

WE KNOW

HUMAN RESOURCES

a guide for employers

HUMAN RIGHTS ACT & EQUAL EMPLOYMENT OPPORTUNITIES [EEO]

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INTRODUCTION

The Human Rights Act 1993, which came into force on 1 February 1994, replaced earlier human rights legislation, the Race Relations Act 1971 and the Human Rights Commission Act 1977. An amendment to the Act in 2001 altered the institutional framework of the Human Rights Commission and separated the Commission's investigative and decision-making functions. It also brought state employees within the Act's coverage and provided for the possibility of challenging other government actions, including government legislation. However it did not change the process for making an initial discrimination complaint. The Act itself forbids discrimination on the grounds of sex, age, marital status, religious belief, ethical belief, colour, race, ethnic or national origins, disability (including having in the body organisms capable of causing illness), political opinion, employment status, family status and sexual orientation.

Discrimination on the above grounds is prohibited in relation to employment, education and training, access to places and facilities, and the provision of goods and services and accommodation. Employment discrimination will be employers' immediate concern but other areas may also be relevant and need to be borne in mind.

The best way to ensure compliance with the Act is to have in place policies and programmes of equal employment opportunity (EEO). Enterprise and workplace practices are far more likely to meet the Act's requirements with such programmes established and functioning effectively.

Giving proper recognition to EEO means making all employment-related decisions on the basis of merit, not on the basis of factors which have nothing to do with ability to perform the job such as the prohibited grounds of discrimination represent. Meeting the Act's standards means taking all possible steps to remove institutional barriers that limit employment opportunities for people in the specified categories in particular.

This guide is intended to help employers to understand their responsibilities under the Act. It describes the legislation itself, with reference to certain related statutes, discusses the introduction of EEO policies and programmes and covers the question of AIDS in the workplace. On the subject of EEO, it should be read together with the EEO Trust's publication, "Making the Most of a Diverse Workforce - an employer's guide to EEO" to which it forms a companion volume. The EEO Trust has numerous other publications, including "How to develop an EEO policy and plan".

Copies of these publications are available both from the Trust and from Regional Employers' Organisations. Regional Employers' Organisations can also offer further advice on the human rights legislation .

HUMAN RIGHTS ACT 1993 INCLUDING THE HUMAN RIGHTS AMENDMENT ACT 2001

UNLAWFUL DISCRIMINATION IN EMPLOYMENT

It is unlawful for both state and private sector employers to discriminate on any of the grounds listed in the Act where a properly-qualified job applicant, or applicant for promotion, is otherwise the best person for the job. Where someone would otherwise be right for a particular job, the employer may not refuse to employ on the basis of a prohibited ground of discrimination, nor offer or provide the job on terms and conditions less favourable than those offered or provided to someone with similar capabilities, employed in the same, or substantially similar circumstances. This includes less favourable superannuation (with some exceptions), other fringe benefits, and opportunities for training, promotion and transfer. However, there is no prohibition on different pay rates and conditions of employment based on performance or productivity since it is not unlawful to treat employees with greater capabilities more favourably than less capable employees who do the same kind of job.

It is also unlawful to dismiss an employee who comes within one of the categories of prohibited discrimination, or to treat such an employee in some detrimental way when others similarly employed are not dismissed or not so treated.

No one (employment agencies included) who finds work for a prospective employee, or who finds employees for employers, is permitted to discriminate on any of the prohibited grounds.

In relation to discrimination, the term **employer** includes the employer of an independent contractor, anyone for whom a subcontractor's employees are working (that is, both the subcontractor and the person employing the subcontractor are affected), and anyone for whom work is done by an unpaid worker, for example, a charitable organisation. **Employment** has a similar meaning.

A complaint of unlawful discrimination may be made if one or other of the prohibited grounds of discrimination currently applies to a job applicant - or to a job applicant's relative or associate - or did so in the past, or if an employer suspects, assumes or believes a prohibited ground applies. For example, if employment is refused because the employer thought that, or knew that, a job applicant, or the applicant's spouse, was once a member of a particular political party). "Relative" includes anyone dependent on the particular individual and a member of that person's household, as well as relatives by blood, marriage or adoption.

Sexual and racial harassment and inciting racial disharmony are also grounds for a complaint under the Human Rights Act.

Complaints of discrimination in employment can also be taken as personal grievances under the Employment Relations Act 2000 but in that case must be raised within the 90-day period specified in that Act. Under the Human Rights Act there is a period of 12 months in which a complaint can be made.

Particular points to notice

Advertisements: Advertisements which can be taken as indicating an intention to discriminate on any of the prohibited grounds are unlawful. Terminology used must be gender-neutral unless it is obvious from the advertisement that there is no intention to discriminate (for example, the words postman and stewardess are not normally acceptable).

Crews of ships and aircraft: The Act does not affect anyone either employed on, or seeking employment on, non-New Zealand planes and vessels if employment commenced, or application for employment was made, outside New Zealand. Foreign ships and aircraft taking on employees within New Zealand **are** subject to the Act.

Genuine occupational qualification: Although the Act contains a number of specific exceptions, the Human Rights Review Tribunal may, in any case before it, declare that a genuine occupational qualification applies, effectively overriding the Act. In other words, the Tribunal may make a **special exception in a particular case**. An employer may seek a hearing for this purpose but will always have to prove the exception claimed. For example, it is unlawful to refuse employment on the ground of political opinion, unless a particular job is one to which limited exceptions apply. It is perfectly permissible to refuse employment to applicants for the position of political adviser (to a member of Parliament, candidate seeking election to Parliament, and so on) because of their particular political opinion and there may be other jobs where political opinion is similarly important. However, in those cases it would be for the employer to establish that a genuine occupational qualification applied.

(It is also possible in relation to areas other than employment - access by the public to places, vehicles and facilities, the provision of goods and services, educational establishments and the like - that there is a genuine justification for something that would otherwise constitute prohibited discrimination.)

Indirect discrimination: Discrimination need not be direct. A complaint may be made where a particular activity, although not intended to be discriminatory, may, nevertheless, be discriminatory in effect. For example, holding training sessions in the evening may mean employees with family responsibilities cannot attend. Where a complaint is made, the employer would need to be able to show why no other time was available. If an activity is discriminatory in its effect it is unlawful, unless there is good reason for it.

Liability of employer and principals: Employers are liable for all discriminatory actions of their employees, whether or not these were done with an employer's knowledge or approval. Where someone is acting as the agent of an employer, it is a defence to show that the agent had no authority to act in the way he, or she, did.

Where the alleged offender is an employee, it is a defence for an employer to prove that all reasonably practicable steps were taken to prevent the particular action or behaviour. For example, in respect to workplace sexual harassment (prohibited by the Act), providing employee education making clear that sexual harassment is not acceptable and having in place a procedure for dealing with it if it occurs will be evidence in the employer's favour if a complaint is made.

Particulars of applicants for employment: Application forms and inquiries made of or about job applicants must not, in any way, indicate an intention to discriminate. Consequently, if application form questions ask about age, sex, marital status, disability, ethnicity and the like employers should be clear why these questions are asked or simply not ask them. For example, it is unnecessary to ask about marital status if the only purpose is to find out how to address an applicant. Instead, the applicant could be asked to tick a box on a form where honorifics such as Mr, Mrs, Ms, Miss are set out.

One good reason for asking such questions is the need to collect information for statistical purposes in order to determine how well an EEO policy is working. Compliance with safety and health requirements in terms of the Health and Safety in Employment Act 1992, or the Injury Prevention, Rehabilitation and Compensation Act 2001 might well involve the collection of particular personal data. For example, an employer might want to ask about accident history relevant to the particular job to ensure that a prospective employee will not be susceptible to the recurrence of previous injuries. An appropriate written question might be:

Have you had an injury or medical condition caused by gradual process, disease or infection - for example, hearing loss, sensitivity to chemicals, repetitive strain injuries - which the tasks of this job may contribute to or aggravate?

In the case of gradual process injuries, deafness, back injuries and the like, an employer is entitled to ask in writing whether a job applicant has suffered, or is suffering, from such an injury or from a condition likely to contribute to such an injury.

The Human Rights Act does not prohibit questions regarding a prospective employee's health or disability status provided these relate directly to real, not perceived, risks associated with the job in question. If it is reasonable to prevent these risks, this should be done, but if this is not possible without unreasonable disruption, the employer would have a defence against any complaint of discrimination. The important thing is to ensure that all appointments can be justified on a best-person-for-the-job basis.

Victimisation: No-one may be victimised for making a claim under the Act, saying they are going to make a claim, giving evidence or information about a complaint or investigation, or exercising any right under, or declining to do something contrary to the Act. Employers must not treat an employee less favourably because they know the employee has done any of those things or because they know or suspect that some relative or associate of the employee has, or intends to act in such a way (unless the employee has acted in bad faith).

PROHIBITED GROUNDS OF DISCRIMINATION

The Act sets out 13 grounds on which discrimination is prohibited. Exceptions apply in limited circumstances. These grounds, and certain exceptions, are:

(1) Sex, including pregnancy and childbirth

The prohibition in relation to pregnancy and childbirth operates additionally to rights provided by the Parental Leave and Employment Protection Act 1987. This latter Act entitles either or both parents to a combined total of 52 weeks' leave, payment for which is available for the first 12 weeks, on the birth of a child, or on the adoption of a child under the age of five years. To qualify, an employee must have worked for the same employer for an average of ten hours a week and no less than 1 hour a week or 40 hours a month during the 12 months immediately preceding the expected date of delivery or adoption.

