The Making and Repeal of the Employment Equity Act: What Next?

Margaret A. Wilson

Introduction

The Employment Equity Act 1990 was the outcome of a strategy to improve the economic position of women in paid employment through the use of the law to provide women with access to all forms of paid employment, equal treatment once within employment, and a fairer method for the assessment of remuneration for the work performed predominantly by women. The importance of the economic position of women has been a concern of feminists in New Zealand since the 1890s.[1] The writings of Christina Henderson[2] and Jessie Mackay[3] are good examples of the arguments used at that time to support women's claim to economic equality. Women continued to assert this claim for the next one hundred years.[4] The election of the Fourth Labour government in 1984 provided another opportunity for women within the trade union movement and the Labour Party to make progress on the political and legal recognition of equal pay and equal employment opportunities.

The enactment of the Employment Equity Act in July 1990 was the product of years of work by many women within the political and industrial institutions to better the conditions of women in paid employment. The events immediately surrounding the Act provide a useful case study of those women's involvement in the political and policy-making processes surrounding a major piece of law reform. This article will briefly describe the strategies and tactics used by the proponents and opponents of the employment equity policy during the 1984–1990 period, the repeal of the

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Employment Equity Act, and will speculate on the future policy development of this issue.

My primary purpose is to provide an account of the experience gained from the process of policy development and legal enactment of the concept of employment equity. The importance of the experience is twofold. On a practical level, the Act was an attempt both to provide the institutional framework through which the work of women could be revalued in order to provide them with a fairer remuneration for their work, and to require employers to address the structural barriers preventing women from access to equal employment opportunities. The process of securing acceptance of the policy by the government enabled many women to gain a greater understanding of policy formation and the institutions of political power. Equally, the process of attempting to draft in legislation the framework through which employment equity was to be achieved, identified the complexity of such an endeavour, particularly the difficulty of the reconciling competing interests of various groups, including groups of women.

Secondly, on a theoretical level, the Act marked the continuation of the strategy to use the law to establish a level playing field in the workplace on which men and women could compete equally. This strategy was first laid out comprehensively in the *The Role of Women in New Zealand Society, Report of the Select Committee on Women's Rights, 1975*.[5] This Report, commissioned by the Third Labour government after lobbying by women, acknowledged the gendered nature of New Zealand society as the major cause of inequality between the sexes. The Report recommended that both legal change and education were required to change social attitudes and practices. The law however was seen as a necessary step in the process of equality for women '... for the overriding reason that members of society in general look to the law as a guide in the formulation of their personal values'.[6] It may be debatable that the law can change values, but it can influence behaviour.

The form of the legal intervention recommended in the Select Committee Report was not the assertion of a positive right to be treated equally, but a negative right not to be discriminated against on grounds of one's sex or marital status. The Report further acknowledged women's scepticism that the legal system could deliver equality through the courts, which at that time had only one

woman judge sitting in the Magistrates Court. It recommended that the enforcement and administration of anti-discrimination rights should be done through a separate statutory body, with the emphasis on mediation rather than the adversary method of resolving instances of discrimination. A change of government at the end of 1975 resulted in a change of policy, and the Human Rights Commission Act 1977 was eventually enacted instead of a Sex Discrimination Act.

While the Employment Equity Act was a continuation of the strategy to use the law to assist women in their struggle for equal employment rights, its focus was not on the creation of individual rights, but on effecting structural change in employment practices. Whether the Act would have been successful in effecting such a change will never be known. What can be examined however is the experience gained from the process of developing a policy idea through to enactment of legislation. This experience can provide insights into the operation of the law-making process, and allows a more informed assessment of law reform as a fruitful site for feminist activity.

