# **CLEW'D IN**

#### Newsletter of the Centre for Labour, Employment and Work (CLEW)

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#### NOTICES

### New Zealand Labour Law Society Conference 2017

**24–25 November 2017** School of Law, University of Canterbury, Christchurch

**Conference Theme:** Labour law in transition in a globalised world

See the <u>conference website</u> for further information on the programme and registrations.

#### **Research services**

CLEW is able to offer research services and to undertake specific research projects on collective bargaining and employee provisions; to review employee benefits; to develop employee engagement or workplace dynamics surveys.

If you are considering a research project involving your workforce or your membership <u>contact us</u> to see if we can help.

#### Issue 2017/4– September 2017

#### EFFECTIVE PREVENTION OF PUBLIC SECTOR WORKPLACE BULLYING: ARE WE THERE YET?

Hamish Crimp, School of Management, Victoria Business School

High levels of workplace bullying in the New Zealand public sector have the potential to severely impact the individuals and organisations who are tasked with delivering core government services to millions of New Zealanders. Is enough being done to effectively prevent and manage this destructive workplace phenomenon?

The findings of a Victoria University Masters research project indicate that whilst departments generally have adequate policies in place, there are further steps that should be taken to provide our public sector workers with a safe work environment free from bullying and harassment.

#### Bullying defined

A good definition of workplace bullying should emphasise the presence of negative or unwanted behaviours, that occur frequently, and over a period of time (Einarsen, Hoel, Zapf, & Cooper, 2011). The elements of power imbalance and intent are contentious, and it is recommended that they are excluded from definitions. WorkSafe NZ's definition of bullying as '*repeated and unreasonable behaviour directed towards a worker or a group of workers that creates a risk to health and safety*', is sufficient for New Zealand organisations, and provides a degree of consistency important for monitoring trends and making interorganisational comparisons (Worksafe NZ, 2014).

#### An environment conducive to high levels of bullying?

Public sector organisations seem prone to workplace bullying, and are likely to encounter additional challenges in effectively dealing with bullying (Bradbury & Hutchinson, 2015; Omari, 2006). Elevated levels of bullying may be explained by the high levels of organisational change, media scrutiny, political interference, shifting performance expectations, and vague, disputed, and conflicting goals experienced in the public sector (Caverley, 2005; Omari, 2006). Accordingly, high levels of workplace bullying have been reported within the wider New Zealand public sector (see NZ State Services Commission, 2014; Plimmer et al., 2013; Plimmer & Cantal, 2016).

#### Potential for severe harm

Workplace bullying has the potential to cause significant harm to individuals and organisations.

Individual consequences include heightened anger and anxiety; poor concentration; feelings of isolation and sadness; low self-confidence; high stress levels; increased work errors and lost time; and lower performance, commitment and job satisfaction (Bartlett & Bartlett, 2011; Cooper-Thomas et al., 2013). These factors can result in increased organisational costs associated with higher absenteeism, recruitment and compensation for

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unjustified dismissals (Bartlett & Bartlett, 2011). An organisation's culture and reputation may also suffer, as a climate of low morale, ineffective teams and poor interpersonal relationships takes hold (Bartlett & Bartlett, 2011).

#### A framework for effective intervention

The Public Health Model outlines primary, secondary, and tertiary anti-bullying intervention opportunities, and is useful for structuring organisational responses to workplace bullying. *Primary interventions* are focused on preventing the occurrence of workplace bullying and include the development of policies, training programs, and the identification of potential bullying antecedents (M. Vartia & Leka, 2011).

Secondary interventions are designed to slow, reduce or reverse the progression of bullying behaviour, prevent its recurrence, and provide individuals with effective coping resources. These could include complaint investigation procedures and the use of conflict resolution strategies such as mediation Secondary interventions are designed to slow, reduce or reverse the progression of bullying behaviour, prevent its recurrence, and provide individuals with effective coping resources. These could include complaint investigation procedures and the use of conflict resolution strategies such as mediation (M. Vartia & Leka, 2011).