The specific reference to pregnancy and childbirth reinforces the Parental Leave and Employment Protection Act which provides that an employee may not be dismissed because she is pregnant. Even where there is no obligation to provide parental leave (because the employee does not meet the statutory criteria), an employer may not, on grounds of pregnancy or childbirth, refuse employment, terminate employment, or treat an employee differently from others similarly employed. By contrast, preferential treatment because of pregnancy and childbirth is lawful and not a breach of the Act.

(2) Marital status

Marital status covers all possible circumstances, referring to persons who are single, married, married but separated, a party to a marriage now dissolved (that is, divorced), widowed or living in a relationship in the nature of marriage.

(3) Religious belief

Employers **must accommodate** any practice which employees who hold a particular religious or ethical belief are required to follow, as long as the employer's activities are not unreasonably disrupted in consequence. "Unreasonable disruption" is not defined. Some employees may be unable to work on particular days of the week, in the same way that some rugby players are not always available to play on Sundays.

(4) Ethical belief

This refers to the lack of a religious belief, in respect to a particular religion or religions, or all religions.

The requirement to accommodate particular religious practices applies equally to ethical belief.

(5) Colour

(6) Race

(7) Ethnic or national origins, including nationality or citizenship.

(8) Disability

Disability covers physical disability or impairment, physical illness, psychiatric illness, intellectual or psychological disability or impairment, any other loss or abnormality of psychological, physiological or anatomical structure or function, reliance on a guide dog, wheelchair or other remedial means and the presence in the body of organisms capable of causing illness (for example, the HIV virus).

An employer is not required to employ or promote someone who could only satisfactorily perform the job with the aid of special services or facilities that **it is not reasonable to expect the employer to provide**. Similarly,

employment may be refused to someone who, because of the environment in which the work is to be carried out, could only perform the duties involved **with risk of harm** either to the employee concerned, or to others.

Risk of harm includes the risk of infecting other persons with an illness when it is not reasonable to take that risk. However, an employer **may not** refuse employment or promotion if, without unreasonable disruption, reasonable measures can be taken to reduce the risk to a normal level. In the event of a complaint, it will be up to the employer to establish what is or is not reasonable. For example, in relation to food handling it will be reasonable, and necessary, to refuse employment to a known hepatitis carrier although AIDS and HIV are not in the high-risk category.

Terms of employment or conditions of work may be set or varied after taking into account any special limitations that a disability places on capacity to perform a job. Special services or facilities may be provided to enable work to be carried out.

(9) Age

There is no age at which employees may be required to retire so that whether or not an employee's services are retained will depend on ability to perform the job or on agreement to a retirement date. For purposes other than employment, age means any **age from 16 years and over**.

Although an employee may agree to a retirement age, that agreement will not be enforceable if, at a later time, the employee decides against retirement and argues that he or she had no option but to agree to the age set. In the event of such a dispute the issues to be resolved will be the ability and competence of the employee to perform the job.

It is not unlawful to refuse someone employment or to retire an employee, where being of a particular age or in a particular age group is a genuine occupational qualification for the position or employment in question - for reasons of safety or for any other reason. For example, if an older airline pilot is no longer able to carry out the job safely, or because of International Regulations, he or she may be retired. And it is probably permissible to employ a younger person as a presenter of a television programme for young people, where the intention is to have someone relatively close in age to the target group. Employers need to develop appropriate performance criteria assessment measurements in substitution for the age limits previously used.

An employer may pay an employee under 18 years of age a lesser amount than that paid to someone aged 18 and over who does the same or similar work (that is, may pay youth rates). This is because a minimum youth rate applies to employees aged 16 and 17 (but not to young persons under the age of 16 since the Education Act (with limited exceptions) requires them to be at school during school hours). The adult minimum rate applies to those aged 18 and over. Where individuals are employed on training agreements requiring them to undertake at least 60 credits a year of an industry training programme in order to become qualified for the occupation to which their training agreement relates, the youth rate applies, whatever age they are.

Discrimination is not involved where an age limitation is prescribed by law. Examples are the statutory retirement age for judges and the legal drinking age.

(10) Political opinion

This includes the lack of a particular political opinion or having no political opinion.

Political advisers to members of parliament, to local authorities, or to parliamentary or local authority election candidates, MPs' secretaries and members of the staff of a political party may all be selected (or rejected) for employment on the basis of their political opinion.

(11) Employment status

Employment status refers to being unemployed or receiving any kind of social security benefit or being on accident compensation.

(12) Family status

Means having responsibility for the part-time or full-time care of children and other dependants, having no responsibility for the care of children or dependants, being married to, or in a relationship in the nature of marriage with, a particular person, or being related to a particular person.

A "relative" is anyone related by blood, marriage, affinity, or adoption to, or wholly dependent on, an employee or job applicant, or who lives in the employee's or job applicant's household.

It is not a breach of the Act to give special treatment to employees who have responsibility for the full or part-time care of children or other dependants, for example, by providing childcare facilities, or allowing time to telephone to check on the condition of a sick child.

An employer need not employ anyone married to, or living in a relationship in the nature of marriage with, an existing employee, or related to an existing employee, if there would be a **reporting relationship** between the two, or a **risk of collusion** to the employer's detriment.

Where there is a risk of collusion to the employer's detriment, employment may also be refused to the relative, spouse or partner of someone employed by some other employer.

(13) Sexual orientation

Means heterosexual, homosexual, lesbian or bisexual orientation.

EXCEPTIONS APPLYING TO MORE THAN ONE GROUND OF DISCRIMINATION

As well as the exceptions relating to particular grounds of discrimination, there are some exceptions relating to more than one ground. Two grounds - colour and employment status - have no exceptions although the general exception of genuine occupational qualification might apply in a particular case (for example, choosing a black actor over a white actor to play a black role would be permissible).

The onus of proving that any exception applies is always on the employer.

Exceptions that relate to more than one category of discrimination are:

Accommodation: Employees may be appointed *because* they are **male** or **female** when the nature or location of the employment makes it impracticable to live anywhere other than in premises provided by the employer, and the only premises available do not have separate sleeping accommodation. Where more than one person is employed, and it is not reasonable either to install separate accommodation or to provide separate premises, the employer's decision to employ only persons of the same sex will not be unlawful.

Employers do not breach the Act if, on the basis of someone's **sex** or **marital status**, they do not provide live-in accommodation (where this would ordinarily be a term or condition of employment) because it is not reasonably practicable to do so. For example, an employer need not provide a single person with live-in accommodation that would otherwise have been provided, if a married couple is already living there and sharing the accommodation with someone else would not be appropriate.

Authenticity: Employment on the basis of **sex** or **age** is permissible where for reasons of authenticity being a particular sex or age is a genuine occupational qualification (as in the case of the roles played by actors).

Domestic work: Applicants for domestic positions in private households may be refused employment, or they may be appointed, on the basis of their **sex, religious or ethical belief, disability, age, political opinion or sexual orientation**.

National security: A person's **religious or ethical belief, political opinion, disability** (in the limited sense of **psychiatric illness or intellectual or psychological disability or impairment**), **family status** (in the sense of **being married to, or being in a relationship in the nature of marriage** with someone, or **being someone's relative**) and **national origin** (or the **national origin of a relative**) are all reasons for not employing that person on work involving national security. And there is no obligation to employ anyone **under the age of 20 years** on work for which a secret or top secret security clearance is required. Ethnic origin is not, however, stated as a ground on which employment on work of national security may be refused.

Privacy: Either a **male or female employee**, as appropriate, may be employed where the employer wants to preserve reasonable standards of privacy. For example, it is not discriminatory to employ only women to sell women's underwear.

Sex, race, ethnic or national origins or sexual orientation can be grounds for appointing or refusing to appoint applicants for a position as counsellor on highly personal matters such as sexual matters or the prevention of violence.

Religious or ethical belief can be relevant to the appointment or otherwise of certain staff in **private schools** where a school requires the appointee's beliefs to be in harmony with the principles on which the school is based. This applies particularly to school principals and to those involved in religious instruction.

Religious or ethical belief is also relevant to the **propagation of belief**. Appointment on this basis is lawful if the sole or principal duties of the position are substantially the same as those of a clergyman, priest, pastor, official or teacher among those who adopt, or in some way promote, a particular belief. Social workers employed by an organisation mainly made up of persons of the same belief may also be appointed because they share that belief.

Sex discrimination is lawful in relation to **organised religion**, where the religion's doctrines, rules or established customs require that a position be limited to members of one sex. It is not, for example, unlawful to refuse women admission to the Catholic priesthood.

Sex, religious or ethical belief or age can be grounds for refusing employment where **work is to be performed outside New Zealand** and the laws, customs or practices of the country in which the work is to be performed are such that the duties involved are ordinarily carried out only by someone of a particular sex or religious or ethical belief, or in a particular age group.

GENERAL QUALIFICATION ON EXCEPTIONS

The exceptions provided in the Act will **not** apply - even though some of the duties of a particular position fall within them - if, without unreasonably disrupting the employer's activities, those duties could be carried out by some other employee. In that case, the employer's refusal of employment or promotion will remain discriminatory. In other words, if an applicant for employment or promotion could do most of a particular job, an exception can not be argued as the basis for refusing the job if, without causing the employer undue problems, that part of the job which would cause difficulty can be done by someone else without causing the employer undue problems. However, there is no obligation to employ if another applicant would be a better person for the job.

MEASURES TO ENSURE EQUALITY

It is lawful to take specific measures to help individuals or groups coming within the prohibited grounds of discrimination, if they need help to achieve an equal place with other members of the community. Reserved training places in universities or polytechnics are an example.

The Crown may provide work or training schemes or employment assistance for which eligibility is determined by age, employment status or family status.