1984 – 1990

The catalyst for the employment equity campaign was the decision of the Arbitration Court in *New Zealand Clerical Administrative etc IAOW v. Farmers Trading Co Ltd & ors* (1986) ACJ 203. This case decided that the Arbitration Court had no jurisdiction under the Equal Pay Act 1972 to hear a claim for equal pay for work of equal value. This clarified the need for new legislation if women's work was to be revalued during the process of negotiation of women's wages. While women had demonstrated there was a problem, they needed to convince the Government that it was also *their* problem. It was therefore important to find a way in which the Government could be persuaded to 'own' the issue. This meant credible evidence of this had to be provided to the government, and in these circumstances the best evidence would be that commissioned by the Government itself.

Since the Department of Labour was primarily responsible for employment-related policy, the next step was to persuade the

government to direct the Department to undertake research into the question of equal pay for work of equal value. It was obvious, however, that since the Department was at the same time proposing the deregulation of the labour market,[7] there was a problem not only in persuading them that the research to develop the policy was necessary, but also in finding people within the department who had expertise in this area. The lack of knowledge and expertise within the bureaucracy on gender issues was to remain a problem throughout the campaign. The senior officials in the bureaucracy did not possess the knowledge necessary to implement an employment equity policy, nor were they always prepared to provide the resources to enable the expertise to be gained. The importance of agencies such as the Ministry of Women's Affairs and Equal Employment Opportunities Unit in the State Services Commission was demonstrated throughout this period by their provision of the main sources of knowledge in this area of policy.

The equal pay for work of equal value research was eventually contracted out to Prue Hyman and Alison Clark, who joined with Urban Research Associates to produce in 1987 the *Equal Pay Study: Phase One Report*,[8] which was envisaged as phase one of a three-part study. It was intended to establish what statistical and other data was available; to identify the extent to which the difference between male and female remuneration was due to discriminatory or non-discriminatory factors; and to look at the means for removing the barriers to the implementation of equal pay for work of equal value. The phase one study concluded that a differential between male and female rates of remuneration existed and that an element in the differentiation was discrimination. The proportion of the differential that was due to discrimination was impossible to quantify without further surveys of pay rates. The Report concluded by recommending that phase two of the study undertake case studies of wage rates, as well as an examination of job evaluation schemes that could assist with the drafting of equal value legislation.

Phase two of the study was undertaken by the Equal Pay Steering Committee comprising officials of the Department of Labour, the Ministry of Women's Affairs, and the Chair of the National Advisory Council on the Employment of Women.[9] The formation of an inter-departmental committee to supervise this report indicated

that the policy was gaining greater official recognition and therefore had to be treated more seriously. The *Phase Two Report* focused on three areas: legislative and administrative provisions relating to equal pay for work of equal value; job evaluation schemes; and equal opportunities policies. The Report then recommended that the Phase Three Report should decide on the following matters: whether changes needed to be made to the Equal Pay Act 1972; what job evaluation schemes should be used; and the nature of the policies or legislation necessary to implement equal employment opportunity.

By the time the second report was produced it was obvious that little further progress could be made before the 1987 election. It had taken three years to achieve some sort of official recognition of the policy, which indicates the amount of time required when pursuing a policy that is not a government priority. To ensure this work was not wasted, equal pay had to be made an election issue, with a commitment to it receiving high priority on the list of new legislation to be introduced by the new government. Since the women working on this issue had influence in the Labour Party only, the first step in this process was to ensure that employment equity was once again included in the election manifesto. This meant it had to be debated at regional and annual conferences, as well as the Women's Policy Conference and the Policy Council of the Labour Party.

The issues raised during these debates highlighted again the fundamental differences in approach to this policy. The Ministers of Finance and Labour and their supporters wanted employment equity left to the operation of the market, while the women and trade unions and their supporters wanted to enact legislation. It was becoming apparent that there was little room for compromise on this basic question. The policy's inclusion in the manifesto was going to depend on who had the most votes in the forums through which it would have to pass before it became legislation. The first battle was won when the policy was included in the 1987 election manifesto.[10] The next step was to ensure the policy was accorded a high enough priority to be implemented during the government's next term.

