CLEW'D IN

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MODERN BARRIERS TO PROFESSIONAL WOMEN'S CAREER ADVANCEMENT

Kendrah Wood, Esme Franken, Geoff Plimmer, School of Management, VUW

Unequal pay and sexual harassment are two examples of the persistence of gender inequities, over 40 years since the emergence of second wave feminism and the passing of Equal Pay legislation. Although many formal and structural impediments have been removed, informal, subtle and sometimes covert barriers to women's advancement still exist. For instance in the public sector, women report less favourably on experiences of cooperation, communication and recognition at work (Bryson et al., 2014).

This study looks at barriers to women's career advancement in banking organisations. These organisations depend strongly on their reputations and brands, have ethical and practical reasons to value gender equity, and often promote their apparent equity and diversity. They also usually have sophisticated pro-equity human resource management practices. Social factors and informal networks, however, limit their effectiveness and are arguably the primary barriers to career advancement (Tharenou, 2001).

In this article, based on interviews with thirteen senior women in the New Zealand banking sector, we report on perceived barriers, and explain the durability of these barriers despite progressive organisational actions and initiatives. These results are a summary – participants' experiences varied. The co-operation of the banking sector and the women in this study is greatly appreciated. Hopefully it will encourage other sectors to be so reflective.

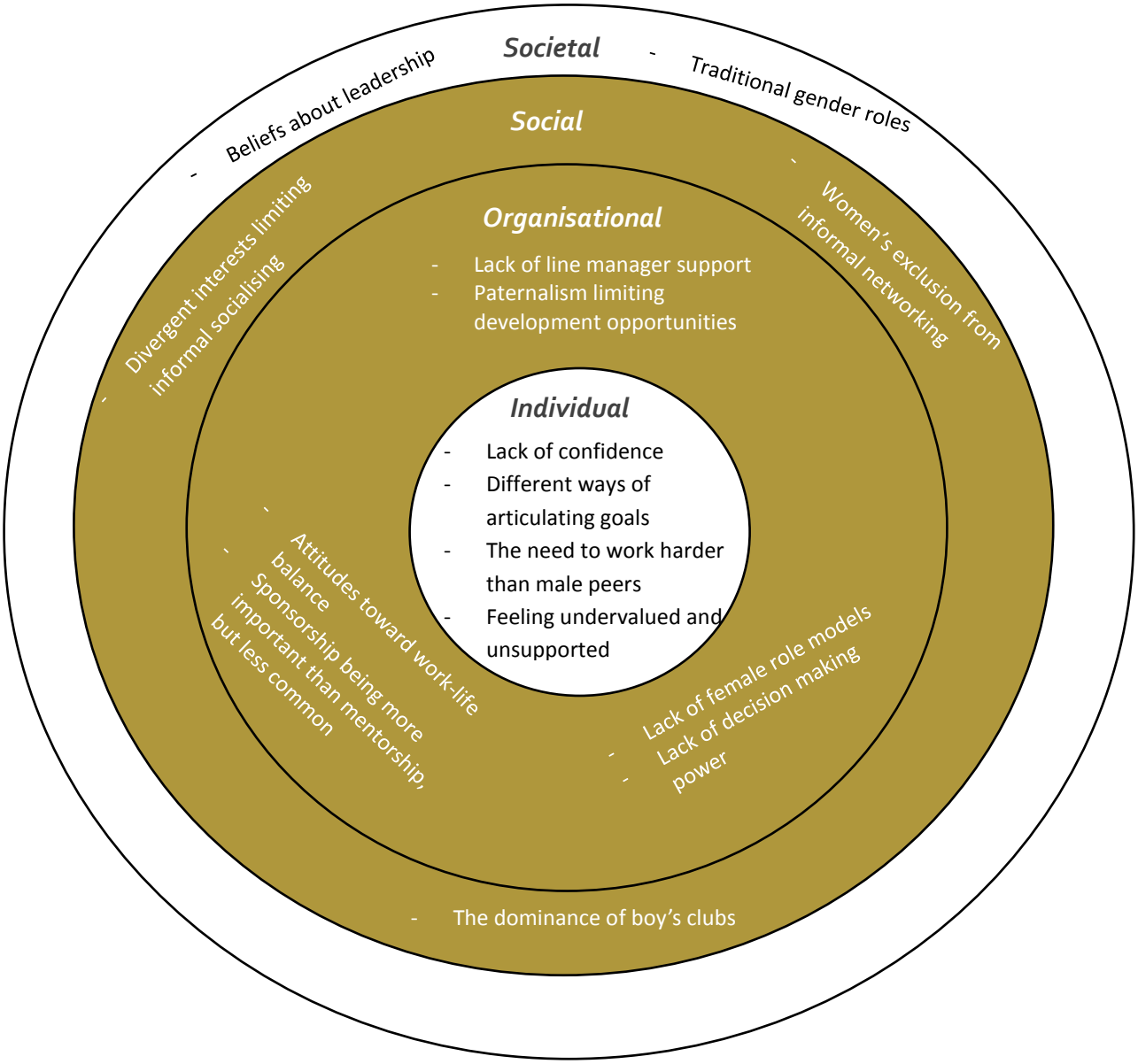
Key findings

Our findings show that barriers to career advancement aren't just organisational or managerial; they are societal, social, and individual too, and a barrier at one level reinforces a barrier at

another level – but for career advancement, they become most concrete at the organisational and social levels.

For instance, traditional male-oriented constructions of leadership may, for example, limit decision rights that in turn lower senior manager advocacy and heighten exclusion from informal networks. These in turn could lower confidence – but it is decision rights, senior manager advocacy and exclusion from social networks where organisations can most make a difference.

The identified barriers are in the figure below, followed by a brief summary of the key findings.



Four key examples of barriers, extending from societal norms to individual behaviours, are described below.