SEXUAL HARASSMENT/RACIAL HARASSMENT

Sexual and racial harassment are two further grounds on which complaints of discrimination can be made. The harassment may be direct or indirect. Claims on both grounds may also be taken under the personal grievance provisions of the Employment Relations Act 2000. Employers are liable under both Acts for the behaviour of their employees. Under the Human Rights Act a complaint about the actions or behaviour of another employee is possible without first notifying the employer, unless the complaint concerns a customer or client. However, under the Employment Relations Act the employer must be told first and given the opportunity to prevent any repetition. This means that under the Human Rights Act employers may be liable for harassment of which they may have no knowledge. Only the existence of an appropriate programme or procedure will afford protection against such complaints. Employers should ensure they have a policy against sexual harassment and that both the policy and their complaints procedure are well understood. In that way if a complaint arises it can be more readily dealt with in-house, while if it proceeds further, having protections in place will be a defence for the employer.

A sexual or racial harassment complaint like a complaint on one of the grounds of prohibited discrimination may be made either under the Employment Relations Act instead of under the Human Rights Act – it is the employee's decision. Under the Human Rights Act the harassment must be either repeated or of such significant nature that it has a detrimental effect on the complainant in relation to his or her employment, including any unpaid work (the Employment Relations Act refers to behaviour which "either by its nature or through repetition has a detrimental effect"). Such complaints will always involve a subjective element, since they will concern something the particular employee finds unwelcome or offensive, whereas another employee might not object.

Sexual or racial harassment complaints may also be made in respect to an **employer's customer or client**. In such a case, under the Human Rights Act, the complaint must first be made **in writing** to the employer who must inquire into the matter and take **all practicable steps to prevent a repetition**. If harassment does occur again, and nothing has been done to prevent it, the employer is deemed to have breached the Act. The affected employee may then lodge a complaint with the Commission.

Sexual and racial harassment claims are possible in relation to other areas affected by the Act for example, education or housing.

More detailed information on sexual harassment prevention is to be found in the companion Sexual Harassment booklet.

ACCESS TO PLACES AND FACILITIES

Only in a limited number of circumstances may access be denied to any place or facility (including transport facilities) to which the public generally has access. Separate facilities may be provided for the use of either sex on grounds of **decency** or **public safety** (separate toilets, for example). A person with a **disability** may be denied access to a place or vehicle if **special services** or **facilities** are needed to make access possible and it is **not reasonable** to require their provision. New buildings, and buildings undergoing renovation, must provide access for people with disabilities, but there may be other circumstances in which it would be considered reasonable to provide, for example, a ramp and a handrail to facilitate entry to a building, even though there is no Building Code requirement.

Access may also be denied where there is a **risk of harm** to the individual or to others, including the risk of infecting others with an illness. This exception does not apply if the risk could be reduced to a normal level without unreasonable disruption.

PROVISION OF GOOD AND SERVICES

No supplier of goods, facilities and services may refuse to provide these on any prohibited ground, nor treat anyone in a particular category less favourably than others are treated. "Facilities" includes banking and insurance facilities and facilities for grants, loans, credit or finance.

It is **not** a breach of the Act to provide **life insurance policies**, annuities, accident insurance policies and so on - for individuals or for groups - **on different terms and conditions for men and women, people with disabilities or people of different ages** on the basis of accepted actuarial or statistical data. With disability, where no such data is available, reputable medical or actuarial advice or opinion may be relied on. However, if a complaint is made, reliance on any data or opinion may have to be justified to the Commission or its Complaints Division which may seek the views of the Government Actuary.

Sex, disability and age are, however, the only exceptions relating to life or other insurance policies. Other grounds of prohibited discrimination may not be used as a basis for offering less favourable terms and conditions than those generally offered.

No **club**, branch or affiliate, which grants privileges to members of another club may treat those members less favourably on any prohibited ground of discrimination. Clubs retain the right to decide who their own members will be (for example, all-male clubs remain lawful), but, if they open their doors to the general public - as in respect to certain competitions, for example - may not exclude on grounds such as marital status (married couples only) or sex (unless questions of strength and stamina are raised).

It is not unlawful to provide a particular **service** either to **men or to women** if it is normal practice to do so (fitting underwear, for example).

Reduced charges for goods and services are permissible on the grounds of age, disability or employment status, as are group travel services for persons of a certain age group.

Educational establishments may refuse admission on the ground of disability if special services are required and cannot reasonably be provided. Admission may also be refused if the disability is such that there is a risk of harm to others and nothing can reasonably be done to reduce the risk to a normal level.

Superannuation Schemes

Superannuation schemes may make provision for different contributions and different benefits by reason of **age** and **disability** provided that the different treatment is based on actuarial or statistical data. Where, in relation to disability, no such data is available, reputable medical or actuarial advice may be relied on, whether or not contained in an underwriting manual.

Different treatment of **men** and **women contributors** is permissible if based on relevant actuarial or statistical data on which it is reasonable to rely in the circumstances.

A superannuation scheme, or its trustees, may:

- Require applicants for membership to be under a maximum age;
- Permit increased or reduced contributions;
- Specify an age of eligibility for each type of benefit;
- Require persons who join on or after 1 January 1995 to leave the scheme on reaching the qualifying age for the transitional retirement benefit (see "Age");
- Provide benefits on death or disability which decrease in value as the members' age increases; or
- Provide benefits for members which differ in nature and amount according to the period of membership.

This latter provision applies equally to replacement superannuation schemes and to schemes to which an employer has paid contributions on behalf of an employee.

Spousal benefits are considered to constitute marital status discrimination and may be provided only in respect to persons who, prior to 1 January 1996, belonged to a scheme which offered such benefits, or were in such a scheme but have since joined a replacement scheme made necessary following company takeover, merger or restructuring.

No minimum age may be set for superannuation scheme applicants.

Following a complaint, the Commission may require the data or opinion relied on to be justified. The views of the Government Actuary may be sought.

More detailed information on the Act's superannuation provisions is to be found in the Human Rights Commission booklet, "Superannuation Guidelines".

OTHER ORGANISATIONS/BODIES AFFECTED

Organisations of employees/employers/professional and trade associations: Such organisations may not refuse membership on any of the grounds of prohibited discrimination, nor offer it on less favourable terms, nor provide less favourable access to any benefits and facilities etc, including the right to stand for election and hold office. No-one may be deprived of membership, or suspended, in circumstances where others would not be treated in the same way. Different age groups may, however, be charged different fees.

Partnerships: The Act's unlawful discrimination provisions affect all partnerships of whatever size. No-one may be refused an offer of admission to a partnership, offered less favourable terms and conditions, denied increased status or an increased share in capital or profits, expelled or adversely treated on any prohibited ground.

However, reasonable terms and conditions may be agreed for a partner or prospective partner who, because of **age** or **disability**, has a restricted capacity to participate or continue to participate in the partnership, or who can only remain a partner if special conditions apply.

Qualifying bodies: Qualifying bodies may not, on any prohibited ground, refuse someone authorisation, or refuse to bestow a qualification on someone, except in **certain cases of disability**. For the exception to operate there must either be an **inability to perform the duties required**, or **the circumstances in which the duties are to be performed** must be such that there would be a **risk of harm** to the person concerned or to others. Included in this is a **risk, which it is not reasonable to take**, of infecting others with an illness. Any grant of authorisation may have conditions placed on it reasonably related to a person's disability.

A reasonable minimum age may be set for the conferring of any qualification. Reasonable age-related terms and conditions may be imposed for the retention of any authorisation.

Vocational training bodies: Vocational training bodies may not refuse training, provide training on less favourable terms and conditions than would otherwise be available, or terminate training on any of the prohibited grounds. There is an exception in the case of **disability** if there would be a **risk of harm** to the individual or to others, including the risk of infecting others with an illness. This exception does **not** apply to the organisation concerned, if, without unreasonable disruption the risk **could be reduced to a normal level**. Preferential access to training may be provided for anyone particularly in need of it because of a lack of regular full-time employment. Special age-related training, or financial grants, may be made available to persons above a particular age or in a particular age group. Different age groups may be charged different fees.

DISCRIMINATION BY GOVERNMENT, RELATED PERSONS AND BODIES, OR PERSONS OR BODIES ACTING WITH LEGAL AUTHORITY

Complaints can be made to the Human Rights Commission alleging inconsistency with the New Zealand Bill of Rights Act's (NZBORA) freedom from discrimination provision. Such complaints will concern acts or omissions of the legislative, executive, or judicial branches of the government (that is, something done or not done in a

statute, by Cabinet or by a judge) or of some person or body that performs a public function or exercises any power or duty imposed by law. They may be made in the same way as complaints of employment discrimination. However, the treatment of such complaints will vary depending upon the nature of the complaint. For example, if a complaint concerns a judgment or other order of the court, the Commission must take no further action in regard to it.

Unless found to be a limitation that can be justified in a free and democratic society, an act or omission that is inconsistent with the right of freedom from discrimination conferred by the NZBORA will be found in breach of the Human Rights Act where it arises from:

1. A Commission inquiry into any Act, law, practice or procedure;
2. The assessment, mediation, or determination of an unlawful discrimination complaint;
3. A decision by the Director of Human Rights proceedings regarding the Human Rights Review Tribunal. The Director has the right to decide whether or not to represent a complainant if a complaint goes on to a Tribunal hearing. (See under "Director of Human Rights Proceedings". The Director can also decide to refer a complaint back to the Commission.)
4. A determination of the Human Rights review tribunal or of any court on appeal from the Tribunal;
5. A determination of any court or tribunal in proceedings brought by the Commission;
6. Any other process or proceedings commenced in relation to an unlawful discrimination complaint; or
7. Any related matter.

