

PPTA

NEW ZEALAND POST PRIMARY
TEACHERS' ASSOCIATION

TE WEHENGARUA

www.ppta.org.nz

SUBMISSION

to the

Justice and Electoral Select Committee

on the

HUMAN RIGHTS AMENDMENT BILL

19 December 2013

ABOUT PPTA

1. PPTA represents approximately 17,500 secondary teachers, principals, and manual and technology teachers, in New Zealand; this is the majority of teachers engaged in secondary education – approximately 90% of eligible teachers choose to join PPTA. PPTA is an affiliate member of the New Zealand Council of Trade Unions (“CTU”).
2. Under our constitution, all PPTA activity is guided by the following objectives:
 - (a) To advance the cause of education generally and of all phases of secondary and technical education in particular.
 - (b) To uphold and maintain the just claims of its members individually and collectively.
 - (c) To affirm and advance Te Tiriti O Waitangi.
3. PPTA is not affiliated to a political party and our members individually support a broad spectrum of political parties in Parliament. However, PPTA have consistently promoted policies that promote progressive economics, social policy and employment relations policy. At our 2012 Annual Conference, PPTA members endorsed the following alternative economic model:
 - (a) A fairer tax system;
 - (b) Effective public services;
 - (c) Addressing the public debt myth;
 - (d) Investing heavily in education and training;
 - (e) Regulating financial markets and limiting corporate excess;
 - (f) Respect for the rights of workers (paid and unpaid) and learners; including:
 - (i) Legislation that promotes union membership and collective bargaining;
 - (ii) Avoiding a unilateralist approach to employment relations by engaging employees, employers and those not yet in employment in ways which add value to the economy and society;
 - (iii) Engaging in employment relationships that outlive economic cycles and extend beyond the walls of individual organisations;
 - (iv) Rejecting a low wage economy (which will help to stop the outflow of skilled labour from Aotearoa / New Zealand).
 - (g) Retaining New Zealand’s state assets in full public ownership;
 - (h) Promoting the idea that we are cultural citizens not just economic citizens;
 - (i) Closing the pay gap between the minimum and maximum wages paid across a workforce or industry; and
 - (j) Fiscal policy that acknowledges the importance of the environment.

EXECUTIVE SUMMARY

4. There has been an unjustified lack of consultation on the proposals in the Bill – which proposes to amend a constitutional document. It is deeply disappointing that key stakeholders that work with the Human Rights Commission (“**the Commission**”), such as NGOs, women’s organisations, multi-faith organisations, disability groups, trade unions and different ethnic communities, including Māori communities, were not given the opportunity to comment on the policy proposals as they were being developed – particularly as it does not appear to have been urgent and has been sitting on the Order Paper for two years, allowing ample time for consultation.

5. We support the concerns raised by the CTU and the Public Service Association (“**PSA**”) about the number of Commissioners proposed under clause 6 of the Bill. The net effect of these changes, given the additional functions and responsibilities contemplated in the Bill, is to decrease the number of Commissioners able to be deployed in the work of the Commission.
6. We would also like to support the point made by the Tertiary Education Union (“**TEU**”) that the fixed nature of part-time or full-time positions for the Commissioner roles is in direct contest with the EEO concerns that women express to the EEO Commissioner; (i.e. that they are locked out of applying for jobs that they are capable and qualified to do because of the restrictive work hours that do not reflect the reality of many women’s lives). Introducing a structural barrier for women being appointed to the EEO Commissioner is inconsistent with the ethos of the position, recognition of the insight and skills required for the position, and the nature of the functions performed by that Commissioner.
7. Pay and employment equity exists when employees’ pay and work experience are not affected by factors such as gender or ethnicity. Despite the significant achievements and progress made by the EEO Commissioner (outlined below), there continues to be persistent problems with pay and employment equity in New Zealand. For example, we know that pay and employment equity remains an issue for women teachers in the compulsory schooling sector and have provided the most recent analysis of these issues below. In addition, through our case work, we know that there is some evidence that immigrant teachers and teachers with non-European names may be discriminated against when applying for a job, in terms of the type of employment agreement (more likely to be casualised, short-term contracts) and the employment conditions that they are offered. New and emerging teachers (i.e. those in their first ten years of teaching), who are predominantly young people, are more likely to be employed on a fixed-term contract or struggle to find work. The New Zealand Teacher’s Council has also reported this to be the case for provisionally-registered teachers (i.e. those in their first two years).
8. There is no justification in watering down the visibility of the EEO Commissioner role or making it more “flexible” at the expense of time dedicated to gaining specialist understanding of the issues, implementing the statutory functions in the Human Rights Act 1993 and meeting with core community and NGO groups. The Commission is continuing to receive a large number of complaints from members of the public that fall within the EEO and race relations portfolios. Both areas continue to represent pressing areas of concern for New Zealanders.
9. As with the EEO Commissioner, the Race Relations Commissioner is able to perform their functions effectively because, under the existing framework, they can work collaboratively with colleagues to identify overlaps, work jointly with the Chief Commissioner to ensure a strategic approach alongside the broader functions of the Commission, and have a clearly independent role ring-fenced in the Act. They also have the ability to build up a core body of specialisation because of their focussed mandate. This will be lost if they are required to work under the direction of the Chief

Commissioner, are subject to competing work priorities in other portfolio areas and lose their statutory role.

