



## Stepping forward for gender equality: Initiatives by the New Zealand Human Rights Commission.

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### Introduction

Kia ora tatou. Konnichiwa.

My name is Judy McGregor and I am very honoured to have been asked to participate today in the FY2014 NWECE International Symposium that focuses on “Keys to Diversity and Women’s Leadership”. I am currently an academic interested in gender equality and human rights issues working at the Auckland University of Technology.

I head the School of Social Sciences and Public Policy. I currently have a large research project that is attempting to benchmark gender equality underpinned by intersectionality, moving beyond male/female comparisons only.<sup>1</sup> I am also finishing a three year project examining the effectiveness of New Zealand’s ratifications of international human rights treaties, including those that relate to gender equality.<sup>2</sup>

From 2002-2012 I was New Zealand’s first Equal Employment Opportunities Commissioner within the New Zealand Human Rights Commission (NZHRC). I have a background in journalism, being the first woman in Australasia to edit a major newspaper, and have law qualifications.

In my speech today I want to focus on two background issues which are the status of gender equality in New Zealand and the role of a human rights institution in furthering women’s progress. Then I will focus on two strategic initiatives undertaken by the NZHRC to advance gender equality.

### A very brief illustrated history of gender equality in New Zealand.

New Zealand has a strong self-regard and international reputation as a leader in gender equality. For example, New Zealand opened its National Report in the second cycle of the Universal Periodic Review at the United Nations earlier this year (2014) with the comment that:

*New Zealand has a proud tradition of promoting and protecting human rights at home and overseas. As the first State in the world to give women the right to vote in national elections, New Zealand celebrated 120 years of women’s suffrage in 2013 (Human Rights Council, 2014).*

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<sup>1</sup> *New directions in benchmarking sex and equality* with Professor Judith Pringle and Associate Professors Lynne Giddings and Sharyn Graham-Davies. Strategic Research Investment Fund, Auckland University of Technology.

<sup>2</sup> *Assessing the impact of New Zealand’s ratification and state receptivity of the major international human rights treaties* with Professor Margaret Wilson of the University of Waikato and Sylvia Bell, principal legal analyst with the New Zealand Human Rights Commission, funded by the New Zealand Law Foundation.

The suffragette Kate Sheppard graces our \$10 banknote as a famous heroine. Kate Edger was the first woman in the British Empire in 1877 to gain a Bachelor's degree after not declaring her gender when applying for admission. New Zealand's Elizabeth Yates was the first woman in the British Empire to become a local authority mayor in 1893, leading to the resignation of four male councillors and the town clerk in a gendered protest.

New Zealand traditionally comes out near the top of international gender rankings whether they are undertaken by UN agencies or others. However, in 2014 in the Global Gender Gap Report, New Zealand had slipped to 13<sup>th</sup> of 142 countries, down from 7<sup>th</sup> among 136 countries in 2013, and from 5<sup>th</sup> between 2007 and 2010. New Zealand is usually ranked just behind Scandinavian countries. (World Economic Forum, 2014). It was 34<sup>th</sup> in the Gender Inequality Index 2013 produced by the United Nations Development Programme (UNDP)<sup>3</sup>, nine places behind Japan who is 25<sup>th</sup> (UNDP, 2013).

New Zealand had two female Prime Ministers in recent political history, Dame Jenny Shipley, and Hon. Helen Clark, now Administrator at the United Nations Development Programme. At one point in our modern constitutional history (2004) we had four women occupying the nation's top positions; Prime Minister Hon. Helen Clark; Governor General Dame Sylvia Cartwright; Attorney General Hon Margaret Wilson and Chief Justice Dame Sian Elias.