As with **employment discrimination complaints, the onus of proving that an act or omission is a justified limitation on the right to freedom from discrimination as set out in the NZBORA lies on the person against whom a complaint is made.** (Employment discrimination complaints, like access discrimination complaints and discrimination complaints relating to the supply of goods and services do not involve the NZBORA.)

THE COMPLAINTS PROCESS

Complaints are made to the Human Rights Commission which has the job of receiving and assessing them, gathering information about them, and providing the information to the parties involved. The aim is to try and get the parties to resolve any dispute promptly themselves and for that purpose the Commission can offer to provide expert problem-solving support, mediation and so on.

If the complainant wishes to proceed with a complaint the Commission *must* take action or further action unless it decides not to because:

1. The complainant has known about the complaint for more than 12 months before approaching the Commission,
2. The complaint is frivolous or vexatious or the subject matter is trivial;
3. There is no need, in the circumstances, to take the complaint further;
4. The complainant has some other adequate remedy or a right of appeal.

The Commission must give reasons if it decides not to proceed.

The Commission may only take action or further action on a complaint if the complainant (or person alleged to be aggrieved if someone else has complained) tells the Commission that he or she wishes to proceed with the complaint.

DISPUTE RESOLUTION SERVICES

Dispute resolution services may include the provision of:

1. General information about discrimination and associated legal obligations;
2. Information about available services;

3. A venue for a dispute resolution meeting convened at the request of the parties, or with their agreement, where a complaint can be discussed and resolved without prejudice to either party's position;
4. The services of a mediator.

Information disclosed at a dispute resolution meeting or in mediation remains confidential (except with the consent of the parties or relevant party).

Services may be provided by telephone, fax, internet or email, through pamphlets or brochures, booklets or codes, or by specialists responding to requests, identifying required services, and providing these promptly.

INFORMATION GATHERING

Before gathering information about a complaint, either initially or where a complainant wishes to take a complaint further, the Commission must tell the complainant, the person alleged to be aggrieved (if someone else has complained) and the person against whom the complaint has been made that it intends to do so. (Where a complaint relates to the NZBORA or to a person or body that performs any public function, power, or duty imposed by law, the Commission must also inform the Attorney General.)

Notice to the above parties must describe rights and obligations under the Act, processes applying to complaints, and other services that might help the parties to settle the matter. The Commission must also supply details of the complaint to the person against whom it is made and tell that person that he or she can, within a reasonable time, provide the Commission with information in response.

The requirement to provide the information referred to above will be satisfied if the Commission has made all reasonable efforts to provide it.

The information gathering process must be conducted in private, although the Commission can hear and obtain information from anyone it thinks fit. The person complained of (and the Attorney General in relevant cases) is the only person who may be heard by the Commission as of right.

SETTLEMENT

Settlement can occur at any time and involves the parties agreeing to actions that will resolve the complaint. Resolution may include paying compensation or tendering an apology, while there must be a satisfactory assurance from the offender that there will be no repetition of the conduct complained of and that nothing similar will occur again.

A complaint may be still be settled by agreement even though it has gone on to a Human Rights Review Tribunal hearing since the Tribunal has to refer a complaint back to the Commission if it thinks it can be resolved in this way. However, the Tribunal will determine the matter itself if it does not think resolution by agreement is possible, or would not be in the public interest, or would undermine the urgent or interim nature of the proceedings.

TAKING A COMPLAINT FURTHER

Unresolved discrimination complaints or complaints about inconsistencies with the NZBORA's anti-discrimination provisions may be taken to the Human Rights Review Tribunal by the complainant, the aggrieved person (if that is someone other than the complainant), or the Commission.

The Commission can also take complaints to the Tribunal on behalf of a class of persons where the complaint concerns an alleged discriminatory practice. However, it may do so only if the complainant or aggrieved person has not brought proceedings, that person has agreed to the Commission bringing proceedings and the Commission considers that doing so will help it carry out its statutory function of being

an advocate for human rights, and promoting and protecting respect for and an understanding and appreciation of human rights in New Zealand society.

Anyone against whom an employment discrimination complaint has been made (or a complaint about the provision of goods and services, access to educational establishments or to places, vehicles, and facilities and so on) may take the complaint on to the Tribunal if the complainant or aggrieved person does not do so.

When proceedings are brought before the Tribunal, the Tribunal must first consider whether an attempt has been made to resolve the complaint in some way or other (as by mediation). The Tribunal must refer the complaint back to the Commission unless it is satisfied that this will not contribute constructively to resolving the complaint, will not be in the public interest, or will undermine the urgent nature of the proceedings. A complaint can be referred back to the Commission – or adjourned - at any time during the course of a hearing if the Tribunal is of the view that the parties themselves may yet be able to resolve it.

The Commission can bring proceedings before the Tribunal if it considers that an inquiry conducted by it into any enactment or law, or any practice, or procedure, governmental or non-governmental, involves or may involve an infringement of human rights. Proceedings may be brought both in respect of discrimination complaints (employment, access etc.) and complaints relating to breaches relating to the NZBORA.

Where a settlement has been reached but one of the parties fails to observe one or more of the terms of the settlement, the other party may go to the Tribunal seeking enforcement.

No one can complain to the Tribunal about any judgment or court order or any act or omission of a court that affected the way proceedings were conducted.

The Attorney General has the right to be represented in any Tribunal proceedings alleging a NZBORA-related breach, or where employment /access etc. discrimination is alleged against a person or body in the performance of a public function, power, or duty conferred or imposed by law. The Attorney General may also be represented in any related proceedings heard in the District or High Court or Court of Appeal, whether or not he or she was a party to the Human Rights Tribunal. The Human Rights Commission enjoys a similar right. Except where the proceedings in question are appeal proceedings, both the Attorney general and the Commission have the right to call evidence and cross-examine witnesses.

DIRECTOR OF HUMAN RIGHTS PROCEEDINGS

The Director of Human Rights Proceedings heads the Office of Human Rights Proceedings which acts independently from the Commission and is essentially concerned with appeals to the Human Rights Review Tribunal where matters have not been resolved at a lower level.

While anyone may appear in person before the Human Rights Review Tribunal or may be represented by his or her own barrister or solicitor, it is also possible for representation by a barrister or solicitor to be provided by the Director – to individuals, groups of persons, and to the Commission – with costs paid by the Director. If costs are awarded against a person so represented they are to be met by the Office. If the award of costs is favourable to the complainant it must be paid to the Office.

The Director may provide representation to a party seeking to enforce a settlement before the Tribunal (or on appeal to the High Court or Court of Appeal) or to a complainant in a discrimination complaint where a settlement has not been, and is not likely to be, achieved at Commission level (and, again, on appeal to the High Court or Court of Appeal). It may also provide representation to the Commission in proceedings arising from complaints, from Commission inquiries into any governmental or non-governmental practice or procedure involving, or which could involve an infringement of human rights, or in any proceedings in which Commission is entitled to be heard (as with appeals the District or High Court or to the Court of Appeal).

The Act sets out a number of criteria that the Director must take into account in deciding whether or not to provide representation. These are:

1. Whether the complaint raises a significant question of law;
2. Whether the complaint's resolution would affect a large number of people;
3. The level of harm involved;
4. Whether the proceedings are likely to be successful;
5. Whether remedies available are likely to suit the particular case;
6. Whether there is likely to be any conflict of interest in providing representation;
7. Whether providing representation is an effective use of resources;
8. Whether or not providing representation would be in the public interest;
9. Any other matter considered relevant.

Any decision regarding representation must be made promptly and notified to the complainant, aggrieved party or to the Commission. If the Director decides not to provide representation, he or she must give reasons for that decision.

The Director does **not** provide representation for alleged offenders against whom complaints are made.

REMEDIES

Where the Tribunal is satisfied on the balance of probabilities that the Human Rights Act has been breached or the terms of any settlement reached have not been observed, it may award any one or more of a number of remedies. These range from a declaration that a breach has been committed, and/or an order restraining the employer from continuing or repeating the breach (or permitting others to do so), to damages. Damages may cover monetary loss suffered, expenses reasonably incurred, and/or the loss of any benefit (monetary or otherwise) which, the complainant, had there not been a breach, could have expected to obtain. Damages may also be awarded for humiliation, loss of dignity and injury to feelings. As well, the Tribunal may issue an order specifying what the employer must do to make good any loss or damage suffered, issue a declaration that a contract in breach of the Act is an illegal contract, grant relief in accordance with the Illegal Contracts Act 1970, order the defendant to undertake any specified training or implement any specified policy or programme to assist with compliance, or grant any other relief it thinks fit. Costs may be awarded whether or not any other remedy is granted.

The only remedy available to someone against whom a complaint has been made who subsequently brings proceedings before the Tribunal because the complainant has not done so, is a declaration that he or she has not committed a breach of the Act.

No award of damages, or any remedy granted, may exceed monetary limits set in the District Courts Act 1947 (\$200,000), unless, where a breach is established, the Tribunal refers the case to the High Court for a decision as to appropriate remedies. The Tribunal must then act on the High Court's decision. If proceedings have been brought on behalf of more than one complainant, they must, for the purpose of applying any monetary limit, be treated as if each complainant had brought a separate action against the defendant. The parties may agree in writing that the Tribunal will have jurisdiction to grant a remedy greater than the District Court's monetary limitation.

It is not a defence that a breach of the Act was unintentional or without negligence, but the Tribunal must take the conduct of the parties into account in deciding what remedies to grant.