10. In summary, we recommend:

- Retaining the EEO Commissioner as a standalone statutory role, and deleting the clauses in the Bill that would abolish this post and weaken its independence;
- Retaining the Race Relations Commissioner as a standalone statutory role, and deleting the clauses in the Bill that would abolish this post and weaken its independence;
- An amendment to the Human Rights Act 1993 that would appoint and formally recognise the Disability Rights Commissioner (but not at the expense of any existing functions performed by the specialist Commissioners or the Commission – i.e. adequate resourcing, including the number of Commissioners, is required);
- Establishing a new specific function for the Commission relating to “the promotion of economic, social and cultural rights”.

THE HUMAN RIGHTS AMENDMENT BILL

Endorsement for the CTU submission

11. We support the submission made by the CTU. The CTU has undertaken comprehensive analysis of the Bill and has also proposed additional areas of change, such as the establishment of a new specific function for the Commission relating to “the promotion of economic, social and cultural rights.”¹ This will help New Zealand to give better effect to our international obligations under the International Covenant on Economic, Social and Cultural Rights (“**ICESCR**”).

Unconstitutional process

12. Like the New Zealand Bill of Rights Act 1990, the Human Rights Act 1993 is recognised as one of our country’s constitutional documents² because it details fundamental rights and protections for the people who live here, and helps to establish the duties that legislature, executive and judiciary have towards individuals, and the rights that members of society have in relation to each other. The Act helps give effect to our international human rights obligations, including the core human rights principle that “all human beings are born free and equal in dignity and rights.”³

13. The Bill proposes to amend this constitutional document.

14. While there is nothing wrong in principle with amending a constitutional document or a constitution as society changes to respond to new and emerging challenges, there has been no public consultation prior to the Bill being introduced into Parliament. The Regulatory Impact Statement published by the Ministry of Justice states that the policy

¹ Paragraph 4.1, pg. 6.

² <http://gg.govt.nz/role/constofnz.htm> (last accessed 18 December 2013).

³ Article 1, Universal Declaration of Human Rights.

was developed “in consultation with the Commission and other government agencies.”⁴

15. It is deeply disappointing that key stakeholders that work with the Commission, such as NGOs, women’s organisations, multi-faith organisations, disability groups, trade unions and different ethnic communities, including Māori communities, were not given the opportunity to comment on the policy proposals as they were being developed. All of these groups have a genuine interest in proposed changes, relating to the Race Relations Commissioner, the EEO Commissioner and the introduction of a specific mandate relating to disability.
16. The Government has followed a poor process for a Bill that proposes to amend one of our constitutional documents.
17. This was not a matter of urgency. There was no sunset provision that would extinguish by a certain date (as was the case with the 2001 amendment Act). The Bill has actually been sitting on the Order Paper, waiting for consideration, for two years. That would have provided ample opportunity to draft a green / white paper and engage with stakeholders to establish the best way forward.
18. Nor is the Bill proposing a technical amendment that could be passed through a Statutes Amendment Bill or without generating comment because there was prior work invested in building consensus on any changes. There is no cross-party consensus on these proposed changes, which undermines the credibility of the process and longevity of the changes.
19. We note that apparent lack of consultation was a significant concern raised by members on the National Party benches when the Human Rights Amendment Bill 2001 was being considered by Parliament. For example, Hon. Georgina Te Heuheu notes in her speech during the Committee of the Whole stage of the Bill that:

“I want one of the Government members to reassure me... that this provision has had widespread debate on our marae around the country. It is my impression that it has not, and my impression of the people who made submissions to the Select Committee was that not a lot of them would have a direct interest in this provision [relating to changes to the functions of the Commission]. In any event, it has become an accepted approach in this country to have consultation...

I want to express my disappointment and concern that the Minister has seen fit to promote a number of new areas of activity in this bill, including this one, without proper consultation with the groups of people directly affected.”⁵

20. This point was echoed by Dr Wayne Mapp, National MP, who stated emphatically:

“There should be no major constitutional change without adequate consultation.”⁶

⁴ Paragraph 7, page 2 of the Regulatory Impact Statement, signed by Sarah Turner, General Manager, Public Law at the Ministry of Justice.