Organisational

Lack of line manager support

Women seemed more dependent on a good boss than were men, as there were fewer alternative pathways to recognition, such as through informal networks, to compensate. Managers play a key role in career advancement,

and weak, unaccountable managers are harmful to both their staff and the organisation (Plimmer, Gill, & Norman, 2011). Weak managers that don't support and develop their staff mean women get overlooked for opportunities. There was also evidence of discriminatory treatment by line managers after returning from maternity leave:

> *"When I came back to work my line manager at the time who I really liked… said to me that I'd never be as smart as I was before I had children."*

Paternalistic managers do not help either. Some line manager assume that they know what is in their staff member's best interests:

> *"If I think of some of the managers a lot of it is about… them trying to help you manage your [career], rather than actually letting you… know the parameters and letting you make the decisions yourself."*

The need for sponsors over mentors

While mentors can help with development, sponsors counted more for advancement. They are also less available to women. Sponsors advocate, often behind closed doors, for progression from middle to senior management, and then to senior leadership positions. While mentors can be a 'sounding board' for job challenges, a high level sponsor can directly create real career progression. In this study, sponsors were often not available to women, although some women had been fortunate:

> *"[Sponsors] give an extra bit of confidence to say, 'yep you're capable of doing whatever it is that we're talking about', and then being advocates within the business, so other people can talk to them about my capability. So it's having sponsors for me that have been higher up the chain than me, so that at the same level of someone who might be hiring me, they can have good peer to peer conversations."*

Social

The exclusionary nature of informal networks

Socialising and informal events are gateways to career-related networking and sponsors, but they can exclude women. In this study, networking opportunities were often seen as exclusionary, with "*other industries do[ing] a better job*" in terms of ensuring inclusiveness. Strong informal networks that were based around sports such as rugby or golf, or around 'grabbing a drink' were not always appealing or comfortable, and so were also a barrier. Sexist humour was another problem.

