



## *Chapter 8: EEO*

### ⊕ Overview

- ▣ What is EEO: the conceptual maze
- ▣ Liberal, radical & transformational models
- ▣ Historical trends in NZ
  - Equal pay, pay & employment equity
  - Human Rights Act 1993
  - Privacy Act 1993
- ▣ How successful has EEO been?

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There are several factors which make EEO (Equal Employment Opportunities) both an interesting and a difficult topic. There are many different concepts and these concepts are often used in different ways by various authors/researchers,

- state interventions have been prevalent in New Zealand but labour market conditions and managerial styles and attitudes have also had a major influence,
- there are several Acts influencing this area, they often overlap with each other and the functioning and impact on practices can be unclear,
- finally, there are different evaluations of how successful EEO has been and there is a range of indicators available, though the importance of these indicators is often disputed.

Again, please don't get too worried about the details of the various pieces of legislation. Instead focus on their general intent and how they influence employment relations practices.



## *EEO concepts & distinctions*

- ✦ Q: how are employees treated? Equality of opportunities? Level of diversity?
- ✦ Key criteria & distinctions (pp. 332-333)
  - ❑ Problem description: direct & indirect discrimination, horizontal & vertical segregation
  - ❑ Approaches: pay equality & pay equity, procedural fairness & affirmative action, managing diversity, family-friendly workplaces

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EEO goes to the heart of employment relations as it deals with how the managerial prerogative is executed in practice, the impact on key employment conditions and opportunities, and how employees perceive the employment relationship.

“identification of new discriminatory practices has increased concerns about EEO.” (p. 195). This has coincided with the focus of EEO being widened.

“Accompanying this broader focus has been the debate concerning the degree to which interventions by the state and voluntary agencies, as well as human resource management practices at workplace level, have succeeded in overcoming discriminatory practices.” (p. 195).

The distinction between direct & indirect discrimination is crucial since it is the fundamental issue associated with EEO and since both forms of discrimination are targeted by the Human Rights Act.

Horizontal and vertical segmentation indicates whether the traditional distribution of people across the labour market has started to change.

Approaches: what are their impacts & do they fit with current perceptions?



## *EEO concepts & distinctions II*

### ✦ Basic criteria:

- ✦ Procedures v/s outcomes
- ✦ Short-term v/s long-term focus
- ✦ Organisational v/s societal focus

### ✦ More 'managerialism' in EEO debate?

- ✦ Weaker concepts?: managing diversity & family-friendly workplaces
- ✦ Little affirmative action in NZ?
  - While there has been another push for pay equity, this has stalled in 2009 & overall progress has been slow.

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The basic criteria are always important when evaluating employment relations changes!

“Horizontal segregation relates to the tendency of certain groups to work in particular occupations. /.../ Vertical segregation is often referred to as the ‘glass ceiling’ and describes the inability of certain groups to break into the higher-level positions in organisations.” (p. 198).

Why can ‘managerialism’ be a problem for EEO?

The focus on procedural fairness and organisational & individual outcomes have made targeting & countering horizontal segregation less ‘political correct’. On the other hand, a particular problem is that ‘fitting in’, ‘having the right attitude’, have become an important criteria for many organisations.

Finally, focus on the merit principle has increased the importance of formal skills and educational qualifications.



## *Liberal & radical models*

- ✦ Convenient distinction – see table 8.1
  - ✦ Procedures or outcomes?
  - ✦ Implications for organisational practices
  - ✦ Often a mix, with liberal model leading in NZ
- ✦ Transformational model
  - ✦ Democratisation of organisational decisions
  - ✦ Short-term v/s long-term perspective
  - ✦ A continuous learning process

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The key distinction in table 8.1 is regarding principles: procedures or outcomes? The other hallmarks flow from this distinction, though seldom in the black-&-white fashion portrayed by the two models.

Crucial confusion: “the assumption that fair procedures (in the liberal sense) lead to fair outcomes (in the radical sense).” (p. 203).

While procedural fairness & positive action dominate in NZ, there are some focus on targets in public sector staff demographics.

It is unclear how democratisation will be implemented under the transformational model, though one option could be through employee influence on key employment decisions (see chapters 16 & 17)

Short v/s long-term: “At its shortest, this involves measures to minimise bias in procedures such as recruitment & promotion. At its longest, it is a project of transformation for organisations.” (p. 203).