ABILITY OF TRIBUNAL TO MODIFY REMEDIES FOR BREACH OF TERMS OF SETTLEMENT OR THE ACT

If the Tribunal finds there has been a breach of the Act or of a complaint's terms of settlement, any party to the proceedings may ask it to do one or other of the following:

1. Specify a period during which the defendant must remedy the breach, or
 - a. adjourn the proceedings to a specified date so that there can be further consideration of the remedies or any other remedies to be granted instead of, or as well as, awarding damages or any other remedy
2. Refuse to grant a retrospective;
3. Refuse to grant any remedy in respect to something that happened before proceedings were brought or before the date of the Tribunal's determination (or of any other date the Tribunal might specify);
4. Provide that any remedy granted will only operate prospectively;
5. Specify the way in which a remedy's retrospective effect is to be limited.

In deciding whether to grant such an application the Tribunal must take into account:

1. Whether or not the person complained of acted in good faith;
2. Whether or not the interests of any person or body not represented in the proceedings would be adversely affected if such an action is or isn't taken;
3. Whether or not the proceedings involve a significant issue not previously considered by the Tribunal;
4. The social and financial implications of granting the remedy the complainant is seeking;
5. The significance of the loss or harm any person has suffered as a result of the breach of the Act or of a complaint's terms of settlement;
6. The public interest generally;
7. Any other relevant matter considered.

In cases involving NZBORA breaches or employment/access etc. discrimination breaches by some person or body in the performance of any public function, power or duty imposed by law, the Tribunal, in deciding whether or not to modify remedies imposed for breach must also consider:

1. The requirements of fair administration; and
2. The Government's obligation to balance competing demands for the expenditure of public money.

The Tribunal may state a case for the High Court.

Appeals against Tribunal decisions, including the grant of an interim order, go to the High Court, whose decision is final. However, the High Court may agree that questions of law arising in appeal proceedings will be decided by the Court of Appeal. The Tribunal must have notice of any appeal within 30 days of its decision.

It is an **offence**, without lawful justification or excuse, to wilfully obstruct or hinder the Commission or a Commissioner, or to fail to comply with any lawful requirement, or to make a false or intentionally misleading statement. In such cases a fine of up to \$3,000 may be imposed.

Conciliation

If parties to a complaint agree, the matter can be conciliated without an investigation. The Complaints Division is required to use its best endeavours to achieve a settlement.

If conciliation fails to achieve a settlement, the matter can then be investigated. Similarly, if the parties agree, an investigation can be abandoned in favour of a conciliated settlement.

In some cases, the Complaints Division may decide on **compulsory conciliation**. If so, the Complaints Division will call the parties to a **conciliation conference** in order to establish what the issues are and secure a settlement. Failure to attend can result in the Proceedings Commissioner issuing a summons compelling attendance at a future date.

Settlement is reached by the parties agreeing how the complaint will be resolved. This may involve paying compensation, or tendering an apology, and providing an assurance that the conduct complained of will not be repeated.

The **Privacy Act 1993**, in theory, complicates employers' ability to respond to a complaint since this Act makes it unlawful to reveal personal information without the consent of the person concerned. However, the Human

Rights Commission has indicated that when faced with a discrimination complaint, an employer may use personal information to establish that the best person for the job was selected. Disclosure of personal information without the consent of the individual it relates to causes no difficulty should a subsequent Complaints Review Tribunal hearing be held. This is because the Privacy Act allows disclosure without consent for the conduct of proceedings before any court or tribunal. Employers who do release personal information without consent at the investigation or conciliation stages of a complaint should be careful **to record clearly in writing their reason for doing so**.

Proceedings

If a complaint, or an investigation initiated by the Complaints Division, is not settled by conciliation or as the result of a conciliation conference, the Proceedings Commissioner must decide whether or not to bring proceedings before the Complaints Review Tribunal. The employer concerned must first be given the right to be heard, by providing written or oral submissions within a reasonable time.

The Proceedings Commissioner will also decide whether to bring proceedings before the Complaints Review Tribunal where there has been a complaint about the **failure to observe the terms of an earlier settlement** - again, first giving the employer the right to offer an explanation. If there has been a failure to comply with the terms of a settlement, or where no settlement is likely to be reached, the Proceedings Commissioner may bring proceedings before the Tribunal on behalf of an individual complainant or a group of individuals considered to be affected by a discriminatory practice.

The Proceedings Commissioner, or the Proceedings Commissioner and the employer together, may apply to the Complaints Review Tribunal for a declaration that something which would otherwise be unlawful discrimination is lawful in the particular case, because a **genuine occupational qualification** applies. With complaints of failure to provide access or goods and services, the declaration sought will be that there was a **genuine justification** for the omission.

Complainants

Complainants may take their own cases if the Complaints Division decides against a Tribunal hearing because the complaint does not have substance, or if the Proceedings Commissioner declines to take proceedings or agrees that the complainant will take them.

When a case goes to the Tribunal, the Proceedings Commissioner can apply to the Tribunal for an **interim order** to preserve the position of the parties while the case is decided. A defendant employer must be given a copy of any interim order application and is entitled to be heard before a decision to grant the application is made. The employer may then, with leave of the Tribunal, apply to the High Court to have the order varied or rescinded (unless it was made with the employer's consent).

As a general rule, Tribunal sittings are held in public, although the Tribunal may sit in private if it considers a private sitting desirable. The Tribunal is not limited to hearing only the kind of evidence admissible in a court of law and it may hear evidence from persons other than those directly involved where an interest in proceedings greater than that of the public generally can be shown, (for example, Workbridge might ask to appear on behalf of someone with a disability). Such persons may call evidence on any matter they believe should be taken into account in reaching a decision.

If someone fails to appear before the Tribunal, following a summons, refuses to be sworn, to give evidence, to answer any question, or to produce any relevant document, he or she may be liable to pay a fine not exceeding \$1,500.

The Tribunal may state a case for the High Court.

Where the Tribunal finds that the Human Rights Act has been breached, it may award any one or more of a number of **remedies**. These range from a declaration that a breach has been committed, and/or an order restraining the employer from continuing or repeating the breach (or permitting others to do so), to damages. Damages may cover monetary loss suffered, expenses incurred, and/or the loss of any benefit (monetary or otherwise) which, the complainant, had there not been a breach, could have expected to obtain. Damages

may also be awarded for humiliation, loss of dignity and injury to feelings. As well, the Tribunal may issue an order specifying what the employer must do to make good any loss or damage suffered, issue a declaration that a contract in breach of the Act is an illegal contract, grant relief in accordance with the Illegal Contracts Act 1970 or grant any other relief it thinks fit. Costs may be awarded whether or not any other remedy is granted.

No award of damages, or any remedy granted, may exceed monetary limits set in the District Courts Act 1947 (\$200,000), unless, where a breach is established, the Tribunal refers the case to the High Court for a decision as to appropriate remedies. The Tribunal must then act on the High Court's decision. The parties may agree in writing that the Tribunal will have jurisdiction to grant a remedy greater than the District Court's monetary limitation.

In deciding what remedies (if any) to grant, the Tribunal must take notice of the fact that a particular breach was unintentional or without negligence on the employer's part. This will not, however, operate as an automatic defence for the employer.

Appeals against Tribunal decisions, including the grant of an interim order, go to the High Court, whose decision is final. However, the High Court may agree that questions of law arising in appeal proceedings will be decided by the Court of Appeal. The Tribunal must have notice of any appeal within 30 days of its decision.

It is an **offence**, without lawful justification or excuse, wilfully to obstruct or hinder the Commission or a Commissioner, or to fail to comply with any lawful requirement, or to make a false or intentionally misleading statement. In such cases a fine of up to \$3,000 may be imposed.

EFFECT OF THE PRIVACY ACT

The **Privacy Act 1993**, in theory, complicates employers' ability to respond to a complaint since this Act makes it unlawful to reveal personal information without the consent of the person concerned. However, the Human Rights Commission has indicated that when faced with a discrimination complaint, an employer may use personal information to establish that the best person for the job was selected. Disclosure of personal information without the consent of the individual it relates to causes no difficulty in the event of a subsequent Human Rights Review Tribunal hearing. This is because the Privacy Act allows disclosure without consent for the conduct of proceedings before any court or tribunal. Employers who do release personal information without consent at the investigation or conciliation stages of a complaint should be careful to record clearly in writing their reason for doing so.

AIDS IN THE WORKPLACE

The effect of the Human Rights Act is to make it unlawful to discriminate against someone because he or she has in the body organisms capable of causing illness. AIDS is the most high profile of the conditions to which this relates but hepatitis B and C which are similarly transmitted, that is, through blood or blood products, come into the same category.

The following advice is included in the belief that there is still a degree of community misunderstanding about such conditions (AIDS is the example used) and in the hope that it will dispel remaining concerns. Where there is a real danger of harm to others, the legislation provides for an exception to operate.

AIDS stands for acquired immunodeficiency syndrome and is a condition caused by the Human Immunodeficiency Virus (HIV) which leads to a severe weakening of the body's natural defence against disease (the immune system). As a consequence, someone with AIDS can readily succumb to infection or to diseases which in ordinary circumstances would not pose a serious threat.

As noted, the HIV virus is transferred through blood or blood products; there is no evidence to indicate that it is transmitted by casual, person-to person contact in any situation. The virus is not transmitted through mechanisms such as insect bites, food, water, coughing, eating and drinking utensils, sneezing, toilets, urine, swimming pools, telephones, clothing, shaking hands, sharing an office or social kissing.

It must be recognised, however, that the presence of AIDS in the workplace can generate acute, but almost certainly groundless, fears. The best way to prevent problems - such as staff refusing to work with people infected with HIV - from arising is to dispel this climate of ignorance by providing factual information and education about AIDS and its means of transmission. Information is available from the Ministry of Health, New Zealand AIDS Foundation, Alcohol and Drug Clinics, AIDS or Sexual Health Clinics or from medical practitioners. It is preferable that the facts about HIV and AIDS are publicised before problems occur.

