

Prue Hyman

Is Active Intervention Still Needed to Improve the Position of Women in the New Zealand Labour Market? If so, what can be done?

Substantial differences in employment and occupation patterns, levels of seniority and earnings between men and women remain in the New Zealand labour market despite considerable narrowing of the gaps favouring men. The extent, if any, to which remaining differences amount to discrimination is controversial. Interpretations vary along many dimensions, including political persuasion. With

women's educational achievements having surpassed those of men on many measures, such as the proportion of those gaining a first degree, some argue that equal employment opportunity (EEO) has been achieved and discrimination against women no longer exists. However, feminist economists show how economic systems and policies still involve substantial gender inequities, with indirect discrimination common inside and outside the labour market, together with greater constraints on women's choices. Women continue to do substantially

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more of the important household and caring work involved in bringing up children and for others needing assistance, reducing their average money income and paid participation. Inequalities between different groups of women and men also continue to be of concern.

Inequality and child poverty are currently major issues in New Zealand and overseas, with the macroeconomic costs of inequality now clearly recognised by international agencies such as the International Monetary Fund (Ostry, Berg and Tsangarides, 2014). Ostry et al.'s results show that countries with lower levels of net inequality on average experience higher and less volatile growth, with the costs of redistribution policies outweighed by the benefits.

Kate Wilkinson and Richard Pickett's book on income inequality (2009) and Thomas Piketty's on both income and

themselves generously, or at the very least to be rather optimistic in gauging their marginal productivity' (Piketty, 2014, p.332).

Questioning the need for the observed wide and widening differentials in labour market incomes is less common. But the simple marginal productivity theory of labour demand is challenged by heterodox economists, not only in a gender context (Hyman, 1999). Increasing inequality of outcomes is a major element in the argument that EEO policies are insufficient. 'The rationale for prioritising equality of opportunity over outcomes bears little scrutiny. Research shows children of wealthy parents, for example, have far wider market opportunities than children of poor or middle-class parents' (Wade, 2014, p.169).

These different perspectives between orthodox and heterodox economists

concludes with discussion of the current court case testing the Equal Pay Act.

Women in paid work: a brief summary

New Zealand's labour force participation rates continue to be higher for men than for women, largely due to women's ongoing greater responsibility for unpaid and caring work, supplemented by the greater longevity of women. This reduces women's overall rate, since women on average are over-represented in the post-retirement age groups. However, participation is increasing rapidly in these older age groups, with about 15% of women aged 65 and over and 25% of men aged 65 and over employed in the first quarter of 2014, up from 2% and 8% in the mid-1990s (Callister, 2014). Overall, in the June 2014 quarter the Household Labour Force Survey shows rates for the 15-plus population of 74.9% for men, against 63.1% for women. This includes all those in paid work for one hour a week or more, with many, particularly women, working low numbers of hours. One third of women worked part-time as against 13.1% of men, so women constitute 75% of all part-timers.

Much part-time and some full-time work is insecure; this includes, for example, casual, fixed-term, temporary employment agency and seasonal work. The New Zealand Council of Trade Unions' detailed discussion of insecure work (NZCTU, 2013) reported that 70% of fixed-term and 60% of casual workers were women, with these predominant in female-dominated low-paid occupations and industries such as care work, retail, hospitality and other services.

In the June 2014 quarter the unemployment rate for women was higher at 6.4% than the male rate of 4.8%, and had dropped less over the previous year. The under-employment rate (those seeking more hours or full-time work) was also higher for women, at 6.1% against 2.6%.

Gender horizontal occupational and industrial segregation remains at high levels: for example, the manufacturing and transport sectors were just under 30% female at the 2013 Census, compared with education (74%) and health (82%). Around half of both women and men

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wealth inequality (2014) have raised the profile of the debates on causes and consequences, although gender was not a major focus, particularly in Piketty. The same is true of New Zealand's most prominent recent book on inequality (Rashbrooke, 2013), although my chapter in the New Zealand collection discussing Piketty raises gender issues (Hyman, 2014). Piketty's work is a theoretical and empirical analysis of wealth distribution and ways of modifying it through taxation, rather than an analysis of labour market inequality (Wade, 2014). Nevertheless, top salaries are rightly receiving critical scrutiny by social justice groups, with Piketty himself commenting, ironically, that 'It is only reasonable to assume that people in a position to set their own salaries have a natural incentive to treat