⁵ Human Rights Amendment Bill, Committee debates *Hansard* 5 December 2001, pg. 13712.

21. Also odd is the fact that this change is being deliberated outside the Government's constitutional review. There are likely to be overlaps and broader principles that should be factored in before any significant reform of one of our constitutional bodies and documents, as contemplated by this Bill. Any reforms to the Commission should have been considered as part of that comprehensive process.

Number of Commissioners

22. We support the concerns raised by the CTU and the PSA about the number of Commissioners proposed under clause 6 of the Bill. The net effect of these changes, given the additional functions and responsibilities contemplated in the Bill, is to decrease the number of Commissioners able to be deployed in the work of the Commission.

23. As outlined further in our submission, the Annual Report for the Commission and Regulatory Impact Statement for the Bill make it clear that employment and race relations continue to be the major areas of work for the Commission, in response to complaints and concerns raised by members of the public. On this basis, there is:

- No evidence to support a diminished role or abolishing the specific post from the legislative framework in terms of efficiency for the Commission's work; and
- A very real risk that this priority work will be compromised as generic commissioners are stretched across the Commission's work programme under the direction of a Chief Commissioner.

24. We would also like to support the point made by the Tertiary Education Union ("TEU") that the fixed nature of part-time or full-time positions for the Commissioner roles is in direct contest with the EEO concerns that women express to the EEO Commissioner; (i.e. that they are locked out of applying for jobs that they are capable and qualified to do because of the restrictive work hours that do not reflect the reality of many women's lives). Introducing a structural barrier for women being appointed to the EEO Commissioner is inconsistent with the ethos of the position, recognition of the insight and skills required for the position, and the functions of the Commissioner.

DEDICATED COMMISSIONERS: EEO, RACE RELATIONS AND DISABILITY

25. This section of the submission predominantly relates to clause 6 of the Bill. Many of the arguments raised about the EEO Commissioner as a stand-alone, designated role apply equally to the Race Relations Commissioner. The profile and effectiveness of these statutory roles also makes it appropriate to adopt a designated statutory role to give effect to the disability portfolio for the Commission. We support an amendment to the Human Rights Act 1993 that would appoint and formally recognise the Disability Rights Commissioner.

26. The current arrangements of having dedicated leaders (as protected in statute) in these roles in the Commission means that the right balance is struck between specialisation and collaboration with other commissioners in respect of the

⁶ Human Rights Amendment Bill, Committee debates *Hansard* 5 December 2001, pg. 13724.

Commission's work. Each role should remain formalised in statute, supported by a specialist team of employees for each priority area and appropriately resourced to give best effect to fulfilling the functions of those priority areas. The EEO Commissioner, Race Relations Commissioner and (we propose) a Disability Rights Commissioner should continue / be empowered to act jointly with, rather than under the direction of, the Chief Commissioner.

27. We also note that the current drafting in clause 6(1A) of the Bill may enable a single Commissioner to be appointed to lead the work in each of the priority areas, as the legislation does not state how much time that Commissioner must dedicate to each priority area or that a different Commissioner must be responsible for each priority area.
28. We have serious concerns that the proposals in the Bill will dilute the effectiveness of the Commission discharging its functions in these priority areas and that progress, particularly in respect of the EEO portfolio, will become stunted. We note that this sits alongside the Government's decision to abolish the Pay and Employment Equity Unit and Simon Bridges' comments that he may "intervene in the proceedings of Kristine Bartlett's equal pay case". This is a disappointing situation, given the fact that the National Party introduced the Equal Pay Act 1972 and the main arguments when it was debated through Parliament related to how quickly it would be implemented.
29. We hope that the Commission will revisit the Government's policy in the Bill, reflect on the concern expressed in the submissions, and be open to reversing the structural changes that will otherwise dampen New Zealand's ability to fulfil its human rights obligations in the priority areas.

EEO COMMISSIONER

Background

30. The EEO Commissioner was established as a separate and specific role in the Human Rights Commission under the Human Rights Amendment Act 2001. The position was introduced because there were a large number of employment-related complaints being received by the Commission and it was identified as an important concern in many of the public submissions to the Select Committee considering the 2001 legislation.
31. The functions of the EEO Commissioner are set out in section 17 of the Act as follows:
 - To lead discussions of the Commission about equal employment opportunities (including pay equity);
 - To provide advice and leadership on equal employment opportunities arising in the course of activities undertaken in the performance of the Commission's functions, both when engaging in those activities and otherwise when consulted;
 - To evaluate, through the use of benchmarks developed by the Commissioner, the role that legislation, guidelines, and voluntary codes of practice play in facilitating and promoting best practice in equal employment practices;