The re-election strategy of the Labour government assisted with this second objective. The emphasis on economic policy during the

1984–87 period had led to pressure to place more emphasis on policies that would produce social equity. If employment equity was to fit within this policy objective it had to be reconstructed as a social equity issue, not just a women's policy objective. The successful transformation of the issue was witnessed in its inclusion as one of the eighteen working groups on social equity matters that were to be formed after the 1987 election. The next objective was to ensure employment equity was accorded a priority in the establishment of the eighteen working groups.

Effective lobbying within the government ensured that the Working Group on Equal Pay and Equal Employment Opportunity was one of the first groups to be established in February 1988. It consisted of an interdepartmental group of officials from the Department of Labour, the State Services Commission, the Ministry of Women's Affairs, the Ministry of Maori Affairs, the Ministry of Pacific Island Affairs and the Treasury, together with three consultants — Judith Reid, an industrial relations consultant, Jenny Morel, an economic consultant, with myself, as chair of the Group, responsible for writing the report. This method of policy formation sought to incorporate the expertise of the public service while drawing from private sector experience. It was also intended to ensure that the policy was not lost in a morass of interdepartmental conflict, which was the reason for the chair of the group being responsible for writing the report. The chair could report directly to the Minister in charge, Geoffrey Palmer, and not be thwarted by the normal bureaucratic reporting procedures. This process was essential because it enabled women to maintain some degree of control over the formation and timing of the policy.

The task of the Working Group was to consider and make recommendations on the need and justification for equal pay and equal employment opportunities legislation in the economic, social, and industrial contexts at that time. If legislative change was seen as necessary then the nature of this change was to be considered.[11] In effect the Working Group was Phase Three of the Equal Pay Study commenced in the Department of Labour in 1987. The Working Group undertook a series of meetings with various interest groups, with the primary purpose of establishing whether some form of legislation was required. It also sought to find a comprehensive and integrated response to the variety of

ways in which different women experienced discrimination simply because they were women.[12] The Working Group followed the general recommendations in the Report of the Royal Commission on Social Policy that legislation was required on equal employment opportunity.[13]

The Working Group rejected the approach of legislating for an individual legal right to equal treatment, both because it failed to address the basis of the discriminatory actions, and because equal treatment assumes all women are the same, which they are not. Equal legal rights also fail to acknowledge that according women the same treatment as men privileges the male experience by assuming maleness as the norm. On the surface it makes sense because it would give women more money and greater choice and opportunities in paid employment. The price for this however is validation of male reality, neither a possible nor a desirable state for many women.

The report was produced on 30 June 1988, and recommended the enactment of an Employment Equity Act, a draft of which was included in the report.[14] Cabinet considered the recommendations and decided to publish the report and seek public submissions. The chairperson asked that the submissions be considered by all members of the Group. Eventually it was decided that an interdepartmental response coordinated by the Department of Labour, and a separate report from the independent consultants, be submitted to the Social Equity Committee of Cabinet. The struggle for control of the policy began in earnest at this point because it began to look as though the legislation might be enacted. The reason for the insistence that the Working Group also reported on the submissions was that it was vital women did not lose influence within the process of bureaucratic consideration of the policy. Once matters disappear inside a government department, delays occur and there is no guarantee of a balanced analysis of the submissions.

There were over 230 submissions, in the light of which the consultants made amendments to their original recommendations in a report delivered to the Cabinet Social Equity Committee on the due date of 30 November.[15] The Department of Labour was unable to report before the end of February 1989. This was the sort of delay that women who supported the legislation

feared, because it placed the enactment of legislation before the next election seriously at risk. It required considerable lobbying to ensure that once the Department of Labour reported in February, the government moved quickly to a decision on whether to enact legislation. The Government gave this commitment at the end of February, but instead of moving directly to drafting the legislation, it established an Implementation Committee to prepare drafting instructions. The purpose of the committee was to ensure the employment equity legislation did not contradict the industrial relations policy. This move was an attempt by Cabinet supporters of a deregulated labour market to stop the drafting of the employment equity legislation, which was seen to directly contradict the policy direction of the recently-enacted Labour Relations Act 1987. It was a major setback in the process of getting the legislation drafted for introduction into Parliament before the end of the year so that it could be enacted before the next election.