underlie arguments for less or more intervention in labour markets, which are never totally free but subject to law, regulation, and policies of various kinds. This is the main dichotomy discussed in this article, with a focus on gender earnings differences. The discussion requires, firstly, a brief analysis of women's position relative to men in the labour market generally, which is followed by more detailed material on gender earnings gaps. The article then looks briefly at weak interventions to improve the position of women; this is followed by more extensive treatment of stronger interventions. This covers both general measures, principally the minimum code and the living wage, and gender-specific measures, notably equal pay for work of equal value. In that area, the article

work in occupations where at least 70% of workers are of their gender. Low-paid work in caring, cleaning and clerical roles continues to be predominantly female, with Māori and Pacific women particularly concentrated in low-paid occupations. Trades and apprenticeships continue to be male-dominated. On vertical segregation (women under-represented in high-paid positions), change is slow. For example, in 2013, of 109 private sector companies listed on the New Zealand Stock Exchange, 12% of the directors were women (see also Human Rights Commission, 2012b). Both vertical and horizontal occupational segregation affect earnings and the gender gap, the subject of the rest of this article.

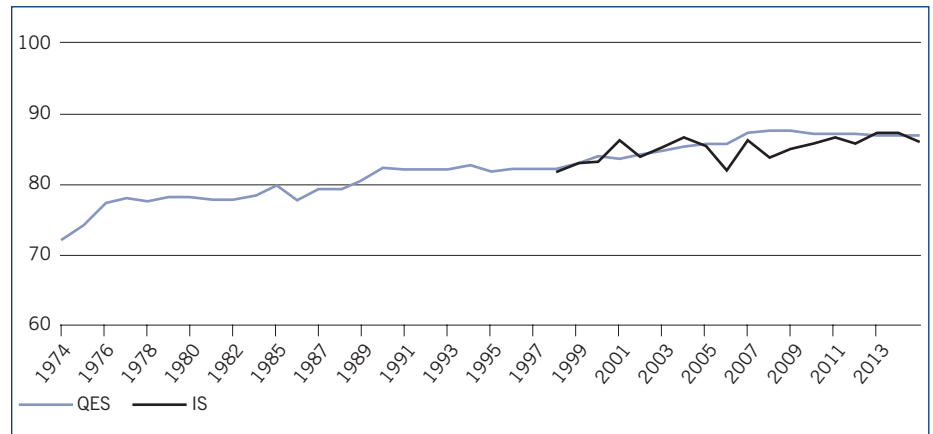
How big is the gender gap in earnings: different measures and analysis

The gender pay gap is usually expressed as a single percentage measure by which women’s pay falls short of that of men. This has the advantage of simplicity, but in reality there are many correct figures, with different coverage. Hourly, weekly and annual earnings and income gaps for wage and salary employees or all in the labour force are quoted, with different employment coverage (e.g. all, or full-time only) and measures of central tendency (median or average/mean) and different sources of data (Quarterly Employment Survey, income statistics, Census, tax statistics).

Weekly and annual earnings show wider gender gaps than hourly earnings, due to women’s preponderance in part-time work and more limited access to overtime due to greater family commitments – not necessarily an unconstrained choice. Average earnings also show a wider gap than median earnings (50% earn above the median and 50% below), since the top tail of high earnings have a greater impact on the mean, with men disproportionally represented in such high earnings.

The New Zealand Income Survey shows that in the June quarter of 2014, women wage and salary earners’ hourly rate averaged \$24.70, 86.1% of the \$28.70 mean for men. This 13.9% gap was greater than the 12.7% gap a year earlier, although year-to-year fluctuations need

Figure 1: Gender ratios, 1974-2014, average hourly earnings from Statistics New Zealand’s Quaterly Employment Surveys and Income Surveys



Source: New Zealand Statistics quarterly employment and income surveys; graph sourced from <http://cevepnz.org.nz/Gender%20pay%20gap/gender%20pay%20gap.htm>

to be treated with caution given issues of sample size and accuracy. Longer-term trends are more reliable, and for several years the gap has been around 13–15%. Certainly, there has been no clear overall trend towards its disappearance. Only the 1973–78 period of implementation of the 1972 Equal Pay Act saw the gap significantly narrowed (by about five percentage points), while the subsequent 36 years have seen slow progress and fluctuations.