- To lead development of guidelines and voluntary codes of practice to facilitate and promote best practice in equal employment opportunities (including codes that identify related rights and obligations in legislation), in accordance with section 5(2)(e) - i.e. a generic function of the Commission to develop guidelines and voluntary codes of practice;
- To monitor and analyse progress in improving equal employment opportunities in New Zealand, and to report to the Minister on the results of that monitoring and analysis;
- To liaise with, and complement the work of, any trust or body that has as one of its purposes the promotion of equal employment opportunities (including pay equity);
- To ensure, acting jointly with the Chief Commissioner, that activities undertaken in the performance of the Commission's functions in matters of equal employment opportunities are consistent with the strategic direction and other determinations of the Commission under section 7; and
- Any other functions, powers, or duties conferred or imposed on him or her by or under this Act or any other enactment.

32. The aspirational goal for the EEO Commissioner is succinctly outlined in the Commission's Annual Report as follows:

"Barriers to equal employment opportunities for vulnerable groups are eliminated so all people in New Zealand enjoy access to decent and productive work and fairness in the workplace."⁷

33. In its 12 years of existence, the EEO Commissioner has had a significant impact on progressing the equal employment opportunity and pay equity agenda and understanding the extent to which it remains a problem in New Zealand – in both the public and private sectors.

34. Having a specific role dedicated to EEO matters, with a particular emphasis on pay equity, has meant that the EEO Commissioner has:

- Conducted a national inquiry into the EEO of approximately 40,000 low paid and marginal workers (overwhelmingly women) in the aged care sector. In 2012, the Commission published its report relating to pay equality, training, migrant worker protection and other issues (*Caring Counts: Tautiaki tika*);
- Published five Censuses of Women's Participation – which provide a benchmark and analysis of women's participation in public and professional life;
- Prepared two National Action Plans for Human Rights (following the 2010 comprehensive baseline review of the status of human rights in New Zealand that specifically identifies the rights of women);
- Developed a major new framework to progress equality at work, *Tracking Equality at Work*, which for the first time establishes an objective method of benchmarking EEO through 20 indicators disaggregated by gender, disability, age and ethnicity;
- Exercised the EEO Commissioner's statutory mandate to advocate for EEO, including pay equity; and

⁷ Annual Report 2013 Human Rights Commission, pg. 11.

- Consistently reported to international treaties bodies (UPR, ICCPR, ICESR and CEDAW) about EEO and pay equity issues, drawing particular attention to pay equality for low paid female carers, pay equity implementation in the public sector and effective pay equality and pay equity legislation.

EEO remains a significant issue

35. Pay and employment equity exists when employees' pay and work experience are not affected by factors such as gender or ethnicity. Despite the significant achievements and progress made by the EEO Commissioner, there continues to be persistent problems with pay and employment equity in New Zealand. The Commission's Statement of Intent 2013-2016 states that:

"Women continue to be paid approximately 10 per cent less than men on a median hourly basis and are overly-represented among workers earning at, or just above, the minimum wage. Women remain under-represented in leadership roles in both the private and public sectors. The gender pay gap in the public sector is wider than that of the whole labour force. These inequalities are more acute for Māori women, Pacific women, young women, and women with disabilities.

Despite the ethnic composition of the public service broadly matching the ethnic composition of the New Zealand population, significant ethnic inequalities in pay and management roles persist across the public sector. Māori, Pacific and Asian peoples are under-represented in senior leadership roles. The pay gap between Māori and European New Zealanders is 11 per cent, while it is 19 per cent for Pacific peoples, and 12 per cent for Asian peoples. Population-wide, Māori and European rates of unemployment are three times higher than that of European New Zealanders, while the rates of unemployment of people from other backgrounds (Asian, Middle Eastern, Latin American and African) are approximately twice as high.

... In all three disability surveys to date, conducted as part of the general Census, people with disabilities of working age are more than twice as likely as non-disabled people to be unemployed.

