond. However, it also strongly emerged that more research into the underlying and relative significance of causes of such stereotyping are needed first. There have been some *ad hoc* initiatives in this regard, such as research in NZ concerning young people’s decision-making about careers in gender-segregated occupations as part of the MWA research programme.<sup>249</sup> Research of this nature also needs to be combined with analyses of the influence of gender stereotypes on women at work and beyond in subsequent life stages, with a view to using this material in contemporary social partner initiatives.

Another proposal for eliminating gender stereotypes relates to the point about women moving into positions of prominence. Female leaders provide important role models and may also be a position, either individually or collectively, to provide a level of mentoring to others. Examples include the recently-established NZ Global Women Network and the FWRM in Fiji which has been important for providing leadership and networking opportunities to women. State equality bodies also need the resources to research and disseminate case studies of good practice that counter gender stereotypes in the workplace.

In terms of improving relevant social dialogue, the preceding section emphasised how the influence of unions, employer bodies and other dialogue groups oscillates according to political and economic contexts. However, in the three countries, the development of greater social dialogue within each setting will be key to overall change for women. Here, state equality bodies can take a lead. For example, the EEO Trust and MWA in NZ, the OfW and EOWA in Australia, and the Department for Women and Inter-Ministerial Committee on Women in Fiji, are widely regarded as key providers of EEO advice and information, and could assume greater significance as platforms from which to encourage more cross-agency dialogue on gender equality. Cross-national research of the role(s) of comparable state agencies in different countries could also provide benchmarks for good practice. International networking between the social partners themselves might generate positive initiatives in terms of analysis and action points. This has been a particularly important process in Fiji where many women and women’s groups have been disenfranchised from the formal decision-making process.

This discussion of improving social dialogue within NZ, Australia and Fiji has primarily stressed a ‘top-down’ approach, in the form of greater coordination and networking. Legislative support to reinforce social dialogue institutions at different levels would also potentially be a great help, though this is currently not on the political agenda. However, the report also identified the significance of pressure from ‘below’, as well as

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from ‘lateral’ sources such as social campaigning groups and NGOs. Relevant examples include the Pay Equity Coalition in NZ and the Equal Pay Alliance and the National Pay Equity Coalition in Australia. These campaigns are also concerned with the promotion of extant legislative and policy arrangements and guidelines. In NZ and Australia, for instance, unions are critical of the promotion of flexible working-hours legislation. Though it could be argued that these developments rather indicate frustration at what conventional social dialogue can deliver, they also help promote the relevance of social partners (unions in particular) to the implementation as well as introduction of gender-equality rights.

### **8.3 Partnerships for social partner capacity building**

It emerged that partnership arrangements can be significant for articulating and helping to progress gender equality in the workplace, even though national-level tripartism does not characterise the industrial relations arrangements in NZ, Australia or Fiji. Tripartite arrangements tend to be looser, expressed in terms of focusing and coordinating consultation. In addition, ‘voluntary’ examples of tripartite and bipartite relations were noted, suggesting recognition by the social partners of the need for inclusive dialogue on significant gender equality and workplace matters.

Social dialogue arrangements can vary hugely in the level and intensity of exchange and resultant activity, but are typically more effective when they function at multiple levels, allowing for flexibility to tailor initiatives within national policy frameworks. Unions are particularly concerned to develop a sector focus. For example, the NZCTU is a key advocate for legislation that enables comparisons of job size and pay between different gendered occupations, not just within an organisation but also within multi-employer groups at sector level.

Effective social dialogue is also linked to collective bargaining. In terms of gender equality, more effort is needed to increase union representation of those in part-time, low paid, sector employment. Among other factors, high levels of unionisation are strongly correlated with a lower wage differential and a lower gender pay gap.<sup>250</sup> Quantitatively at least, this also provides greater opportunity for union capacity building as well as partnership with employers in which gender equality issues can be given greater profile than is currently the case. However, as noted in Section 8.1, union membership and density in Australia, NZ and Fiji have been in decline. Women are also under-represented in the union hierarchy, despite constituting around half of the union membership in Australia and NZ and a significant minority in Fiji.

Another factor aiding social dialogue is the role of policy research bodies or ‘think tanks’. These are most limited in Fiji. For instance, the FTUC acknowledges that it does not possess the resources to carry out financial and economic analyses. Individual unions have tended to rely on academics for *ad hoc* research support.<sup>183</sup> Another more general omission is the lack of IFAs involving MNCs and global and local trade unions, with only two pertaining to the three countries (Section 6.3). Such partnership arrangements have played a role in helping MNCs to respond to international instruments concerning gender equality, and to profile and address other gender equality issues in the workplace, not least as MNCs are said to ‘perform well wherever they are in the world, even in areas where overall management practice scores were particularly low’.<sup>250</sup> MNCs can build capabilities and critical mass, and augment the flow of knowledge and skills to domestic firms<sup>252</sup> and such arrangements could be encouraged since in each of the three countries as a host to a significant number of MNCs. The establishment of ‘role model’ IFAs may be an important lever for encouraging the transferral of ‘good practice’ on gender equality at work, including to domestic firms.