The Implementation Committee was chaired by David Imrie, who was an official in the Deputy Prime Minister's Office. At this stage the Deputy Prime Minister, Geoffrey Palmer, chaired the Social Equity Committee of Cabinet and controlled the whole process. Without his support the Employment Equity Policy would not have survived to or beyond this point. His support, and that of other government members in Cabinet and Caucus, was essential in ensuring the policy maintained its priority and did not simply disappear from the government's agenda. The Implementation Committee also consisted of representatives from the Department of Labour, and the State Services Commission, (different officials from those who had been members of the Working Group) the Ministry of Women's Affairs, the Treasury, and the chairperson of the Working Group. The inclusion of the chairperson of the Working Group was essential for continuity in the translation of the Working Group's recommendations into legislation. It also provided another important input from women outside the bureaucracy who supported employment equity, and enabled them to maintain some influence over the tactics that would be necessary if the obstacles placed in the path of the legislation were to be successfully overcome.

The Implementation Committee made very slow progress, and it soon became apparent that while discussions could take

place on the equal employment opportunity recommendations, there was to be no discussion on pay equity recommendations. The refusal of officials to meet or discuss anything to do with pay equity again reflected the impasse in Cabinet. Throughout the entire time the issues were under consideration it was impossible to arrange a discussion on the substance of the proposals. The rigid refusal to examine the detail of the pay equity proposals appears to have resulted from a deep feeling of insecurity about the survival of the recent industrial relations reforms. In particular, there was an overriding fear that compulsory arbitration would return under the cover of employment equity.[16]

While this fear may have been understandable because some unions had stated that they preferred compulsory arbitration, it was harder to understand the refusal to address the real equity concerns of women. No attempt was made to address the inequitable outcomes from the restructuring of the industrial relations system. The supporters of the deregulatory policy considered this consequence was of no concern to government, and that it was now solely a problem for the market place. This was not the policy position of the majority of the government members however. For women at that time, it was only the government, using the power of the state, that could change the rules sufficiently to enable them to bargain from a position of relative equality in the market place.

The impasse on the Implementation Committee continued until it was fortuitously broken by a change of leadership in the government in August 1989 which resulted in a reshuffling of the Cabinet. The new Minister of Finance, David Caygill, and the new Minister of Labour, Helen Clark, were not opposed to employment equity. During the impasse two factors enabled the employment equity supporters to act quickly once the political conditions became more favourable. The first was that the media maintained an interest in the issue, so it was not allowed to die. The second factor was that during the period of the impasse, Ministry of Women's Affairs officials had continued to work on the complex problems surrounding pay equity, so that a proposal was available to go to Cabinet shortly after the Cabinet reshuffle.[17] Through this work the Ministry could take the initiative when the new Cabinet

decided to proceed with Employment Equity legislation. Their work prevented further delay and enabled women to retain some control over the process.

The final detailed work on the drafting instructions was taken over by officials in the office of the Minister of Labour, who worked in consultation with officials from the Department of Labour, the State Services Commission, and the Ministry of Women's Affairs. Compromises were made in the legislation to try to accommodate the various interests of different unions and employer groups. Although employer resistance was centred on the risk to the economy, there was also the unarticulated assumption that women's primary role was that of the unpaid caregiver, and that women's role in paid employment was secondary. This argument reflected the dominant gendered view of society and was expressed by Karacaoglu in the National Bank's *Business Outlook* in April 1989.[18] A more sophisticated argument advocated by the Business Roundtable was that equity could best be delivered through a deregulated labour market.[19] The difficulty with this argument was that it was driven by ideology with little evidence to support it.[20]

The Bill was eventually introduced into Parliament before the end of 1989, which enabled submissions to be sought over the Christmas break and the select committee to hear them and report back to Parliament before the election in September. The management of the select committee was very important because delays can occur unless the chairperson is efficient and supportive. In this instance Anne Collins, a member of the government who was supportive of the Bill, guided the process through to the enactment of the Bill on 26 July 1990. The Act came into force on 1 October 1990.