The Ministry of Women’s Affairs’ comment on New Zealand Income Survey includes:

The New Zealand gender pay gap is 9.9 percent ... The gender pay gap has been reducing over time. However, any gender pay gap is unacceptable and improving women’s economic independence, which includes reducing the gender pay gap, is a priority ... the causes of the remaining gender pay gap are complex and there are no straight-forward solutions. Closing the gap requires sustained action over time, and collective action from a range of players including workers, employers, careers advisers, business leaders and employee groups as well as the Government. (Ministry of Women’s Affairs, 2014a)

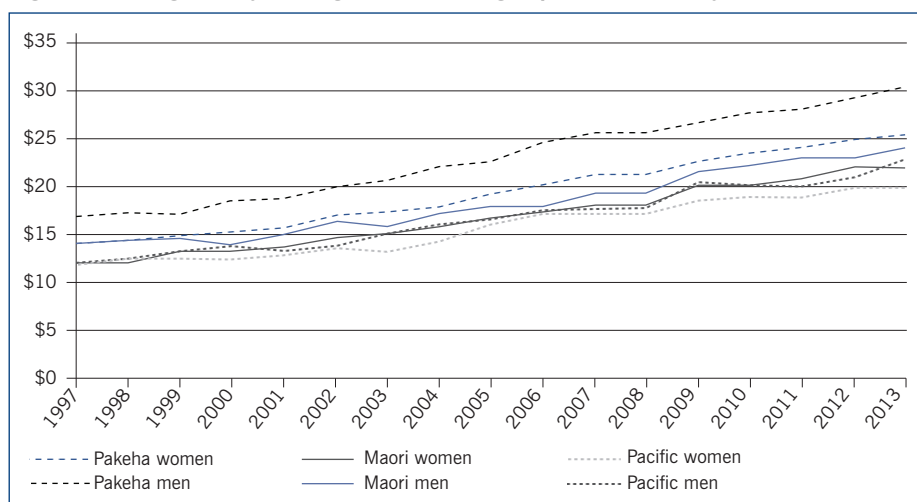
Interestingly, the ministry’s comments also include: ‘The median is used because it is less likely to be skewed by very high wages’ (Ministry of Women’s

Affairs, 2014c). As the higher gap in the mean is due to there being more male chief executives, directors, partners in professional firms and men in other top jobs, a phenomenon which the ministry is committed to changing, the comment thus appears a shade contradictory.

The government has at times quoted the gender gap in median hourly earnings for full-time workers only (those working 30 hours or more per week). This is lower again at 6% in the June 2014 quarter, with the main reasons for the difference compared with all earners being the high proportion of women part-time workers, together with much lower hourly earnings for part-time work overall. Median hourly earnings for part-time work were \$16.96, as against \$23.44 for full-time work. Removing part-time workers from gender gap calculations is therefore misleading and inappropriate.

When weekly rather than hourly earnings are considered, the gaps widen even for full-time workers, at 14.3%/18.4% in the June 2014 quarter for the median/mean. For average earnings of this group it was 18.4%, again very much greater than for hourly earnings. With full-time work defined as 30 hours or more, male full-timers on average work more hours than women. When full- and part-time work are combined the gap widens to 25.1%. For actual purchasing power, these wider gaps are the most relevant. For total weekly personal income from all sources, men constitute over two-thirds of those in the top 20% of incomes (\$1190 plus per week), while of those with earnings

Figure 2: Average hourly earnings, main ethnic groups, income survey 1997-2014



under \$201 per week in 2013, 60% were women.

While women overall continue to be disadvantaged in the labour market, the disparities among women (and men) on the basis of other factors, particularly ethnicity, age and disability, are even more marked. Māori and Pacific men and women both earn considerably less on average than their Pākehā counterparts, with little or no improvement in these relativities over time, as Figure 2, produced for the Campaign for Equal Value, Equal Pay by Linda Hill, clearly shows (CEVER, 2014). While both tertiary education rates and self-determination are increasing rapidly for these groups, it will take some time to feed through to substantial improvement in the earnings gaps.

Minor interventions

The orthodox economics approach to the remaining gender gaps is that they are a result of individual and household choices, and little or no intervention is needed in market-determined outcomes. The remaining gaps should disappear through continuation of current trends, except the part which results from women's greater involvement in unpaid work. At most, encouragement to reduce gender gaps is sufficient, through more education, training, and advice to women themselves and to employers. An example of this approach is a New Zealand Institute of Economic Research report to the Ministry of Women's Affairs (NZIER, 2013) which points to the narrowing of education, earnings and workforce

duration differences by gender. It argues that women's attitudes and decisions are now the issues which the Ministry of Women's Affairs should consider, totally ignoring social norms and feminist critiques of economic and social systems. There is no mention at all of the possibility of discrimination, of undervaluation of female-dominated occupations, or of issues about how skills are defined and measured.