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More generally, monitoring of and action on gender equality requires robust collection and analysis of data. Unfortunately, a recurring theme in this report was inadequacies in the relevant datasets. There have been some improvements in the countries, including the development of the Fiji Bureau of Statistics' inaugural *2004-2005 Employment and Unemployment Survey*, though it is uncertain whether this survey will be repeated. National agencies like Australia's OfW have noted the imperative for gathering more evidence and using benchmarks to identify the gaps and challenges remaining and to measure progress. Better data capture has also been stressed at international fora such as the Pacific Ministerial Meeting on women's issues in 2004, especially for Fiji because of the importance of work in its informal economy. Further, basic methodological issues such as how 'work' is defined in different surveys has impacted on interpretation of the results.<sup>253</sup> In all three countries – especially Fiji – much more data are thus required if gender inequalities are to be more sensitively assessed and responded to. Unfortunately, the reverse is sometimes the case, as evidenced by NZ's cancellation of regular PaEE reviews. Yet it remains the case that social partner capacity to develop policy, engagement and response plans is premised on reliable, in-depth intelligence.

The case is also made for evidence-based evaluation and review of government policy. For instance, there have recently been several reviews of key anti-discrimination and equality laws and agencies involving substantial social partner input in Australia. In NZ, evaluative work on gender equality in the workplace has been curtailed, whilst in Fiji it is patchy and the timing of data collection somewhat unpredictable. Legislative encouragement of regular reviews could in turn promote social partner capacities insofar as such agencies are collaborative in their review processes and use findings to inform subsequent strategy.

Finally, the capacity-building of social partners might be encouraged through the development of national or regional social dialogue fora to discuss diversity issues more generally alongside gender equality matters. In this manner, the intersectional interests of employees might be better understood and addressed. To illustrate, in Australia and NZ, within many unions, women's groups function at different organisational levels and in various structural forms. Whilst their primary focus has been on so-called 'women's issues' in unions, the workplace and beyond, recent evidence suggests that they increasingly recognise and seek to address broader interests and identities.<sup>248</sup> This has sometimes been facilitated by collaboration with external and community bodies, stressing a shift towards diversity-based representation and a more fundamental embrace of the interface between gendered work and non-work roles.

## **8.4 Further collaboration with international organisations**

The three countries are all engaged in active ongoing relations with international bodies concerning gender equality, and they have all ratified a range of relevant international instruments, though to varying extents. There is also considerable variation in terms of implementation and practical effect. The need remains therefore for the ILO and other international bodies to regularly seek verifiable comparative information that addresses any potential gaps between intended and actual practice. (This also relates to another theme to emerge here: the general need for comprehensive, standardised and more frequent data collection on gender equality matters – Section 8.3). This includes data from both official and independent sources.

Related to this is that gender equality issues are indeed at the heart of the ILO's 'decent work' agenda. The improvement of data collection (particularly with this issue in mind) could aid understanding of the nature of this nexus. The ILO and other international agencies could be key to developing consistent research and data repositories to enable comparative analysis of the inter-relationship between gender equality and decent work.

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They could also help clarify to the social partners in each country some of the key terminology and measures used. Across different national contexts, for instance, there is no standard definition of the constructs underpinning the term ‘gender equality’. The ILO could play a part in promoting consistency or providing rationales for more idiosyncratic or country-specific terminology to help foster cross-national understanding.

Additionally, and developing points made earlier in this chapter, the ILO could also help to promote social dialogue on gender equality and its translation into effective legislation, HRM policy and workplace practice via measures including:

- providing information on and promote IFAs, perhaps in the context of corporate social responsibility, as one mechanism by which to encourage jointly-agreed gender equality arrangements and progress gender monitoring and best practice in MNCs;
- disseminating and encouraging discussion of conceptual equality approaches (such as group-based/outcome and diversity models alongside individualistic equality approaches) and their implications for policy;
- promoting gender equality in terms of core human rights as well as workplace rights, highlighting relevant cross-references between different conventions and instruments; and
- developing qualitative studies of ‘best practice’ gender equality approaches which show sensitivity to cultural and sector issues.

## 8.5 Final remarks

In Australia and NZ, various indices of gender equality at work reveal considerable improvement in recent decades. Fiji lags behind both countries on an array of measures including employment, income, education, government, business management and ownership. However, on certain indices for NZ and Australia, and on a wider range for Fiji, manifestations of gender inequality in employment continue and are indeed growing. This is often attributed to the failure or inadequacy of regulation, but it also reflects a conceptual and practical separation of different fields of regulation (e.g. anti-discrimination and employment relations laws) as well as the ‘hardness’ of the regulatory measures. The links between different forms of social dialogue and responses in terms of legislative and policy frameworks and workplace practice also need to be closely assessed to help ensure the implementation of, and improvement on, international labour standards and human rights in decent work settings for women and men. The report identified various difficulties in these processes, partly due to a progressive weakening of regulatory underpinnings or institutional supports, most dramatically demonstrated in Fiji. Moreover, the comparative analysis highlighted how the disappearance or obscuring of a broader gender equality policy agenda has contributed to weaknesses in each countries’ approaches to advance gender equality in employment and decent work.

There is also a need for better data collection and analysis of gender inequality. Monitoring and review needs to become a more systematic exercise on the part of the social partners as well as state agencies, and encompass qualitative as well as quantitative studies. Evaluation of national level data would also benefit from being more firmly placed in international comparative perspective. However, what is already clear is the imperative of an integrated approach to legislative, policy and workplace/HRM policy development in each country which is encouraged by social dialogue at multiple levels and across sectors in order to progress gender equality aims. A holistic approach is more likely to lead to more intense social partner involvement; to equality initiatives that respond to and address problems within and beyond the workplace; and encourage more robust progress that is less prone to buffeting by changes in government and economic conditions.



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