The Provisions of the Employment Equity Act 1990

In its final form the Act was in three parts. The first part established the office of the Employment Equity Commissioner. Her basic function was to administer the legislation. Her major responsibilities centred on assisting employers, unions, and workers to develop and implement equal employment opportunities programmes,

and on conducting pay equity assessments. Although the Commissioner, Elizabeth Rowe held office for only six months, in that short time the office produced a report of equal employment opportunities that was indicative of the type of work the Commissioner could have produced if the legislation had remained.[21] The report examined levels of awareness of the need for equal employment opportunities programmes in various sectors of the economy.

The second part of the Act required all employers in the public sector, and employers employing fifty or more employees in the private sector, to develop and implement equal employment opportunities programmes covering the designated groups defined as women, Maori, Pacific Island people and workers with disabilities over a three-year period. The issues to be addressed in the programmes are stated in the Act, but the way in which the issues were addressed was left substantially to the discretion of the individual employer.[22] Hence an attempt was made to strike a balance between ensuring that discriminatory behaviour was redressed by employers and giving the employer some freedom as to how to achieve the objective of the legislation. The method of compliance with this part of the Act was through an application for a compliance order in the Labour Court (now known as the Employment Court).

The third part of the Act dealt with pay equity. It provided that an employer, union, or twenty women workers in a female occupation (that is, an occupation in which 60 percent or more of the workers are female) could apply to the Employment Equity Commissioner to make a pay equity assessment of their particular occupation. When making the application, the claimant had to specify two male occupations (that is, occupations in which 60 percent or more of the workers are male) with which the female occupation would be compared for the purposes of the assessment. The Commissioner had considerable discretion in determining the occupational classes for assessment. The final assessment would be the result of comparing the same skills, effort, and responsibility, as against the wages paid, allowing for the minimum rates of remuneration in any award or agreement, the differences of remuneration between regions, any extraordinary working conditions, and recruitment and retention differences. The assessment should express any

evidence of gender bias as a percentage or dollar amount. This assessment did not automatically apply to the claimant female occupation. It required the union or employer in a negotiation for an award or agreement to make a claim for pay equity based on the previously-obtained assessment. If the employer and the union could not agree on the inclusion of the assessment in the award or agreement, then the matter was to be referred to the Arbitration Commission (which no longer exists). The Commission would determine the matter on the basis of final offer arbitration. It would also determine the period during which the assessment should be implemented.

The procedure to achieve a pay equity payment was a long and cumbersome one with many checks and balances. The legislation reflected the compromises that had to be made by the women involved in the drafting process to gain statutory recognition of their right to have their work valued equally with that of men. It was an unsatisfactory piece of legislation from the perspective of women because it would have been difficult to implement. In many ways it provided no immediate real threat to those who opposed it. In the longer term it would have contributed to that slow process of attitudinal change. With the change of government in 1990 however, threat or not, it had to be repealed. The Employment Equity Act was in direct contradiction to the National government policy of a market-driven labour market, eventually enacted in the Employment Contracts Act 1991.

The Repeal

As soon as the National government was elected in September 1990 it announced that it would repeal the Employment Equity Act, which it duly did on 21 December 1990. This action was consistent with intentions the National Party had expressed during the election campaign. Before the Act was repealed in November 1990 the government established a Working Group on Equity in Employment, chaired by Anne Knowles. The National government's policy was that equity in employment would come through the operation of the free market. In effect this meant that after the enactment of the Employment Contracts Act the

position of women in the labour market was to be determined through the operation of the market, and not through statutory requirements.[23] In a recent speech the Minister of Women's Affairs, Jenny Shipley, reaffirmed this policy of voluntarism when she stated, 'It is up to employers to retain a commitment to these gains if they want the advantages of a modern workplace'.[24] (The gains she was referring to were those made by women in the past through collective bargaining.)