On vertical segregation, there is a large literature encouraging women in professions and business to be more assertive in interviews and salary negotiations, to improve curricula vitae and ambitions – in fact, to behave more like the stereotype of men. Employers are urged, rightly, to realise that diversity of leadership on average has been shown to improve the performance of business, and are rewarded for strong EEO and diversity policies. There are many groups active in the area of increasing the proportions of women in management, on boards and at the top of professions, from the EEO Trust to the Ministry of Women's Affairs and others, using exhortation, advice and prizes. Clearly this is unobjectionable, although the initiatives, even if successful, will not necessarily improve the position of the many lower-paid women.

Although encouraging women into leadership positions has been a major focus of the Ministry of Women's Affairs in recent years, a second focus on economic independence for women is welcome and aimed at lower-paid women. A recent paper suggests ways of improving the economic independence

of women with low or no qualifications, women who are not in education, training or employment, and Māori and Pacific women (Ministry of Women's Affairs, 2014b). While it makes some positive suggestions, including recognition of the need for adequate child care policies and cultural responsiveness, the paper largely glosses over other problems for these groups, particularly sole parents, who are disadvantaged by sole care of children, insecure work, and the difficulties of combining paid work and benefits (Dwyer, 2015). It notes the gendered nature of labour markets, but, like the New Zealand Institute of Economic Research paper, fails to problematise the low-paid nature of much of the female-dominated work available to these groups unless they can enhance the human capital valued by the market. The emphasis on formal qualifications can be seen as in part credentialism, with a lack of acknowledgement of the undervalued skills which many women involved in household and caring work have already acquired.

More active interventions

Those who believe that the labour market and the economy generally exhibit structural discrimination based on gender, ethnicity, class and other relevant population characteristics argue for more significant policy interventions to modify the market than those considered so far. As earlier observed, the market is, of course, never totally free. The general economic and social situation and policy climate has more impact on the position of disadvantaged groups than specific interventions to assist these groups. For example, the globalisation and deregulation policies of the 1980s and beyond, including labour market power being shifted from unions towards employers, helped increase both inequalities within countries and outsourcing to the cheapest labour countries. Those most adversely affected were lower-earning employees, with women and ethnic minorities over-represented.

The sharp reduction in unionisation and in collective, and especially multi-employer, bargaining, under the 1991 Employment Contracts Act was

particularly strong for women employees, and levels increased only marginally under later legislation. High levels of female unionisation and centralised bargaining are strongly associated in cross-country comparisons with a lower gender pay gap and lower differentials generally, with collective coverage improving the situation of lower-paid groups (Whitehouse, 1992). With this reduction, the minimum wage and other minimum code provisions become especially important. In New Zealand the relativity of minimum to average wages has fluctuated widely over the years, with extremes of 83% initially (in 1947) and 30% in 1984, with the percentage commonly increasing to around the low 50s under Labour administrations and falling to the low 40s under National (Hyman, 2004). Minimum wage rates have been raised more since 1999 under Labour-led governments than under National-led ones, while National has reintroduced lower youth and training rates.

Space precludes extensive discussion of other areas of the minimum code (for its links to gender equity, see Hyman, 2004), but it is clear that its provisions have both general and EEO implications. The extension of the period of paid parental leave announced in the 2014 Budget from its current 14 weeks to 16 weeks in April 2015 and 18 in April 2016, together with some extension in coverage, is positive for gender equity. However, the 26-week period proposed by Labour would better meet international standards, and real needs in initial bonding and breastfeeding. It is unclear whether the 90-day employee probation period's main impact has been job creation or exploitation. Human Rights Commissioner Jackie Blue (formerly a National MP) criticised the 2014 Employment Relations Amendment Act, labelling New Zealand's labour market as already one of the least regulated in the world and arguing that the act 'has the potential to put vulnerable workers in a more precarious position'. The changes to Part 6A of the 2000 Act, originally enacted to ensure jobs were protected in industries where restructuring was common, exempted such workplaces

with fewer than 20 employees. Noting the sectors likely to be affected, she pointed out that '[t]hese workers are predominantly women, many of whom are Māori, Pacific peoples and other ethnic minorities' (Small, 2014).