“Cockburn and others argue that both the liberal and radical models have missed the point and that achieving EEO depends on learning how to transform organisations ... making them work for all people.” (p. 204)



## *Historical trends in NZ*

- ✦ A long row of state interventions (pp 204-5)
- ✦ The public sector has led the way
- ✦ Equal pay, breadwinner model, IC&A system
  - ▣ Equal pay: Public sector - 1960, Overall - 1972
    - At the time, many OECD countries do the same
- ✦ Pay & employment equity
  - ▣ Why the debate & what are the goals?
  - ▣ Employment Equity Act 1990
    - Repealed immediately by the 1990 National Government

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A number of older Acts were about protection & preventing discrimination. For example, the 1894 IC&A Act and the 1912 public sector reform.

IC&A system enshrined the notion of a 'breadwinner' & thus, unequal pay.

From the mid 1950s, there were pressures to implement anti-discrimination measures and equal pay legislation in several OECD countries. Factors included: a surge in workplace democratisation following the Second WW, influx of women & ethnic minorities in the labour market, expansion of public sector employment, general labour shortages, higher educational levels.

The distinction between equal pay & pay equity is important: equal pay targets similar types of jobs while pay equity focuses on different types of jobs (for example, comparing nurses and police officers).

The debate about pay & employment equity was prompted by a tailoring off in the gains made to close the 'gender pay gap'. It was also an attempt to deal with women's work being undervalued.

Would employment equity have dealt with horizontal and vertical segregation?



## *Human Rights Act 1993*

- ✦ Has been enshrined in law since 1970s
  - ✦ The legislative intent has widened over the years
- ✦ Human Rights Act 1993 covers a wider range of categories – see p. 210
  - ✦ Follows 1990s policy focus on individual rights
  - ✦ Prescribes general functions, duties & institutional structures – see pp. 209 & HRC website
    - Many complaints, around half about employment matters
    - Book focus: on sexual harassment & racial discrimination

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The key areas of the Human Rights Act were already covered by the Race Relations Act 1971 & the Human Rights Commission Act 1977. These earlier Acts covered: sex, race, colour, ethnic and national origins, marital status, religious and ethnical beliefs. Subsequently, the 1993 Act added: age, disability, political opinion, employment & family status and sexual orientation.

The HR Act prompted – together with Personal Grievance rights to all employees under the ECA – a major increase in individual employment rights.

The 2 largest groups of complaints were disability and then race & racial harassment - see Table 8.2 (p. 211). In 1999/2000, it was disability and sexual harassment (constituting 28% & 18% of all complaints). Why this rise in race & ethnicity complaints (see Table 8.2)?

“Despite a rise in the number of complaints compared to previous years’ statistics, the enforcement agencies remain concerned that there is a large degree of under-reporting of discrimination and sexual harassment in the workplace.” (p. 211).



## *Human Rights Act 1993 - II*

- ✦ If the applicant is qualified then it is unlawful to discriminate on several grounds:
  - ✦ Sex (incl. pregnancy & childbirth), marital & family status, religious or political opinions, ethnic & national origins, disability, age, employment status
  - ✦ Sexual harassment & racial discrimination are covered by both HR Act & the ERA
    - The two acts take a stronger & wider approach than before (more offensive behaviours are targeted)
    - ERA: collective rights. HRA: individual rights

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Difference between HRA & ERA: “Another difference is that once an allegation is made, the discrimination or harassment will be presumed to exist and the onus is on the accused party to prove otherwise.” (p. 212).

This – putting the onus on the accused party - is rather unusual and it has attracted a fair amount of employer criticism.

In case of sexual harassment & racial discrimination: what makes people take their case either under the HRA or the ERA?

There doesn't appear to be firm research evidence about these decisions to pursue action under either the HRA or the ERA.

There are, however, different procedures and often different outcomes under the types of legislation. This may influence people's decisions.

While the ERA has a focus on collective rights, taking a personal grievance case is – as the name implies – often an individual, personal action. There has also been a strong focus on protecting individual rights under the ERA (see chapter 6).



## *Privacy Act 1993*

- ✦ Individual has right to know about: what kind of information & for what purpose
- ✦ Concerns collection, storage, use & disclosure of personal information
  - ❖ Recruitment, termination, managing staff, surveillance activities, 'whistle-blowing'
  - ❖ Based on 12 privacy principles – see pp 214-5
  - ❖ Many complaints & more surveillance is possible
    - See re: drug testing & employee surveillance (pp 217-9)

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The 'right to know' principle of the Privacy Act requires openness and accountability.

It also requires organisational to implement procedures and administrative and storage options.

The Act has had a significant impact upon questions asked in job interviews and in the collations and disclosure of employee data.

Another major and still evolving area is electronic and video surveillance and there have been several recent court cases in that area. With the widespread use of computers, this will probably be a fertile ground for legal precedent in the coming years. Another contentious area is drug testing.