The Report of the Working Party on Equity in Employment received many submissions identifying systematic barriers to discrimination. Matters such as legislation, inadequate and inappropriate child care, the need for better education programmes, and discriminatory attitudes towards Maori, Pacific Island peoples, and people with disabilities were all identified as barriers and recommendations were made to research or investigate the issues further. Although the Working Group resisted statutory or state intervention as a means of systematically redressing this systematic discrimination, they did recommend an Equal Employment Opportunities Act modelled on the Australian Affirmative Action Act. No government action has yet been taken on this recommendation. The Working Group appeared to rely on the then-foreshadowed Employment Contracts Act to rectify inherent discriminatory employment practices. This Act was seen as introducing flexibility and competition into the labour market and workplace and thereby resolving the problem of discriminatory practices.

The Working Group also rejected that there is a necessary link between pay and opportunities. This had been a fundamental conclusion of the Working Group on Equal Employment Opportunities and Equal Pay, which had linked pay and employment practices into the one concept of employment equity. The two 1987 Equal Pay studies had also found that while equal employment opportunities may redress some of the discrepancy in remuneration rates between men and women, it could not account for the entire gap. Recognition had to be given to the act of discrimination as a factor in the economic inequality of women. The Working Group on Equity in Employment however could find no justification for pay equity, though they did recommend the retention of the Equal Pay Act 1972, which seems inconsistent with

the market-led approach to equity. This Act is now unenforceable anyway, because it was dependent on the centralised industrial relations system to deliver equal pay for equal work, or work that is substantially similar.[25] The understanding and approach of the group is summed up in their conclusion:

> ... the Working Group sees the imposition of a pay equity exercise where the intrinsic worth of one job is compared with the worth of another, and a monetary adjustment made, as perpetuating the artificiality that imposed arbitrary settlements effect. Having recommended that 'all vestiges of arbitrary systems' be removed we cannot, in good conscience, recommend reinstatement of such a procedure in this area.[26]

This statement does not acknowledge that the existing gendered system already imposes arbitrary effects on women. There is also no understanding that the existing labour market is constructed and dominated by the experience and reality of men, existing for their benefit, depending also on their class and ethnicity. Women are assumed to be able to compete on the same terms as men in a 'free' labour market. The Working Group appears to consider that there is nothing fundamentally wrong with the existing social and economic system, and that inequities that do emerge can be addressed through research, education, specifically-targeted legislation, and a flexible labour market.

The Report's recommendations have not been implemented by the government, and a follow-up survey by the National Advisory Council on the Employment of Women[27] makes it clear that not only is employment equity off the policy agenda for the term of the National government, but that it is unlikely the Working Group's recommendations will be implemented quickly. The National government has provided seed money for an Equal Employment Opportunities Trust, which is now largely dependent on employer contributions. Its function is to educate and persuade employers to provide equal employment opportunities programmes. It is too early to assess the outcome from this experiment with voluntary programmes, which will provide an important case study of the effects of this policy approach on the position of women in paid employment.

The most important challenge to employment equity was not directly addressed in the Working Group Report however. It is

to be found in the Employment Contracts Act 1991. This Act places constraints on collective bargaining as the primary method of determining wages and conditions and tries to impose the individual employment contract as the norm. It also attempts to remove trade unions as the primary representatives of employed labour in contract negotiations. The effects of the Act, and in particular its effects on women, have yet to be assessed in detail, though some preliminary research is now becoming available.[28] It is difficult to see how a market-driven employment policy could be beneficial to women, or to any waged worker who has little or no bargaining power when negotiating a contract, or trying to enforce one.