*Tertiary interventions* aim to reduce the negative impacts of bullying, and restore worker health and wellbeing. Specific strategies include counselling, group recovery programs and other forms of redress (Cooper, Dewe, & O'Driscoll, 2001).

Effective primary level prevention initiatives should be prioritised, although, as bullying is unlikely to ever be eliminated, effective secondary and tertiary interventions are necessary (Blackwood, 2015).

#### Selected research findings

Given the severe consequences of workplace bullying, it is important for organisations to have strong preventative and management initiatives in place. The following selected research findings provide insights into current workplace anti-bullying initiatives within the core New Zealand Public Service, and should be viewed as opportunities to enhance public sector responses to dealing with a complex and destructive workplace phenomenon.

1. Few bullying complaints are upheld, and are generally viewed as performance management, relationship or behavioural issues

Data obtained from a sample of twelve Public Service departments revealed that of the 155 formal bullying complaints received between 2010 and 2016, 111 complaints (72%) were found to be unsubstantiated. Furthermore, Human Resource Practitioners perceived most allegations of workplace bullying to be unsubstantiated, generally viewing them as performance management, relationship or behavioural issues.

2. Other than the development of anti-bullying policies, primary-level anti-bullying interventions are generally limited

Whilst all organisations involved in the study held organisational anti-bullying policies, and these did generally follow best practice, there was little emphasis on perpetrator consequences, and policies generally focused on secondary interventions to manage complaints of workplace bullying, rather than discussing practical preventative measures. Furthermore, other than the development of policies, organisations generally appeared to take few steps to proactively prevent workplace bullying. This is concerning as the development of a policy in isolation is generally inadequate to effectively prevent workplace bullying.

3. Weak management as a driver of bullying complaints

Significantly, all participants involved in the study discussed poor managerial skill as a key driver of bullying complaints, especially where performance management is concerned. Managers' failure to effectively deal with performance issues in a timely manner seems to allow the escalation of minor conflict to the level of bullying, and inconsistent performance expectations across managers seems to result in either real or perceived injustices, prompting complaints of bullying.

#### 4. Unions as key players in the prevention and management workplace bullying

Organisational anti-bullying polices rarely reference trade unions, however, in practice, unions seem to play several important roles in effectively dealing with public sector workplace bullying. Unions act as intermediaries between management and complainants; are a source of information and support for complainants; and provide a 'toolbox' of innovative and practical ideas to help prevent and manage bullying.

#### 5. Mediation as a preferred secondary and tertiary intervention

Mediation is used in resolving bullying complaints, and for repairing workplace relationships following the resolution of a complaint. The use of mediation to repair workplace relationships is an interesting finding, and there is some evidence to suggest that this may be a product of MBIE's unique mediation style (for a good discussion of these styles see Morris 2015). This finding may have wider implications for managing workplace bullying in other contexts, and MBIE should take pride in the positive reports of their mediation service.

- Ensure policies are regularly updated to keep abreast with changes in recommended best
  practice. The SSC has a copy of IRD's policy on their website as an example for other
  departments this is a good starting point, but should be tailored to suit an organisations
  needs and take account of any changes in legislation or best practice.
- Provide training for all employees on 'what does workplace bullying look like in our organisation?' There is a chance the high level of unsubstantiated complaints could stem from a poor understanding of what constitutes bullying behaviour.
- Improve managerial skills around the delivery of effective performance management dealing with performance concerns in a timely manner, having 'courageous conversations', and ensuring consistent intra-organisational performance standards.
- Involve unions from start of any anti-bullying initiative and pursue a 'partnership approach'
   some good steps are being made by some departments in this respect.
- Focus on training to mitigate investigator bias in complaint handling/investigation if managers and investigators expect that most bullying complaints are unsubstantiated, there is a risk that this perception could influence formal investigation outcomes.
- Continued support for affected parties following 'resolution' of the bullying situation, to avoid conflict re-escalation. The use of MBIE's mediation service as a tool for repairing workplace relationships following the resolution of conflict is likely to be useful here.