But as Dame Sylvia noted:

*New Zealand and international media have focused on the perceived predominance of women across some of the country's key leadership positions during recent years....Such attention, however positive, carries the risk of a double-edged sword. It is all too convenient to assume that this profile accurately reflects the status of all professional women (McGregor and Olsson, 2004).*

Her caution was far-sighted because the rise of women's political power was relatively short lived. Overall women's national political representation has stabilised at around 32.2 per cent of nationally elected representatives (also 32.2 per cent in 2005). Electoral reform, which changed New Zealand political system from First Past the Post to Mixed Member Proportional system in the mid-1990s, boosted gender diversity to about a third (Drage and Tremaine, 2011) but it has not progressed proportionately since then.

New Zealand has a proud history and is conscientious in ratifying and implementing human rights treaties, conventions and undertaking various voluntary commitments. But there are today in 2014 worrying signs of complacency and even retrogression in relation to some systemic, structural issues of gender equality. This reflects a backlash against state and institutionalised feminism (Hyman, 2010), a period of low morale among women's civil society, and the loss of women's political leadership on issues for women.

Common themes in the seven CEDAW Concluding Observations and Recommendations made to New Zealand include urging action on:

- Eliminating violence against women
- Implementing equal pay and pay equity
- Bridging the inequalities between Māori (indigenous people) and other New Zealand women (education, health, employment)
- Improving women's representation in the corporate sector in both governance and management as well as the judiciary, local government, universities and the professions.

The concluding comments of the Committee on the Elimination of Discrimination Against Women after New Zealand had reported on its progress under CEDAW in 2012 were more specific and targeted than they have been in the previous six reports. This perhaps reflects the frustration of

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<sup>3</sup> New Zealand has a comparatively high maternal mortality ratio and a high adolescent fertility rate.

international experts that a role-model country like New Zealand appears to have stalled and their desire that it should be doing more to accelerate gender equality.

New Zealand has been a lucky country for women to be born in and to live in. But it must renew its commitment to women's progress and gender equality. While the pace and scope of gender equality progress varies by country, reflecting cultural traditions, societal attitudes and values, women's educational trajectories, female work force participation, gender equality frameworks, and rates of development, no country has yet closed the gender gap. There is much we can learn from each other and much we still need to do.

### [The role of the New Zealand Human Rights Commission.](#)

In many countries national human rights institutions (NHRIs) are part of the institutional framework around women's and girls' human rights. They usually have a separate quasi-constitutional status in empowering legislation. They are distinct from both civil society and from State agencies, as independent and autonomous institutions.

NHRIs can raise human rights concerns relevant to women and girls at the international level through their participation in the work of treaty bodies, such as CEDAW, and through their distinct and often active participation in the Universal Periodic Review process.

The CEDAW Committee is the primary international body for the implementation of the international legal framework around women's human rights. It monitors the performance of State parties in meeting their obligations under CEDAW. It also makes recommendations on matters relating to the implementation or interpretation of CEDAW or on broader issues affecting the human rights of women and children.

NHRIs have a special status. In addition to helping State parties prepare their reports, they submit their own detailed report to the CEDAW committee, appear and speak to the committee, lobby committee members and can effectively influence recommendations to governments. For example, 12 of 14 recommendations made by the New Zealand Human Rights Commission were adopted or referred to by the CEDAW Committee's Concluding Observations back to the New Zealand Government in 2012. NHRIs can also support and push civil society to be involved with CEDAW processes.

The NZHRC is an A-accredited NHRI under the Paris Principles. It works at the national, international and regional levels on issues relating to women and girls. It belongs to a regional organisation, the Asia Pacific Forum of National Human Rights Institutions, that works with member NHRIs spread geographically from Mongolia to Qatar. They have agreed under the Amman Declaration and the Amman Programme of Action to specific activities that relate to women's public and political participation; to women's economic, social and cultural rights; to violence against women and girls and to reproductive rights (Asia Pacific Forum, 2014).

New Zealand has been very actively involved in the focus on women and girls' rights among Asia Pacific region NHRIs- both getting it on the agenda of NHRIs as a priority for advocacy and activity, and in securing commitment to change internationally.

