

## *Chp. 14: EEO*

### 🔗 Overview

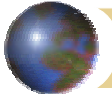
- 🔗 What is EEO: the conceptual maze
- 🔗 Liberal, radical & transformational models
- 🔗 Historical trends in NZ
  - Equal pay, pay & employment equity
  - Human Rights Act 1993
  - Privacy Act 1993
- 🔗 How successful has EEO been?

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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 segregat.
  - 📌 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.

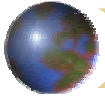
“identification of new discriminatory practices has increased concerns about EEO.” (p. 331). This has coincided with the focus of EEO being widened.

“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. 332).

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?
    - I am starting to have my doubts whether this is still correct?

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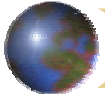
The basic criteria are always important when evaluating employment relations changes!

“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. 334).

Active & passive assistance: “Passive assistance can involve encouragement, cultural change and indirect help while active assistance includes measures such as skills and development programmes which directly support targeted employee groups.” (p. 335). Similar to affirmative or positive action, while outcome targets are covered by the concept of positive discrimination.

Why can ‘managerialism’ be a problem for EEO?

Focus on procedural fairness and organisational & individual outcomes have made targeting & countering horizontal segregation less ‘political correct’. A particular problem is that ‘fitting in’, ‘having the right attitude’ have become 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 14.1
  - ▣ 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 14.1 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.

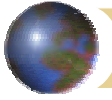
Confusion: “the assumption that fair procedures (in the liberal sense) lead to fair outcomes (in the radical sense).” (p. 339).

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 functions (see chp. 9 & 10)

“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.” pp. 339-340).

“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 ... to making them work for all people.” (p. 340)



## *Historical trends in NZ*

- ⊕ A long row of state interventions: table 14.2
- ⊕ The public sector has led the way
- ⊕ Equal pay, breadwinner, IC&A system
  - ▣ 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

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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.

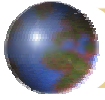
IC&A system enshrined the notion of a breadwinner & thus, unequal pay.

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, nurses and police officers).

The debate about pay & employment equity was prompted by a tailoring off 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 of EEO debate, pp 332-40
- ⊕ Human Rights Act 1993 covers a wider range of categories – see p. 345
  - ▣ Follows 1990s policy focus on individual rights
  - ▣ Prescribes general functions, duties & institutional structures – see pp. 346-347
    - Many complaints, half about employment matters

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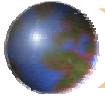
The key areas of the Human Rights Act were already covered by the Race Relations Act 1971 & the Human Rights Commission Act 1977. These earlier Acts covered: sex, race, colour, ethnic and national origins, marital status, religious and ethnical beliefs. Subsequently, the 1993 Act added: age, disability,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

Human Rights Commission: Chief Commissioner, Race Relations Conciliator, Privacy Commissioner, Proceedings Commissioner, and up to 3 other Human Rights Commissioners.

The 2 largest groups of complaints were disability and then sexual harassment (constituting 28% & 18% of all complaints in 1999/2000).

“Despite the rise in the number of complaints, there is still concern among the enforcement agencies that there is a large degree of under-reporting of discrimination and sexual harassment in the workplace.” (p. 347).



## *Human Rights Act 1993 - II*

- ✚ If the applicant is qualified than it is unlawful to discriminate because of:
  - ▣ 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
    - 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. 348).

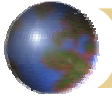
This is rather unusual and it has attracted a fair amount of employer criticism.

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

As far as I am aware, there is no firm research evidence about these decisions.

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.



## *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 p. 350
  - ▣ Many complaints & more surveillance possible

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

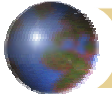
It also require new procedures and administrative and storage changes.

It 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 casus 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 compliants in 1996/97 (see table 14.4, p. 351).



## *Privacy & other issues*

- ⊕ What has the impact been of Privacy Act?
  - ▣ Many org. 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
- ⊕ Age: key issue in many OECD countries
  - ▣ Retirement: an option & less state supported

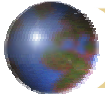
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The impact of the Privacy Act is difficult to ascertain. There appears to be at least three issues/stages: first, employers have not developed formal policies; second, employers have developed formal policies but these policies are either not effective or they are 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 public sector organisations, it is becoming custom that employers 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 (p. 359). This is an indication that disability and age only recently have been seen as major EEO issues.

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 retirement age (receiving 'the pension') in the 1990s, from 60 years to 65 year, may be 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 lab. 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

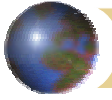
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While there has been much lament over the slow progress and sometimes reversal of EEO, it is also necessary to celebrate: that the New Zealand labour market has become more multi-cultural, that women have started to move beyond the traditional horizontal 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 over the last decade, 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 political debates over the sustainability or indeed 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'
- ⊕ Contestable EEO fund at DOL
- ⊕ Two last reminders:
  - ▣ Check websites of key institutions
  - ▣ EEO evaluations: what data sources are available?

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The public policy agendas have changed since the election of the Labour-Alliance government and this is bound to have some impacts on EEO thinking, management and outcomes. It is unclear, however, what these impacts will be, until sufficient research has become available.

Other important trends are the rise in female participation in higher education and the changing norms concerning family, childcare and careers.

The EEO trust have promoted 'best practice' for a decade. See their web side for annual reports, recommendations of 'good employers' and other activities.