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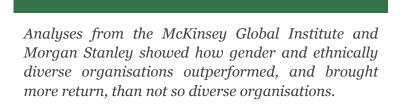
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# SEMINAR REPORT: DIVERSITY AND INCLUSION – IMPROVING ORGANISATION CAPACITY AND PERFORMANCE

The Centre for Labour, Employment and Work (CLEW) recently hosted a seminar *Developing Organisational Capacity through Diversity and Inclusion* with Professor Quinetta Roberson, from the School of Business, Villanova University, Pennsylvania. Professor Roberson has the unusual combination of finance and human resources and was thus able to explore the impact of diversity and inclusion on organizational performance. The talk was part of the Centre for Labour, Employment and Work (CLEW) 2017 Seminar Series and was presented in partnership with the Human Resources Institute of New Zealand (HRINZ).

Professor Roberson opened with the phrase "diversity does not drive firm performance" and encouraged the audience to think about how diversity was connected to performance. Analyses from the McKinsey Global Institute and Morgan Stanley showed how gender and ethnically diverse organisations

outperformed, and brought more return, than not so diverse organisations. She also presented the results of one of her own studies showing that organizational performance initially declines as the representation of racial minorities in leadership increases, but once that increase passes a certain point, that diversity starts to be related to increases in performance



(Quinetta & Park, 2007). The Professor related the inflection point in this study to the percentage of critical mass necessary to implement actions based on thinking/solution diversity.

Diversity conforms to the well-known 'iceberg model'. There is diversity that is easily seen (e.g. gender, ethnicity) and diversity that is not so easily accessible (e.g. skills, background, tenure in different types of

organization). The latter accounts for a deeper, intricate, inner diversity. It is not only about representation to ensure organisations are gender and ethnically diverse, but also making the most of their skills and attributes, and bringing in other employees with diverse skills, backgrounds, knowledge and other diversity characteristics. This broader and deeper enhances organizational diversitv competitive advantage. The diversity of

It is not only about representation to ensure organisations are gender and ethnically diverse, but also making the most of their skills and attributes, and bringing in other employees with diverse skills, backgrounds, knowledge and other diversity characteristics. This broader and deeper diversity enhances organizational competitive advantage.

skills and knowledge required to gain competitive advantage vary according to each organization and thus cannot be easily copied. Professor Roberson argued that the mix of skills and knowledge in a team, and the team relationships, are the glue that connect diversity and performance.

It is important to have an infrastructure that facilitates diversity. This requires capabilities that foster attraction, engagement, retention and productivity supported by collaborative and inclusive processes. Professor Roberson emphasized that it is important to have an infrastructure that facilitates diversity. This requires capabilities that foster attraction, engagement, retention and productivity supported by collaborative and inclusive processes. Moreover, for a team to be successful, it is important not only to have members with the necessary mix of skills

and knowledge, but also to make sure there is: trust among team members; no communication barriers; team objectives are clear and goals of team members are aligned (Govindarajan & Gupta, 2001). In this sense, in order for a team (diverse or not) to be successful, it is important to discuss ideas in a healthy way (storming) and to establish rules about how the team should work (norming).

Finally, Professor Roberson provided a three-step checklist to implement diversity and inclusion in organizations:

1) A diversity strategy needs to be put in place and this has to be connected to the people and business strategies;

2) A climate for diversity has to be created with employees being valued as full contributors of the organization; and

3) Diversity-related progress has to be measured in order to show how diversity is connected to increases in performance. The balanced scorecard technique can be useful in this step and it is important to establish manageable steps of performance improvement in order to maintain employee and organizational motivation.

Professor Roberson finished with a challenge to move beyond, the first step of the diversity path - representation based on. ethnicity, gender. Further progress starts by examining underlying diversity (e.g. skills, knowledge, different world views) and appreciating how that diversity can help to achieve organizational goals. Creating an organization that understands and facilitates all people working

together moves closer to the vision that "the capabilities developed through diversity drive firm performance".