The structure of the NZHRC is based on fulltime and part time Commissioners. The fulltime Commissioners include a Chief Commissioner, a Race Relations Commissioner, an Equal Employment Opportunities (EEO) Commissioner, and a Disability Rights Commissioner. The EEO Commissioner, first appointed in 2002, traditionally has a significant focus on gender equality, specifically women's equal opportunities. The New Zealand Commission has generally enjoyed gender parity among Commissioners and has more female than male staff members.

The New Zealand Human Rights Act (HRA) 1993 is New Zealand's major anti-discrimination legislation that accompanies the New Zealand Bill of Rights Act 1990. Section 21 of the HRA

legislation prohibits discrimination on the grounds of sex, marital status, religious belief, ethical belief, colour, race, ethnicity, disability, family status, age, political opinion, and sexual orientation.

The areas of discrimination listed in the legislation relate to employment, education and training, public access, and the provision of goods and services. The NZHRC accepts complaints and has a dispute resolution mandate to resolve complaints but has no investigation powers. If a grievance cannot be resolved through mediation, a complainant can ask the Director of Human Rights Proceedings to provide them with legal representation at the Human Rights Review Tribunal. The Tribunal can ask for issues to be removed to the High Court for determination.

In addition to implementing anti-discrimination legislation, the Commission is charged with positively promoting human rights through advocacy; research; education; making public statements; developing guidelines; undertaking inquiries; developing a national plan of action; and reporting to the Prime Minister.

In addition, the EEO Commissioner under s 17 of the Human Rights Act 1993 has specific statutory functions relating to the provision of advice and leadership on equal employment opportunities; evaluating the role of legislation, guides and codes of practice; monitoring and analysis; and liaising with others about the promotion of EEO, specifically as it relates to equal pay for women.

Two recent NZHRC initiatives employing different intervention strategies for gender equality are discussed below. The first uses the traditional, anti-discrimination complaint mechanism of the Commission. The other utilises an exceptional intervention, a national inquiry by the NHRI.

Both examples relate to the fight for equal pay in New Zealand. This is a systemic human rights concern in many developed and developing countries. The burden of unequal pay disproportionately falls on Māori and Pacific female workers in low paid industries, but also impacts on professional women in New Zealand.

New Zealand has made little progress in recent years in reducing its overall gender pay gap which is approximately 13 per cent based on average hourly earnings. However, this metric disguises wide variability including the double disadvantage of gender and ethnicity. For example, the gender pay gap between the highest hourly rate (European men) and the lowest (Pacific women) is 24.4 per cent. Of the 32 government departments that employ 44,500 people, only two have positive variances, and thirty departments have gender pay gaps ranging between 2.77 per cent at the Department of Corrections to 42 per cent at the Ministry of Defence (New Zealand Human Rights Commission, 2012). The right to equal pay is outlined in Article 23(1) of the Universal Declaration of Human Rights:

*Everyone, without any discrimination, has the right to equal pay for equal work, and in Article 11(1) (d) of CEDAW: State Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work.*

The first intervention I wish to discuss involves advancing gender equality through the use of a sex discrimination complaint. The second initiative relates to the use of national inquiry powers by the NZHRC to be a catalyst for equal pay for female workers in the aged care sector.

#### [A successful sex discrimination complaint](#)

This is a snapper, a highly prized New Zealand eating fish. Excellent for sashimi. Filleting the snapper is an assigned work role.

These are snapper fillets trimmed away from the fish backbone. Trimming the fillets is another assigned work role. Filleting the snapper and trimming the fillets are two different jobs.

Two New Zealanders, a man and a woman who were partners in a relationship, presented for employment at a fish factory in the South Island, one of New Zealand's biggest food processors and employers. On arrival, the woman was given a set of knives and was allocated fish trimming work, arguably requiring more complicated and "fiddly" knife skills. The man was given a different set of knives and allocated fish filleting work. The knife skills of neither the male nor the female were evaluated at the time.