Cross-gender networking is still difficult to tackle for women. The mutual interests are not necessarily there to provide a base for networking: "*as long as there are more men than women and you have separate interests, there are more opportunities for men to be, you know, in the 'old boys' networks' or talking to each other in those environments*". One participant elaborated:

> *"Two to three hours at a rugby game, is good quality networking time, but only if you are interested in the sport and if you are not, then its two to three hours that could have been better spent with family."*

Women can be pressured to be more 'deliberate' about networking, but if there are less opportunities for cross-gender networking it isn't easy.

Societal

Limited audience for challenging traditional gender roles

One participant highlighted that many young females are being delivered the message that it is possible, and more importantly, normal, to have a successful career, climb the corporate ladder and have a family while doing so, whilst young males are not necessarily receiving the same progressive message: *"You can't deliver a message to half of society and expect society to change or accept the change desired by half of society"*.

Individual

Differences in goal articulation

Women's advancement can be limited by gender differences in how goals are articulated, or how personal identities and 'personal brands' are managed. A number of participants noted that while women identified desired capabilities and areas for development, men identified specific job titles and positions they wanted. The latter was more effective in getting ahead.

It was explained that women need to be more informally invited or encouraged into roles, and this is where sponsors are effective in advocating or pushing women into roles. Participants said they knew they could do the roles, but were not sure whether they were 'ready for it'. Although confidence and clarity about career job goals seems most effective, a competency learning or growth orientation can still work, albeit in a different way. One participant explains this idea:

> *"I think traditionally we probably want to wait for someone to tap us on the shoulder, and that… may not happen, in which case we'll just be sitting there wasting capability which is a shame. So I think by doing everything you can to take feedback on and grow every day, by setting goals so that you know you can be as excellent as you possibly can be… letting people know that you want to progress and that you're keen to think about the next step… I think that's the thing."*

What can be done?

Worldwide women continue to be underrepresented in higher levels of management (Braun *et al*. 2017) – and these barriers can be subtle, informal, hard to define, and mutually reinforcing (Reilly, Jones, Rey Vasquez & Krisjanous, 2016).

Last year, the vice-chair of Credit Suisse, Noreen Doyle, told the Financial Times; "We'll be considered equal when equally incompetent women get the same opportunity as incompetent men" (Noonan *et al*., 2017). In the meantime, here are a few suggestions from this research:

- Measure line managers on their support for equity and development. A 'good' manager asks the right questions around what their staff member does next. They encourage staff to put their hand up for other roles and act as an advocate where appropriate, knowing that they need this kind of support to move forward.
- Develop gender neutral or pro – women networks.
- Active encouragement by organisations to push women into both development and job positions
- Flexible working to support diverse household structures upon re-entry into the workforce
- Develop awareness of personal identities and 'brands' to remove 'self-barriers' around confidence and readiness for instance. Help promote their capabilities and achievements, by pushing themselves to the front and speaking up around their desire to progress, re-enforcing their personal brand.

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GOVERNMENT BEGINS EMPLOYMENT LAW OVERHAUL

Sue Ryall and Stephen Blumenfeld, CLEW

Former Prime Minister Bill English described the Government's recently proposed changes to New Zealand's labour law as a 'union shopping list' and argued that the reforms are 'cutting across what has been a very impressively performing labour market'. How well-founded are these claims, though? To answer this, we look to data in CLEW's Collective Agreements database for the year ending 31 May 2017 and evaluate those proposed changes against what is currently provided by way of CAs.

Union access to workplaces

Since 2011, Union access to workplaces has required by statute the union to obtain the employer's consent in advance. The employer must respond to the request within one working day and cannot 'unreasonably' withhold access. The exception to this statutory requirement is where there is provision in the collective agreement for the union to have unfettered access to the workplace to meet with its members or to conduct union business (including recruitment).