The privacy principles provide straightforward (in plain English) directions for the collection and handling of personal information.

While there are still many complaints, it appears that the 'settling in' period of the Act is over, and there has been a decline in the number of complaints since the high point of 1,200 complaints in 1996/97 (see Figure 8.1, p. 216).



## *Privacy & other issues*

- ✦ What has the impact been of Privacy Act?
  - ✦ Many organisations have a policy of:
    - if in doubt don't release any information
    - Careful about storage & access to information
    - Allows employee access to own information
  - ✦ Disability: barriers are reduced, very slowly
    - ✦ Stereotyping & attitudinal barriers still exist
  - ✦ Age: key issue in many OECD countries
    - ✦ Retirement: an option & less state supported

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The impact of the Privacy Act is difficult to ascertain. There appears to be at least three issues/stages: first, employers had not developed formal policies; second, employers had developed formal policies but these policies were either not effective or they were not adhered to; third, there are formal and well implemented policies. In particular, it is difficult to estimate how effective privacy policies and procedures are.

In many organisations, it is becoming custom that employees can access their personal files stored on computer. They will also be told what the information, they are providing, will be used for and when it will be deleted.

While state sector organisations have recorded outcomes for women and ethnic minorities for a while they have only recently begun to survey outcomes regarding disabilities and age. This is an indication that disability and age only recently have been seen as major EEO issues (pp 220-222).

NZ has a different demographic profile from many other OECD countries and the 'aging' labour market will arrive in NZ nearly two decades after being experienced in Japan and European countries. Nevertheless, the rise in the retirement age (receiving 'the pension') in the 1990s, from 60 years to 65 year, is a warnings of things to come.



## *Has EEO been a success?*

- ✦ Compared to 25 years ago: Yes
- ✦ However: less spectacular as proponents had hoped for and patchy across labour market
  - ✦ Public sector has seen significant gains
  - ✦ Procedural fairness: increased significantly
  - ✦ But: many labour market issues still evident:
    - growth in atypical & insecure jobs, pay issues, horizontal & vertical segmentation, unemployment distribution, longer working hours, training & skills

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While there has been much lament over the slow progress and sometimes reversal of EEO, it is also necessary to celebrate: that the New Zealand labour market has become more multi-cultural, that women have started to move beyond the traditional horizontal and vertical segregation, that many organisations have implemented EEO initiatives and policies, that individual employment rights have increased over the last decade.

There have been significant gains in the public sector. For example, women have more than tripled their relative share in senior & better paid jobs since the mid-1990s, Maori have doubled their relative share in the same period.

Improvements to employment procedures have happened both in the public and private sectors.

There are, however, still issues to be tackled. Witness for example: the growth in lowly paid jobs in the service sectors, the inability to improve on the 'gender pay gap', the over-representation of Maori & Pacific Islanders amongst the unemployed, the difficulty in implementing proper procedures and policies in many small and medium sized organisations, the debates over the sustainability (or even the necessity) of individual employment rights.



## *Has EEO been a success? II*

- ✦ ERA & other public policy changes:
  - ▣ Will the 1990s shift from traditional EEO towards managerialism & individualism go into reverse?
- ✦ EEO trust: fits with voluntary approach
  - ▣ Promoting issues & 'best practice'
- ✦ Gender & ethnicity issues are still crucial
  - ▣ Gender: why haven't more educated women broken through the glass ceiling & what should be done about male educational achievement gap?
  - ▣ Ethnicity is crucial in a 'global labour market'

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The public policy agendas have changed dramatically in the new millennium and a tight labour market has existed until 2008: this has had some impacts on EEO thinking, management and outcomes. There are, however, two issues. First, the change has probably been slower than anticipated (see, for example, the slow rise in women in management positions – p. 229). Second, it is unclear, however, what the impact of public policy changes has been and further research is still necessary.

Other important trends are the rise in female participation in higher education and the changing norms concerning family, childcare and careers. The rise in female participation in education has been surprisingly overlooked by many commentators and researchers (p. 230). The gender imbalance is bound to become a major focus of public policy and academic research in the coming years.

The EEO trust have promoted 'best practice' since the early 1990s. See their website for annual reports, recommendations of 'good employers' and other activities.



### *Has EEO been a success? III*

- ✦ There can be both a positive or a negative evaluation of trends
  - ✦ Positive: more awareness & a considerable shift compared to some decades ago
  - ✦ Negative: progress is slow – gender & ethnicity issues, disability & age
- ✦ Two last reminders:
  - ✦ Check websites of key institutions
  - ✦ EEO evaluations: what data sources are available?

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