... Young people have been disproportionately affected by the global financial crisis and, where they are able to find work, are often employed in more vulnerable sectors where there is less job security, high turnover, lower wages and more part-time and casual hours. The unemployment situation of Māori and Pacific youth is acute. The Pacific youth unemployment rate is at least twice that of the youth unemployment rate for European New Zealanders; the Māori youth unemployment rate one and a half times. Disability advocates and commentators note the double disadvantage in the labour market of being both disabled and young."⁸

36. Through our case work, we know that there is some evidence that immigrant teachers and teachers with non-European names may be discriminated against when applying for a job, in terms of the type of employment agreement (more likely to be casualised, short-term contracts) and the employment conditions that they are offered. In addition, new and emerging teachers (i.e. those in their first ten years of teaching), who are predominantly young people, are more likely to be employed on a fixed-term contract

⁸ *Statement of Intent: 2013 – 2016* Human Rights Commission, pg. 11.

or struggle to find work. The New Zealand Teacher's Council reported the following about provisionally-registered teachers (i.e. those in their first two years):

"Most teachers (83 per cent) received a formal letter of appointment to their first teaching position. Less than half (47 per cent) of the teachers were appointed to permanent positions for their initial appointments but this had increased to two-thirds by the time of their current employment. For first time positions, 59 per cent of secondary teachers [had] a permanent position compared with 39 per cent of primary teachers."⁹

37. We know that pay and employment equity remains an issue for women teachers in the compulsory schooling sector and have provided the most recent analysis of these issues below. PPTA participated in the 2008 Pay and Employment Equity Review in the Compulsory Schooling Sector ("**the review**"), which was undertaken by project coordinators and a Tripartite Steering Group ("**the Group**") comprising representatives from the Ministry of Education, the New Zealand School Trustees Association ("**NZSTA**"), and trade unions representing workers in the compulsory schooling sector.
38. The Group identified the following problems and recommended responses to be fulfilled mainly by the Ministry – although trade unions and NZSTA had a role in respect of their members, predominantly through education and training:

Problem: *There was gender disadvantage for women teachers and principals in career advancement. In the secondary sector, a third of teachers thought promotional chances were not equal for men and women, and nearly a fifth of men and women thought men's chances of promotion were higher. The perceptions reflected the pay data showing inequitable advancement for men and women in the secondary sector.*

Recommended responses:

- Include pay and employment equity policies and processes into Ministry of Education policy development that impacts on schools;
- Explore having a specific pay and employment equity role within the Ministry to provide a gender lens. This role could encompass the promotion, development and monitoring of PAEE policies and programmes in the education sector;
- Provide access to expert advisory service on employment equity issues to:
 - Participate in, attend or advise boards appointing a principal;
 - Provide employment equity training for boards of trustees prior to appointing a principal;
 - Provide free expertise if required;
 - Ensure boards of trustees know how to access expertise
- Provide employment equity training for principals in relation to appointment processes for staff;
- Include gender equity in NZSTA / union employment education courses
- Monitor pay and employment equity policies and processes in schools to determine the extent to which gender equity issues are being addressed,

⁹ Cameron, M., Dingle, R. and Brooking, K. *Learning to Teach: A Survey of Provisionally Registered Teachers in Aotearoa New Zealand* (New Zealand Council for Educational Research - A study commissioned by the New Zealand Teachers Council), pg. 36.

including appointment processes relating to the progression of women teachers through management positions to principalships;

- Design career-related professional development specifically for women (e.g. within programmes such as Aspiring Principals and Kiwi Leadership);
- Support the establishment of a mentoring programme for women aspiring to careers in management in schools;
- Develop resources to encourage and assist employers to consider appointing part-time teachers to positions of responsibility.

Problem: *There was inequitable provision of classroom release time or non-contact time for part-time teachers (who are disproportionately women).*

Recommended responses:

- Refer equitable provision of classroom release time or non-contact time with full-time teachers for part-time teachers to the next bargaining rounds for teachers in each sector.

Problem: *Unjustified use of fixed-term agreements.*

Recommended responses

- Provide guidance to employers about fixed-term agreements;
- Provide advice to employees re legal entitlement with regard to fixed term;
- Explore the size of the issue for support staff and funding arrangements (including sufficiency of funding) that lead to the use of unjustified fixed-term positions.

Problem: *Inadequate sick and domestic leave provisions for women teachers and support staff.*

Recommended responses:

- Investigate means of providing fair sick and domestic leave provisions for support staff and teachers and refer to the next bargaining rounds;
- Consider discrete domestic leave provisions for support staff and teachers as part of the above investigation.

Problem: *Women teachers felt that they had a lack of ability to contribute influence and advice to school decisions.*

Recommended responses:

- Develop and disseminate joint guidelines on the inclusive policies and employee engagement surveys, and encourage and assist in their use in schools to enable staff to fully participate; and
- Include guidelines in the management training and courses for new principals.

Problem: *Bullying, harassment and discrimination – school policies and responses. Among secondary teachers, 51% of women and 39% of men did not agree that their school's bullying, harassment and discrimination policies were sufficiently promoted*

within the school; and 44% of women and 23% of men did not agree that the school dealt appropriately with these issues when they arose.