This restriction on union access to workplaces in the ERA has rendered it particularly difficult for unions to organise on greenfield sites, where a collective agreement is not in place. The changes in the Government's new

legislation returns to the status quo that existed prior to 2011, implying unions will now be able to access workplaces without gaining prior consent from the employer, although they will still be required to enter workplaces only at reasonable times and not unduly interrupt business continuity.

Notwithstanding this change, it has been the case for many years that most employees covered by collective agreements have had provision in those agreements allowing union representatives ready access to their workplace. Two-thirds of employees across just under half of all private sector collective agreements in effect in the year to June 2017 included provision for their union to enter the workplace in order to meet with employees, both union and non-union, without requiring their employers' permission to do so. This provision is found in the agreements of a majority of employees on CEAs in most industries.

Union delegate leave

Union delegate leave is paid time for union delegates to complete their duties, such as talking with new employees about the collective agreement, representing their workmates when issues arise, and consulting with the employer when changes are proposed. Under the proposed changes to the Act, employers will be required to pay union delegates for reasonable time to undertake their role. Regardless of this change to the legislation, provisions allowing for paid union delegate leave are common in collective agreements.

More than four-fifths of private sector employees on collectives are covered by an employment agreement under which union delegates in their workplace are provided with paid leave to conduct union business. Nevertheless, such provision is found in only two-thirds of all collective agreements, suggesting that union delegate leave applies most to larger coverage agreements. Provision of union delegate leave is particularly common in collectives covering workers in food retailing and other retailing and warehouse trade, as well as those in financial services. In the latter, more than 90 percent of covered employees have such provision specified in their employment agreement. Union delegates working in most areas of manufacturing, information, media and telecommunications

NOTICES:

Employment Agreements Update still available

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 order form from our website and also order our 2018 edition in advance (*this is included in our Employment Agreement Update seminar registration fee*).

DIARY NOW! 2018 Employment Agreement Update seminars

Our annual seminar series, held in July and August, has been scheduled as follows.

Thurs 26 July, Christchurch - Chateau on the Park
Friday 27 July, Dunedin - Dunedin Art Gallery
Thurs 2 August, Auckland - Crowne Plaza Hotel
Friday 3 August, Hamilton - Novotel Tainui
Thurs 9 August, Wellington - Rydges Hotel

All seminars are scheduled for 9am to 12.30pm and on-line registrations will be available in March. If you would like to sign up for an alert when registrations open, contact susan.ryall@vuw.ac.nz.

Fees (all gst excl):
Full fee -$465
Earlybird fee - $420 (registered by June 15)
Discounts for bulk registrations (6 or more) on enquiry.

and transport, postal and warehousing are also likely to have access to paid leave for that work.

Pay rates in collective agreements

Under the proposed changes, collective agreements will be required to include pay rates or ranges for various levels of staff. In our collective agreement data, we code agreements for 'discrete' wage rates (those that have wage rates expressed for particular occupations, skills and competencies and/or length of service); ranges of rates either for particular occupations/roles or across an organisations such that the employee's rate is at the discretion of the employer or subject to performance; only a minimum rate of pay for the organisation is included and there is no link to occupations or roles.

With the possible exception of the local government sector, our data for the year ending June 2017 suggests that the proposed legislative changes will have little impact in this regard. To this end, whereas only 6 percent of collective agreements in private sector organisations do not include pay rates, 11 percent of private sector collective agreements include only the minimum rate paid rather than stipulating pay rates or specifying wage ranges for different occupations or across groups of employees. It is more likely (50 percent of employees) that a private sector employee's wage or salary will be expressed as 'discrete' rates for particular jobs, occupations or skills. It is, nonetheless, becoming more common for wages to be specified as a range of rates (currently 39 percent of private sector employees) and this is the most common way that wages are specified in public sector collective agreements.

Extension of collective agreement for first 30 days

The Government's proposed changes also reinstate the requirement, removed in 2015, that new employees who are not union members be covered for first 30 days of employment by the terms and conditions of the collective agreement, if their work was covered by a collective agreement in that workplace. Unions have long seen this as an important entitlement that prevents the employer from offering terms and conditions that undermine the collective.