An important recent initiative to improve the situation of lower-waged workers is the campaign for employers to pay a living wage, above the mandated minimum wage. 'The idea of a living wage is that workers and their families should be able to afford a basic, but decent, life style that is considered acceptable by society at its current level of economic development. Workers and their families should be able to live above the poverty level, and be able to participate in social and cultural life' (Anker, 2011, p.5). This

wage and 573,100 workers on less than the living wage, then calculated by the New Zealand campaign research to be \$18.40 an hour (increased to \$18.80 in 2014). A large proportion of these workers are women, with Māori and Pacific also being over-represented.

Economic arguments from efficiency-wage theory support a higher-wage economy, based on its capacity to increase productivity rather than productivity gains having to come first (Altman, 2012). There is substantial evidence that paying slightly above the market by, for example, committing to a living wage can generate loyalty and lower turnover and its costs in recruitment and training. This can improve the quality of work and the responsibility taken by employees. Labour

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international movement was slow to take off in New Zealand, partly because, in the past, the floor on pay and conditions set by the minimum code was seen as reasonably adequate, but this is no longer the case (Hyman, 2012). The living wage campaign seeks voluntary adoption, not legislative action, and has strong support from many community, church, union and feminist groups. In the United Kingdom large numbers of local government authorities and considerable numbers of private sector firms have become living wage employers, while Wellington City Council has become the first council here to move in that direction. (For extensive resources on the economic and social case for the New Zealand living wage, the campaign and research see www.livingwage.org.nz.)

The Ministry of Business, Innovation and Employment estimated in 2013 that 84,800 workers were on the minimum

is not simply a cost, as the basic model assumes, but a factor of production and an investment.

Pay equity/equal pay for work of equal value

While I have argued that general policies have more impact on the position of women than targeted ones, ongoing horizontal occupational segregation raises the need to consider whether women in these types of jobs are remunerated fairly. Reducing horizontal and vertical segregation is a slow process, so will not alone close gender earnings gaps or be sufficient for the labour market to display gender equity.

The equal pay for work of equal value principle (often now known as pay equity) is broader than equal pay for identical work. It requires work assessed as needing similar overall levels of skill, responsibility, effort and working conditions (in total, not necessarily on

each component separately) to be paid equally. It is mandated by the International Labour Organization (ILO 100) and by the United Nations Convention for the Elimination of Discrimination Against Women, both of which New Zealand has ratified. Worldwide, female-dominated work has historically been undervalued by decision-makers, the market, and in bargaining situations. Skill definition and assessment are partly a social construct, with skills involved in many jobs undervalued or ignored. Gender-neutral job evaluation systems have been devised to remedy this undervaluation and negate

commitment by the current government to pay equity (see Ministry of Business, Innovation and Employment, undated).

In October 2014 the Court of Appeal dismissed the Terranova Homes and Care Ltd appeal against an Employment Court judgment favourable to plaintiff Kristine Bartlett and her union, the Service and Food Workers' Union. The union argued that Bartlett's (and others') hourly wage, at that point \$14.46, was based on undervaluation of this female-dominated caring work, convincingly demonstrated in the Human Rights Commission's report *Caring Counts* (Human Rights

The difficulties involved in selecting comparators and evaluating the work were raised as a major problem by the employer, but the Court of Appeal referred to the Pay and Employment Equity Unit's work and rightly regarded the claims about workability as overstated. (In fact, there is considerable expertise available on this and many other aspects of pay equity: see also <http://www.cevepnz.org.nz/>.)

The Court of Appeal placed less weight on the bill of rights and the implications of our international obligations towards equal pay for work of equal value under ILO conventions and the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) than the Employment Court did. Nevertheless, these pieces of legislation and conventions, together with the climate in which they were implemented, strengthen the case. Over many years, comments by international institutions on New Zealand government reports on progress have criticised lack of action. For example, the relevant CEDAW committee in July 2012 called on New Zealand to 'effectively enforce the principle of equal pay for work of equal value, through establishing specific measures and indicators, identifying time frames to redress pay inequality in different sectors and reviewing the accountabilities of public service chief executives for pay policies' (quoted in McGregor, 2013, p.10).

A study by Judy McGregor of seven of New Zealand's reports to CEDAW documents its committee's increasingly strong adverse reactions as mechanisms for pay equity were eroded. Referring to *Caring Counts* and the 'greater mobilisation and visibility of low paid female carers as a result of strategic trade union intervention', McGregor notes 'a confluence of factors, including the demographics of ageing, the rise of the private sector aged care industry and its relationship to public funding, and a predicted global shortage of health care workers that will impact on New Zealand as elsewhere'. She suggests that 'the case for redressing political commitment and addressing low pay for low paid women workers, such as those in the aged care

Implementing equal pay for work of equal value principles is one such intervention which could reduce the undervaluation of female-dominated work.

overly-simple market determination arguments.