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# RESEARCH UPDATE: COLLECTIVE BARGAINING ACROSS THREE DECADES: LESSONS FROM CLEW'S COLLECTIVE AGREEMENT DATABASE<sup>1</sup>

#### Stephen Blumenfeld and Noelle Donnelly, CLEW

For those of you with an interest in employment matters, you will recall the 1990s as a decade characterised by the negotiation of non-union collective contracts and the loss of automatic and exclusive rights for unions within workplaces, which swiftly led to decentralisation of collective bargaining, the demise of multi-employer bargaining, and the retrenchment of employment conditions across New Zealand. Effectively overnight, the country's long-standing highly-centralised industrial relations system was replaced with a system based on individual employment contracting. As a result, collective bargaining became exclusively an enterprise-level phenomenon, and pattern bargaining was largely abandoned. The introduction of the Employment Contracts Act (ECA) in 1991 was, in this sense, a watershed event that would forever change relationships between employers and employees and transform the country's industrial relations landscape. As many have noted, the enactment of the ECA represented a radical ideological shift which, by the mid-1990s, had irrevocably altered the nature of industrial relations in New Zealand.

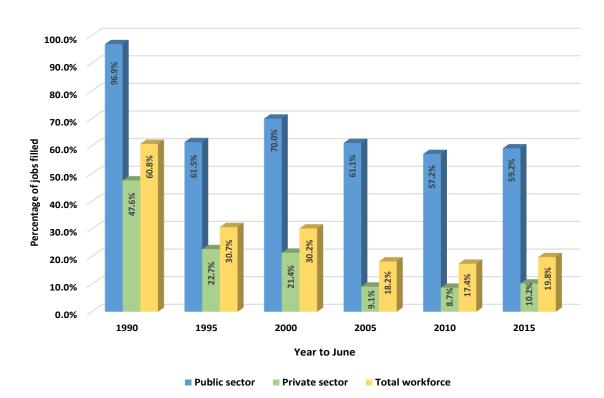
#### Employment Agreements Update 2016/2017

If you are heading into bargaining in the next few months make sure you have checked out our publication *'Employment Agreements: Bargaining Trends and Employment Law Update 2016/2017'*.

The book is seen as the essential reference for employment relations experts and the only source of information on current provisions in employment agreements.

Download the <u>order form (PDF 154KB</u>) from our website.

<sup>&</sup>lt;sup>1</sup> Excerpted from Gordon Anderson, Editor (forthcoming) *Transforming Workplace Relations in New Zealand 1976-2016* (Victoria University Press).



#### Figure 1: Share (%) of jobs covered by collective bargaining, selected years, 1990-2015

As can be seen in the figure above, the share of the workforce covered by collective agreements – regardless of union membership status – dropped from more than three-in-five to just over three-in-ten during the first four years of the ECA. In addition to this, under the ECA, collective bargaining coverage in the private sector slumped from 50 per cent of the workforce in 1990 to under 25 per cent by the end of the 1990s when the ECA was repealed. Nonetheless, although the public sector experienced some gains, overall collective bargaining coverage levelled off at 30 per cent during the second half of the 1990s.

The deregulatory environment of the 1990s also produced a growing disparity between public and private sector collective bargaining coverage in New Zealand. Throughout the 1990s, more employees were covered by Collective Employment Agreements (CEAs) in the private sector than in the public sector. This situation reversed following the introduction of the Employment Relations Act (ERA) in 2000 – where from 2004 onwards more employees in the public sector were covered by CEAs than in the private sector. More recent coverage rates confirm this pattern and point towards, on average, around 30 per cent more collectivised workers located in the public sector than in the private sector.