Despite this change, our data for the 2016/17 survey year indicate that more than half of employees under collective agreements in the private sector were covered by an agreement which either covered new employees in their first 30 days or covered all employees throughout their tenure with the employer, regardless of union membership status. Forty percent of employees in the private sector on CEAs are on agreements with provision that new employees will be covered by the CEA in their first 30 days, and a further 11.5 percent are covered by a collective agreement, regardless of their joining the union. Nevertheless the '30-day' rule applies in agreements covering only 35 percent of collectivised employees.

Ninety-day trial periods

Ninety-day trial periods were brought into law by the former National-led Government in March 2009 with the stated purpose of encouraging small businesses (under 20 employees) to take on new employees deemed to be 'high-risk', without the danger of incurring a legal challenge in the event of dismissal. The government deemed it successful in its objectives and from 1 April 2011, this ability to employee on a 'trial period' was extended to all employers regardless of the size of the organisation. A study by Motu Economic and Public Policy Research Trust funded by the New Zealand Treasury and published in 2016, though, has shown that that policy had little effect on hiring or overall employment. Thus, the legislation simply made it easier for an employer to dismiss a recently

hired employee. The current Government's proposed law change will once again make 90-day trial periods available only to businesses with under 20 employees.

Our analysis suggests 90-day trials are seldom addressed in collective agreements. Of the 136,931 employees covered by the 1652 private sector collective agreements in our database for 2016/2017, 5 percent enjoy protection of a clause specifically excluding them from employment on a grievance-free trial basis. Despite this, only 11 percent – across 13.5 percent of all CAs in the private sector – have specific provision in their agreement allowing their employer to use a trial period for new employees. In the absence of any trial period clause, the rule defaults to the Act. Hence, as things currently stand, the majority of employers who are party to a collective agreement, including those employing 20 or more workers, are unrestricted in this regard.

Where do trial period clauses exist? They are most likely to be found in agreements related to the agriculture, forestry and fishing sector and to a lesser extent in manufacturing. Such clauses are virtually non-existent in the public sector, the exception being collective agreements covering local government employees, where around 4 percent of those employees are covered by agreements allowing the use of trial periods and 1 percent are covered by agreements forbidding such practice.

On the other hand, close to one fifth of employees in the private sector agreements included in our database are covered by a probationary clause which allow employers to assess a new employee's skills before offering them permanent employment. Under such a clause, the employee must be informed of issues around their performance and given an opportunity to improve during the probationary period. The employer also must provide adequate training and support to help probationary employees improve to the required level of performance/competency. Unlike under trial periods, in the event of dismissal, the probationary employee is entitled to challenge the employer's actions through the personal grievance procedures.

Probationary clauses are commonly found in collective agreements covering workers in information and media industries, accommodation and food services, and mining, with more than 50 percent of employees on CEAs in those industry groups being subject to such a clause in their agreement. It is also interesting that most probationary periods specified in those clauses extend for a similar period to the 'trial periods' - equal to or less than three months. Despite this most employees are covered by collective agreements with no probationary clause included.

Summary

Our analysis of CLEW's collective agreement data suggests the changes the Government is making to New Zealand's labour law will, for the most part, merely bring the Employment Relations Act into line with what is currently provided for a majority of employees covered by collective agreements and what has become the 'standard' across the private sector and most industries. The one exception to this is with regard to 90-day trial periods, where the proposed change will return the law to the previous status quo to make it available only to employers with fewer than 20 employees.

Finally, as Labour has not yet been able to get agreement from their coalition partner to introduce its promised sector-wide 'fair pay' agreements, which are intended to set a standard or 'bottom-line' provisions across an industry. Further work will be done on this in the next year to see how these agreements would be developed and how they would work. At this stage, though, the changes proposed by the new Government in its first 100 days do not seem to be the 'radical' change the Party touted during the election campaign.