OCCUPATIONS WITH INCREASED RISK

There are some occupational situations which may bring employees into direct contact with blood or other body fluids. Physicians, surgeons, nurses, ward orderlies, laundry workers, cleaners, mortuary attendants, medical laboratory staff, ambulance workers and dentists are included in this group, as are any others who may deal with blood or other body fluids.

It is appropriate for such persons to take precautions in circumstances where they may come into contact with body fluids, as there is the possibility of infection if these fluids enter the body through a cut or abrasion. It is important to establish policies and procedures to cover this situation. It is especially important to avoid needlestick injuries where the skin is pierced by a syringe or other sharp piece of possibly-contaminated equipment.

Other occupational groups at somewhat greater risk than normal are those involved in certain community or emergency service work, including fire fighters, police, prison officers and embalmers.

FIRST AIDERS IN THE WORKPLACE

Anyone required to administer first aid in the workplace may be concerned about the possibility of infection. While no cases of infection have been reported as having occurred in this way, nor from performing mouth to mouth resuscitation, it is always wise to take standard precautions.

As standard first aid practice, first-aiders should cover any exposed cuts or abrasions on their own hands or arms and wash their hands before and after applying dressings to an injured person. Gloves, which should be provided in any first aid kit, must be worn to prevent direct contact with blood or other body fluids. Regulations requiring first aid kits to contain such gloves were issued in 1991. Similarly, gloves should be worn if blood has to be cleaned up and any contaminated material should be disposed of safely. Clothing should be washed in hot water and surfaces disinfected using household bleach at 1:10 dilution, (i.e. 1 part bleach to 10 parts water).

If there is concern about performing any mouth-to-mouth resuscitation, a piece of cloth or gauze may be placed over the casualty's mouth, provided air will pass freely through it. Special plastic airways are available but these should only be used by properly trained people.

EQUAL EMPLOYMENT OPPORTUNITIES (EEO)

Business New Zealand has long supported the principle of equal opportunities in employment, education and training, emphasising how important it is that employment decisions be made on the ground of **relevant** merit, not on the basis of personal characteristics unrelated to ability. EEO means ensuring that no-one is excluded from a job for which he or she is skilled and qualified by inappropriate processes, rules and attitudes. Further, EEO means eliminating barriers to ensure that all potential employees are considered for the employment of their choice, and that they have the chance to perform to their maximum.

The Human Rights Act itself provides a practical reason why EEO policies and programmes should be introduced and put into practice. With these in place, policies, procedures and other institutional barriers which cause, or tend to cause or to perpetuate, inequality of opportunity can be eliminated and compliance

with the Act more readily guaranteed. More particularly, however, there are good business reasons for promoting EEO. Greater workforce diversity reflects far better the changing nature of the community and demonstrates a willingness to be open to the changes which are occurring. It makes sense to recognise and respect employee differences and to treat uniqueness as a valued asset.

Moreover, demographics point to an aging population, with the likelihood not only of older workers seeking employment, but of the whole question of care for the elderly gaining increasing prominence for employees and, consequently, for their employers. Understanding that employees have domestic as well as work responsibilities helps to create and promote a more efficient working environment.

The implementation of EEO policies and programmes assists employers to observe the requirements of human rights legislation but, at the same time, it has practical commercial advantages. It is obvious that the talents of all employees should be used in the best way possible. It is in employers' own best interests for all employees to develop their full employment potential.

It has to be remembered, however, that in introducing EEO policies and programmes it is essential to have the support, not only of senior management, but of all supervisors and line managers. Being sensitive to the culture of the organisation will ensure this support is gained. Awareness of the need for EEO and commitment to its aims is fundamental to success.

The EEO Trust's booklet "Making the Most of a Diverse Workforce" identifies the following as some of the benefits of EEO:

- broadening the choice of job candidates at all levels;
- increased diversity in the workplace. Companies become more flexible, more responsive to change, and have a richer and more interesting workplace "culture";
- improved customer service. More diversity means businesses can be better matched with clients and customers;
- improved productivity. When employees know they are valued and are treated fairly, their contribution to the workplace increases;
- improved staff relations and morale;
- lower absenteeism. For example, employees who can be honest about needing to care for sick children are less likely to take extra days off;
- improved development opportunities for employees;
- reduced staff turnover and subsequently lowered recruitment and training costs;
- improved PR, an important consideration for even the smallest companies.

Introducing and developing EEO policies and programmes is a process in which the EEO Trust, and local Employers' Associations and Organisations can help. The Trust's extensive EEO resource data base is available to those keen to know more about EEO and to those wanting to list their own EEO initiatives.

EEO POLICY

The nature of any EEO policy and its manner of implementation will be likely to vary depending on the size and operational requirements of individual employing organisations. Smaller firms, for example, may require a lesser degree of formality. However, all EEO policies should have the following elements in common:

- state the organisation's commitment to the principles of EEO;
- be in written form;
- have explicit senior management commitment;
- be signed by the Chief Executive Officer;
- be developed after staff consultation and discussion, including, as appropriate, employee representative involvement, so that employees have a proper understanding of what EEO is about;
- have a senior manager assigned, responsible for putting policy into practice and for monitoring progress;

- be published through notice boards, staff newsletters, employee handbooks, e-mail and the like so that staff know the policy is in place;
- give the name of the person or persons involved in the implementation of the programme;
- provide for the establishment of staff records so that the effectiveness of the policy can be monitored. Employers will then know whether hiring, training and promotion procedures are helping to foster the development of equality of opportunity;
- provide for an examination of jobs within the enterprise to ensure existing job criteria relate directly to the way in which jobs should be performed. Irrelevant job criteria (for example, expecting an applicant to be of a particular age when he or she is entirely competent to perform the job) may operate to exclude someone who would otherwise work accurately and well, (it also contravenes the age discrimination provisions of the Human Rights Act);
- provide for an investigation of the reasons why some work areas are staffed by members of one particular designated group only so that steps can be taken to change this situation;
- provide for recruitment and training literature (including advertisements and methods) and course materials to be checked for any bias;
- provide for continuing training in the importance and application of EEO.

PUTTING THE POLICY INTO PRACTICE

Management commitment

Effective policies have support at the highest level. The Board of Directors (or equivalent body) should issue a written statement setting out its commitment to EEO. The policy statement should include:

- a declaration of the organisation's commitment to EEO and to the elimination of all forms of discrimination;
- information on the provisions of the Human Rights Act and other relevant legislation, in particular, the Parental Leave and Employment Protection Act 1987;
- an invitation to staff to take part in a process of consultation before the policy is implemented;
- a brief outline of how the policy is to be implemented and its objectives, including areas of activity to be concentrated on initially (such as recruitment and promotion) and the name of the senior manager responsible for policy co-ordination;
- the goals to be aimed for;
- the timeframe to be set;
- a statement of the benefits of EEO in terms of the full use of human resources.

Management should decide on the most effective means of making employees aware of the policy and what is proposed. This might include translating the policy into other languages, or using alternative means of communication, such as EEO videos, for putting the message across. But the success of any EEO initiative will depend ultimately on the extent to which all in management positions are committed to it and have been given the right tools with which to promote it.

Appointment of EEO Manager/Coordinator

Appointing a capable and dedicated person as EEO manager/co-ordinator is imperative to the success of any EEO policy. The person should report directly to a very senior person in the enterprise. The person appointed will be responsible for:

- co-ordinating the development of EEO planning;
- arranging EEO training for employees including senior management;
- providing technical advice and assistance to those responsible for employment decisions - hiring, supervision, promotion and the like - and monitoring personnel data;
- developing an effective system of internal and external communications;
- designing and introducing audit and reporting systems;
- devising effective methods of data collection for EEO purposes;

- ongoing monitoring of personnel data;
- discussing EEO programmes with the organisation's administration, and with employees, to ensure these are operating effectively;
- liaising with EEO designated group employees, e.g. via group networks;
- determining the success of EEO programmes and reporting on the efforts of those involved;
- making necessary changes or revisions;
- ensuring managers are kept informed of developments in the EEO area;
- identifying problem areas;
- conducting a periodic audit of training programmes, and hiring and promotion patterns so that remaining obstacles to the achievement of EEO objectives can be identified and removed;
- arranging counselling for employees as requested.

Workforce assessment

Assessing the makeup of the existing workforce is an essential step in EEO policy implementation. As well, an organisation's rules, practices and policies can, intentionally or otherwise, create invisible, institutional, barriers to employment. A statistical analysis of who is in the workforce, e.g. in terms of age, gender, ethnicity, family responsibilities, will help to establish what these barriers are.

How an analysis is carried out will depend on an organisation's size and structure. In many cases, personal information will have to be sought specifically for analytical purposes. Employees should understand that providing information is voluntary. How well employees co-operate will depend on how well the reason for information-gathering is explained to them. It is important that employees are assured of the confidentiality of the information and know who will have access to data collected.

Suggested methods of analysis are:

- dividing the workforce up into major areas of activity;
- analysing lines of progression - that is, the order of jobs employees pass through in the process of promotion. Establishing the levels at which members of different groups are working (for example, women, members of different racial groups, people with disabilities and so on) will help identify where barriers to employment promotion have been operating. Once these have been identified, an employer may, for example, consider taking particular initiatives such as providing on-site childcare or funding community-based childcare. Employers may also look again at how jobs are currently carried out. In some cases, with a degree of modification (particularly in the light of technological assistance now available) or with a willingness to accept non-routine methods, the employment of people with disabilities in areas and jobs not previously considered suitable will become possible. Moreover, people with disabilities often develop different ways of doing things. Asking an employee or potential employee how a job can be done is likely to provide some new ideas;
- analysing wage and salary levels. Establishing who is being paid what may also help to determine whether, or where, structural discrimination exists;
- analysing educational qualifications. This kind of analysis will often identify many staff members who are not making full use of their skills and talents;
- analysing future organisational plans. Analysing future plans will enable organisations predicting expansion to incorporate EEO in their growth plans. It will also help an organisation considering retrenchment to ensure staff cutbacks and EEO initiatives are not in conflict;
- analysing job applications and applications for promotion. Knowing the kind of people who apply for jobs acts as a monitoring system and helps to ensure that any discriminatory practices in the hiring and promotion areas are eliminated.