The principal 'benefit' of the Act was probably intended to lie in the part-time, casual employment opportunities that a more flexible, low-waged economy would offer women. The Employment Contracts Act could never have been seen as a serious means to introduce equity — in the sense of fairer remuneration or better working conditions — into the labour market. However what is more serious than its failure to deliver equity for women is the real barriers it will erect to women being able to fully participate within the existing labour market, let alone challenge its gendered nature. Principal among these barriers is the casualisation of women's work itself. A consideration of the Employment Contracts Act is beyond the scope of this article, but it is sufficient in this context to note that it reasserts the dominance of capital and the consequential subordination of labour, and within that context reinforces the dominance of male experience over that of women. While the Act remains in force, employment equity policies will be impossible to implement.

What Next?

The Employment Equity Act project would have been a radical one at any time in New Zealand. It was especially ambitious at the time of major restructuring of the New Zealand economy. The timing of the project was beyond the control of those women who initiated it, but this illustrates that women do not create the policy environment in which they must operate. They have to work

within the constraints of a society whose institutions of power are controlled by men who reflect and reproduce a gendered society in which their values and experiences are dominant. Women who work for change through political and legal institutions must therefore be skilled opportunists and have an intimate knowledge of these institutions of power. This knowledge can come from observation and analysis, but it must also come from engagement with those institutions.

The first of the many lessons that may be learnt from the Employment Equity Act project is that for such engagement with political and bureaucratic power, women must not only be well positioned within these decision-making institutions, but they must have the support of the general electorate. Employment equity was not widely understood or supported at the time and therefore was not a priority when voting. The National Party had clearly signalled its intention to both repeal the Employment Equity Act and enact the Employment Contracts Act. That both these measures would detrimentally affect some women did not rate as an election issue. If another campaign is to be organised then it is important to analyse why this happened. Was it because the concept was not relevant to most women? Was it because they had little opportunity through the media to understand the issues? (Issues surrounding women and violence have received much more attention from the media, for example.) Was it because employment equity threatened the basis for the construction of one important part of our economy, the determination of remuneration? Or was it the fear of women achieving greater economic independence? All these and other questions need to be addressed as part of any new strategy. The repeal of the Act does not mean the concept behind it is not valid. What it does mean is that legislation such as the Employment Equity Act may not be the best method of delivery of employment equity. The Employment Contracts Act has removed the central bargaining infrastructure on which pay equity delivery was built, necessitating a total rethink of the concept and its mode of implementation. The provisions in the Employment Equity Act relating to equal employment opportunities programmes could still be enacted without any difficulty. Such a measure however would be contrary to the currently dominant market-driven policy.

Asking whether legislation is the most appropriate method of delivering employment equity raises the second lesson to be learned here. We need to understand more clearly the limited usefulness of the concept of equality — in particular legal equality — when devising strategies to redress the gendered nature of our society. This is not a new question in New Zealand, as is evidenced by the 1975 Report of the Select Committee on Women's Rights, but it is one that goes to the heart of our legal system. This article does not question that our legal system is a gendered one, but is concerned with strategies to change it. The Employment Equity Act was one response to the need for change; it is now necessary to develop others.

It is beyond the scope of this article to develop that new response. However, I would like to identify some elements essential to any new strategy. One is the recognition of the diversity of the experiences and realities of women that need to be accommodated in any response. This will add to the complexity of the response, but it may ensure its greater acceptance. It will also test the ingenuity of women to find the unity of action, within the diversity of women's lives, required to effect political and legal change. A second necessary element will be the development of an indigenous feminist theory of the state that will assist in creating feminist policy. A lack of practical experience and a theoretical ambivalence have combined to stunt the growth of a feminist theory of the state that reflects the conditions, contemporary and historical, of New Zealand women. The increasing number of women in decision-making positions, combined with the development of feminist theory could provide the conditions for a fruitful synthesis of thought and action over the next decade.

A third important element is a greater understanding of the mechanisms that effect change within the legal system. It is trite, as well as being unhelpful for future action, to state that the legal system is an instrument of patriarchal power, and therefore beyond usefulness to those of us who challenge the gendered nature of our society. It may well be, but it is also the institution that reflects the exercise of 'legitimate' authority within our community. The role the law plays within any society is a complex one that needs to be much better understood by feminists. On an issue like employment equity, an understanding of the way in which the law supports the

economic power within the society will provide a basis for a legal strategy for change. There are other elements that will be required as we make our next moves. I offer these as a starting point.