LEGAL UPDATE: REPRESENTATION IN INDIVIDUAL BARGAINING

New Zealand Public Service Association Te Pukenga Here Tikanga Mahi v Commissioner and Chief Executive Inland Revenue Department Te Tari Taake **[2017] NZEmpC 164**

This case concerns a claim by the Public Service Association (PSA) that the Inland Revenue Department (IRD) had breached the duty of good faith in collective bargaining under section 32 of the Employment Relations Act 2000. The union also claimed a breach of section 236 when, as part of a restructuring process, the IRD sent letters offering employment to members of the PSA who had authorised the union to represent them in the change process.

The Court found that there was no breach of section 32, but that the IRD had breached section 236. The breach of s 236 was important because it meant the union and IRD had to engage in further discussion about the effectiveness of the IRD's offers.

The background facts

The IRD is undertaking a large change process involving the implementation of a new technology platform together with significant organisational change.

As part of the first stage of its restructure, the IRD was to disestablish the roles of 3,300 front-line staff, all of whom were to be offered new roles in new customer-facing teams.

The IRD consulted with the PSA about its proposed letter of offer to these employees. Due to concerns about the lack of certainty in the offers, and members concerns that any individual requests for information could make them too vulnerable, the PSA suggested to its members that it be appointed as their representative in all matters relating to the change process. Over 1,300 PSA members subsequently authorised the PSA to act as their representative. The union requested all communications be directed to it and made clear its expectation that there was to be no direct or indirect communication by the IRD to the represented PSA members.

Notwithstanding this, the IRD sent the letters of offer directly to the employees. Its reason for doing so was that it wished for all offers to be received simultaneously so that each employee had the fullest opportunity to consider them. The IRD stated that a copy of the offer had also been forwarded to the union.

Shortly after the letters of offer were sent, the PSA initiated collective bargaining to replace the current CEA, due to expire on 27 December 2017. The union wrote to the IRD and requested that it refrain from bargaining with union members about matters relating to their terms and conditions of employment.

However, the IRD continued to communicate with the PSA members directly about the offers of employment.

Section 32

The Court noted that section 32 **"***describes the core requirements of* [the duty of good faith] *when a union and an employer bargain for a collective agreement*."[1]

[1] At [68].

In particular, subparagraph 32(1)(d)(ii) states that the union and employer "*must not (whether directly or indirectly) bargain about matters relating to terms and conditions of employment with persons whom the representative or advocate are acting for, unless the union and employer agree otherwise*".

The PSA argued that this section applied whenever an employer sought a variation of individual terms that apply in addition to those in a collective agreement, whether the changes were effected by way of individual bargaining, collective bargaining, or a combination of the two.

The IRD argued that section 32 did not apply to the offers of employment, emphasising the opening words of the section ("*Good faith in bargaining for collective agreement*") and the placement of the section in Part 5 of the Act, which relates to collective bargaining.

The Court held the letters of offer constituted individual bargaining, and therefore Part 6 of the Act was applicable, in particular section 63A and section 61(1), which allows for agreement to "*additional terms and conditions*" that are "*not inconsistent with the terms and conditions in the collective agreement*". This was "*not a process of bargaining for a new CEA*".[2]

Accordingly, the Court found no breach of section 32.

Section 236

Section 236 states relevantly:

> ***236 Representation***
>
> *(1) Where any Act to which this section applies confers on any employee the right to do anything or take any action—*
>
> *(a) in respect of an employer; or*
>
> *(b) in the Authority or the court, —*
>
> *that employee may choose any other person to represent the employee for the purpose…*

The IRD argued that sending the letters of offer to the union members did not fall within the language of section 236, but the Court did not accept this.