Work was allocated to men and women simply on the basis of their sex. Women were segregated into fish trimming work at the factory and paid less per hour for their work. After comparing their pay packets at the end of the first pay cycle, the woman complained about her unequal pay to the NZHRC. Later, the man also complained to the Commission about victimisation when he was not employed the following season because of his partner's sex discrimination complaint.

The company refused to mediate at the Commission level. This meant the complaint was considered by the Office of Human Rights Proceedings, who represented the complainants and won. The Wellington High Court and two members of the Human Rights Review tribunal ruled against the fishing company in what has become a landmark case. The High Court judgment found the jobs were "substantially similar" and the fish factory had discriminated against the female complainant. The judgment stated: "The reason she received less money was because she was made a trimmer, and the reason she was made a trimmer was because she was a woman."

This case demonstrates how an NHRI or similar body can affect change through the successful resolution of sex discrimination cases taken through the courts. The following video developed from interviews with the couple involved in this case is now used as an advocacy tool.

#### VIDEOCLIP 1

This sex discrimination case used a traditional intervention of a complaint to the NHRI followed by court action. However, it took many years to resolve and the litigation and the controversy impacted negatively on the lives of the complainants. They felt socially isolated in the small rural community in which the fish factory was the major employer. They eventually left the small town to live elsewhere in the South Island.

The employer involved finally accepted the court's decision and was ordered to introduce an equal employment opportunities programme into the workplace. The wider implications of the case are that New Zealand employers now understand that they could face legal liabilities if they explicitly allocate work simply on the basis of sex. To that extent this individual complaint progressed gender equality in New Zealand. However, all of the limitations inherent in individual complaints of sex discrimination were evident including:

- the length of time for resolution;
- the burden on an individual complainant;
- while a landmark case, it rested on its own individual facts and occupational segregation of women's work remains a feature of working life for many women in New Zealand.

The next example, another equal pay case, used a different approach. It employed a more strategic intervention- the use of national inquiry powers by the NZHRC.

#### [Using a national inquiry as a catalyst for women's progress.](#)

The power of public, national inquiries undertaken under the independent, statutory mandate of a national human rights institution (NHRI) can be significant. National inquiries have been very successful in influencing public debate and raising community understanding about human rights (von Doussa, 2006).

The ability of an NHRI to hold a national inquiry has been described by Smith (2006) as one of the most important indicators of the operational independence of an NHRI, particularly if the institution

is vested with the appropriate powers of investigation. These might include the summoning of witness and disclosure of documentation, for example.

National inquiries are generally undertaken as exceptional activities examining systemic human rights issues or abuses that cannot be addressed by the daily business of the institution or are not well suited to an individual complaint procedure.

For example, the NZHRC has undertaken only three national inquiries in the past decade-including the nationwide inquiry that is the focus of this speech, *Caring Counts*, which examined equal employment opportunities in the aged care sector (NZHRC, 2012).

The unique nature of national inquiries and their relative infrequency give them a higher status and profile within countries to advance action with civil society, Government and other stakeholders such as employers.

Because NHRIs “seek to offer higher levels of accessibility than the courts, and to emphasise a conciliatory rather than a litigious approach” (NZMFAT, 2008, 69), their inquiries can also emphasise an open and inclusive approach to stakeholders in contest about human rights issues.

In the area of women’s human rights, NHRIs worldwide are increasingly using public inquiries to expose widespread violations and they are particularly well-suited to an examination of discrimination and inequality in relation to economic, social and cultural rights which is an area of profound significance for the lives of many women (Asian Pacific Forum, 2014)

Aged care is one of the lowest paid sectors in New Zealand with approximately 40,000 predominantly women (92 per cent) receiving the minimum wage of NZ\$14.25 an hour.<sup>4</sup> Many work part time (Grant Thornton, 2010) in casualised and contingent work with insecure tenure and variable hours. In New Zealand aged care workers are often Māori, Pacific or migrant workers (Badkar and Manning, 2009). Fundamental human rights issues such as equal pay and pay equity are traditionally associated with the caring sector in New Zealand and elsewhere.