Recommended responses:

- Promote the use of surveys in schools and for the survey to include questions about prevention of bullying, harassment and discrimination;
- Develop and disseminate guidelines and examples of surveys to boards of trustees for principals and staff;
- Include or provide guidelines and resources in management training and first time principals' courses; and
- Provide best practice guidelines and resources regarding workplace bullying and student behaviour.

39. A copy of the full report is available [here](#)¹⁰.
40. We raise this study in the context of this submission because it demonstrates a need to invest in, not curtail, funding and resource for EEO issues – and the continued need to have a dedicated champion of EEO and pay equity through an EEO Commissioner.
41. EEO concerns are prevalent in many other sectors. From 2004 to 2009, the EEO Commissioner conducted pay and employment equity reviews across the public service, the public health and public education sectors, two local councils and three Crown entities. These reviews found gender pay gaps in all but one of the public service departments of between 3-35%. Common findings included:
- Unequal starting salaries for the same job;
 - Female-dominated jobs being paid lower than male dominated jobs;
 - Gender disparities in pay progression and performance pay;
 - Women dominating the lowest paid staff and few in the best paid jobs; and
 - Women having a smaller share of additional rewards and significant gender differences in participation opportunities at all levels.
42. We note that the Ministry of Justice, as the Government department responsible for the administration of the Human Rights Act 1993 and advising the Government on its international human rights obligations, appears to be struggling to meet its own EEO obligations in senior leadership positions. We note that last year's restructure resulted in a decrease in the women in senior management positions, with only 2 of the 9 top positions now being held by women. This hardly seems consistent with its mandate of providing sector leadership.
43. The landmark case taken under the Equal Pay Act 1972 by Kristine Bartlett, the Service and Food Workers Union and the New Zealand Nurses Organisation, following the former EEO Commissioner's investigation into employment conditions in the aged care sector, is merely the tip of the iceberg. There are many sectors where the

¹⁰<http://www.minedu.govt.nz/~media/MinEdu/Files/EducationSectors/SchoolEmployment/TopicsInterest/PayEmploymentEquityReview.pdf> (last accessed 17 December 2013).

workforce is predominantly women and the pay and employment conditions do not reflect the skill, effort and responsibility inherent in doing the job.

44. We have reviewed the Ministry of Justice's Regulatory Impact Statement on the Bill ("**the RIS**") and note that employment-related complaints still remain high on the agenda for the Human Rights Commission to resolve. For example, paragraph 24 of the RIS states:

"The Act needs to place an emphasis on race relations, equal employment opportunities and disability rights because these areas generate the most inquiries and discrimination complaints to the Commission."¹¹

45. If anything, there is more need now than ever before to be having a dedicated role that seeks to fulfil the functions of the EEO Commissioner.

Changes will result in diminished responsibility and effectiveness

46. Abolishing the specific role of the EEO Commissioner and subsuming the functions into a generic human rights commissioner role – under the direction of the Chief Human Rights Commissioner - will significantly dilute the emphasis and effectiveness of the EEO Commissioner to deliver a programme of change and improve the working lives and conditions of New Zealand women.

47. The Government has stated that its objective in reviewing the Act and introducing these reforms is as follows:

"...to strengthen the Commission's performance by increasing its efficiency and effectiveness; this is in line with the Government's focus on better results from public services. A stronger performance of the Commission will enhance New Zealand's ability to comply with its international human rights obligations as well as benefit the implementation of domestic human rights legislation."¹²

48. There is no evidence that the EEO Commissioner's functions will be either more efficiently or effectively performed by a generic human rights commissioner. Instead, there is a very real risk that the EEO portfolio will become subservient to other human rights obligations that are deemed more appropriate to the Chief Commissioner.

49. In contrast, efficiencies are gained by having a dedicated portfolio, where an individual can spend necessary time building critical relationships in the sector and a knowledge base necessary to perform the job. For example, we had the benefit of the current EEO Commissioner, Dr Jackie Blue, attend a meeting of our Wellington Women's network and have been able to share some of the EEO concerns in the secondary education sector outlined in the review. This level of engagement is more likely to happen if the EEO Commissioner's specific functions are set out in statute and ring-fenced for them in a dedicated portfolio.

¹¹ Paragraph 24, page 5 of the Regulatory Impact Statement, signed by Sarah Turner, General Manager, Public Law at the Ministry of Justice.

¹² Paragraph 8, page 2 of the Regulatory Impact Statement, signed by Sarah Turner, General Manager, Public Law at the Ministry of Justice.