The significant drop in private sector coverage by CEAs in 2001, the year following enactment of the ERA is, to a large extent, a consequence of large numbers of non-union employees covered by CEAs under the ECA. One factor explaining the shift in collective bargaining to the public sector and away from the private sector is the relative decline of the manufacturing sector. That is, in terms of its share of both the labour market and overall collective bargaining coverage, manufacturing has greatly declined over the past quarter century. Today only one of every six collectivised employees works in manufacturing.

A further impact of the change in legislation is that by 2005, two main features of collective bargaining coverage were discernible: first, most employees were covered by large collective agreements of 500 or

Source: Statistics New Zealand Quarterly Employment Survey, Table: Filled Jobs by Sector by Status in Employment, March quarter, QEX018AA

more employees, within a small number of organisations; and second, there was a marked difference between coverage rates in the public and private sectors. While levels of unionisation and collective bargaining remained strong across the public sector, coverage and union density in the private sector had dwindled by 2005.

What this suggests is that, notwithstanding the great promise the ERA held for trade unionism and collective bargaining in New Zealand, the share of the workforce whose wages, hours and working conditions were determined through collective bargaining has actually declined during the early years if the ERA. What this suggests is that, notwithstanding the great promise the ERA held for trade unionism and collective bargaining in New Zealand, the share of the workforce whose wages, hours and working conditions were determined through collective bargaining has actually declined during the early years if the ERA. Yet, despite a dip in the immediate aftermath of the GFC and domestic recession, the proportion of waged and salaried jobs covered by

collective agreements has remained relatively constant at just under 20 per cent since the mid-2000s.

Although bargaining coverage has increased within some industries since enactment of the ERA, overall there has been a relative stabilisation in both coverage and, for the most part, the content of CEAs in that time. Importantly, although around only one-in-five workers are in the public sector, the majority of workers on collective agreements are employed in the public sector. More than half of all employees on collective agreements work in three sectors: education and training, health and social services, and government administration and security services. This has largely been the case for more than a decade now. So too has the fact that the vast majority of workers on multi-employer CEAs are located in the public sector, and primarily in education and health.

In effect, the ERA brought together a set of legislative requirements and institutional arrangements for employers and employees that would ostensibly create a more favourable environment for unions and collective bargaining. Yet, after more than a decade-and-a-half under legislation which purports to support the negotiation of collective agreements to regulate pay and working conditions, the share of the workforce covered by them has continued to fall. It is now apparent that, although the

The ERA brought together a set of legislative requirements and institutional arrangements for employers and employees that would ostensibly create a more favourable environment for unions and collective bargaining. Yet, after more than a decadeand-a-half under legislation which purports to support the negotiation of collective agreements to regulate pay and working conditions, the share of the workforce covered by them has continued to fall.

ERA established a legislative framework that promoted and facilitated the negotiation of wages, hours and working conditions by trade unions, collective bargaining was unlikely to recover fully within a labour market that was permanently transformed a decade earlier. Indeed, despite the encouragement to return to multi-employer bargaining, movement towards Multi-Employer Collective Agreements (MECAs) did not occur in the manner it was anticipated. As a result, while the number of workers in New Zealand covered by collective agreements has increased, the share of the workforce covered by collective bargaining has remained largely static under the ERA. For more detail see: Gordon Anderson, Editor (forthcoming) *Transforming Workplace Relations in New Zealand 1976-2016* (Victoria University Press).

#### BARGAINING TRENDS PRESENTED IN SEMINARS AROUND THE COUNTRY

Report from Sue Ryall, Centre Manager, CLEW

CLEW recently completed the roadshow of seminars on our 2017 edition of *Employment Agreements: Bargaining Trends and Employment Law Update.* Close to 300 HR professionals, employment lawyers, union officials and policy analysts attended the seminars held in Auckland, Hamilton, Wellington, Christchurch and Dunedin, with many people attending for the first time.