Getting the EEO message across

Policy-implementation, through the introduction of EEO programmes, will be smoother if all levels of the workforce know what is intended and what progress is being made. Managers in particular need to be aware of how EEO implementation is progressing.

Communication is an essential factor. EEO networks or support groups for EEO designated groups are a useful tool for improving communication and ensuring acceptance of EEO policies and plans. They are also a direct way of tapping into expertise of EEO groups.

Employers, or senior managers responsible for EEO implementation, should:

- hold a series of briefing meetings to ensure the policy is understood, particularly by those who have influence over work opportunities and career progression. This applies to personnel and line management staff (including supervisors) and to all employees, such as telephonists and receptionists, who have contact with job applicants;
- understand the importance of front or first line management in promoting EEO and in giving encouragement to individuals and groups considered affected by discrimination. For example, some people with disabilities may need particular assistance during the first days and weeks of employment. Supervisors can play a big part in ensuring that a new employee gets off to a good start, helping to encourage the feeling of belonging to a team. In some instances - though by no means all - work procedures may have to be explained more slowly and a longer learning time allowed. Other employees with disabilities may need to be watched for signs of fatigue or strain - often the results of trying too hard to "prove" themselves. Others will need no special treatment and should not be treated as if they did. A supervisor will be in a position to work with the employee and/or a network to decide which approach should be taken. Supervisors can also make sure that other staff are not over-protective to someone who cherishes independence and that an appropriate balance is kept;
- encourage all employees to discuss their career prospects and training needs with their immediate superior, who should also involve the personnel/training officer;
- provide regular and continuous support and advice to employees at all levels so that misunderstandings can be dealt with and help given with implementation difficulties. Senior management and the EEO co-ordinator should hold regular progress meetings;
- recognise that any change is likely to cause concern and make staff aware that EEO is not a threatening process. Any fears should be dealt with as soon as they arise;
- integrate the EEO policy into day-to day activities so that it becomes standard workplace practice;
- where appropriate, establish monitoring systems directed to particular groups in need of encouragement;
- report progress in implementing EEO programmes through in-house magazines, notice boards etc.

HOW TO INTRODUCE EEO PROGRAMMES

Having established an EEO policy, **EEO co-ordinators** should develop specific EEO programmes. These might include:

- orientation courses for staff so they can learn what EEO is and become involved in the process of change;
- training in the use of non-discriminatory interview techniques for selection personnel. Much will be done to reassure job applicants with disabilities (and, indeed, all job applicants), if it is understood that selection is always on merit and ability to perform the job. In the case of disability, emphasising that this will not affect the consideration which an applicant receives will go a long way towards dispelling natural anxiety;
- training for all involved in the recruitment process, to provide an awareness of EEO and to make sure no-one is biased against any particular group in society;

- incorporating an EEO segment into relevant training courses such as public relations, supervisor development, skills for effective management, interpersonal relations and organisational effectiveness;
- examining existing training materials for bias and preparing new material specifically for use in EEO orientation courses and as an EEO segment in other training courses;
- ensuring that all who act in a managerial capacity or hold supervisory positions understand the importance of their role and responsibility in promoting EEO.

Implementation plan

EEO implementation will not be achieved overnight, so a plan of action is essential.

First, the immediate objective must be described in specific terms.

Second, the steps needed to achieve the objective must be detailed.

Third, the person responsible for achieving the objective must be decided on.

Fourth, a realistic target date must be set.

Fifth, a procedure for evaluating the action taken must be established.

Examples

Objective: To ensure all staff understand the reasons for introducing an EEO policy and programme.

Steps to achieve: Develop EEO information material for use on staff notice boards, publish in in-house newsletter etc and work out a programme of staff meetings. Seek both an individual employee response and reports from meetings held.

Objective:

Responsibility: Appoint a senior manager to supervise the EEO awareness process.

Target date: Determine as appropriate.

Evaluation: Determine, from replies and reports received, whether further education on the reasons and need for EEO implementation is necessary.

Objective: To ensure recruitment procedures encourage Maori applicants to apply for advertised job vacancies.

Steps to achieve: Consult with Maori to determine strategies to increase applicants, objective: give name of Maori contact person in ad, use iwi media etc. State only the skills and/or qualifications necessary to do the job and advertise all positions widely.

Responsibility: Departmental managers/supervisors.

Target date: Determine as appropriate.

Evaluation: Senior manager responsible for EEO/personnel department to check on job responses and persons appointed.

Objective: To ensure people with disabilities, in varying age groups etc are not unnecessarily excluded from certain jobs because of a too-rigid adherence to existing job criteria.

Steps to achieve: Encourage departmental managers/supervisors to examine, with objective: people with disabilities, other ways in which jobs might be performed, and be willing to make changes and modifications to accommodate people with disabilities. Because of the range of disabilities, job modification must be carried out on a case by case basis. What is important is to recognise that job modifications are often possible. If necessary, seek advice from organisations involved in finding employment for people with disabilities (for example, Workbridge).

Responsibility: Departmental managers/supervisors.

Target date: Determine as appropriate.
Evaluation: Senior manager responsible for EEO/personnel department to check whether more people with disabilities have been employed as a consequence of the exercise.

Objective: To eliminate all forms of sexual and racial harassment.
Steps to achieve: Develop, publicise and put into practice a company/departmental policy and complaints procedure.
Objective: Senior manager responsible for EEO/personnel department.
Responsibility: Senior manager responsible for EEO/personnel department.
Target date: Four to six months development period.
Evaluation: Personnel department to monitor policy effectiveness - extent to which complaints have diminished/procedure used.

Special measures to promote EEO in employment

The following strategies - which the Human Rights Act either permits or insists on - have all been used in successful EEO programmes. Those which are optional may not be needed in every organisation and not all can be adopted at once. Specific measures should be chosen as appropriate and a decision made about the order of implementation and the time implementation should take. Most importantly, managers, in particular, need to have the ability to put appropriate measures into practice. Strategies might include:

Recruitment

- developing specific recruitment programmes for occupations where, for example, women, people with disabilities and members of ethnic groups are under-represented. Recruiting efforts might involve communication with relevant networks and the use of the ethnic press and radio;
- ensuring advertising - both verbal and visual - is non-discriminatory;
- developing mature-age entry programmes and generally facilitating workforce re-entry through retraining programmes and the like;
- re-examining existing job criteria. For example, where appropriate, allow for relevant voluntary work experience to be taken into account;
- identifying jobs where experience of particular problems - such as those likely to be experienced by people with disabilities or with family responsibilities - or a knowledge of other cultures and languages would be a relevant job qualification;
- liaising with relevant groups to determine strategies, e.g. with Maori either in the enterprise or the community;
- liaising regularly with educational institutions to facilitate the recruitment of technically and professionally qualified members of minority groups;
- reviewing career information literature to eliminate any existing bias in content, language and pictures;
- periodically reviewing recruitment strategies for any remaining bias.

Selection and appointment

- ensuring that relevant merit is always the criterion for any appointment made. For example, if Maori language or cultural expertise will benefit the organisation, ensure that that it is included in relevant criteria to be assessed;
- including, where possible, designated-group members (for example, women, members of particular racial groups, people with disabilities) on interview panels or selection committees;
- developing non-discriminatory interview guidelines, and training selection staff in their use;
- examining selection practices, tests and required qualifications to identify and eliminate any element of discrimination;
- examining induction literature and procedures to eliminate any discriminatory effects, together with an examination of base grade recruitment;
- establishing a mechanism for the periodic evaluation of selection practices and procedures and their outcomes:

- considering, where appropriate, whether alternative employment arrangements should be made, for example, part-time work or tele-working, to accommodate family responsibilities.

Training and staff development

- establishing appropriate career development courses;
- extending training activities to provide courses in necessary basic skills such as English language, letter writing and basic office administration skills. Course access should not be limited to people already in positions requiring the use of these skills;
- providing induction courses for all employees, including, where relevant, for specific groups of employees;
- making provision for individual career counselling and ensuring all employees are told about this service;
- identifying training needs for designated groups in consultation with those groups;
- encouraging members of particular groups to apply for and to enrol in both external and internal training programmes, and reviewing course nomination procedures;
- developing training courses in selection techniques where possible sources of discrimination are described and discussed;
- introducing periodic EEO orientation courses for all staff, to provide information about the nature of EEO and to promote continuing awareness of the need for EEO;
- examining existing training materials for bias and developing new training material for use in EEO orientation courses and in EEO segments in other training courses;
- incorporating an EEO segment into relevant training courses, such as public relations, supervisor development, effective management skills, interpersonal relations and organisational effectiveness courses.

Promotion and career opportunities

- developing upward mobility programmes for low-level employees so that they have the opportunity to gain skills which will enable them to compete for higher-level positions, for example, through "bridging" positions;
- identifying career structures with limited opportunity and, where appropriate, consolidating these with related career structures which provide more scope for advancement, or create greater opportunities for lateral transfer;
- breaking down occupational stereotyping. Not only men, for example, are engineers nor women early childhood educators;
- implementing job redesign and job rotation programmes;
- establishing elective, permanent part-time employment for a broad range of positions including those at senior levels;
- compiling registers and/or personnel skills inventories using objective criteria so that managers become more aware of who is available for management and top-level jobs;
- ensuring that relevant merit is always the criterion for any appointment or promotion.