The latest attempt to secure equal pay for work of equal value: testing the 1972 Equal Pay Act

Unions, academics and feminist groups have long argued that New Zealand's 1972 Equal Pay Act does cover equal pay for work of equal value, despite its somewhat arcane wording, but it was not routinely interpreted in this way (Hill, 1993; Hyman, 1994; Coleman, 1997). The act had not been tested since a failed Clerical Workers' Union case in 1986, and those supporting pay equity turned to securing new, clearer legislation, containing specific mechanisms, as well as using collective bargaining with some success. Labour-led governments from 1999 progressed pay equity somewhat in the public sector, health and education, through the Department of Labour's Pay and Employment Equity Unit. Abolished by the 2008 National-led government, the unit's research and evaluation tools remain helpful in the current case. In addition, there is theoretically at least, an ongoing

Commission, 2012a). The Court of Appeal stated that the Employment Court's answers to key questions were correct in law, with the decision 'driven by the language and purpose of the Act itself'. With the 1986 case not well argued, the judgment faulty and possibly only lack of resources preventing a successful appeal, the ongoing ability of the act to deal with equal value-based cases was reasserted where predominantly female jobs are concerned. The court ruled that it is not a defense against equal pay claims to find a few men in a female-dominated occupation who are paid as little as the (undervalued) women, and stated: 'We have reached the preliminary conclusion that the Act is not limited to providing for equal pay for the same or similar work ... It may be relevant to consider evidence of wages paid by other employers and in other sectors. Further, any evidence of systemic undervaluation of the work in question must be taken into account' (<http://www.courtsofnz.govt.nz/front-page/cases/terranova-homes-care-ltd-v-service-and-food-workers-union-nga-ringa-tota-inc-and-anor>).

sector, then becomes indisputable' (McGregor, 2013, p.14).

The employers' organisation in the industry, the New Zealand Aged Care Association, has publicly accepted that their care workers deserve a pay increase, and in particular to earn as much as those doing similar work in the public sector, where DHB carers' pay is around \$2–\$3 per hour more. However, the association claims that there is no fat in the system, even where reported profits are high, and that any increase must be matched by more government funding. Meanwhile, Health Minister Jonathan Coleman refused any responsibility, arguing that providers must decide how they allocate their money. Employers and government each pass responsibility on to the other, while the carers suffer, with pay below their value and little above minimum wages, despite the considerable skills needed. The schedule of the employer's requirements of caregivers submitted with the case was highly impressive, as is the commitment to their elderly residents displayed by the vast majority of carers, which had made them slow to take any strong action to improve their own position. On the cost/affordability concerns about a pay increase, Employment Court chief

judge G.L. Colgan pointed out that similar arguments were made against the abolition of slavery. Moreover, simply levelling up the private sector pay levels to those of caring work in the public sector is important, but probably insufficient. It deals only with the very direct inequity of lack of equal pay for almost identical work, but does not tackle the issue of the claimed overall undervaluation of caring work.

How the case will proceed from here is by no means clear. The Court of Appeal has given a steer for the Employment Court to establish, under section 9 of the Equal Pay Act, principles for implementation of its provisions, something that has never occurred in the Act's 42-year history. The next step is likely to see the parties making submissions to the court on such principles, including procedures for choosing comparator non-female-dominated jobs for any predominantly female job under consideration. Meanwhile, more similar cases have been filed by the Service and Food Workers' Union and the Public Service Association, while the New Zealand Nurses Organisation has also filed claims for over 800 members.

Conclusion

This article has contrasted two divergent analyses of the economy and labour market, with the orthodox approach to market rewards accepting wide and increasing labour market differentials as justified returns to skills and with gender gaps seen as inevitable within that framework, though reducing as education and skills gaps narrow. Heterodox approaches, including those of feminist economists, by contrast, emphasise the ways in which power imbalances and historical and social factors and norms allow increasing inequalities which are not economically justified and which disadvantage women and ethnic minorities. Applying this analysis to earnings differences between women and men, I conclude that stronger rather than weaker interventions are needed on the grounds of both equity and efficiency. Implementing equal pay for work of equal value principles is one such intervention which could reduce the undervaluation of female-dominated work. The Court of Appeal has agreed in principle that the 1972 Equal Pay Act can still be used to take claims of this sort, and the impacts of this decision will be tested in the near future.

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2015 Sir Frank Holmes Memorial Lecture *Global Development in the Twenty-first Century*



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