National inquiries are topical internationally in countries like the United Kingdom (Equality and Human Rights Commission [EHRC], 2011) and Scotland (Scottish Human Rights Commission (2011) to address aspects of aged care. Despite age being a ground of discrimination in contemporary anti-discrimination legislation, the rights of older people are an emergent rather than a developed focus of United Nations human rights treaty body work.

Like Japan with 23 per cent of its population aged 65 and over, New Zealand also has an ageing population at 14.3 per cent. New Zealand projects that from 2031 the proportion of the population aged 65 and over will be greater than the proportion under 15 years of age. Growth in the 85 plus age group is expected to double. The aged care workforce is itself ageing and is older than the current New Zealand workforce (Grant Thornton, 2010, Badkar and Manning, 2009), with the modal age range in the New Zealand Nurses Organisation (NZNO) survey of carers (Walker, 2009) at 51-60 years of age.

The New Zealand inquiry was conducted under s 5(2) (h) of the New Zealand Human Rights Act 1993:

*...to inquire generally into any matter, including any enactment or law, or any practice, or any procedure, whether governmental or non-governmental, if it appears to the Commission that the matter involves, or may involve, the infringement of human rights.*

The EEO Commissioner also used her own statutory functions to undertake the inquiry, particularly as the legislation specifies the responsibility for progressing and monitoring equal pay.

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<sup>4</sup> NZ\$1=87.68 Japanese yen.

## Utilising the Human Rights Approach

The decision to hold an inquiry was prompted by two concerns reflecting the universality and indivisibility of fundamental human rights. The first related to the low pay, the undervaluing and the pay disparity of many thousands of New Zealand women working in the aged care sector. The second related to the 'nexus between the value society places on the aged care workforce and on the respect and dignity of older New Zealanders' (New Zealand Human Rights Commission, 2012, 7). The Terms of Reference of the inquiry had been identified through complaints to the Commission and in community outreach work with migrant groups and low paid workers. The inquiry was confined to EEO issues as opposed to quality of care issues in the aged care sector. The exception was when conditions of work more broadly intersected with the quality of care, such as where excessive work hours or inadequate staffing ratios impacted on safety. The terms of reference included:

- the regulatory frameworks in place in relation to employment and their impact on decent work;
- workforce supply issues including recruitment and retention;
- training and qualifications in the sector;
- conditions of work including staff- to- resident ratios and managerial competence;
- wages of nurses, health care assistants and others in aged care and equal pay, pay parity and pay equity issues;
- the role of men and women in the sector;
- and migrant workers.

The Terms of Reference stated that the recommendations would relate to changes to legislation, regulations, policies, practices, procedures and funding arrangements; consideration of the frameworks, standards and codes of practice necessary for the future; and the development of a timetable for implementation of recommendations.

## The Inquiry Process

Over a 12 month period in 2011-2012 the EEO Commissioner and a senior policy analyst gathered information from 886 participants from throughout New Zealand. Data was gathered from written submissions, three online questionnaires and an interactive website established for stories and information from those who could not travel or who desired anonymity. Information was also gathered from public meetings that were openly advertised, and from private meetings with groups and individuals. Visits were made to residential aged care facilities and home-based health services in 12 different cities or towns in the North and South Islands.

Three trips were made to Christchurch to investigate the enforced adaptation of aged care services in response to the 2010 and 2011 earthquakes. Over 600 residential aged care beds were lost in the city, which has the highest percentage of older people at 15 per cent of the population (Carswell, 2011).

The inquiry report also included a diary account of me as EEO Commissioner working as a carer undercover and incognito, which attracted increased media interest when the inquiry report was released.

Information was collected from older people and their friends and families, New Zealand's leading civil society organisation representing older people, Grey Power, and the non-governmental organisation active in the prevention of elder abuse, Age Concern.