Notes

1. Margaret Lovell-Smith, *The Woman Question* (New Women's Press, Auckland, 1992).
2. Christina Henderson, 'The Ethics of Wage Earning', ibid., p. 132.
3. Jessie Mackay, 'Equal Pay for Equal Work', ibid., p. 139.
4. See Margaret Corner, *No Easy Victory: Towards Equal Pay for Women in the Government Service 1890 - 1960* (New Zealand Public Service Association, Wellington, 1988) for an account of women's stuggle for equal pay in the government service 1890 – 1960.
5. Select Committee on Women's Rights, *The Role of Women in New Zealand Society* (Government Print, Wellington, 1975).
6. ibid., p. 97.
7. Department of Labour, *Industrial Relations: A Framework for Review* (Government Print, Wellington, 1985).
8. Urban Research Associates, P. J. Hyman and A. Clark, *Equal Pay Study: Phase One Report* (Department of Labour, Wellington, 1987).
9. Equal Pay Steering Committee, *Phase Two Report: Equal Pay* (Department of Labour, Wellington, 1987).
10. New Zealand Labour Party, 1987 Policy Document.
11. Margaret Wilson, *Towards Employment Equity: Report of the Working Group on Equal Employment Opportunities and Equal Pay* (Government Print, Wellington, 1988) p. 7.
12. The term *employment equity* was used deliberately to encompass both pay and opportunity issues. The term was used in Canada for a similar purpose in a similar exercise by Judge Rosalie Silberman Abella who wrote the Royal Commission Report, *Equality in Employment*, October 1984.
13. *Report of the Royal Commission on Social Policy* (Government Print, Wellington, 1988) Vol II, pp. 384 – 5.
14. Margaret Wilson, *Towards Employment Equity*, pp. 25 – 37.
15. Margaret Wilson, *Report on the Submissions on the Towards Employment Equity Report* (Unpublished report to the Cabinet Social Equity Committee, 1988).
16. *National Business Review*, 6 March 1989.
17. As chair of the Working Group, I met with the Ministry frequently during this period.
18. See Karren Harker, *Evening Post*, 3 May, 1989.

19. New Zealand Business Roundtable, *Employment Equity: Issues of Competition and Regulation* (Submissions to the Working Group on Equal Employment Opportunities and Equal Pay, 1988). Also Penelope J. Brook, *The Inequity of Pay Equity* (Centre for Independent Studies, Auckland, 1990).
20. See Ellen Frankel Paul, *Equity and Gender: The Comparable Worth Debate* (Transaction, New Brunswick, N.J., 1989) for a discussion of the issues.
21. Commission for Employment Equity, *Into the 90's: Equal Employment Opportunities* (Department of Labour, Wellington, 1990).
22. See the Schedule to the Employment Equity Act which sets out the requirements to be complied with by employers.
23. The National government's policy position is set out in *Report of the Working Group on Equity in Employment* (Government Print, Wellington, 1991).
24. Jenny Shipley, 'Changes and Challenges' (Address to New Zealand Federation of University Women, Dunedin, 23 July, 1992).
25. Prue Hyman, 'Equal pay for Women After the Employment Contracts Act: Legislation and Practice — The Emperor Has No Clothes?', *New Zealand Journal of Industrial Relations*, 18:1 (1993) pp. 44–57.
26. *Report of the Working Group on Equity in Employment*, p. 12.
27. During 1991, the National Advisory Committee on the Employment of Women sought information from the appropriate Ministers on progress on the Working Group's recommendations. These responses were not published.
28. For a discussion of the Employment Contracts Act see Raymond Harbridge (ed.) *Employment Contracts: New Zealand Experiences* (Victoria University Press, Wellington, 1992); and also articles in *New Zealand Journal of Industrial Relations*, 18:1 (1993) which has published in this issue the most recent research on women and the Employment Contracts Act.