The seminars present analysis of the 2016/2017 data from the Employment Agreements Database and the analysis showed some interesting emerging trends. The data draws from 2064 collective agreements that expired less than two years before June 2016 and these agreements cover close to 324,000 employees. The CLEW collection is unique. While other organisations collect data on wages and allowances the CLEW data includes employment agreements provisions relating to leave, hours of work, redundancy, health and safety, and training along with other smaller items.

As always the wages trends were a key interest. For the wage trends we only use agreements that are current in the year 1 June 2016 to 31 May 2017. This includes 1140 collective agreements covering 260,300 employees. There are of course many agreements where the wages are not included in the agreement and are therefore not included in the wage increase calculations, even though these employees may have had an annual increment. Our annual increment is calculated from the minimum rate included in the document.

The major trends identified in the past year are:

- 1. **Two years is the most common term for collective agreements** with 42 percent of employees covered by such an agreement and close to 80 percent are covered by an agreement of 24 months or more. This trend has been evident throughout the last decade but particularly in the last five years.
- 2. **The average annualised wage increment** across all the CAs in our wage sample **is 1.9 percent** and the increase for central government employees has increased to 1.8 percent for the 2016/2017 year. The average annualised increment for private sector employees was 1.9 percent.
- 3. The movement in the legislated minimum wage in the last few years has resulted in higher increments for industries where this minimum is the common rate of pay. In particular, accommodation and food services' employees averaged the highest increment in the past year at 3.2 percent and this group has also received the highest mean annualised increment across the last six years at 3.1 percent.
- 4. While ordinary **weekly hours** are specified in collective agreements for close to 90 percent of employees, the proportion of collectivised employees who do not have **ordinary days** of the working week included has increased in recent years, particularly for private sector employees.
- 5. Most employees on CEAs across all sectors have **no entitlement to compensation for working weekend hours** as part of their ordinary working hours. For that matter, almost no employees in food retailing and business services are paid extra for working on Saturday or Sunday when rostered to do so.

- 6. Sick leave: Since 2010 there has been a **steady increase in** the proportion of employees who have **more than the statutory entitlement to sick leave and to accumulate 20 days sick leave**. In the last year the proportion who can accumulate more than 100 days has increased.
- 7. CEAs are now more likely to include a much lower cap on the amount of redundancy compensation than was the case before the global financial crisis and recession in 2008/2009.

During the seminars there was interest in what is happening with Domestic Violence Leave clauses and how common they are and also in how agreements are dealing with changes under the Employment Standards Bill, particularly around the 'availability' provisions. These are both areas for which CLEW will be collecting data in the future and information will be available later in 2018.

### **CLEW – WHO ARE WE?**

The Centre for Labour, Employment and Work (CLEW) is situated in the School of Management at Victoria University of Wellington. Our research and public education programme are centred on three pillars of research:

Organisational dynamics	<b>Employment rights and</b>	<b>Changing nature of work and</b>
and performance - What	<b>institutions -</b> What is the role	<b>the workforce -</b> Rapid and
happens in organisations	of trade unions and of collective	increasing change in the external
matters. From strategies,	bargaining in New Zealand's	environment of organisations has
business processes,	contemporary economy and	fundamentally changed the world
management practices, worker	society? Is the current system of	of work. Factors shaping how we
experiences to knowledge	employment rights and the	organise and participate in work
sharing, collaboration,	institutions and processes for	include rapid technological
innovation, productivity,	enforcement of those rights in	development, intensifying
engagement and trust – these	New Zealand still relevant? Is it	environmental and resource
all impact how individuals and	efficient, and does it contribute	pressures, globalised markets,
organisations perform. Contact person: Dr Geoff Plimmer Tel: 04 463 5700 Email geoff.plimmer@vuw.ac.nz	to overall productivity growth? <b>Contact person: Dr Stephen</b> <b>Blumenfeld</b> <b>Tel:</b> 04 463 5706 <b>Email:</b> stephen.blumenfeld@vuw.ac.nz	mobile workforces and changing demographics. Contact person: Dr Noelle Donnelly Tel: 04 463 5704 Email: noelle.donnelly@vuw.ac.nz



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