Three leading trade unions in the sector representing the female workers, the Service and Food Workers Union (SFWU) the Public Service Association (PSA) and the New Zealand Nurses Organisation (NZNO), were actively involved in the inquiry, organising public meetings of members in the regions, making formal written submissions and encouraging carers to contribute via email. Employer organisations, such as the New Zealand Aged Care Association (NZACA) representing the

residential aged care facilities and the New Zealand Home Health Association (NZHHA) representing providers of home-based and community care, both made formal written submissions.

The inquiry team additionally met and talked with Ministry of Health (MoH) officials, general practitioners, and those working in clinical roles in aged care, representatives of New Zealand's 20 District Health Boards and academic experts. The academics included gerontologists (Boyd *et al.*, 2008), nursing educators (Whitehead, 2010) and health workforce experts (Health Workforce New Zealand, 2010) who have regularly published in the field.

A particular feature of the inquiry process was its reliance in the report on the public voice of individual nurses and carers themselves. All of the spoken word and interview material was recorded and transcribed from tape and returned to participants for verification. The verification process also sought agreement about the use of direct quotations and the attribution of names in the final report. A full draft of the report was made available to all participants to check for accuracy and revised after this feedback. Protocols were developed to safeguard the confidentiality and anonymity of those participants, the majority of them carers, who had requested that their voices be heard only if it was safe for them to recount their experiences and express opinions.

Financial modelling of the fiscal impact of pay parity between home-based and residential care workers with their hospital based counterparts was undertaken by an academic accountant with health budgeting expertise. A literature review was written by a public policy academic and a legal analyst involved in older people's human rights on secondment from the Scottish Human Rights Commission helped provide an international law context for the report.

### Using Personal Stories

Human rights scholarship usually merges aspects of legal analysis of case law, conventions, treaty body reports and United Nations commentary, with social science research that claims for itself aspects of detachment, impersonality and objectivity. It is, however, the use of stories, narrated lives, words from the heart, sometimes emotional and personal, that give life to the reports of national human rights inquiries.

The *Caring Counts* inquiry invited story-telling from the outset and was avowedly committed to 'engaged research'. It specifically sought the voices of carers, nurses, doctors, older people and their families, providers, employers, unions working in the field, owners of aged care facilities in an interactive process between the researched and the researchers. Further, as part of this shared enterprise, as EEO Commissioner I worked as a carer (with the approval of the NZHRC) and wrote about it, observing, learning, and reconstructing an insider's snapshot of the lived experience of female carers in the residential aged care sector in New Zealand. I gained access to a medium sized residential facility in a provincial city owned by one of the larger chain providers in January 2012 working a variety of day and night shifts as an unpaid 'buddy' or trainee carer. The facility's management, other staff and the patients were not aware of my identity.

I had no access to patient's files. The facility's clients were predominately very frail older people in their eighties and nineties, many of them stroke victims. As part of the facility's usual protocol for 'buddying', essentially a trial period for potential carers, each older client was asked if they were comfortable with the presence of the 'buddy' in their rooms and in their daily routines such as dressing, showering, toileting and eating. Fictional names were used in the 'Diary of a Carer' published as a subjective account of the experience in the inquiry report, *Caring Counts* (New Zealand Human Rights Commission, 2012).

I learnt first-hand as a relatively highly paid female Commissioner how difficult aged care work was, how physically and emotionally demanding the tasks were, and what very low paid work involved and what impact poor wages had in the family lives of thousands of women. I concluded that the quality of aged care provided by female workers was high but that they were being exploited in the



job with very low pay, insecure hours, and increasing job demands as the demographic pressures see more “old, old” in residential and home-based care.

My personal diary of undercover shifts as a buddy carer had heightened newsworthiness for journalists. Previous human rights inquiries had not attracted significant media coverage. My personal diary received saturation, front page media interest in the country’s largest Sunday newspaper, the *Sunday Star Times*. The inquiry report was also a significant news story on Television New Zealand, *Sky Television’s* Prime News, and Television Three’s main news hour. It also received considerable exposure on Radio New Zealand, the public radio broadcaster. The media coverage was followed by several weeks of inquiries, public responses on the NZHRC’s infoline, personal and email correspondence. Hundreds of hard copies of the report were mailed out to newer public audiences who had no previous contact with the NZHRC. Inevitably this high profile pressured a range of responses from government.