50. We note that the proposal to abolish the EEO Commissioner appears to have been based on the following identified problem set out in the RIS:

“The inflexibility resulting from the way specialised Commissioner roles are provided for in the Act (governance arrangements).”¹³

51. However, the RIS later makes it clear that the formalised leadership roles of the EEO Commissioner and the Race Relations Commissioner is one of the benefits of the current governance arrangements that should, if anything, be extended to include a specific mandate for a Disability Rights Commissioner, and future areas of human rights, as they develop:

“The Act does not allow the creation of formalised leadership roles in other priority areas, such as disability rights... the Act needs to allow for the creation of a formalised leadership role in other priority areas of human rights as they develop in future.”¹⁴

52. It is not clear that this is actually a problem. We note that, even under the current legislative arrangements, the Chief Commissioner has been able to appoint a Disability Rights Commissioner – Mr Paul Gibson. More information about Mr Gibson’s role and mandate is available [here](#)¹⁵ on the Commission’s website.
53. However, even if the Government did want to provide more formal recognition for the Disability Rights Commissioner role, it is a more elegant and effective solution to simply amend the Act to formally recognise that position. It does not require the EEO Commissioner and Race Commissioner to be abolished.
54. Having the EEO Commissioner as a member of the Commission, rather than a stand-alone office, means that effective and integrated collaboration happens without prejudicing the independence of the office or decisions made by the Commissioner. This independence is also currently protected by the provision in the Act that requires the EEO Commissioner to work “jointly” with the Chief Commissioner, compared to under the direction of the Commissioner – as proposed in the Bill.

RACE RELATIONS COMMISSIONER

Background

55. In drafting this part of the submission, we have reviewed the submission made by the New Zealand Federation of Multicultural Councils (“**NZFMC**”), which has had extensive history dealing with both the Race Relations Commissioners and the Race Relations Conciliators (the forerunner to the Commissioners, who operated through the Office of the Race Relations Conciliator).

¹³ Paragraph 7, page 2 of the Regulatory Impact Statement, signed by Sarah Turner, General Manager, Public Law at the Ministry of Justice.

¹⁴ Paragraphs 23 to 24, page 5 of the Regulatory Impact Statement, signed by Sarah Turner, General Manager, Public Law at the Ministry of Justice.

¹⁵ <http://www.hrc.co.nz/human-rights-environment/about-the-human-rights-commission/commissioners/paul-gibson> (last accessed 19 December 2013).

56. As stated in the NZFMC's submission, the original Office of the Race Relations Commissioner was established by the Race Relations Act 1971 in order to comply with the International Convention on the Elimination of Racial Discrimination.
57. Like the EEO Commissioner, the Race Relations Commissioner was established as an independent and specific role within the Commission, following the passage of the Human Rights Amendment Act 2001. There was considerable debate when the 2001 Amendment Bill was considered in Parliament about whether incorporating the role within the Commission would dilute the effectiveness and independence of the role. For example, Hon John Luxton (National MP) made the following comment about the proposal to absorb the functions of the Race Relations Office within the Human Rights Commission:
- “[The Government] abolished the office and put it underneath the Human Rights Commission, so that it could keep an eye on it. It is putting in someone it can control, rather than having an independent commissioner, as has traditionally been the way in the past.”¹⁶
58. This was supported by National MP, Arthur Anae, who praised the work that Rajen Prasad had done in the office, noted that 92 per cent of submitters had opposed the abolition of the Office, and strongly spoke in favour of retaining an independent role for race relation functions.¹⁷
59. Before the 2001 Bill was passed, it was amended to ring-fence and protect the Race Relations Commissioner's independence within the Commission and to make it clear that this Commissioner was not under the direction of the Chief Commissioner but only required to act jointly (although see section 141A of the Act, which protects decisions that have been made by the Race Relations Commissioner from being challenged in court on the basis that they have not been made jointly).
60. The functions of the Race Relations Commissioner are outlined in section 16 of the Human Rights Act 1993 as follows:
- (a) To lead discussions of the Commission in relation to matters of race relations;
 - (b) To provide advice and leadership on matters of race relations arising in the course of activities undertaken in the performance of the Commission's functions, both when engaging in those activities and otherwise when consulted;
 - (c) To ensure, acting jointly with the Chief Commissioner, that activities undertaken in the performance of the Commission's functions in matters of race relations are consistent with the strategic direction and other determinations of the Commission under section 7;
 - (d) To supervise and liaise with the general manager, acting jointly with the Chief Commissioner, on the activities undertaken in the performance of the Commission's functions in matters of race relations; and

¹⁶ Human Rights Amendment Bill, Committee debates *Hansard* 5 December 2001, pg. 13718.

¹⁷ See, for example, Human Rights Amendment Bill, Committee debates *Hansard* 5 December 2001, pg. 13723.

(e) Any other functions, powers, or duties conferred or imposed on him or her by or under this Act or any other enactment.