HOW TO INTRODUCE EEO PROGRAMMES

Job descriptions and competency profiles

Developing job descriptions which specify only necessary skills and experience and avoid making reference to unrelated job criteria is essential to the proper functioning of any policy of EEO. A job description/personnel specifications check list can help in this process. **Managers** should ask:

- does each job have a written description?
- are job descriptions based on a systematic analysis of key factors, including cultural and linguistic requirements?
- are methods of measuring performance standards as objective and as flexible as possible?
- do managers' job descriptions define their responsibility for staff development?

- have job descriptions been accepted and are copies held by the job holder, his or her superior and the personnel department?
- are job descriptions kept up to date, compared for consistency and given to job applicants?
- is there a personnel specification for every job based on an analysis of necessary job skills and knowledge requirements?
- are skill and knowledge requirements separately categorised as essential or desirable and do requirements reflect diversity needs?
- where personnel specifications are used in recruitment, is a variety of job applicants attracted (men, women, people with disabilities, members of different ethnic minority groups)?
- do current job holders, particularly successful ones, meet the personnel specifications?
- if the specification is used to identify training needs, does this result in comparable training recommendations for a range of employees?

The recruitment process

Unbiased publicity material, widely disseminated, should promote a response from the widest range of job applicants, encouraging people to enter into non-traditional occupations. **Employers or managers** should:

- check job advertisements for arbitrary restrictions or unnecessary qualifications;
- aim for those involved with recruitment to have an understanding of what is meant by employment diversity, so that applicants can more readily establish their worth;
- prepare structured interview questions;
- check whether recruitment for management trainees and grades from which managers are developed are based on clearly defined needs;
- make sure that recruitment literature includes information on flexitime, parental leave, part-time employment, English language courses, study time etc. No-one should be passed over for recruitment on the basis of reasons unrelated to the job itself, such as responsibility for children or other dependants. Be prepared to consider flexible work arrangements, the provision of childcare facilities or childcare support;
- ensure that recruitment techniques are periodically assessed for any kind of bias.

The appointment

In making any job appointment the merit principle should always apply. The aim is to select the best person on the basis of job requirements and ability to carry out the particular tasks and responsibilities involved. The selection process may contain several elements, for example, the application form, aptitude tests and a job interview. The process may present some applicants with unnecessary hurdles. Experience shows that, consciously or unconsciously, the selection process is probably responsible for more discrimination in employment than any other practice. **Employers or managers** should:

- ensure selection criteria are based on an analysis of job requirements only;
- ensure qualification barriers to selection have been assessed for relevance and for sex and cultural bias and for bias against people with disabilities. These include: internal and external examinations, IQ tests, psychological assessments and medical examinations. In some cases it will be worth considering alternative tests for people with certain disabilities. IQ tests, for example, have a visual bias.
- ensure there are measurable standards for assessing candidates against all selection criteria;
- ensure those involved in the selection process are trained in assessing all kinds of candidates;
- check whether a reasonably diverse range of people succeeds at the application form stage;
- check whether a reasonably diverse range of applicants passes any selection tests used;
- check whether a reasonably diverse range of applicants passes the selection interview;
- check whether results vary when selection is done by managers, by a specialist recruitment service or by a selection board;
- ensure all potential interviewers have attended EEO training courses, are familiar with the Human Rights Act and appreciate the need to get rid of discrimination in employment;
- check personnel consultants' knowledge and use of EEO practices and brief them on their need to comply with EEO principles.

The new employee

Induction introduces the new employee to the work environment. An effective induction programme will enable a new employee to understand and accept the culture of the organisation. It also offers, if designed and conducted appropriately, the opportunity for the employer to learn of the needs and potential of the new recruit. **Managers or supervisors** should:

- ensure that induction training is provided;
- check that induction programmes offered are appropriate to different needs, for example:
 - first time entrant to the workforce;
 - internal job change or promotion;
 - women returning to the workforce after time out for family responsibilities;
 - mature entrants;
 - Maori and members of other ethnic groups;
 - people with disabilities;
- ensure induction includes an indication of expected standards of performance;
- check whether the induction process includes the appointment of a mentor to counsel trainees.
- Check whether the person acting in the mentor role requires training;
- check that basic job training covers any specific needs identified for particular groups;
- check that the range and scope of basic job training provides all employees with an equitable basis for career development;
- check that work standards after training are comparable for all groups. All employees should be given suitable feedback on their performance;
- check that job training needs are reviewed regularly and that the identified training needs of all staff are met. Investment in initial training may otherwise be lost;
- ensure that the needs of all staff receive consideration when training schedules are prepared.

On the job

Training is the main process by which the composition of the existing workforce can be changed; it has a central role in promoting equitable career progression among all groups of employees. A review procedure should be established and, after a designated period of service, the performance of all staff should be subject to regular appraisal and performance assessment to determine potential for development and promotion.

Employers and managers should:

- check that there is an overall training plan based on an analysis of training needs but taking into account both group and individual needs. Individual needs can be identified through the personnel plan, through job analysis and performance assessments and through reviews of staff with promotion potential. Group needs can be identified through networks or support groups;
- ensure that training objectives and programmes are agreed between individual managers and subordinates. Counselling can be an important part of career development, particularly for employees unsure of their employment potential;
- check, in the case of on-the-job training, if coaching is provided and ensure designated staff are trained in appropriate coaching techniques;
- ensure that all employees are provided with specific on-the-job training;
- ensure off-the-job training occurs at times when all who should take part can attend and that those with family responsibilities are reimbursed for any extra-ordinary costs actually incurred;
- ensure training courses are checked for unintentional bias;
- ensure that off-the-job training is subsequently applied on the job;
- compare feedback from trainees;
- compare post-training performance reviews;
- ensure that informal social events occur at times when all staff have the opportunity to attend (and are not, for example, excluded by family responsibilities).

Promotion

Many people reach a plateau in their career progression. Take care to ensure that any plateau is determined by personal ability and motivation and not by the culture of the enterprise and limitations imposed by the attitudes of others. Aim for workplace diversity at all levels of the enterprise. **Employers or managers** should:

- ensure that there is a formal promotion policy and procedure based on properly-analysed enterprise needs;
- check that promotion policies and criteria are known to managers and employees alike;
- check that there is a formal process for identifying employees with promotion potential and ensure that this process is objective. Employment capability - ability to perform the job - should be the important factor;
- ensure objectivity by checking, where the promotion process is based on an analysis of existing skills/qualities, that a systematic analysis has been carried out;
- involve a more senior manager to help counter any bias (such as assumptions about women's career aspirations or those of employees with disabilities) where immediate managers are responsible for identifying employees with promotion potential. All managers need to be trained to minimise risks such as these;
- check that the promotion process takes account of the aspirations and aptitudes of individual employees, as well as of current job performance (for instance, are employees counselled about what their aims should be in relation to the organisation's needs?);
- keep a record of promotion appointments and examine this regularly to ensure that appointments are not limited to members of one particular employee group. Appointments should be made, on ability, across a broad spectrum of employees.

Staff records

Record-keeping is essential to the proper monitoring of EEO policies and programmes. While personal information must be voluntarily given, it is important that staff, and potential employees, know the reason why it is needed, and that as provided in terms of the Privacy Act, it will remain confidential. **Employers or managers** should:

Check that information on workforce composition has been collected for:

- each section, division, branch etc. of the organisation;
- each geographic work location;
- major groupings within the organisation, for example, managerial and administrative, professional, clerical, skilled or unskilled employees;
- major occupational groups, such as, clerical, engineering, process work;
- types of employment - permanent, temporary, full or part-time, casual, seasonal;
- length of time in positions;
- resignations and transfers - why these occur and which areas have the highest staff turnover. Exit interviews are important here;
- qualifications and capabilities required for promotion;
- enrolment in internal and external training programmes;
- employee aspirations and expectations;
- educational study courses leading to qualifications relevant to career advancement;
- skills, experiences which may be regarded as "informal" qualifications yet can still benefit the workplace e.g. supervisory/teaching skills developed through involvement with marae committee or kohanga reo.

Policy review

To function effectively, every EEO policy and every EEO programme must be properly monitored. Regular, preferably annual, audits should be carried out.

The degree of formality needed will vary with the size of the organisation. In a small organisation with a simple structure, it may be enough to assess the distribution and payment of employees from personal knowledge. In

a larger and more complex organisation, a more formal analysis may be required. Sensible monitoring will show who applies for promotion and who does not, who is recruited and who is not, and whether particular groups of people are concentrated in particular occupations, particular jobs, or in certain sections or departments of the organisation.

A regularly-updated workforce analysis will go a long way towards making sure that actions taken to promote workforce diversity are successful. Regular feedback from EEO groups is a crucial part of monitoring progress.

Further information

The EEO Trust, and Regional Employers' Associations and Organisations, can help with the process of EEO implementation should assistance be required. The Trust has developed a comprehensive self-assessment kit to help employers identify current work practices which are, or are not, compatible with EEO. The kit's three sections cover:

- checking on the workplace profile - who works for the organisation - and comparing it with the diversity of customers and the talent pool;
- assessing the workplace environment - what it is like to work there; and
- action planning - helping to move from rhetoric to action.

The EEO Trust has numerous other resources on topics as diverse as the prevention of sexual harassment, a model HIV/AIDS policy, family friendly workplaces, disability and Maori issues at work, as well as guidelines on the development of EEO-related work and family policies. The Trust has established an employer Work and Family Network which provides employers with up to date information about developments in the work/family area. **For a free information pack ring (09) 525 3023 or view the website at www.eeotrust.org.nz**