### Framing the Recommendations

The recommendations made in the final Inquiry report addressed three significant, long standing equal pay breaches.

1. The inquiry found that many thousands of female carers working through provider contracts in residential facilities and home based settings were receiving \$3 to \$6 less per hour than carers directly employed by health boards, a clear breach of UN and ILO conventions relating to equal pay. This was despite both sets of carers being paid for by public state funding through district health boards.
2. The inquiry also found that female carers using their own private vehicles were not being paid the standard mileage per kilometre rate travelled and nor were they being paid for travel between clients. This resulted in many thousands of women workers receiving less than the minimum wage for an hour of work, a clear breach of New Zealand’s own domestic legislation protecting workers, the Minimum Wage Act 1982.
3. A third equal pay issue that was clearly identified in the inquiry report was perhaps the most complex of all. What is the value of women’s work in aged care? Only two of 886 participants felt carers were adequately paid and most felt a \$5 an hour immediate increase was required.

Several inquiry recommendations related to equal pay and travel compensation and being paid to drive between clients. The Commission recommended that a mechanism be developed that would deliver pay parity for aged care workers whether they worked in state hospitals, home support or residential facilities. A further recommendation referred to a fair travel policy that was annually reviewed and adjusted and covered the real and actual costs of travelling of aged care workers including vehicle costs when driving between clients.

Other recommendations addressed the need for greater political leadership around aged care, the provisions of compulsory qualifications by carers, mandatory safety standards and improved consumer information. Diversity recommendations were included that encouraged the recruitment and retention of more men as aged carer workers and improved information for migrant workers. The transparency of the public funding model used in the aged care sector also featured.

### Strengths of the inquiry

A strength of the inquiry was the increased empowerment of carers in taking a public voice on the issue of low and unequal pay and the care of older people. Previously carers had been an invisible female workforce with little public agency. Paid aged care workers were casualised and marginalised women (Burns *et al*, 1999) and largely un-regulated. Age care workers also lacked visible role models and public champions to promote their cause for higher pay and better work conditions. They are also isolated. Rural aged carers working on their own travel long distances between clients living at home, while those who work in privately-operated, residential facilities often do so in separate institutional settings.

The inquiry was the first time many carers themselves had spoken publicly about their work. Negative public attitudes towards them in society, the physicality of their work and their own ageing as a workforce were revealed in their stories. The increasing scope of their work coupled with growing acuity of needs, low pay, the gendered nature of the work, the desirability of more men, and of the plight of migrant workers also came to light. Many commented on their increased self-esteem and sense of achievement from improved training in the sector but wanted higher qualifications and the accompanying professionalization to be indexed to pay rates. The legitimization of carers' stories in *Caring Counts* has helped to build an increased solidarity between them and other stakeholders, such as the age lobby, and providers, as well as with the NZHRC.

## ▶ VIDEOCLIP 2

There is clear evidence from continuing advocacy in the media, in public spaces and in collective bargaining processes, that the carers on whose behalf the inquiry was undertaken, have moved from victims to actors. The process and the positive public reception accorded to the report have encouraged and politicised carers to advocate on their own behalf. The inquiry was a catalyst for the increased sense of agency by carers and older people around employment issues and union activism. It helped personalise the complex and abstract concept of equal pay.

### Prompting legal action

The inquiry prompted two significant legal interventions: one relating to equal pay and the other relating to whether travelling between clients constituted work and compensation for vehicle expenses.