61. The Commission's Annual Report notes the following core objectives relating to the role of the Race Relations Commissioner:

"Prejudice, inequality and exclusion are eliminated so that relations between ethnic and cultural groups are harmonious, mutually respectful, and there is a shared sense of belonging to Aotearoa New Zealand."¹⁸

"The Treaty of Waitangi is understood as belonging to all New Zealanders, so that the Treaty's promise of two peoples to take the best possible care of each other is realised."¹⁹

62. The Annual Report goes on to note the following achievements in these areas in 2013:

- The Commission contributed to harmonious relationships between ethnic groups and to all groups being treated equally, through three case studies that showed participating organisations in the New Zealand Diversity Action Programme responded positively to the diversity of their clients, communities or staff;
- The Commission contributed to improved application of the human rights dimensions of the Treaty of Waitangi, through education workshops with public agencies, local authorities and community groups. Fourteen participants indicated that the workshop would lead to changes in policy and practice.²⁰

Comment

63. Clause 6 of the Bill would abolish the statutory role of the Race Relations Commissioner and instead have the functions performed by one of the generic human rights commissioners under the direction of the Chief Commissioner. This is an unusual proposal, given the National Party's previous support for having an independent post for this important social function.

64. As outlined earlier in the submission, the Commission is continuing to receive a large number of complaints from members of the public that fall within the Race Relations portfolio. Race and its related grounds of colour, ethnic or national origin, racial disharmony or racial harassment were the most common grounds of unlawful discrimination across the public and private sectors – accounting for 32.2% (467) unlawful discrimination enquiries and complaints received by the Commission.²¹

65. These statistics do not support structural change to the composition of the Commission, which would in any way decrease the strength and independence of the Race Relations Commissioner – as proposed by the Bill. As with the EEO Commissioner, there continues to be an on-going need for a dedicated leader to champion race relations.

¹⁸ *Annual Report 2013 Human Rights Commission*, pg. 11.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Annual Report 2013 Human Rights Commission*, pg. 19.

66. The “flexible” structure proposed by the Bill would only mean that the role was at risk of less time, energy and focus being invested by the Commission staff and a responsible Commissioner. As with the EEO Commissioner, the Race Relations Commissioner is able to perform their functions effectively because, under the existing framework, they can work collaboratively with colleagues to identify overlaps, work jointly with the Chief Commissioner to ensure a strategic approach alongside the broader functions of the Commission, and have a clearly independent role ring-fenced in the Act. They also have the ability to build up a core body of specialisation because of their focussed mandate.

67. We note that the NZFMC have stated that the Human Rights Commission provided the following advice to the Government about this proposal:

“The Human Rights Commission advised at the time the Bill was considered by Cabinet that the proposed abolition of the specific statutory titles of the Commissioners responsible for disability rights, equal employment opportunities and race relations would be perceived by the communities they support to lessen these roles and to alter their special character and visibility.”²²

68. We agree that this is likely to be the case and it is woeful that the Government did not take the time to consult with those communities and interested groups before deciding to change the law.

69. We oppose changes proposed in the Bill that abolish the post of the Race Relations Commissioner and seek to limit its independence.

DISABILITY RIGHTS COMMISSIONER

70. We support the extension of the Commission’s functions to include disability as a priority area; however, for the reasons outlined above and as stated in the PSA and CTU’s submissions:

- This should not be at the expense of the other functions and priorities of the Commission – it is not appropriate to reduce staff and the number of Commissioners to incorporate this function, more investment should be made in the Commission; and
- As with the EEO Commissioner and the Race Relations Commissioner, there should be a statutory role for a Disability Rights Commissioner, to be the key specialist and champion who engages with communities and groups and gives effect to our international obligations. This should follow the statutory framework that exists in the current Act rather than the watered down version proposed in the Bill.

71. We have outlined below a pressing disability issue that we have become aware of in the compulsory schooling sector.

72. Students with special needs provide particular challenges in a school setting. We would like to see these students have the best possible chance to succeed. If the

²² Paragraph 4, page 6.

education system is to be truly equitable, their access to learning should not be defined by their parents or by the extra supports that they get but should be equal to that of all New Zealand students.

73. To achieve this, support should be available according to need. The Intensive Wraparound Service, which is focused on the 250 most high needs students, is run on a competitive model with expert regional teams deciding on the neediest cases. Forty-two of these cases are transitioning from residential schools into mainstream settings. To our knowledge two of these cases have fallen over due to lack of support.
74. This should not be a capped number but should be a service available to student according to need or, like the ORRS system, it will only catch the very worst cases and will disadvantage many more students who are not afforded the same level of support. Teachers want to do their best by these students but additional resourcing and support that meets their individual needs is required rather than a prioritising exercise that enables the Crown to ration its resource.

Oral presentation

75. We would like to appear before the Committee in support of our submission.