The Court noted that the section does not impose limits on direct communications with a represented person. However, "… *whether direct dealings with an employee who authorises another party to represent them are permitted, is a question of fact; it is one which must be assessed in all the circumstances*."[3]

Judge Corkill reviewed the relevant provisions of the CEA, which provided for members to "*collectively participate*" in the organisation of the workplace through the union. His Honour also reviewed the factual

[2] At [106].
[3] At [140].

circumstances, noting the union's history of involvement in the consultation process. The Court accepted evidence that the affected employees were placed under considerable pressure to accept the offer.

The Court declared that section 236 had been breached when the IRD dealt directly with the PSA members, as opposed to their appointed representative, regarding the offers of employment.

The Court instructed the parties to engage in good faith to resolve the status of the offers, in particular those offers that had already been declined or accepted conditionally.

Reviewed by Peter Kiely, Partner, Kiely Thompson Caisley

RECENT PUBLICATIONS

The ***Unions and Union Membership in New Zealand - Report on 2016 Survey*** (S. Ryall and S. Blumenfeld, Dec 2017) was released in our December *CLEW'd IN.* If you missed the report it is available on our website. Thank you to all the unions who submitted a survey and to the Companies Office for providing the data for those that were not returned to us.

Geoff Plimmer, Clara Cantal and Tamara Qumseya released their report for the New Zealand Productivity Commission - ***Staff perceptions of performance and effectiveness in the New Zealand State Sector*** in October 2017. The report further analysed the data from the 2016 Public Service Association Survey on workplace dynamics in public sector organisations originally undertaken under contract to CLEW. The report contributed to the Productivity Commission's inquiry into how the New Zealand State sector can effectively measure and improve productivity in core public services, with a focus on health, education, justice and social support. The report is available on our website.

Transforming Workplace Relations in New Zealand 1976-2016 (Victoria University Press, Wellington, 2017) edited by Gordon Anderson with Alan Geare, Erling Rasmussen and Margaret Wilson.

This collection of essays was published to mark the 40th anniversary of the publication of the first issue of the *New Zealand Journal of Industrial Relations*. A wide range of academic commentators reflect on this revolution in labour relations and speculate on the future of work relationships in a world again being challenged by newly evolving forms of work and employment. Contributors include both those who lived through the last 40 years as well as those who, in another 40 years, may again look back over a much changed employment landscape. For on-line purchases see http://vup.victoria.ac.nz/transforming-workplace-relations-in-new-zealand-1976-2016/

SEMINAR: TRANSFORMING WORKPLACE RELATIONS 1976-2016

Thursday 1 March 2018, 9am-1pm
Lecture Theatre 2, Ground floor, Rutherford House
Pipitea Campus, Victoria University of Wellington
(cnr Bunny St and Lambton Quay)
Cost: $85+gst

The way people work and workplaces have changed dramatically in the last forty years. But how has the management of workplace relations changed? What have been the drivers of change and has it made for better work and workplaces? What can we learn from this experience for future workplace relations?

This seminar is based on the recently published book as described above. The seminar brings together a number of the contributors to the book and will be valuable to policy analysts, employment lawyers, employment relations and union strategists and everyone with an interest in this area.

Information on the programme and registrations is available on our website - https://www.victoria.ac.nz/som/clew/seminars-and-workshops.

.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 and performance - What happens in organisations matters. From strategies, business processes, management practices, worker experiences to knowledge sharing, collaboration, innovation, productivity, engagement and trust – these all impact how individuals and organisations perform.

Contact person: Dr Geoff Plimmer
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Employment rights and institutions - What is the role of trade unions and of collective bargaining in New Zealand's contemporary economy and society? Is the current system of employment rights and the institutions and processes for enforcement of those rights in New Zealand still relevant? Is it efficient, and does it contribute to overall productivity growth?

Contact person: Dr Stephen Blumenfeld
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Changing nature of work and the workforce - Rapid and increasing change in the external environment of organisations has fundamentally changed the world of work. Factors shaping how we organise and participate in work include rapid technological development, intensifying environmental and resource pressures, globalised markets, mobile workforces and changing demographics.

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