1. After the inquiry, the first significant test of New Zealand's Equal Pay Act 1972 in thirty years was launched. Kristine Bartlett, a Lower Hutt caregiver receiving an hourly wage of \$14.46, backed by her trade union, took a privately-owned residential facility to the New Zealand Employment Court alleging breaches of the Equal Pay Act 1972. The case attracted a number of interveners including the Commission, unions, equal pay campaigners, Business New Zealand representing employers, and the organisation of aged care providers, as well as the parties directly involved. The number of interveners reflected the potentially broad implications of the issues. The case turned in part on an assessment of the scope of s 3 of the Equal Pay Act 1972 which sets out the criteria to determine whether an element of difference in remuneration based on sex existed. Ms Bartlett was claiming on behalf of female care-givers that they were being paid a lower rate of pay than would be the case if care-giving of the aged were not so substantially female-dominated. The judgment of the full Employment Court referenced the Inquiry report's conclusion that aged care workers in New Zealand were amongst the lowest paid in the country for physically, mentally and emotionally demanding work. The Court referred to the frequent statements in *Caring Counts* that the work was undoubtedly gendered and that the low pay was directly related to it traditionally being women's work.<sup>5</sup>
2. The second test case was taken by the Service and Food Workers Union to the Employment Relations Authority on whether travelling between elderly clients constituted "work". Tamara Baddeley, a carer using her own ageing Honda car, drove around Wellington city to visit 12 older people she cared for. She received 33 cents a kilometre, half the official Government rate, and was not paid for the time she was in the car between clients. The case was then removed by the government to mediation between the parties. The very good news is that this year the Minister of Health, along with employers, signed a \$38 million agreement with the trade unions involved to provide for travel time to be paid at a rate of at least the minimum wage from July 2015. Carers

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<sup>5</sup> Service and Food Workers Union Nga Ringa Tota Inc v Terranova Homes and Care Ltd. NZEMPC Auckland NZEMPC 157 [22 August 2013] ARC 63/12.

will receive an increase in mileage allowance to 50 cents and an expert advisory group will work on implementing guaranteed hours of work for carers.

Other improvements resulting from the inquiry *Caring Counts* include better information for migrant carers; improved commitment to training of carers and female worker professionalism; improved safety standards and consumer information. Public debate about the “value of female carers in aged care” has increased significantly and they may never again be an invisible workforce. Stakeholders picked up on the recommendations and used their own institutional power and collective action in a coalition to force attention to a range of issues relating to the work of female carers. Here is a power point (accompanying) showing which recommendations of the inquiry, *Caring Counts*, have been implemented since 2012.

## Conclusion

There are a number of positive outcomes for women from this national inquiry. The government has responded in a number of significant ways around information for migrant workers, the fair travel agreement, and by supporting training initiatives and improved consumer information about aged care. Participation in a national human rights inquiry was a powerful and lasting intervention for thousands of women workers. While their equal pay remains unresolved, so far the lower courts have upheld human rights standards for women and the use of international human rights treaties, such as the right to equal pay in CEDAW. The higher courts are very likely to follow suit. So while justice has been delayed, it will probably not be denied in the long run.

There has also been a positive consequence of the *Caring Counts* inquiry becoming a political and social controversy. It drew attention to the power of inquiries to accelerate change for women. After the aged care inquiry, a private philanthropist, Sir Owen Glenn, launched a public inquiry into domestic violence and child abuse in New Zealand. In 2014 that inquiry released a “People’s Report” that included strong representation of the voices of those most affected by family violence- women.<sup>6</sup> Many of the lessons learnt in the aged care inquiry have therefore transferred to women’s civil society, individuals and other community groups, who will continue to use national inquiries, where resources and funding are available, to accelerate change for women.

Both in New Zealand and in Japan, women need to experiment with different intervention strategies around systemic gender inequalities. We also need to evaluate how successful they have been. While the courts are important, as demonstrated in the sex discrimination case involving fish work, so equally is the court of public opinion, as evident in the aged care workers’ inquiry. Equal pay, violence against women and women’s representation are just three systemic human rights issues that we share despite our different country contexts. Our challenges are both different and common. Progressing women’s rights is unfinished business and I wish you all the very best in your important and significant work for the women of Japan.

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<sup>6</sup> <https://glenninquiry.org.nz/the-peoples-report>.

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